



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

9/5/2023 11:55:27 AM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Counseling TITLE-SERIES: 27-14
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Series 14 Telehealth and Interstate Telehealth
Registration for Licensed Professional Counselors
and Licensed Professional Marriage and Family
Therapists

CITE STATUTORY AUTHORITY: W. Va. Code §§ 30-31-5 (19) and 30-31-6

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 10/05/2023 11:59 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Cheryl Henry
ADDRESS: 815 Quarrier Street, Suite 212
Charleston, WV 25301
EMAIL: cheryl.j.henry@wv.gov

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:

This rule establishes the scope of practice for the provision of counseling services via telehealth technologies and the process for licensed professional counselors or licensed marriage and family therapists to obtain an interstate telehealth registration with the Board. This rule ensures the continuity of care while existing clients are either transitioning to become a resident of another jurisdiction or because they are temporarily located in another jurisdiction.

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

This rule allows the temporary continuity of care for existing clients of out of state licensed counselors and therapists while in the state of WV.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no economic impact on revenues of the state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no economic impact on the special revenue accounts.

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

There is no economic impact on the state or its residents because the fee will be imposed on counselors and therapists not licensed in the state of WV.

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):

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

Yes

Cheryl Henry -- 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 27
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF EXAMINERS IN COUNSELING

SERIES 14
TELEHEALTH AND INTERSTATE TELEHEALTH REGISTRATION FOR LICENSED PROFESSIONAL
COUNSELORS AND LICENSED MARRIAGE & FAMILY THERAPISTS

§27-14-1. General.

1.1. Scope. – This rule establishes the scope of practice for the provision of counseling services via telehealth technologies and the process for licensed professional counselors or licensed marriage and family therapists to obtain an interstate telehealth registration with the Board. This rule ensures the continuity of care while existing clients are either transitioning to become a resident of another jurisdiction or because they are temporarily located in another jurisdiction.

1.2. Authority. -- W. Va. Code §§ 30-31-5 (19) and 30-31-6.

1.3. Filing Date. --

1.4. Effective Date. --

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

§27-14-2. Definitions.

2.1. "Board" means the West Virginia Board of Examiners in Counseling, established in W. Va. Code §30-31-4.

2.2. "Licensed professional counselor" (LPC) means a person licensed under the provisions of 27CSR1 to practice professional counseling;

2.3. "Licensed marriage and family therapist" (LMFT) means a person licensed under the provisions of 27CSR8 to practice marriage and family therapy;

2.4. "Good standing" means a license that:

2.4.1. Is not currently revoked, suspended, under investigation or subject to a probationary restriction or limitation.

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

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

2.5. "Interstate telehealth registration" or "registration" means an authorization to practice as a licensed professional counselor or licensed marriage and family therapist for the limited purpose of providing interstate telehealth services within the registrant's scope of practice for no more than 30 nonconsecutive days within a six month period.

2.6. Interstate telehealth registrant" or "Registrant" means a licensed professional counselor or licensed marriage and family therapist issued an interstate telehealth registration by the Board.

2.7. "Interstate telehealth services" means the provision of telehealth services to a client located in West Virginia by a licensed counselor or therapist located in any other state, jurisdiction, or commonwealth of the United States.

2.8. "Licensee" means:

2.8.1. A licensed professional counselor who has been granted a license to practice pursuant to W. Va. Code § 30-3-1 et seq.

2.8.2. A licensed marriage and family therapist who has been granted a license to practice pursuant to W. Va. Code § 30-3-1 et seq.

2.9. "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls that are compliant with Federal and State privacy and confidentiality requirements by a licensed professional counselor or licensed marriage and family therapist to provide services, including, but not limited to, assessment, diagnosis, and treatment. The term does not include internet questionnaires, email messages, or facsimile transmissions.

2.10. "Telehealth provider" means a licensee or registrant who provides counseling services using telehealth technologies to patients temporarily located in the state of West Virginia.

2.11. "Telehealth technologies" means technologies and devices which enable secure 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, remote monitoring, or audio only telephone calls to provide or support counseling service delivery by replicating the interaction of a traditional in-person counseling session.

§27-14-3. Telehealth Practice Requirements.

3.1. The practice of counseling and or therapy occurs where the client is located at the time services, including telehealth, are provided.

3.2. A LPC or LMFT may not provide telehealth services to clients in West Virginia unless the LPC or LMFT is:

3.2.1. Licensed by the Board; or

3.2.2. Registered with the Board pursuant to this rule.

3.3. A LPC or LMFT who is not licensed in West Virginia may provide interstate telehealth services to clients temporarily located in the state of West Virginia, within the LPC or LMFT scope of practice, if the

LPC or LMFT holds an interstate telehealth registration issued by the Board and is providing services to an already existing client.

3.4. An interstate telehealth registration does not authorize a LPC or LMFT:

3.4.1. To practice from a physical location or distant site within this state or to establish a new client relationship.

§27-14-4. Interstate Registration as a Telehealth Provider.

4.1. A LPC or LMFT who is not licensed in West Virginia may only provide telehealth services pursuant to this rule if they are eligible for an interstate telehealth registration.

4.2. A LPC or LMFT is eligible for an interstate telehealth registration issued by the Board if all the following requirements are continuously met:

4.2.1 The LPC or LMFT holds a valid, active license issued by another state licensing authority or board.

4.2.2 The LPC or LMFT is licensed in good standing in all states in which they are licensed.

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

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

4.2.5. The LPC or LMFT must submit a registration application to the Board

4.2.6. The LPC or LMFT must pay the registration fee required by the Board set forth in W. Va. Code §30-31-7.

4.3. A LPC or LMFT may not apply for an initial registration unless the eligibility requirements set forth in subsection 4.2. are met.

4.4 Registration as an out of state telehealth provider should occur prior to the provision of services.

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

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

§27-14-5. Interstate Telehealth Registration Application, Renewal and Expiration.

5.1. An eligible LPC or LMFT 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 LPC or LMFT who:

5.2.1. Meets all eligibility requirements for an interstate telehealth registration set forth above in Section 4 of this rule; and submits a complete application for an interstate registration. This should include all required documentation and verifications, which is accompanied by the appropriate fee established by the Board.

5.3. An application for an interstate telehealth registration shall be completed on a form provided by the Board, to be made 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 telehealth registration fee for the LPC and LMFT shall be based on the fee schedule of the Board issuing the temporary permission.

5.4. The Board will not consider a telehealth registration application until the completed application, including all third-party documentation and/or verification, is on file with the Board and the application has been reviewed and approved.

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

5.5.1. A listing of all current and former professional licenses held by the applicant and primary source verification of license to determine the applicant's good standing of each professional license; and

5.5.2. Information concerning whether the applicant:

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

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

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

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

5.6. Ineligible applications shall be denied.

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 submitted.

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

5.9. Interstate telehealth registration is valid for a period of 30 nonconsecutive days within a six month period. The six month period begins with acknowledgment of registration for temporary access for each client the counselor is requesting to provide services to within the state of West Virginia. Engagements of more than 30 nonconsecutive days or lasting longer than a six month period would require the need to apply for endorsement licensure.

§27-14-6. The Standard of Care for the Provision of Telehealth Services.

6.1. The LPC and the LMFT has a duty to practice in a manner consistent with:

6.1.1. The LPC's scope of practice and the ACA Code of Ethics; and the LMFT's scope of practice and the AAMFT Code of Ethics.

6.2. The standard of care for the provision of counseling services is the same for services provided in-person and provided via telehealth technologies.

6.3 A registration issued in pursuant to this rule does not authorize a LPC or LMFT to practice from a physical location within this state without first obtaining endorsement licensure by the Board.

6.4 Obtain the client's consent to receive telehealth services.

6.4.1 Conduct all appropriate evaluations and history of the clients consistent with the standard of care for in-person treatment of the client's mental health condition; and

6.4.2. Create and maintain records for the client which justify the course of treatment, and which verify compliance with the requirements of this section.

6.5. A telehealth provider shall maintain a patient medical record for each client for whom telehealth services are provided. The client 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.

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

§27-14-7. Complaint and Disciplinary Procedures for Interstate Telehealth Registrants.

7.1. By registering with the Board to provide temporary interstate telehealth services to clients located in this state, a counselor/therapist is subject to:

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

7.1.2. The state judicial system.

7.1.3. All professional conduct rules and standards incorporated into the ACA Code of Ethics for LPCs and AAMFT Code of Ethics for LMFTs; and

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

7.2. Registrants shall comply with W. Va. Code §30-31-1 et seq. and the legislative rules promulgated by the Board of Examiners in Counseling. Failure to comply will be grounds for disciplinary action under W. Va. Code §30-31-12 and the legislative rule promulgated by the West Virginia Board of Examiners in Counseling.

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

§27-14-8. Registration Denial, Professional Conduct, and Discipline.

8.1. The Board shall deny an application for an interstate telehealth registration, to any applicant who is ineligible based upon the criteria set forth in W. Va. Code §30-31-8 or section 4 of this rule.

8.2. The Board may discipline a LPC or LMFT registered by the Board who, after a hearing, has been ruled by the Board as unqualified due to any of the following reasons:

8.2.1. Conduct by a registrant which is equivalent to any of the grounds cited for the discipline in W. Va. Code §30-31-12, which apply equally to registrants or applicants as they do to licensees; or

8.2.2. Failure to comply with any provision of this rule and/or

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