



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

6/4/2024 11:31:34 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: Occupational Therapy TITLE-SERIES: 13-09  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 13-09 Telehealth Practice; Requirements; Definitions

**PRIMARY CONTACT**

NAME: WV Board of Occupational Therapy  
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CITE STATUTORY AUTHORITY: 30-1-26 and 30-28-7

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:

Rulemaking authority to establish procedures for the practice of telehealth by an occupational therapist or occupational therapy assistant in WV.

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: 4/24/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 5/31/2024

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?

Notice of comment period posted on Board website; email notification to all licensees of the Board.

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

Modification expands the definition of an Occupational Therapist or Occupational Therapy Assistant to include persons holding a compact privilege to practice occupational therapy in WV for the purposes of practicing telehealth.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Passage of SB221 during the 2022 regular session adding article §30-28A establishing the Occupational Therapy Compact in WV.

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		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

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

No fiscal impact

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

Yes  
 Vonda K Malnikoff -- 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.



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TITLE 13  
LEGISLATIVE RULE  
BOARD OF OCCUPATIONAL THERAPY

SERIES 9  
TELEHEALTH PRACTICE; REQUIREMENTS; DEFINITIONS

**§13-9-1. General.**

1.1. Scope. -- This rule establishes procedures for the practice of telehealth by an occupational therapist or occupational therapy assistant.

1.2. Authority. -- W. Va. Code §30-1-26, and W. Va. Code §30-28-7

1.3. Filing Date. -- ~~April 5, 2021~~

1.4. Effective Date. -- ~~May 1, 2021~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon ~~the expiration of five (5) years from final filing date~~ August 1, 2035.

**§13-9-2. Definitions.**

2.1. "Board" means the West Virginia Board of Occupational Therapy established pursuant to W. Va. Code §30-28-1 *et seq.*

2.2. "Occupational Therapist" or "Occupational Therapy Assistant" means a person licensed by the board or holding a compact privilege to practice occupational therapy in West Virginia.

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

**§13-9-3. Licensure.**

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

3.2. An occupational therapist or occupational therapy assistant who practices telehealth must be licensed or hold a compact privilege to practice in West Virginia as provided in this article.

**§13-9-4. Practitioner-patient relationship through telehealth.**

4.1. A practitioner-patient relationship may not be established through audio-only, 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.

**§13-9-5. Telehealth practice.**

5.1. Prior to providing occupational therapy services via telehealth:

5.1.a. An occupational therapist shall determine whether an in-person evaluation is necessary and make every attempt to ensure that a therapist is available if an on-site visit is required;

5.1.b. An occupational therapist shall determine whether in-person interventions are necessary and make every attempt to ensure an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions;

5.1.c. Occupational therapy personnel shall obtain informed consent of the delivery of service via telehealth from the patient/client prior to initiation of occupational therapy services via telehealth and maintain documentation of the consent-to-treat process and content in the patient's or client's health records.

5.2. An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

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

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5.2.b. Comply with provisions of W. Va. Code §30-28- et seq., the Occupational Therapy Practice Act and its Legislative Rules;

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.

5.3. Occupational therapy assistants working under general supervision, as defined in §13-1-2.6, can provide services via telehealth. Telehealth cannot be used when direct supervision, as defined in §13-1-2.3, is required (i.e. Limited Permit holders, students, aides). All supervision requirements, as defined in §13-1-12, must be followed.