

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 24-039)

PROPOSED ORDER

An order of the Medical Examining Board to repeal Med 24.01 (5) and repeal and recreate Med 24.02, relating to Telemedicine and Telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 440.01 (1) (hm) and 440.17, Stats.

Statutory authority: ss. 15.08 (5) (b) and 448.40 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. states that “The 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 448.40 (1), Stats., provides that “[t]he board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

Related statute or rule: None.

Plain language analysis: The objective of the proposed rules is to implement the statutory changes from 2021 Wisconsin Act 121. This was achieved by revising the definition of “telemedicine,” as well as removing a reference to the Physician Assistant Affiliated Credentialing Board by repealing section Med 24.05 (5). The new Telemedicine and Telehealth rules for Physician Assistants are listed in section PA 3.08, so the Board decided it was no longer necessary to have a reference included in chapter Med 24. The rules in section PA 3.08 align with the statute changes from 2021 Wisconsin Act 121 and the changes to Med 24 from this rule.

Summary of, and comparison with, existing or proposed federal regulation: The U.S. Code of Federal Regulations (CFR) includes requirements for Telehealth services in the context of Medicare patient and provider relationships. Definitions for terms in this section of the CFR include asynchronous store and forward technologies, distant site, interactive telecommunications system, and originating site. In general, these requirements allow for telehealth visits to be paid for through Medicare part B as long as the conditions in this section of the CFR are met [42 CFR 410.78].

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of the practice of medicine in Illinois, with input from the Illinois State Medical Board. The Illinois Department is also responsible for the promulgation of rules to implement certain sections of the Illinois Medical Practice Act of 1987. This Act contains requirements for applications, licensure, and discipline for physicians. As outlined in Section 49.5, telemedicine may only be performed by someone who has an Illinois medical license or permit. Telemedicine includes, but is not limited to diagnosis and treatment of a patient in Illinois by a person in a different location than the patient via electronic means of communication. [225 Illinois Compiled Statutes ch. 60 s. 49.5].

Iowa: The Iowa Board of Medicine is responsible for the licensure and regulation of medicine and surgery in Iowa. Chapter 148 of the Iowa Code includes statutory requirements for licensure, composition and powers of the Iowa Board, and discipline for physicians [Iowa Code ch. 148]. The Iowa Administrative Code includes rules relating to medical practice, including Telemedicine. In Iowa, Telemedicine means the practice of medicine via electronic communications including asynchronous transmission. [653 Iowa Administrative Code ch. 13 s. 13.11].

Michigan: The Michigan Board of Medicine is responsible for the licensure and regulation of medical practice in Michigan. Act 368 Article 15 Part 170 of the Michigan Compiled Laws includes the regulations for medicine in Michigan, among several other occupations. Some of the requirements in this part include those for licensure, informed consent, and duties of the Michigan Board. [Michigan Compiled Laws ss. 333.17001-333.17097]. The statutory definition for Telehealth in Michigan is contained in Act 218 Chapter 34 Section 500 and includes the use of electronic media to link patients with health care professionals [Michigan Compiled Laws s. 500.3476 (2) (b)].

Minnesota: The Minnesota Board of Medical Practice is responsible for the licensure and regulation of medicine in Minnesota. Part 6800 of the Minnesota Administrative Code includes requirements for licensure, continuing education, and hearings before the Minnesota Board. [Minnesota Administrative Rules part 5600]. Chapter 147 of the Minnesota Statutes, or the Minnesota Medical Practice Act, also includes requirements for licensure, practice, and discipline for physicians, as well as Telehealth [Minnesota Statutes ch. 147]. In Minnesota, the statutory definition of Telehealth is included in the Minnesota Telehealth Act and means the delivery of healthcare services via two-way interactive communications [Minnesota Statutes ch. 62A s. 62A.673 (2) (h)].

Summary of factual data and analytical methodologies:

The Board reviewed 2021 Wisconsin Act 121 and made changes to Wisconsin Administrative Code Chapter Med 24 accordingly.

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

The rule was posted for 14 days on the Department of Safety and Professional Services website to solicit economic impact comments, including how the proposed rules may affect businesses, local municipalities, and private citizens. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon completion.

Effect on small business:

These 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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on June 19, 2024, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 24.01 (5) is repealed.

SECTION 2. Med 24.02 is repealed and recreated to read:

Med 24.02 Definition of telemedicine. In this chapter, “telemedicine” means “telehealth” as defined in s. 440.01 (1) (hm), Stats.

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)

This Proposed Order of the Medical Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairperson
Medical Examining Board