



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Report From Agency

DATE: February 15, 2022

TO: The Honorable Chris Kapenga
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
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FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Clearinghouse Rule 21-062 Final Draft Rule regarding VE 1-11 relating to veterinarians and veterinary technicians

Proposed Rule

The proposed rule is attached.

Reference to Applicable Forms

There are no applicable forms.

Fiscal Estimate and EIA

The fiscal estimate and EIA are attached.

Detailed Statement Explaining the Basis and purpose of the Proposed Rule, Including How the Proposed Rule Advances Relevant Statutory Goals or Purposes

The basis and purpose of the proposed rule is to make the rule more clear, consistent, and easy to understand, as well as to respond to public requests for clarification regarding veterinary telehealth. The proposed rule advances relevant statutory goals and purposes by making the rules more clear and

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accessible to both credential holders and members of the public. The proposed rule achieves these goals through structural changes, minor language changes, and telehealth changes as described below.

Structural Changes

- Consolidates the eleven existing rule chapters into three chapters: one for veterinarians, one for veterinary technicians, and one for the professional assistance program. Consolidation makes the rules easier to access quickly.
- Adds a chapter for relevant complaint procedures that did not transfer in the previous rules from DSPS to DATCP.
- States the current fee amounts in rule. Fee amounts do not change.

Minor Language Changes

- Makes changes regarding procedures and processes.
 - o Removes the word annual from references to the review of colleges and technical schools.
 - o Expands the temporary veterinary permit process to include applicants who are scheduled to take or are awaiting results from the examination on state laws and rules.
 - o Clarifies that applicants for licensure who have previously been licensed in Wisconsin or another jurisdiction must apply by endorsement.
 - o Adds for clarity and consistency a section identifying common situations in which the board may require additional information from an applicant when reviewing an application.
 - o States more clearly that the board may reprimand the licensee or deny, suspend, limit or revoke a credential for cause, including filing an incomplete or fraudulent application, misrepresenting information on an application, or violating the rule chapter or Wis. Stat. ch. 89.
- Makes technical changes and updates.
 - o Adds the denial of a license to the list of reasons for a temporary veterinary permit to expire.
 - o Allows applicants to provide proof of graduation through the American Association of Veterinary State Boards (AAVSB), which allows for electronic submissions using the AAVSB online system.
 - o Adds direction in the rules to assure the requirements for access to health care records required in Wis. Stat. s. 89.075 are clear and consistently applied.
 - o Removes an obsolete provision regarding continuing education auditing of journal articles read. The Board previously eliminated the ability to self-study journal articles and mistakenly did not also eliminate this provision regarding auditing.
 - o Clarifies the continuing education requirements for persons who have not been credentialed for more than 5 years.
 - o Adds language to clearly state license exemptions.

- Allows veterinarians to delegate additional veterinary medical acts to certified veterinary technicians and unlicensed assistants.
 - Allows veterinarians to delegate the placement of intravenous catheters to unlicensed assistants under the direct supervision of the veterinarian present on the premises, per requests from stakeholders.
 - Additional changes to the delegation of veterinary medical acts are included in the telehealth section of this summary.

- Makes changes for consistency and ease of use the places in which rule requirements repeat, or refer to requirements in statute.
 - Modifies language regarding unprofessional conduct so that it also refers to Wis. Stat. s. 89.07 (1).
 - Modifies language regarding prescribing and dispensing a veterinary drug to refer to Wis. Stat. s. 89.068 (1) (c).
 - Makes a correction to the delegation of rabies vaccinations to reflect Wis. Stat. s. 95.21 (2) (a).

- Modifies terminology for clarity and consistency.
 - Adds additional definitions and updates existing definitions language for clarity.
 - Renames “temporary permit” to “temporary veterinary permit” and renamed “temporary consulting permit” to “veterinary consulting permit.”
 - Changes language to use the word “dispense” rather than “sell” to be more consistent with statutory language and definitions to make the language clearer and easier to understand.
 - Adds a note clarifying that the board accepts “veterinary nurse” as equivalent to “veterinary technician.”

Telehealth Changes

- Adds definitions related to telehealth.

- Adds definitions related to veterinary consulting and clarifies that a consulting veterinarian or other consultant may not do any of the following:
 - Visit the patient or client or communicate directly with the client without the knowledge of the attending veterinarian.
 - Take charge of a case or problem without the consent of the attending veterinarian and the client.

- Clarifies that the practice of veterinary medicine takes place where the animal is located at the time of practice, in alignment with Wis. Stat. ss. 89.05 (1) and 89.02 (6).

- Clarifies that in order to practice veterinary medicine in Wisconsin a veterinarian must be licensed in Wisconsin and have an established veterinary-client-patient relationship (VCPR) with the client. A VCPR must be established via an in person physical exam, or timely medically appropriate visits to the premises on which the patient is kept. It may not be established by telehealth technologies.
- Clarifies that the VCPR, once established, extends to other veterinarians within the practice, or relief veterinarians within the practice, that have access to, and have reviewed, the medical history and records of the animal.
- Clarifies that records must be kept, regardless of the encounter type.
- Clarifies, in accordance with Wis. Stat. s. 89.02(8) (c), that an animal owner must be able to easily seek follow-up care or information from the veterinarian who conducts an encounter while using telehealth technologies.
- Expands the delegation of medical services to allow a veterinarian to delegate the following items to a certified veterinary technician (CVT) if the veterinarian is available to communicate via telehealth technologies within five minutes. Under current rules, these items may only be delegated to a CVT if the veterinarian is personally present on the premises.
 - o Performing diagnostic radiographic awake contrast studies not requiring general anesthesia.
 - o Sample collection via a cystocentesis procedure.
 - o Placement of intravenous catheters.
 - o Suturing of tubes and catheters.
 - o Fine needle aspirate of a mass.

Summary of Public Comments and the Department’s Responses, Explanation of Modifications to Proposed Rules Prompted by Public Comments

Preliminary Public Hearing and Comment Period on the Statement of Scope

The Board held a preliminary hearing on SS 064-20 on August 19, 2020, with a written comment period through August 26, 2020. The Board received three comments. One comment was for information. Two comments expressed support of the scope, both expressed support of including telehealth in the scope, and one also expressed support of including addressing the circumstances under which a veterinarian may dispense a drug for a patient of another veterinarian in the scope.

Comment Period on the Economic Impact Analysis

The economic impact analysis was posted for 14 days, with comments accepted through June 21, 2021. One comment was received. The comment noted a typo in the plain language analysis, which has been corrected. The comment also expressed objection to the term “veterinary nurse,” stated that there are

objections from the national nursing organization regarding the term, and stated that “nurse” does not adequately encompass the skills and knowledge base of veterinary technicians. The rule draft does not use “veterinary nurse” to refer to veterinary technicians, but does include a note that states that the Board accepts the classification of “veterinary nurse” in other jurisdictions as equivalent to “veterinary technician.” While the Board, and this rule, does not use “veterinary nurse” to refer to veterinary technicians, this note clarifies that the Board accepts the term as equivalent when used by other jurisdictions.

Public Hearing and Comment Period on the Preliminary Rule Draft

The Board held public hearings on the preliminary rule draft on September 9 and 15, 2021, with comments accepted through September 29, 2021. Both hearings offered a combination of in-person access and remote access. The Board sent an email notice to licensees notifying them of the hearing and comment period, in addition to the posting in the Administrative Register. The Board received 3 comments at public hearings and 25 written comments. There were 26 total commenters. Of these 26:

- Nine expressed support of the proposed rule. Of these nine:
 - o Nine also specified support of the veterinary-client-patient relationship (VCPR) definition
 - o Eight also specified support of the omission of Assisted Reproductive Technologies (ART) procedures in delegation changes
 - o Two also expressed that ART procedures should not be delegated to a CVT at all
 - o One also expressed opposition to delegation without the veterinarian on the premises generally
 - o Six also expressed support of language regarding veterinarians filling prescriptions for other veterinarians
- Fourteen expressed opposition to the VCPR definition
- One expressed opposition to the omission of ART in delegation changes
- Two did not express a position for/against the proposal
 - o One expressed concerns about existing rabies provisions

VCPR Definition

The hearing draft created a new section regarding telemedicine and stated that “In order to practice veterinary telemedicine in Wisconsin, a veterinarian must be licensed in Wisconsin and have an established VCPR with the client. A VCPR must be established via an in-person physical exam, or timely medically appropriate visits to the premises on which the patient is kept. The VCPR may not be established by telehealth technologies.”

Comments expressing opposition to the VCPR definition expressed that:

- There are cases where a veterinarian cannot do a physical exam because of the aggression displayed by the patient

- The VCPR definition is restrictive and will negatively impact pet owners, foster care providers, and animal shelters
- Telecommunicating might make veterinary services more affordable
- Access to veterinary care in northern Wisconsin is challenging and referral after hours is to a clinic over an hour away
- Being able to establish a VCPR via virtual tool would allow more pets to receive care at critical times
- Telemedicine can provide quality, and potentially lifesaving care, improve efficiency and flexibility in scheduling options, and provide benefits to pet owners without access to transportation or who are unable to easily leave their homes
- Dogs and cats needlessly suffer, experience premature death, or are relinquished to animal shelters due to gaps in veterinary access, and telemedicine is a critical tool for the veterinary community to bridge gaps in care
- While physical veterinary medical examinations are sometimes critical, responsible use of telemedicine can bring essential care to more animals
- The education and licensing requirements that veterinarians undertake prepare them to utilize professional judgement in determining whether telemedicine is appropriate in the care of a particular animal or condition
- The rule could require safeguards with criteria for establishing a VCPR through electronic means
- Telehealth technologies have been used to create a human physician-patient relationship, including infants and nonverbal children
- The American Association of Veterinary State Boards (AAVSB) practice act model language supports allowing a veterinarian to establish a VCPR through telemedicine
- Support options 2 and 3
- Support Michigan and Washington policies

Comments expressing support of the VCPR definition expressed that:

- The statutory definition of VCPR under Wis. Stat. s. 89.02 (8) requires that the veterinarian has recently examined the patient or has made medically appropriate and timely visits to the premises on which the patient is kept, the VEB is granted authority to promulgate rules within the limits established by the statutory authority granted to it by the legislature, and the VEB may not change the VCPR definition but may allow the use of telehealth technologies within the scope of the statutory definition
- The telehealth changes are good and oppose moving them beyond what was proposed in the hearing draft
- In-person contact is critical for the long-term care of the patient
- While telehealth is an excellent tool for managing very specific cases, it does not provide enough background for a broad picture view of a farm in its entirety
- There is a critical difference between providing care to animals and humans because animal patients cannot directly communicate their pain or their symptoms to a veterinarian using language
- The owner can misinterpret an animal's condition

- A physical exam or visit to the premises provides a more complete understanding of the animal, its medical history, the environment, and the client in order to provide the highest standard of care, and it is critical to the safe and effective provision of veterinary medicine using telehealth technologies
- An in-person visit by the veterinarian serves to protect patients and clients by assuring that animals have been appropriately evaluated
- Eliminating the requirement for an in-person evaluation can present substantial risks, including suboptimal diagnosis and treatment, misinterpretation of animals' clinical signs by owners/caretakers, overprescribing, animal disease risks associated with transport of livestock for which an in-person evaluation was not conducted prior to issuing a Certificate of Veterinary Inspection, public health risks associated with delayed or missed diagnosis of zoonotic disease, and claims of malpractice
- Medical care delivered to patients must continue to be of high quality, and technological tools used to support electronic veterinary visits are still in their early stages of development and as of yet do not provide the same amount of information as an in-person encounter
- Addressing care disparities is not as straightforward as allowing the VCPR to be established electronically, and barriers to the receipt of veterinary care include socioeconomic, geographic, knowledge and demographic/culture based
- Through research the lack of physical proximity and the requirement for an in-person visit do not appear to be the primary barriers to accessing veterinary care
- Telemedicine itself is not free of access barriers, right now only 10% of veterinary clients are using it (8% telephone only), and surveys on the human health side revealed technological barriers, such as lack of access to technology, insufficiency of broadband internet, and digital literacy
- Telemedicine is not a clear solution to the problem of cost, results are mixed as to whether telehealth reduces downstream utilization of health care, and study on the human side resulted no reduction in overall spending for patients
- The VCPR language is consistent with federal law, the Food and Drug Administration (FDA) does not allow a VCPR to be established through electronic means and does allow it to be maintained through electronic means, and Wisconsin veterinarians are required under federal law to follow federal VCPR requirement in each applicable circumstance, such as any extralabel drug use or when authorizing a veterinary feed directive
- The proposal is consistent with American Veterinary Medical Association (AVMA) and FDA policies, and is supported by the Wisconsin Veterinary Medical Association (WVMA)
- The practice of veterinary medicine should be as broad and expansive as is allowed under Wisconsin law and as is protective of animal health, and the proposed rule meets both of those criteria

Based on public comments, the Board decided to maintain the same VCPR definition in this final draft as was in the preliminary hearing draft. However, the Board did make changes to make related provisions clearer. The Board moved provisions regarding emergency care, general advice, and consulting, and from the definitions into the body of the rule and added language to the telemedicine section of the rule to make it clearer that those specified items do not require the establishment of a VCPR.

ART Procedures

The hearing draft included creating a new category of delegation to allow a veterinarian to delegate specific acts to a CVT when the veterinarian is available via telehealth technologies within five minutes, rather than requiring that the veterinarian be personally present on the premises as current rule requires. This new category of delegation did not include ART procedures, which are performing amniocentesis, embryo collection and transfer, follicular aspiration, and transvaginal oocyte collection and recovery on livestock.

The comment expressing opposition to the omission of ART in delegation changes expressed that:

- CVTs safely and effectively perform ART under the direct supervision of a veterinarian hundreds of times each week
- The omission of ART will prevent the incorporation of technology into future operations, have a financial effect on farms, and cause delays to procedures due to the lack of large animal veterinarians
- Human medicine has broadly applied telehealth to existing procedures by modifying the definition of direct supervision generally and not based on individual services

Comments expressing support of the omission of ART in delegation changes expressed that:

- ART procedures are very tactile in nature, it is not uncommon to find reproductive abnormalities and pathology that require diagnosis by palpation, palpation is critical for the procedures, and specific tactile manipulations that cannot be visualized in their entirety from the exterior of the animal
- ART procedures pose a significant risk for complications that cannot be managed in a timely fashion unless the veterinarian is present on the premises
- Severe complications can have life-threatening and permanent consequences to a previously healthy animal, and the veterinarian needs to be present on the premises to mitigate the risk of permanent damage
- The required level of care cannot be accomplished via telehealth
- The risk of complications from ART procedures is significant, and the convenience of using telehealth does not outweigh the risk to the animal
- Relaxing these rules could hurt the perception of the Wisconsin dairy industry by giving the impression that Wisconsin quality is not up to standards, while delegating ART procedures could save some money up front, the long-term implications outweigh any potential short-term gain, and we need to continue to set the bar high when it comes to caring for animals and educating the public
- There may be business or financial reasons that could make the delegation of ART procedures using telehealth appealing to practitioners, clients, or businesses, but the argument is inappropriate in this context, the role of the VEB is to define the safe provision of veterinary care for animals and to protect animal health and not to make the practice of veterinary medicine fast or economical, and cited North Carolina State Board of Dental Examiners, *Petitioner v. Federal Trade Commission*, 574 U.S. 494 (2015)

- ART procedures should not be delegated to a CVT at all, and that performing them with telehealth would be a step in the wrong direction for the industry
- A veterinarian must be present on the premises for procedures delegated to a CVT in general, and being available within five minutes when the aorta has been lacerated during a cystocentesis is not acceptable
- The procedures identified in the draft can be safely supervised by a veterinarian using telehealth, but would oppose expansion of the proposed list

Based on public comments, the Board decided not to add ART procedures to the delegation changes. The delegation changes in this proposed final draft are the same as those in the hearing draft.

Other Comments

Six commenters expressed support of language regarding veterinarians filling prescriptions for other veterinarians. No commenters expressed opposition to this aspect of the rule proposal.

One commenter expressed concerns about existing rabies provisions, including that cats also have a risk of rabies, it is restrictive to require a veterinarian to be physically present for a CVT to give a rabies vaccine, and a veterinary assistant should be able to provide the rabies vaccine if the veterinarian is present. This rule draft references Wis. Stat. s. 95.21 (2) (a), which requires that rabies vaccinations required for dogs be administered “by a veterinarian or, if a veterinarian is physically present at the location the vaccine is administered, by a veterinary technician.” This requirement is statutory, and therefore the Board is unable to evaluate a change in rule.

Response to Legislative Council Staff Recommendations

The Board modified the rule draft to address all Clearinghouse comments. Most significantly, per Clearinghouse comments, the Board evaluated the definitions sections for clarity and consistency. The Board identified several terms that are used only once or twice in rule, or in some cases not used at all in the body of the rule, and moved the content from the definitions into the body of the rule, including:

- In VE 1:
 - o Complementary, alternative, and integrative therapies
 - o Consulting veterinarian
 - o Consultant
 - o Consultation
 - o Deception
 - o Faculty license
 - o Fraud
 - o General Advice
 - o Gross negligence
 - o Post graduate training permit

- Preceptor
 - Standard of care
 - Surgery
 - Telemedicine
 - Tele-triage
 - Temporary veterinary permit
 - Veterinary consulting permit
- In VE 2:
- Advertising
 - Board approved technical school or college
 - Gross negligence
 - Surgery

Report from the SBRRB and Final Regulatory Flexibility Analysis

The Small Business Regulatory Review Board did not issue a report on this rule. The Final Regulatory Flexibility Analysis is attached.