



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/28/2023 9:47:40 AM

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: Dietitians TITLE-SERIES: 31-07
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 31-07 Telehealth Practice; Requirements; Definitions

PRIMARY CONTACT

NAME: Mallory Mount
ADDRESS: 101 Dee Drive Suite D
Charleston, WV 25311
EMAIL: wvbold@wv.gov
PHONE NUMBER: 304-558-1024

CITE STATUTORY AUTHORITY: #30-35-4

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:

This rule is being submitted as required by legislative rule for telehealth practice. This rule establishes procedures for the practice of telehealth by a licensed dietitian.

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: 6/21/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/21/2023

COMMENTS RECEIVED: No

(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?

n/a

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

This rule is being submitted as required by legislative rule for telehealth practice. This rule establishes procedures for the practice of telehealth by a licensed dietitian.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is being submitted as required by legislative rule for telehealth practice.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

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

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

n/a

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

Yes

Mallory J Mount -- 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 31
LEGISLATIVE RULE
BOARD OF LICENSED DIETITIANS

SERIES 7
TELEHEALTH PRACTICE; REQUIREMENTS; DEFINITIONS

§31-7-1. General.

1.1. Scope. -- This rule establishes procedures for the practice of telehealth by a licensed dietitian.

1.2. Authority. -- W. Va. Code §30-35-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force after August 1, 2029.

§31-7-2. Definitions.

2.1. "Board" means the West Virginia Board of Licensed Dietitians established pursuant to W. Va. Code §30-35-1 et seq.

2.2. "Licensed Dietitian" means a person licensed by the board to practice medical nutrition therapy or nutrition therapy in West Virginia.

2.3. "Store and forward" means the asynchronous communication of medical data or images from an originating location to a licensed dietitian 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. Medical nutrition therapy or nutrition 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 medical nutrition therapy or nutrition therapy services by replicating the interaction of a traditional in-person encounter between a licensed dietitian and a patient.

§31-7-3. Licensure.

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

3.2 A licensed dietitian who practices telehealth must be licensed as provided in this article.

3.3 Medical nutrition therapy or nutrition therapy services must be provided by a licensed dietitian who possess a current valid, active license and is in good standing in West Virginia and in all states in which they are licensed and are not currently under investigation or subject to an administrative complaint.

§31-7-4. Practitioner-patient relationship through telehealth.

4.1. A practitioner-patient relationship may be established through video, audio or 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.

§31-7-5. Telehealth practice.

5.1. Prior to providing medical nutrition therapy or nutrition therapy services via telehealth:

5.1.a. The licensed dietitian shall obtain informed consent of the delivery of service via telehealth from the patient/client prior to initiation of medical nutrition therapy or nutrition therapy services via telehealth and maintain documentation of the consent-to-treat process and content in the patient's or client's health records.

5.1.b. The licensed dietitian shall verbally verify the identity and location of the patient or client and document in the patient's or client's health records.

5.1.c. Telehealth services may only be used to provide medical nutrition therapy or nutrition therapy services to a patient or client who is physically located at an originating site in West Virginia other than the site where the licensed dietitian is located, whether or not in West Virginia.

5.2. The licensed dietitian providing medical nutrition therapy or nutrition therapy services via telehealth must:

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

5.2.b. Comply with provisions of W. Va. Code §30-35 *et seq.*, the Medical Nutrition Therapy Practice Act and its Legislative Rules. The failure of a licensed dietitian to comply will be grounds for disciplinary action under W. Va. Code §30-35-10;

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;

5.2.d. The Board will investigate complaints regarding services provided via telehealth in the same manner as it investigates other complaints as set in statute and rule.