



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Respiratory Care TITLE-SERIES: 30-11
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 30-11 Telehealth Practice; Requirements; Definitions

PRIMARY CONTACT

NAME: Amber D Shawver
ADDRESS: 106 Dee Drive
Suite 1
Charleston, WestVirginia 25301
EMAIL: amber.legg@wv.gov
PHONE NUMBER: 304-558-1382

CITE STATUTORY AUTHORITY: 30-34-6a & 30-1-26

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:

30-34-6a & 30-1-26 as mandated.

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: 9/26/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 10/30/2023

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?

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

Telehealth Practice for Respiratory Therapist

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

30-1-26 as mandated.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NA

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

NA

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

NA

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 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):

Increase in number of licensed Respiratory Therapist experienced in FY2023 and expected to continue.

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

Yes

Amber D Shawver -- 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 30
LEGISLATIVE RULE
BOARD OF RESPIRATORY CARE

SERIES 11
TELEHEALTH PRACTICE; REQUIREMENTS; DEFINITIONS

§30-11-1. General.

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

1.2. Authority. -- W. Va. Code §30-34-6a.

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.

§30-11-2. Definitions.

2.1. "Board" means the West Virginia Board of Respiratory Care established pursuant to W. Va. Code §30-34-1 et seq.

2.2. "Respiratory Therapist" means a person licensed by the board to practice respiratory care in West Virginia.

2.3. "Telehealth" is the application of evaluative, consultative, preventative, and therapeutic services delivered through telecommunication and information technologies. Respiratory Care services provided by means of a telehealth service delivery model can be synchronous, that is, delivered through interactive technologies in real time, or asynchronous. Telehealth is considered the same as teletherapy, telerehabilitation, and telepractice in various settings and for the purpose of this rule.

2.4. "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 respiratory care services by replicating the interaction of a traditional in-person encounter between a respiratory therapist and a patient.

§30-11-3. Licensure.

3.1. The practice of respiratory care occurs where the client is physically located at the time the telehealth technologies are used.

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

3.3 Respiratory Care services must be provided by a licensed respiratory therapist 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.

§30-11-4. 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, 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.

§30-11-5. Telehealth practice.

5.1. Prior to providing respiratory care services via telehealth:

5.1.a. The licensed respiratory therapist shall obtain informed consent of the delivery of service via telehealth from the patient/client prior to initiation of respiratory care 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 respiratory therapist 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 respiratory care services to a patient or client who is physically located at an originating site in West Virginia other than the site where the respiratory therapist is located, whether or not in West Virginia.

5.2. The licensed respiratory therapist providing respiratory care services via telehealth must:

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

5.2.b. Comply with provisions of W. Va. Code §30-34 *et seq.*, the Respiratory Care Practice Act and its Legislative Rules. The failure of a respiratory therapist to comply will be grounds for disciplinary action under W. Va. Code §30-34-5;

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.

§30-11-6.

6.1 A respiratory therapist licensed by the WV Board of Respiratory Care is authorized to engage in Telehealth procedures approved by the board to include but, not limited to:

6.1.a Patient education and or troubleshooting related to pulmonary diseases and equipment;

6.1.b Patient assessment and monitoring of respiratory related disorders and or conditions;

6.1.c Invasive and non-invasive ventilation management and troubleshooting;

6.1.d Modification and recommendations of respiratory plans of care including therapeutic devices, medications, and home regime;

6.1.e Discharge planning and follow-up;

6.1.f Assisting with respiratory therapy choices based on diagnostic results;

6.1.g Pulmonary rehabilitation.