

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 7/1/21
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) VE 1 to 11	
4. Subject Veterinarians and Veterinary Technicians	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.115 (2) (jm)
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The proposed rule makes structural changes, minor language changes, and telehealth changes as described below.	
<b>Structural Changes</b> <ul style="list-style-type: none"><li>- 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.</li><li>- Adds a chapter for relevant complaint procedures that did not transfer in the previous rules from DSPS to DATCP.</li><li>- States the current fee amounts in rule. Fee amounts do not change.</li></ul>	
<b>Minor Language Changes</b> <ul style="list-style-type: none"><li>- Makes changes regarding procedures and processes.<ul style="list-style-type: none"><li>o Removes the word annual from references to the review of colleges and technical schools.</li><li>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.</li><li>o Clarifies that applicants for licensure who have previously been licensed in Wisconsin or another jurisdiction must apply by endorsement.</li><li>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.</li><li>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.</li></ul></li></ul>	

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- 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.
  - o 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.
  - o 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.
  - o Modifies language regarding unprofessional conduct so that it also refers to Wis. Stat. s. 89.07 (1).
  - o Modifies language regarding prescribing and dispensing a veterinary drug to refer to Wis. Stat. s. 89.068 (1) (c).
  - o Makes a correction to the delegation of rabies vaccinations to reflect Wis. Stat. s. 95.21 (2) (a).
  
- Modifies terminology for clarity and consistency.
  - o Adds additional definitions and updates existing definitions language for clarity.
  - o Renames “temporary permit” to “temporary veterinary permit” and renamed “temporary consulting permit” to “veterinary consulting permit.”
  - o 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.
  - o 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:
  - o Visit the patient or client or communicate directly with the client without the knowledge of the attending veterinarian.
  - o 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. §§ 89.05 (1) and 89.02 (6).

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- 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. § 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.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The Board held a preliminary public hearing on SS 125-19 on February 17, 2020, with a written comment period through February 24, 2020. The Board received three comments. All three comments requested that the statement of scope be expanded to address the use of telehealth technologies in the practice of veterinary medicine. One comment also requested that the statement of scope address the circumstances under which a veterinarian may dispense a drug for a patient of another veterinarian. This statement of scope for this rule proposal (SS 064-20) includes both of these topics.

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.

The Board convened a Telehealth Advisory Committee (Committee) to advise the Board in relation to the veterinary telehealth. The Committee was comprised of 13 representatives: 10 veterinarians and 3 certified veterinary technicians. Of the veterinarians, 1 works in large and small animal practice, 3 work in large animal practice, 1 works in equine and small animal practice, and 5 work in small animal practice. The veterinarians included representatives from the Wisconsin Veterinary Medical Association, Sexing Technologies, and the Dairy Business Association. The Department submitted a notice to JCRAR with the names of the Committee members on February 9, 2021. The Committee met on March 4, March 25, and April 8, 2021, to discuss potential veterinary telehealth options.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

Not applicable.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

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The Board expects the proposed rule to have minimal to no economic impact. No fee amounts will be changed in the proposed rule.

Most veterinary practices are small businesses. The proposed rule's structural changes and minor language changes may reduce the burden to veterinarians, veterinary technicians, and consumers of veterinary services, as the rules may become easier to access and understand quickly.

The proposed rule also allows for more use of telehealth technologies than the existing rule. New language regarding telehealth may reduce the economic burden to veterinarians and animal owners, especially in rural areas. The proposed rule expands the delegation of medical services to allow a veterinarian to delegate the following items to a 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.

- Performing diagnostic radiographic awake contrast studies not requiring general anesthesia.
- Sample collection via a cystocentesis procedure.
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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rule makes changes clarity and ease of use. The fee amounts remain the same but are stated in the proposed rule to make them readily accessible. Restructuring the chapters makes the rules easier to read and reference quickly. Adding a chapter for relevant complaint procedures makes those procedures clearer and more accessible to credential holders and members of the public. Changes and clarifications to procedures and processes, technical changes and updates, delegation of veterinary medical acts, references to relevant statutory requirements, and terminology make the rules more consistent and easier to understand. The proposed rule allows the Board to respond to public interest to address the use of telehealth technologies in veterinary medicine.

Without the proposed rule, the existing rules would remain unnecessarily difficult to understand. The amounts of fees would continue to be unspecified in rule. Current requirements relating to veterinarians and veterinary technicians would remain scattered across multiple rule chapters. Some of the board's procedures and processes would remain unclear. The board would not be able to evaluate technical changes and updates or the delegation of veterinary medical acts. References to relevant statutory requirements would remain inconsistent. Some terminology would continue to be unclear and confusing. The board would also not be able to respond to public interest to address the use of telehealth technologies in veterinary medicine.

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#### 16. Long Range Implications of Implementing the Rule

The proposed rule's structural changes and minor language changes may reduce the burden to veterinarians, veterinary technicians, and consumers of veterinary services, as the rules may become easier to access and understand quickly. The proposed rule also allows for more use of telehealth technologies than the existing rule.

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#### 17. Compare With Approaches Being Used by Federal Government

Pursuant to 9 CFR 160 to 162, a veterinarian must be specifically authorized by the United States Department of Agriculture – Animal and Plant Health Inspection Service to perform animal disease eradication and control functions under federal animal health laws.

Licensure requirements to practice veterinary medicine are established by each state and should not be affected by federal requirements.

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The structural changes and minor language changes in the proposed rule are unique to Wisconsin rules and make the

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rules clearer and easier to use. Veterinary telehealth regulations in Wisconsin, Illinois, Iowa, Michigan, and Minnesota are compared below. Regulatory recommendations by the American Association of Veterinary State Boards, the American Veterinary Medical Association, and the Wisconsin Veterinary Medical Association are also included for comparison.

#### Wisconsin

Under both the existing rule and the proposed rule, a veterinarian must be licensed in Wisconsin in order to practice veterinary medicine 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. It may not be established by telehealth technologies.

The proposed rule clarifies items related to telehealth and also expands the delegation of medical services to allow a veterinarian to delegate the specific items to a CVT if the veterinarian is available to communicate via telehealth technologies within five minutes.

#### Illinois

In Illinois, a valid VCPR cannot be established solely by telephonic or electronic communications. No further information was provided regarding whether Illinois would allow telehealth to be used if a VCPR was previously established.

#### Iowa

In Iowa, a valid VCPR cannot be established solely by telephonic or electronic communications. No further information was provided regarding whether Illinois would allow telehealth to be used if a VCPR was previously established.

#### Michigan

Michigan recently promulgated a new rule related to the practice of veterinary medicine using telehealth technologies, which became effective April 15, 2021. The Michigan rules now require:

- Disclosure of the identity and contact information of the veterinarian providing telehealth services. Licensing information shall be provided upon request.
  - Ensure that the technology method and equipment used to provide telehealth services complies with all current privacy-protection laws.
  - Employ sound professional judgement to determine whether using telehealth is an appropriate method for delivering medical advice or treatment to the animal patient.
  - Have sufficient knowledge of the animal patient to render telehealth services demonstrating by satisfying one of the following:
    - o Have recently examined the animal patient in-person or have obtained current knowledge of the animal patient through the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.
    - o Have conducted medically appropriate and timely visits to the premises where the group of animal patients is kept.
  - Act within the scope of practice.
  - Exercise the same standard of care applicable to traditional, in-person veterinary care service.
  - Be readily available to the animal patient for follow-up veterinary services or ensure there is another suitable provider available for follow-up care.
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- Consent for medical advice and treatment shall be obtained before providing a telehealth service.
- Evidence of consent for medical advice and treatment must be maintained in the animal patient's medical record.
- A veterinarian providing a telehealth service may prescribe a drug if the veterinarian is a prescriber acting within the scope of practice and in compliance.

#### Minnesota

Minnesota only allows patient-specific telemedicine within a VCPR. A VCPR cannot be established without an in-person examination. A veterinarian licensed in another state can serve as a consultant to the Minnesota veterinarian that holds the VCPR for that patient. The same standards of care apply to services rendered via telemedicine as to in-person visits.

#### American Association of Veterinary State Boards (AAVSB)

The AAVSB practice act model and AAVSB guidelines for telehealth are both available at <https://www.aavsb.org/board-services/member-board-resources/practice-act-model/>. Regarding the VCPR, the AAVSB practice model act and AAVSB guidelines for telehealth state that:

- Veterinarian-Client-Patient Relationship (VCPR) exists when:
  - o Both the Veterinarian and Client agree for the Veterinarian to assume responsibility for making medical judgments regarding the health of the Animal(s); and
  - o The Veterinarian has sufficient knowledge of the Animal(s) to initiate at least a general or preliminary diagnosis of the medical condition of the Animal(s); and
  - o The Veterinarian has provided the client with information for obtaining timely follow up care.
- The AAVSB recommends that each jurisdiction promulgate appropriate regulations clarifying who may be included within the scope of a single VCPR such as a Veterinarian or another Veterinarian within the same practice group with access to medical records. The AAVSB recommends that each jurisdiction promulgate appropriate regulations defining how to establish sufficient knowledge of the Animal(s), including the following:
  - o A recent examination of the Animal or group of Animals, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; or
  - o Through medically appropriate and timely visits to the premises at which the Animal or group of Animals are kept.
- The AAVSB recommends that each Jurisdiction promulgate appropriate regulations for the Veterinarian to provide instructions to the Client for obtaining follow up care that may include directing the Client to another Veterinarian or emergency clinic. It is essential for the VCPR to be easily established in order to require the Veterinarian to assume accountability for the Veterinary Medical Services rendered. Furthermore, as standards of practice and codes of conduct change over time, it is easier to promulgate new rules incorporating such changes rather than adopting legislative modifications.

#### American Veterinary Medical Association (AVMA)

AVMA guidelines for the use of telehealth in veterinary practice are available at <https://www.avma.org/sites/default/files/2021-01/AVMA-Veterinary-Telehealth-Guidelines.pdf>. Regarding the VCPR, the AVMA guidelines state that:

- Having a VCPR in place is critical whenever practicing veterinary medicine, whether practicing in person or
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remotely using telemedicine. The AVMA Model Veterinary Practice Act, which many governmental bodies use as a guide when establishing or revising laws governing veterinary practice, includes the following definition of the VCPR: The veterinarian-client-patient relationship is the basis for veterinary care. To establish such a relationship the following conditions must be satisfied:

- o The licensed veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient(s) and the need for medical therapy and has instructed the client on a course of therapy appropriate to the circumstance.
- o There is sufficient knowledge of the patient(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition(s) of the patient(s).
- o The client has agreed to follow the licensed veterinarian's recommendations.
- o The licensed veterinarian is readily available for follow up evaluation or has arranged for:
  - Emergency or urgent care coverage, or
  - Continuing care and treatment has been designated by the veterinarian with the prior relationship to a licensed veterinarian who has access to the patient's medical records and/or who can provide reasonable and appropriate medical care.
- o The veterinarian provides oversight of treatment.
- o Such a relationship can exist only when the veterinarian has performed a timely physical examination of the patient(s) or is personally acquainted with the keeping and care of the patient(s) by virtue of medically appropriate and timely visits to the operation where the patient(s) is(are) kept, or both.
- o Patient records are maintained. Both the licensed veterinarian and the client have the right to establish or decline a veterinarian-client-patient relationship within the guidelines set forth in the AVMA Principles of Veterinary Medical Ethics. A licensed veterinarian who in good faith engages in the practice of veterinary medicine by rendering or attempting to render emergency or urgent care to a patient when a client cannot be identified, and a veterinarian-client-patient relationship is not established, should not be subject to penalty based solely on the veterinarian's inability to establish a veterinarian-client-patient relationship.

- Many states have adopted this definition of the VCPR, or a very similar one, as a component of their state veterinary practice act or regulations. In addition, federal law requires a veterinarian to establish a VCPR before undertaking any extra-label drug use in animals, issuing a Veterinary Feed Directive, or the creation and use of certain types of biologics. It is also important for veterinarians to understand that they must comply with the federal law requiring a VCPR under these circumstances, regardless of how a state may ultimately define a VCPR in state law or regulation.

- Given current technological capabilities, available research, and the existing state and federal regulatory landscape, the AVMA believes veterinary telemedicine should only be conducted within an existing VCPR. An exception may be made for advice given in an emergency until a patient can be seen by a veterinarian. Ultimately, how a state defines the VCPR, the congruence of that state VCPR with federal requirements, and whether or not a VCPR exists in a given situation based on those definitions, determine what services can be offered.

- Within an established VCPR: A variety of telehealth and telemedicine service models are available to veterinarians and veterinary practices. Client-facing telemedicine services may include use of tools that allow the veterinarian to remotely and securely gather essential patient health information from the animal owner or another caretaker; access the patient's medical records; and conduct a virtual evaluation of the patient through real-time video or transmitted photographs or other data.

- Without an established VCPR: The veterinarian may provide non-patient-specific advice, but must stay clear of diagnosing, prognosis of, or treating patients. Two exceptions may apply: (1) if state law allows a VCPR to be established electronically, the veterinarian has met the requirements for doing so, and activities that would invoke a

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requirement for adherence to the federal VCPR are not conducted or (2) advice given in an emergency until a patient can be seen by a veterinarian. Non-client electronic communications that include the provision of non-patient-specific advice and general educational content are usually acceptable.

Wisconsin Veterinary Medical Association (WVMA)

WVMA formed a Telehealth Task Force and submitted suggested guidelines to the Board on December 19, 2019. Regarding the VCPR, the WVMA suggested guidelines state that:

- VCPR Required: Veterinary services may only be provided using telehealth technologies where a VCPR is established. If an existing VCPR relationship is present, then telehealth technologies may be used as long as the VCPR is maintained in accordance with Wis. Stat. s. 89.02 (8) and the requirements in this Section. If an existing VCPR relationship is not present, then a veterinarian must take appropriate steps to establish a VCPR consistent with Wis. Stat. s. 89.02 (8) and the requirements in this Section.
- Establishing an Initial VCPR for Telehealth: For purposes of establishing an initial VCPR prior to engaging in the practice of veterinary medicine using telehealth technologies, the veterinarian must meet the requirements of Wis. Stat. s. 89.02 (8) and:
  - o For livestock, (food and fiber animals), the veterinarian must have either conducted an in-person physical examination of the patient or must have visited the premises on which the patient is kept at least once in the immediate six (6) months prior to engaging in any telehealth treatment or services.
  - o For companion animals and equine animals, the veterinarian must have conducted an in-person physical examination of the patient at least once in the immediate six (6) months prior to engaging in any telehealth treatment or services.
- Maintaining a VCPR for Telehealth: Once a VCPR is established, for purposes of maintaining that VCPR and engaging in the ongoing practice of veterinary medicine using telehealth technologies, the veterinarian must meet the requirements of Wis. Stat. s. 89.02 (8) and:
  - o For livestock (food and fiber animals), the veterinarian must either conduct an in-person physical examination of the patient or must visit the premises on which the patient is kept at least once every six (6) months.
  - o For companion animals and equine animals, the veterinarian must conduct an in-person physical examination of the patient at least once every twelve (12) months.

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19. Contact Name

Angela Fisher

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20. Contact Phone Number

608-224-4890

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This document can be made available in alternate formats to individuals with disabilities upon request.



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### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The Board expects the proposed rule to have minimal to no economic impact. No fee amounts will be changed in the proposed rule.

Most veterinary practices are small businesses. The proposed rule's structural changes and minor language changes may reduce the burden to veterinarians, veterinary technicians, and consumers of veterinary services, as the rules may become easier to access and understand quickly.

The proposed rule also allows for more use of telehealth technologies than the existing rule. New language regarding telehealth may reduce the economic burden to veterinarians and animal owners, especially in rural areas. The proposed rule expands the delegation of medical services to allow a veterinarian to delegate the following items to a 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.

- Performing diagnostic radiographic awake contrast studies not requiring general anesthesia.
- Sample collection via a cystocentesis procedure.
- Placement of intravenous catheters.
- Suturing of tubes and catheters.
- Fine needle aspirate of a mass.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The proposed rule will directly affect Wisconsin licensed veterinarians and certified veterinary technicians. Most veterinary practices are small businesses. Current fee amounts would not change. Adjustments to make rule language and structure clearer, and to simplify processes where possible, may reduce the burden to each of these affected entities, by making the rules easier to access and understand quickly.

The Board convened a Telehealth Advisory Committee (Committee) to advise the Board in relation to the veterinary telehealth. The Committee was comprised of 13 representatives: 10 veterinarians and 3 certified veterinary technicians. Of the veterinarians, 1 works in large and small animal practice, 3 work in large animal practice, 1 works in equine and small animal practice, and 5 work in small animal practice. The veterinarians included representatives from the Wisconsin Veterinary Medical Association, Sexing Technologies, and the Dairy Business Association.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule's structural changes and minor language changes may reduce the burden to veterinarians, veterinary technicians, and consumers of veterinary services, as the rules may become easier to access and understand quickly. The

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proposed rule also allows for more use of telehealth technologies than the existing rule.

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5. Describe the Rule's Enforcement Provisions

The proposed rule does not makes changes to enforcement.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes    No

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