

## Report From Agency

### STATE OF WISCONSIN MEDICAL EXAMINING BOARD

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**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE**  
**PROCEEDINGS BEFORE THE : CR 15-087**  
**MEDICAL EXAMINING BOARD:**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

N/A

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The current administrative code is silent with regards to telemedicine practice. The proposed rules define telemedicine, explain how a valid physician-patient relationship can be established in a telemedicine setting, and identify technology requirements for physicians who use electronic communications, information technology or other means of interaction with patients who are not physically present. The proposed rules require out-of-state physicians to hold a valid Wisconsin medical license in order to diagnose and treat patients located in Wisconsin.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Medical Examining Board held a public hearing on January 20, 2016. Written comments were received from:

- Alliance of Health Insurers, UA
- Nina M Antoniotti, AthenaWerx Telemedicine Transformation
- Convenient Care Association
- ERISA Industry Committee
- Froedtert Health
- HealthPartners
- Teladoc
- Wisconsin Academy of Physician Assistants
- Wisconsin Hospital Association
- Wisconsin Medical Society

- Zipnosis

The primary concern expressed in public comments was the proposed rules were establishing different standards for telemedicine than for in-person encounters. The Board addressed this concern as well as others by simplifying the rule and explicitly stating in the rule language a physician licensed to practice medicine and surgery by the Board is held to the same standards of practice and conduct regardless of whether health care services are provided in person or by telemedicine.

As the proposed rules were substantively changed as a result of public comments, the Board held a second public hearing on November 16, 2016, on the proposed rules as modified. The Wisconsin Hospital Association, Wisconsin Medical Society, Rural Wisconsin Health Cooperative, and Teladoc registered in favor of the proposed rules as revised. Comments in support of the rules as revised were received from:

- Alliance of Health Insurers, UA
- ERISA Industry Committee
- Teladoc

Comments expressing concern that the scope of the rule is limited to physicians and physician assistants were received from:

- Mary Simons, Radiology Team Facilitator and Telemedicine Coordinator for Bellin Health
- Linda Roethle, Vice President of Regional Business Development for Bellin Health
- The Convenient Care Association

The comments collectively requested the scope of the rule be expanded to include nurse practitioners, nurse-midwives, clinical nurse specialists, certified registered nurse anesthetists, clinical psychologists, and clinical social workers. The Board is unable to expand the scope of the rules to these providers, as they are not under the Board's regulatory authority.

#### **VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

To the extent applicable, the Legislative Council recommendations have been incorporated into the proposed rules as modified in response to public comments.

#### **VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:**

N/A