

**STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
HEARING AND SPEECH : CR 22-058
EXAMINING BOARD :**

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 objective of the rule is to provide greater clarity for hearing instrument specialists, speech-language pathologists, audiologists, and temporary licensees regarding the practice of telehealth. The Board completed a comprehensive review of chs. HAS 5 and 6 to ensure that the rules are current with standards of practice and consistent with the FDA Reauthorization Act of 2017 (FDARA) regarding Over-the-Counter (OTC) hearing aids.

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

The Hearing and Speech Examining Board held a public hearing on October 10, 2022. No public comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All recommendations suggested in the Clearinghouse Report have been accepted in whole.

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

N/A

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date August 9, 2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) HAS 5 and 6 - Permanent Rule	
4. Subject Telehealth	
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 s.20.165(g)(1)
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 type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$	
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 type="checkbox"/> No	
11. Policy Problem Addressed by the Rule These rules clarify the statute changes from 2021 Wisconsin Act 121 on telehealth.	
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. These rules will be posted for 14 days on the Department of Safety and Professional Services' website to solicit comments on the potential economic impact.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
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)	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are that there will be more detailed practice guidelines for audiologists and speech-language pathologists, and hearing aid specialists regarding telehealth practices. The alternative to implementing this rule is that the statute will leave open interpretations regarding the use of telehealth and licensing, technology, and other practices for audiologists and speech-language pathologists and hearing aid specialists in Wisconsin.	
16. Long Range Implications of Implementing the Rule The long range implications of implementing the rule improved are improved practice for audiologists, speech-language pathologists, and hearing aid specialists as a result of having rules for the profession in place.	
17. Compare With Approaches Being Used by Federal Government None.	
18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) Illinois:	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

In the Illinois Compiled Statutes Chapter 225, the Telehealth Act provides a definition for “Health care professional” which includes speech-language pathologists, audiologists, and hearing instrument dispensers. This Act also provides a definition of “Telehealth” as “the evaluation, diagnosis, or interpretation of electronically transmitted patient-specific data between a remote location and a licensed health care professional that generates interaction or treatment recommendations. ‘Telehealth’ includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system, as defined in subsection (a) of Section 356z.22 of the Illinois Insurance Code.” If the patient being treated is in Illinois, then the healthcare professional providing treatment via telehealth must be licensed to practice in Illinois (225 ILCS 150).

Illinois Executive Order 2020-09 expanded the definition of “Telehealth Services” to include provision of healthcare to a patient in any location through electronic or telephonic methods, in response to the COVID-19 pandemic for the duration of the Illinois Gubernatorial Disaster Proclamation. Executive Order 2021-14 re-issued Executive Order 2020-09 and extended it through at least July 24, 2021.

Iowa:

The Iowa Administrative Code Chapter 300, rule 645.300.2 includes that the provision of speech pathology or audiology services in Iowa via telephonic, electronic, or other methods, requires an Iowa license (IAC 645.300.2(147)).

Michigan:

The Michigan Compiled Laws, Chapter 333, Act 368 provides that Telehealth is defined as long-distance health care through telecommunication technologies. Telehealth may include telemedicine, which is defined in MCL 500.3476 (MCL 300.26283). Act 368 includes Michigan laws relating to the practice of speech-language pathology and audiology.

Minnesota:

The practice of speech-language pathology and audiology are provided for in Minnesota Statutes ss.148.511 to 148.5198. Telehealth, telemedicine, or telepractice is not specifically mentioned.

The Minnesota Department of Health provides the following definition related to Telehealth: “The provision of speech-pathology or audiology services in Minnesota through telepractice, electronic, or other means, regardless of the location of the speech-language pathologist or audiologist, shall constitute the practice of speech-language pathology or audiology and shall require Minnesota licensure.” (source:

<https://www.health.state.mn.us/facilities/providers/slpa/telepractice.html>)

19. Contact Name Dana Denny, Administrative Rules Coordinator	20. Contact Phone Number 608-287-3748
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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)

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

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:

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

5. Describe the Rule's Enforcement Provisions

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

- Yes No
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STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	HEARING AND SPEECH
HEARING AND SPEECH	:	EXAMINING BOARD
EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-058)

PROPOSED ORDER

An order of the Hearing and Speech Examining Board to amend HAS 5.01, and to create HAS 5.013, 5.015, 5.02 (2) and (3), 6.015 and 6.02 (9m), relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 459.12, Stats.

Statutory authority: Sections 15.08 (5) (b), 459.12 (1), and 459.34 (2) h, Stats.

Explanation of agency authority:

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. [s. 15.08 (5) (b), Stats.]

The examining board may make rules not inconsistent with the laws of this state which are necessary to carry out the intent of this chapter. [s. 459.12 (1), Stats.]

The examining board may reprimand a licensee or permittee or deny, limit, suspend or revoke a license or permit under this subchapter if it finds that the applicant, licensee or permittee has been engaged in unprofessional conduct as defined by rule by the examining board. [s. 459.34 (2) (h), Stats.]

Related statute or rule: Chapters HAS 5 and 6

Plain language analysis:

The objective of the rule is to provide greater clarity for hearing instrument specialists, speech-language pathologists, audiologists, and temporary licensees regarding the practice of telehealth.

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

None.

Comparison with rules in adjacent states:

Illinois:

In the Illinois Compiled Statutes Chapter 225, the Telehealth Act provides a definition for “Health care professional” which includes speech-language pathologists, audiologists, and hearing instrument dispensers. This Act also provides a definition of “Telehealth” as “the evaluation, diagnosis, or interpretation of electronically transmitted patient-specific data between a remote location and a licensed health care professional that generates interaction or treatment recommendations. ‘Telehealth’ includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system, as defined in subsection (a) of Section 356z.22 of the Illinois Insurance Code.” If the patient being treated is in Illinois, then the healthcare professional providing treatment via telehealth must be licensed to practice in Illinois (225 ILCS 150).

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Summary of factual data and analytical methodologies:

The Board reviewed chs. HAS 5 and HAS 6 to clarify the provision of telehealth services. The Board also referenced Wisconsin Administrative Code s. Med 24.02 when creating a definition of Telehealth specifically for the practice of speech-language pathology and audiology in the state. The Board also reviewed and considered the definition relating to telehealth provided by the American Speech-Language- Hearing Association (ASHA) and the Wisconsin Speech-Language Pathology and Audiology Association (WSHA).

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.

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 Jennifer.Garrett@wisconsin.gov.

Agency contact person:

Dana Denny, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; telephone 608-287-3748; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dana Denny, 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 the public hearing, to be held on October 10, 2022, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. HAS 5.01 is amended to read:

HAS 5.01 Authority. The rules in this chapter are adopted pursuant to the authority in ss. 15.08 (5) (b), 227.11, 459.10 (1) (k), ~~and~~ 459.12 (1), and 459.34 (2) (h), Stats.

SECTION 2. HAS 5.013 is created to read:

HAS 5.013 Scope. The standards of practice and professional conduct in this chapter apply to a licensee regardless of whether services are provided in person or by telehealth.

SECTION 3. HAS 5.015 is created to read:

HAS 5.015 In this chapter, “telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 4. HAS 5.02 (2) (i) and 5.02 (3) are created to read:

HAS 5.02 (2) (i) Failing to utilize equipment and technology to provide telehealth services which enable the hearing instrument specialist to meet or exceed the standard of minimally competent practice.

(3) A person engaging in the practice of selling or fitting hearing aids to a patient located in this state, whether in-person or via telehealth, shall be licensed under ch. 459, Stats., as a hearing instrument specialist or audiologist.

SECTION 5. HAS 6.015 is created to read:

HAS 6.015 Scope: The licensure and conduct rules in this chapter and ch. 459, Stats., apply to any person providing services to patients located in this state without regard to whether services are provided in person or via telehealth.

SECTION 6. HAS 6.02 (9m) is created to read:

HAS 6.02 (9m) “Telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 7. 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 Hearing and Speech Examining Board is approved for submission to the Governor and Legislature.

Dated 4/27/2023

Kathleen A Pazak

Chair

Hearing and Speech Examining Board