



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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4/5/2021 12:26:03 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Occupational Therapy

TITLE-SERIES: 13-09

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Telehealth Practice; Requirements; Definitions

CITE STATUTORY AUTHORITY: 30-28-7

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB182

Section 64-9-9 Passed On 3/23/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2021

This rule shall terminate and have no further force or effect from the following date:

May 01, 2026

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Vonda K Malnikoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 13
LEGISLATIVE RULE
BOARD OF OCCUPATIONAL THERAPY

SERIES 9
TELEHEALTH PRACTICE; REQUIREMENTS; DEFINITIONS

§13-9-1. General.

1.1. Scope. -- This rule establishes procedures for the practice of telehealth by an occupational therapist or occupational therapy assistant.

1.2. Authority. -- W. Va. Code §30-1-26, and W. Va. Code §30-28-7

1.3. Filing Date. -- April 5, 2021

1.4. Effective Date. -- May 1, 2021

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon May 1, 2026.

§13-9-2. Definitions.

2.1. "Board" means the West Virginia Board of Occupational Therapy established pursuant to W. Va. Code §30-28-1 *et seq.*

2.2. "Occupational Therapist" or "Occupational Therapy Assistant" means a person licensed by the board to practice occupational therapy in West Virginia.

2.3. "Store and forward" means the asynchronous communication of medical data or images from an originating location to an occupational therapist or occupational therapy assistant at another site for the purpose of therapeutic assistance.

2.4. "Telehealth" is the application of evaluative, consultative, preventative, and therapeutic services delivered through telecommunication and information technologies. Occupational therapy services provided by means of a telehealth service delivery model can be synchronous, that is, delivered through interactive technologies in real time, or asynchronous, using store-and-forward technologies. Telehealth is considered the same as teletherapy, telerehabilitation, and telepractice in various settings and for the purpose of this rule.

2.5. "Telehealth technologies" means technologies and devices which enable secure electronic communications and information exchange in the practice of telehealth, and typically involve the application of secure real-time audio/video conferencing or similar secure video services or store and forward digital image technology to provide occupational therapy services by replicating the interaction of a traditional in-person encounter between an occupational therapist or occupational therapy assistant and a patient.

§13-9-3. Licensure.

3.1. The practice of occupational therapy occurs where the client is physically located at the time the telehealth technologies are used.

3.2. An occupational therapist or occupational therapy assistant who practices telehealth must be licensed as provided in this article.

§13-9-4. Practitioner-patient relationship through telehealth.

4.1. A practitioner-patient relationship may not be established through audio-only, written forms of communication, such as e-mail or text-based messaging, or any combination thereof.

4.2. If an existing practitioner-patient relationship is not present prior to the utilization of telehealth technologies, or if services are rendered solely through telehealth technologies, a practitioner-patient relationship may only be established through the use of telehealth technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial patient evaluation.

4.3. Once a practitioner-patient relationship has been established, either through an in-person encounter or in accordance with section 4.2 of this rule, the practitioner may utilize any telehealth technology that meets the standard of care and is appropriate for the patient.

§13-9-5. Telehealth practice.

5.1. Prior to providing occupational therapy services via telehealth:

5.1.a. An occupational therapist shall determine whether an in-person evaluation is necessary and make every attempt to ensure that a therapist is available if an on-site visit is required;

5.1.b. An occupational therapist shall determine whether in-person interventions are necessary and make every attempt to ensure an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions;

5.1.c. Occupational therapy personnel shall obtain informed consent of the delivery of service via telehealth from the patient/client prior to initiation of occupational therapy services via telehealth and maintain documentation of the consent-to-treat process and content in the patient's or client's health records.

5.2. An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

5.2.a. Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of service delivery;

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5.2.b. Comply with provisions of W. Va. Code §30-28- et seq., the Occupational Therapy Practice Act and its Legislative Rules;

5.2.c. Secure and maintain the confidentiality of medical information of the patient/client as required by HIPAA and state and federal law. The nature of the service delivery as being performed through telehealth should be thoroughly documented.

5.3. Occupational therapy assistants working under general supervision, as defined in §13-1-2.6, can provide services via telehealth. Telehealth cannot be used when direct supervision, as defined in §13-1-2.3, is required (i.e. Limited Permit holders, students, aides). All supervision requirements, as defined in §13-1-12, must be followed.