

Clearinghouse Rule 21-016

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Psychology Examining Board to create Psy 1.02 (11) and 5.02 (1) and (2), relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 455.08, Stats.

Statutory authority: Sections 15.08 (5) (b) and 455.08, Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats.: Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 455.08, Stats.: The examining board shall adopt such rules as are necessary under this chapter and shall, by rule, establish a reasonable code of ethics governing the professional conduct of psychologists.

Related statute or rule:

None.

Plain language analysis:

The current Psychology Examining Board rules are silent on telehealth. This rule will include a definition of telehealth, and specify psychologists are to hold a Wisconsin license in order to diagnose and treat patients located in Wisconsin and are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

None received.

Comparison with rules in adjacent states:

Illinois:

Illinois Statute provides that telehealth includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system. Illinois law further provides that “[a] health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.” Practice of telehealth in Illinois is limited to the extent of the practitioner’s scope of practice as established in his or her respective licensing and consistent with the standards of care for in-person services. Psychologists are included in the definition of “health care professionals.”

Iowa:

Iowa law defines telehealth as “...the delivery of health care services through the use of interactive audio and video.” “Telehealth” does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission. Services must comply all rules adopted by the appropriate professional licensing board, having oversight of the health care professional providing the health care services. Mental health is included in the delivery of health care services.

Michigan:

Michigan law defines “telemedicine” in their insurance code as the use of an electronic media to link patients with health care professionals in different locations. To be considered telemedicine under this section, the health care professional must be able to examine the patient via a statutorily compliant, secure interactive audio or video, or both, telecommunications system. Psychologists are included in the definition of “health care professionals.”

Minnesota:

Minnesota’s Governor issued an Executive Order authorizing and requesting “... out-of state mental healthcare providers who hold a current license, certificate, or other permit in good standing issued by a state of the United States or the District of Columbia evidencing the meeting of qualifications and competencies for licensees to render aid involving those skills in Minnesota by telehealth to meet the needs of this emergency.” Out-of-state practitioners must submit to the jurisdiction of the Minnesota health related regulatory and licensing boards. The relevant board may revoke a provider’s authorization to practice under this Executive Order at the board’s discretion. Minnesota’s telehealth law applies to physicians and is silent as to psychologists practicing telehealth.

Summary of factual data and analytical methodologies:

The Psychology Examining Board reviewed and seeks to revise its rules to provide greater clarity for psychologists with regards to the practice of telehealth.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797 email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before March 31, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Psy 1.02 (11) is created to read:

Psy 1.02 (11) “Telehealth” means patient care, treatment, or services are provided using technology where the psychologist and the patient are not at the same physical location for the patient care, treatment, or service.

SECTION 2. Psy 5.02 is created to read:

Psy 5.02 Telehealth

(1) The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.

(2) A psychologist who uses a telehealth visit to provide psychological services to a patient located in this state shall be licensed by the board.

SECTION 3. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
