



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/26/2022 12:29:41 PM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Registered Nurses WV Board of TITLE-SERIES: 19-16
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 19-16 Telehealth Practice; Requirements; Definitions

PRIMARY CONTACT

NAME: Sue Painter
ADDRESS: 5001 Maccorkle Ave Sw
South Charleston, WV 25309
EMAIL: sue.a.painter@wv.gov
PHONE NUMBER: 304-744-1110

CITE STATUTORY AUTHORITY: 30-1-26 et seq

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Establishes procedures for the practice of telehealth for registered nurses and advanced practice registered nurses.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/16/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/15/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Email to organizations interested in rule

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Establishes the procedures for the practice of Telehealth for registered nurses and advanced practice registered nurses.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Changes for advanced practice registered nurses to prescribe Schedule II and does not require a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that an in-person encounter is required.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

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

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 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):

None

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 §30-1-26 *et seq.*

1.3. Filing Date. -- ~~May 1, 2022.~~

1.4. Effective Date. -- ~~May 1, 2022.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2027~~33~~.

§19-16-2. Definitions.

2.1. "Board" means the West Virginia Board of Examiners for Registered Professional Nurses, established in W. Va. Code §30-7-3.

2.2. "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance.

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. "Good standing" means a license that"

2.4.1. Is not currently revoked, suspended, or subject to a probationary period or a practice restriction or limitation;

2.4.2. Was not surrendered while under or to avoid an investigation or disciplinary action; or

2.4.3. Was not revoked, suspended, or subject to a probationary period or a practice restriction or limitation at the time the license expired, lapsed, terminated, or was cancelled.

2.5. "Health care practitioner" or "practitioner" means a registered professional nurse or advanced practice registered nurse.

2.6. "Interstate telehealth registration" or "registration" means an authorization to practice as a registered professional nurse or advanced practice registered nurse regulated for the limited purpose of providing interstate telehealth services within the registrant's scope of practice.

2.7. “Interstate telehealth registrant” or “Registrant” means a registered professional nurse or advanced practice registered nurse issued an interstate telehealth registration by the Board.

2.8. “Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a registered nurse or advanced practice registered nurse located in any other state or commonwealth of the United States.

2.9. “Licensee” means:

2.9.1. A registered professional nurse who has been granted a license to practice nursing pursuant to W. Va. Code § 30-7-1 *et seq.*;

2.9.2. An advanced practice registered nurse who has been granted a license to practice nursing pursuant to W. Va. Code § 30-7-1 *et seq.*;

2.10. “Originating site” means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner’s office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient’s home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

2.11. “Professional license” means a license to practice nursing in any state or commonwealth of the United States.

2.12. “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 weight, 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.

2.13. “Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a registered nurse or advanced practice registered nurse 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.

2.14. “Telehealth provider” means a licensee or registrant who provides health care services using telemedicine technologies to patients in West Virginia.

2.15. “Telemedicine technologies” means technologies and devices which enable secure communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring or “store and forward digital image technology”, or audio only telephone calls to provide or support health care delivery by replicating the interaction of a traditional in-person provider and a patient.

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

2.17. “Nurse Portal on Board’s website” means the set of related webpages operated by or on behalf of the West Virginia Board of Examiners for Registered Professional Nurses located at the domain name wvnmboard.wv.gov, or at any successor domain name published by the Board.

§19-16-3. Telehealth Practice Requirements.

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 health care practitioner may not provide telehealth services to patients in West Virginia unless the practitioner is:

3.2.1. Licensed by the Board; or

3.2.2. Practicing on the privilege of a multi-state Registered Nurse license in West Virginia; or

3.2.3. Registered with the Board pursuant to this rule.

3.3. 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.

3.4. A registered nurse or advanced practice registered nurse who is not licensed in West Virginia may provide interstate telehealth services to patients located at an originating site in West Virginia from a distant site, within the practitioner's scope of practice, if the practitioner holds an interstate telehealth registration issued by the Board.

3.5. An interstate telehealth registration does not authorize a registered nurse or advanced practice registered nurse:

3.5.1. To practice from a physical location or distant site within this state; or

3.5.2. To provide telehealth services to a patient in the State of West Virginia from an international distant site.

§19-16-4. Interstate Telehealth Registration Eligibility; Invalidation and Reinstatement.

4.1. A registered nurse or advanced practice registered nurse who is not licensed in West Virginia or practicing on a multistate Registered Nurse practice privilege may only provide telehealth services pursuant to this rule if the nurse is eligible for an interstate telehealth registration.

4.2. A registered nurse or advanced practice registered nurse is eligible for an interstate telehealth registration issued by the Board if all the following requirements are continuously met:

4.2.1. The practitioner holds a valid, active registered nurse or advanced practice registered nurse license issued by another state licensing authority or board that is not in the Nurse Licensure Compact;

4.2.2. The practitioner is licensed in good standing in all states in which the practitioner is licensed;

4.2.3. The practitioner is not the subject of an administrative complaint which is currently pending before another state licensing authority or board; and

4.2.4. The practitioner is not currently under investigation by another state licensing authority or board.

4.3. A registered nurse or advanced practice registered nurse may not apply for an initial registration or renew a registration unless the eligibility requirements set forth in subsection 4.2 are met.

4.4. The Board shall decline to issue or renew an interstate telehealth registration to any applicant who does not meet all the eligibility requirements.

4.5. Registrants must continue to maintain eligibility at all times to continue to practice pursuant to an interstate telehealth registration.

4.6. An interstate telehealth registration issued by the Board shall invalidate upon a registrant's loss of eligibility.

4.7. A registrant whose interstate telehealth registration is invalid due to a loss of eligibility may apply for registration reinstatement upon regaining eligibility.

4.8. A registered nurse or advanced practice registered nurse who is ineligible to apply for, receive or maintain an interstate telehealth registration is not automatically disqualified from or ineligible for a professional license issued by the Board.

§19-16-5. Interstate Telehealth Registration Application, Renewal and Expiration.

5.1. An eligible registered nurse or advanced practice registered nurse who is not licensed in West Virginia may apply for an interstate telehealth registration with the Board.

5.2. The Board shall issue an interstate telehealth registration to a registered nurse or advanced practice registered nurse who:

5.2.1. Meets all eligibility requirements for an interstate telehealth registration set forth above in Section 4 of this rule; and

5.2.2. Submits a complete application for an interstate telehealth registration, including all required documentation and verifications, which is accompanied by the appropriate fee.

5.3. An application for an interstate telehealth registration shall be completed in the Nurse Portal provided by the Board, which is available on the Board's website. An interstate telehealth registration application must be accompanied by payment of a nonrefundable application fee as set forth herein:

5.3.1. The initial and renewal registration fee for registered nurse or advanced practice registered nurse is \$100.

5.4. The Board will not consider an application or decide upon the issuance of an interstate telehealth registration until the complete application, including all third-party documentation and/or verification, is on file with the Board and the Board has had at least ten business days to review the application. These applications will be processed in order of receipt.

5.5. Applicants must provide the following information in association with an application for an interstate telehealth registration:

5.5.1. The applicant must have submitted a verification of licensure from the state in which he or she was originally licensed and the state in which he or she is currently employed if it is different than the

original state of licensure. If these boards participate in the licensure verification system maintained by the National Council of State Boards of Nursing, the applicant shall follow the process of verification to another state in accordance with the procedures set in place for that system.

5.5.2. The advanced practice registered nurse applicant must have submitted primary source verification of certification/recertification of successful completion of the appropriate APRN national certification examination in the APRN role and population focus congruent with educational preparation. The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

5.5.3. Information concerning whether the applicant:

5.5.3.1. Has any limitations, restrictions or conditions placed upon a professional license by any licensing board;

5.5.3.2. Has had a professional license revoked, suspended or placed on probation;

5.5.3.3. Has had disciplinary action taken against a professional license in any jurisdiction; or

5.5.3.4. Is currently under investigation or subject to an administrative complaint in any jurisdiction related to professional conduct or professional licensure.

5.6. Ineligible applications shall be declined. Complete applications without discrepant information may be approved without presentation to the Board. Any registration application that contains discrepant information concerning the applicant may be presented to the Discipline Review Committee for review and recommendation to the Board.

5.7. Registrants shall maintain complete and up-to-date contact information, including a current email address, with the Board. Registrants are required to update all categories of contact information collected by the Board within 10 business days of any change to the information previously provided.

5.8. Registrants shall immediately notify the Board, in writing via their Nurse Portal, of any restrictions placed on the registrant's professional license(s) in any state or jurisdiction.

5.9. An interstate telehealth registration is valid for a period of up to one year, and automatically expires on the 31st day of October unless the registrant renews the registration.

5.10. An interstate telehealth registration may be renewed annually during the renewal period established by the Board if the registrant remains eligible and meets all of the requirements for renewal.

5.11. A registrant may renew an interstate telehealth registration issued by the Board if the registrant:

5.11.1. Meets all eligibility requirements for an interstate telehealth registration as set forth in section 4 of this rule.

5.11.2. Submits a complete application for registration renewal accompanied by the appropriate renewal fee; and

5.11.3. Certifies compliance with all continuing education requirements associated with the registrant's current professional licenses.

5.12. The Board shall decline to renew a registration if the renewal applicant is ineligible.

5.13. The Board shall publish the renewal period and renewal application on its website and shall provide email notice via Nursys e-Notify of the renewal to the registrants' email address of record with the Board. Registrants are responsible for registering for Nursys e-Notify and submitting a renewal application by the deadline.

5.14. Communications and notifications regarding the renewal process will be provided to the registrant via email in their Nurse Portal. Failure of the registrant to receive or review a renewal notification does not justify the provision of interstate telehealth services after registration expiration.

5.15. If a registration automatically expires, the former registrant may reapply. If registration is granted, the Board shall reactivate the registration and reissue the practitioner's original registration number.

§19-16-6. Establishment of the Practitioner-Patient Relationship.

6.1. A practitioner-patient relationship may be established through:

6.1.1. An in-person patient encounter;

6.1.2. Telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing, or similar secure video services during the initial provider-patient encounter; or

6.1.3. Audio-only calls or conversations that occur in real time.

6.2. While real-time audio-only communications may be utilized to establish the practitioner-patient relationship, patient communication through audio-visual communication is preferable, if available or possible. Real-time audio-only communications may not be utilized when its use does not conform to the standard of care.

6.3. The practitioner-patient relationship may not be established through text-based communications such as email, internet questionnaires, text-based messaging, or other written forms of communication.

6.4. After a practitioner-patient relationship has been established, a practitioner may utilize any telemedicine technology that meets the standard of care and is appropriate for the patient presentation.

6.5. This rule does not prohibit the use of text-based communications for:

6.5.1. Responding to a call for existing patients;

6.5.2. Providing cross coverage for a practitioner who has established a practitioner-patient relationship with the patient through an in-person encounter; or

6.5.3. Providing assistance in the event of an emergency.

§ 19-16-7. Standard of Care, Delivery of Telehealth Services and Medical Records.

7.1. A telehealth provider has the duty to practice in a manner consistent with:

7.1.1. The provider's scope of practice;

7.1.2. The professional conduct standards established in this state for the provider's profession; and

7.1.3. The standard of care applicable to the provider's practice.

7.2. The standard of care for the provision of health care services is the same for health care services provided in-person and health care services provided via telemedicine technologies.

7.3. A telehealth provider's selection of telemedicine technologies for a patient encounter must permit the provider to meet the standard of care for the patient's particular health issue and presentation. Treatment, including issuing a prescription, if the nurse has prescriptive authority, based solely on an online questionnaire, does not conform to the standard of care.

~~7.4. The standard of care requires a telehealth provider to verify that a patient has visited an in-person health care practitioner within twelve months of an initial telehealth service by the provider or the provider's telehealth service or company. Continued treatment of a patient solely through telemedicine technologies after an initial telehealth encounter, with no intervening in-person health services, violates the standard of care. The provisions of this subsection: Nothing in this rule requires a practitioner to use telemedicine technologies to treat a patient if the practitioner, in his or her discretion determines that an in-person encounter is required.~~

~~7.4.1. Do not apply to acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care; and~~

~~7.4.2. May be suspended, in the discretion of the telehealth provider, on a case-by-case basis. If suspended, the telehealth provider must document the reason for suspending the in-person visit requirement in the patient medical record.~~

7.5. A telehealth provider shall:

7.5.1. Verify the identify and location of the patient;

7.5.2. Provide the patient with confirmation of the identity and professional qualifications of the telehealth provider;

7.5.3. Provide the patient with the physical location and contact information for the telehealth provider;

7.5.4. Establish or maintain a provider-patient relationship that conforms to the scope of practice, professional conduct standards, and standard of care;

7.5.5. Determine whether telemedicine technologies are appropriate for the patient's presentation of a specific health issue;

7.5.6. Obtain the patient's consent to receive telehealth services;

7.5.7. Conduct all appropriate evaluations and history of the patient consistent with the standard of care for in-person treatment of the patient's health condition; and

7.5.8. Create and maintain health care records for the patient which justify the course of treatment, and which verify compliance with the requirements of this section.

7.6. A telehealth provider shall maintain a patient medical record for each patient for whom telehealth services are provided. The patient record shall be accessible to the provider and the patient and maintained consistent with the laws and legislative rules governing patient health care records. All laws governing the confidentiality of health care information and governing patient access to medical records shall apply to records of telehealth encounters.

7.7. A telehealth provider solely providing services using telemedicine technologies shall make a patient's medical record easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient.

7.8. Upon request of the Board, a telehealth provider shall provide the Board with the identity of, and address for, the custodian of records of any company, service, platform or entity through which the telehealth provider practices while treating patients at originating sites in West Virginia.

§19-16-8. APRN Prescribing Authority and Limitations.

8.1. When prescribing to a patient via telemedicine, a telehealth provider shall prescribe within the prescriptive authority as set forth within the provisions of W. Va. Code § 60A-9-5a and the requirements set forth in §30-7-15a, 15b, and 15c and 19 CSR 08.

8.2. Telehealth providers who prescribe any medication listed in Schedules III through V of the Uniform Controlled Substance Act pursuant to a telehealth encounter with a patient at an originating site in West Virginia shall:

8.2.1. Obtain and maintain online or other electronic access to the CSMP;

8.2.2. Comply with all preconditions to prescribing identified in W. Va. Code § 60A-9-5a and the requirements set forth in 19 CSR 08;

8.2.3. Maintain a record of the controlled substance prescribed and the diagnosis or basis for the prescription in the patient medical record;

8.2.4. Comply with all prescribing protocols and prescribing limitations established in the Opioid Reduction Act, W. Va. Code § 16-54-1 *et seq.*;

8.2.5. Comply with all state and federal laws which govern the prescribing of controlled substances.

8.3. A telehealth provider may not, based solely upon a telemedicine encounter, prescribe any drug with the intent of causing an abortion.

§19-16-9. Complaint and Disciplinary Procedures for Interstate Telehealth Registrants.

9.1. By registering with the Board to provide interstate telehealth services to patients in this state, a health care practitioner is subject to:

9.1.1. All state laws regarding the registrant's profession in this state;

9.1.2. The state judicial system;

9.1.3. All professional conduct rules and standards incorporated into W.Va. Code § 30-7-1 et seq.; and 19 CSR 03; and

9.1.4. The jurisdiction of the Board, including the Board's complaint, investigation, and hearing process.

9.2. In circumstances where a registration is not declined or invalidated due to uncontested ineligibility, the complaint and disciplinary process and procedures, and appeal rights set forth in the contested case hearing procedure, W. Va. Code §29A-5-1 *et seq.*, W. Va. Code 30-7-11, and in the Board's procedural rules 19 CSR 5, Contested Case Hearing Procedure, and 19 CSR 9, Complaint Procedure, also apply to interstate telehealth registrants.

§19-16-10. Registration Denial, Professional Conduct, and Discipline.

10.1. The Board shall deny an application for an interstate telehealth registration, or a registration renewal, to any applicant who is ineligible based upon the criteria set forth in W. Va. Code § 30-7-1 *et seq.* or section 4 of this rule.

10.2. In circumstances where a registration is not declined or invalidate due to ineligibility, the Board may discipline a registered nurse and advanced practice registered nurse registered by the Board who, after a hearing, has been adjudicated by the Board as unqualified due to any of the following reasons

10.2.1. Engaging in professional misconduct as outlined in WV Code 30-7-1 *et. seq.*, 19 CSR 03 or section 04 of this rule may subject a registered nurse or advanced practice registered nurse to disciplinary action and or fines by the West Virginia Board of Examiners for Registered Professional Nurses.

10.2.2. Failure to immediately notify the Board of any restrictions placed on the registrant's professional license in any state or jurisdiction.

10.3. If the Board determines that an eligible registrant is otherwise unqualified, the Board may enter an order imposing any limitation, restriction or other disciplinary measure set forth in W. Va. Code § 30-3-14(j) and/or 19 CSR 03.

10.4. In addition to the complaint, investigation and disciplinary processes available in this state, the Board may elect to report or refer any complaint or allegation of professional misconduct by a registrant to the registrant's professional licensing boards.

§19-16-11. Required Records.

11.1. The Board shall provide each interstate telehealth practitioner registered written verification of registration via their Nurse Portal and registration expiration via email through the e-Notify system of Nursys®.

11.2. The Board shall provide verification of practitioners who are registered with the Board as interstate telehealth practitioners and shall publish that information for each registrant on its website at wvnm.boardsofnursing.org/licenselookup.