



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Registered Professional Nurses TITLE-SERIES: 19-16
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Telehealth Practice
CITE STATUTORY AUTHORITY: Va. Code §30-1-25, and W. Va. Code §30-7-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/30/2021 9:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Sue Painter
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South Charleston, WV 25309
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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This rule establishes procedures for the practice of telehealth by a registered nurse or advanced practice registered nurse

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There will be none.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There will be none.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There will be none.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

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

Yes

Sue Ann Painter -- 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.

TITLE 19
LEGISLATIVE RULE
WV BOARD OF EXAMINERS
FOR PROFESSIONAL REGISTERED NURSES

SERIES 16
TELEHEALTH PRACTICE; REQUIREMENTS; DEFINITIONS

§19-16-1. General.

1.1. Scope. -- This rule establishes procedures for the practice of telehealth by a registered nurse or advanced practice registered nurse.

1.2. Authority. -- W. Va. Code §30-1-25, and W. Va. Code §30-7-4

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five (5) years from final filing date.

§19-16-2. Definitions.

2.1. “Board” means the West Virginia Board of Examiners for Registered Professional Nurses

2.2. “Registered Nurse” or “Advanced Practice Registered Nurse” means a person licensed by the board to practice as a registered nurse or advanced practice registered nurse in West Virginia.

2.3. “Established patient” means a patient who has received professional services, face-to-face, from, from a Registered Nurse or Advanced Practice Registered Nurse within the past three years.

2.4. “Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

2.5. “Registration” means an authorization to practice as a Registered Professional Nurse or Advanced Practice Registered Nurse regulated by §30-7 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the scope of practice.

2.6. “Remote patient monitoring services” means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weigh, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

2.7 “Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient;

transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

2.8 “Virtual telehealth” means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

§19-16-3. Licensure.

3.1. The telehealth practice of registered nursing or advanced practice registered nursing occurs where the client is physically located at the time the telehealth technologies are used.

3.2 A registered nurse or advanced practice registered nurse who practices telehealth must be licensed or registered as provided in WV Code §30-7-1 et seq. and 19 series code of legislative rules. A person currently licensed as a registered nurse or advanced practice registered nurse in this state is not subject to registration but shall practice telehealth in accordance with the provisions of this section and the rules promulgated by the West Virginia Board of Examiners of Registered Professional Nurses thereunder.

3.3 A registered nurses or advanced practice registered who wishes to provide telehealth healthcare services from another state not in the Nurse Licensure Compact to West Virginia patients must submit the appropriate registered nurse and or advanced practice registered nurse license application as determined by the Board and fee as determined by 19CSR12 the Board fee rule. The licensed registered nurse or advanced practice nurse health care practitioner who practices telehealth shall be:

(A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and

(B) Registered as an interstate telehealth practitioner with the West Virginia Board of Examiner’s for Registered Professional Nurses;

1. A registration issued pursuant to the provisions of or the requirements of this section does not authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure approved by the Board.

2. A health care professional who registers to provide interstate telehealth services pursuant to the provisions of or the requirements of this section shall immediately notify the West Virginia Board of Examiners of Registered Professional Nurses board where he or she is registered of any restrictions placed on the individual’s license to practice in any state or jurisdiction.

§19-16-4. 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. The standard of care with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of an initial telehealth service, or the telehealth service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not pertain to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care.

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

§19-16-5. Telehealth practice.

5.1. The registered nurse or advanced practice registered nurse using telehealth technologies to practice nursing shall:

5.1.a. Verify the location of the patient;

5.1.b Provide the patient with the identity, qualifications, location and contact information of the registered nurse or advanced practice registered nurse;

5.1.c Conform to professional standards of care, including the determination of the appropriateness of utilization of telehealth technologies for the patient presentation and nursing services to be rendered;

5.1.d. Conform to professional scope of practice;

5.1.e. Obtain informed consent for the delivery of service via telehealth from the patient;

5.1.f Maintain appropriate healthcare records for the patient consistent with standards of care when delivering nursing services via any other mode of delivery and;

5.1.g. Maintain confidentiality of healthcare information of the patient as required by HIPAA and other federal and state laws.

§19-16-6. Telehealth prescribing

6.1 The advanced practice registered nurse with prescriptive authority may prescribe medications when delivering care utilizing telehealth technologies in accordance with professional standards of care, professional scope of practice, and subject to the limitations of WV Code 30-7-15a.

6.2 A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing limitations contained in this section do not apply to an advanced practice registered nurse, or other healthcare provider with prescriptive authority or a member of the same group practice, with an established patient, who is not

excluded from prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act.

§19-16-7. Discipline

7.1 A registered nurses and advanced practice registered nurse engaged in telehealth health care practice shall not engage in professional misconduct as outlined in WV ode 30-7-1 et. seq. and 19CSR3 or they may be subject to disciplinary action and or fines by the West Virginia Board of Examiners for Registered Professional nurses.

7.2 By registering to provide interstate telehealth services to patients in this state, a licensed registered nurse or advanced practice registered nurse health care practitioner is subject to:

(a) The laws regarding the profession in this state, including the state judicial system and all professional conduct rules and standards incorporated into West Virginia Code 30-7-1 et.seq., for registered professional nurse and advanced practice registered nurse health care practitioner's practice act and the 19 series legislative rules of registered professional nurse board; and

(b) The jurisdiction of the West Virginia Board of Examiners of Registered Professional Nurses board with which he or she registers to provide interstate telehealth services, including such board's complaint, investigation, and hearing process.