



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Optometry

TITLE-SERIES: 14-12

RULE TYPE: Legislative

Amendment to Existing Rule: No

RULE NAME: Optometric Telehealth Practice

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

WV Code 30-1-26, 30-8-1 et.seq.

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W.VA.Code, §30-1-26(b), says "Unless provided for by statute or legislative rule, a health care board referred to in §30-1-1 et. seq. of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of §29A-3-15 et. seq. of this code to regulate telehealth practice by a telehealth practitioner."

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The cost for state government cannot be estimated because the demand for telehealth registration has not been established.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The demand for out of state telehealth registration has not been established, so no estimate may be made at this time. The Board cannot estimate the revenue generated from the \$300.00 fee for registration since a demand for registration has not been established.

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

There will be no cost to the state's residents.

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):

There has been no measure of demand for optometric telehealth registration. Therefore, no projection of any staff time cost or revenue may be made at this time.

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

Yes

Pamela P Carper--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 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 12
OPTOMETRIC TELEHEALTH PRACTICE

§14-12-1. General.

1.1. Scope -- This legislative rule establishes requirements for telehealth registration and telehealth practice.

1.2. Authority -- W. Va. Code §30-8-1., et seq., W. Va. Code, §30-8a-1, et.seq. and W Va. Code 30-1-26.

1.3. Filing Date --

1.4. Effective Date --

1.5. Sunset Provision: This rule shall terminate and have no further force or effect on August 1, 2028.

§14-12-2. Definitions.

2.1. “Board” means the West Virginia Board of Optometry.

2.2. “Established patient” means a patient who has received professional services, face-to-face, from the optometrist, or optometrist of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

2.3. “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.

2.4. “Optometrist” means an individual licensed to practice optometry in West Virginia under §30-8-1, et seq. or in any other state or commonwealth of the United States.

2.5. “Registration” means an authorization to practice optometry regulated by §30-8-1 et. seq. of this code and this rule for the limited purpose of providing interstate telehealth services within the registrant’s scope of practice.

2.6. “Registrant” means an individual who holds a valid telehealth registration from the Board.

2.7. “Store-and-forward technologies” means the asynchronous computer-based communication of medical data or images from an originating location in West Virginia to a registered optometrist at another site for diagnostic purposes.

2.8. “Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone call 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.

§14-12-3. Requirements for Optometric Telemedicine.

3.1. The practice of optometry occurs where the patient is located at the time the telehealth services are provided.

3.2. The optometrist who registers to practice interstate telehealth shall be:

3.2.1. 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

3.2.2. Registered as an interstate telehealth practitioner with the West Virginia Board of Optometry holding a valid registration.

3.3 No person shall deliver optometric telehealth services unless a bona fide optometrist-patient relationship is established. A bona fide optometrist-patient relationship shall exist if the optometrist has:

3.3.1. obtained or caused to be obtained and reviewed a health and ocular history of the patient;

3.3.2. performed or caused to be performed and reviewed appropriate examination of the patient, either physically through use of instrumentation and diagnostic equipment by which digital scans, photographs, images and records able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies;

3.3.3. provided information to the patient about the services to be performed;

3.3.4. initiated additional diagnostic tests or referrals as needed; or

3.3.5. through audio only calls or conversations that occur in real time.

3.3.6. In cases in which an optometrist is providing telehealth, the examination required by clause 3.3.2. shall not be required if the patient has been examined in person by an optometrist licensed by the Board within the twelve months prior to the initiation of telehealth and the patient's records of such examination have been reviewed by the optometrist providing telehealth.

3.4. The standard of care shall require that with respect to the established patient, the patient shall visit an in-person optometrist within 12 months of using the 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 optometrist, on a case-by-case basis in the event of an imminent, life-threatening or sight-threatening emergency, acute inpatient care, or postoperative follow-up checks.

3.5. A registrant shall not prescribe any controlled substance listed in Schedule II of the Uniform Controlled Substance Act via interstate telehealth services.

3.6. The standard of care for providing optometric care in the State of West Virginia via telehealth services by a registrant or licensed optometrist shall be the same as for in-person care.

3.7. A provider of telehealth services shall ensure that the patient or patient's guardian is aware of the provider's identity, location, and license or registration number, and

3.8. The provider of telehealth services shall provide to the patient or guardian a clear mechanism to:

3.8.1. access, supplement, and amend contact information and health information;

3.8.2. register complaints with the Board; and

3.8.3. provide consent for the use of telehealth.

3.8.4. All consent and required notification shall occur prior to initiating any services.

3.9. Patient medical records must meet the same requirements as in-person records including, but not limited to:

3.9.1. record retention;

3.9.2. informed consent;

3.9.3. accessibility to both the licensee or registrant and the patient or legal guardian; and

3.9.4. be consistent with all established laws and administrative regulations governing patient healthcare records, but not limited, to HIPAA.

§14-12-4. Registration and Renewal.

4.1. To provide optometric care in the State of West Virginia via interstate telehealth services, an individual not otherwise licensed by the Board must first apply for and obtain registration with the Board using the application materials provided by the Board and paying fees equal to the initial instate optometry license application and annual licensing fees. The annual renewal fees for a registrant shall be equal to the annual renewal fees for an instate optometry license renewal as set forth by the Board's rules and fees established by the Board. The annual renewal and expiration dates shall equal the annual renewal and expiration dates of in-state licenses as set forth by the Board.

4.2. By registering to provide interstate telehealth services to patients in this state, a registrant is subject to all the laws, rules, and regulations regarding the practice of optometry in this state, including the state judicial system and all professional conduct rules and standards incorporated into the Optometry practice act, W. Va. Code, §30-8-1, *et.seq.*, and all the legislative rules and jurisdiction of the West Virginia Board of Optometry including the Board's complaint, investigation, and hearing process.

4.3. To obtain registration with the Board, an individual must be a licensed optometrist in good standing in all other states in which he or she is licensed and not currently under investigation or subject to an administrative complaint.

4.4. A registrant shall immediately notify the Board of any restrictions placed on the individual's license to practice in any state or jurisdiction.

4.5. A registration with the Board does not authorize an optometrist to practice from a physical location within the State of West Virginia without first obtaining appropriate licensure.

4.6. A person currently licensed to practice optometry in this state is not subject to registration but shall practice telehealth in accordance with the provisions of W.Va. Code, §30-1-26, W.Va. Code, §30-8-1, *et.seq.* and the rules promulgated thereunder.

§14-12-5. Restrictions.

5.1. Nothing in this section shall be construed to invalidate §30-8A-3 or to permit use of any automated refractor or other automated or remote testing device to generate refractive data unless that use is under direct, in-person supervision of a licensee in the same physical location as the patient.