

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE
OPTOMETRY EXAMINING BOARD	:	ECONOMIC IMPACT ANALYSIS

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Optometry Examining Board, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Jake Pelegrin, Administrative Rules Coordinator
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935
DSPSAdminRules@wisconsin.gov

The deadline for submitting economic impact comments is February 21, 2024.

PROPOSED ORDER

An order of the Optometry Examining Board to **amend** Opt 1.03 and Opt 5.03 (8); and to **create** Opt 1.02 (7m), Opt 5.045 (4), and Opt 5.20; relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 440.01 (1) (hm), 449.02 (1), and 449.25 (1), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 449.25, Stats., and section 5 of 2021 Wisconsin Act 121.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that each examining board “[s]hall 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 227.11 (2) (a), Stats., provides that “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 449.25, Stats., provides that the examining board shall promulgate rules relating to informed consent, stating that, “[a]ny optometrist who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments.”

Section 5 of 2021 Wisconsin Act 121: “If the department, an examining board, or an affiliated credentialing board promulgates rules related to telehealth, the department, the examining board, or the affiliated credentialing board shall define “telehealth” to have the meaning given in s. 440.01 (1) (hm).”

Related statute or rule:

None.

Plain language analysis:

This rule will include a uniform definition of telehealth for optometrists based on that given by 2021 Wisconsin Act 121. It will specify optometrists are to hold a Wisconsin license or apply for a temporary credential in order to diagnose and treat patients located in Wisconsin. It will specify that optometrists 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:

N/A

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. Optometrists 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 real-time interactive audio and video, or other real-time interactive electronic media, regardless of where the health care professional and the covered person are each located. “Telehealth” does not include the delivery of health care services delivered solely through an audio-only telephone, electronic mail message, or facsimile transmission.” Services must comply with all rules adopted by the appropriate professional licensing board that has oversight of the health care professional providing the health care services. Optometry 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 secure interactive audio or video, or both, telecommunications system, or through the use of store and forward online messaging. Optometrists are included in the definition of “health care professionals.”

Minnesota:

Minnesota law defines "Telehealth" as “the delivery of health care services or consultations through the use of real time two-way interactive audio and visual communications to provide or support health care delivery and facilitate the assessment, diagnosis, consultation, treatment, education, and care management of a patient's health care.” Telehealth includes the application of secure video conferencing, store-and-forward technology, and synchronous interactions between a patient located at an originating site and a health care provider located at a distant site. Until July 1, 2025, telehealth also includes audio-only communication between a health care provider and a patient. Telehealth does not include communication between a health care provider and a patient that consists solely of an email or facsimile transmission. Telehealth does not include telemonitoring services. Optometrists are included in the definition of health care providers.

Summary of factual data and analytical methodologies:

The Optometry Examining Board reviewed and seeks to revise its rules to provide greater clarity for optometrists 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 will be 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.

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, Jennifer Garrett, may be contacted by calling (608) 266-2112.

Agency contact person:

Jake Pelegrin, 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 608-267-0989; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jake Pelegrin, 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, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 1.02 (7m) is created to read:

Opt 1.02 (7m) “Telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 2. Opt 1.03 is amended to read:

Opt 1.03 Delegation and supervision. Except as provided under s. Opt 5.03 (19) and (20), an optometrist may direct an unlicensed person working under the optometrist's supervision to perform any act that is within the optometrist's scope of practice. This includes performing telehealth with patients, as defined in s. Opt 1.02 (7m). The optometrist continues to be responsible for interpretation of test findings, as well as the diagnosis and management of any condition related to the care of the patient.

SECTION 3. Opt 5.03 (8) is amended to read:

Opt 5.03 (8) Practicing while knowingly having an infectious or contagious disease, except when practicing telehealth, as defined in s. Opt 1.02 (7m).

SECTION 4. Opt 5.045 (4) is created to read:

Opt 5.045 (4) An optometrist shall be responsible for informing a patient upon initiation of scheduling a visit, or within a reasonable amount of time in the event of a change of circumstances, if the visit is going to be performed by telehealth. The patient shall be provided with the name and contact information of the telehealth provider.

SECTION 5. Opt 5.20 is created to read:

Opt 5.20 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) An optometrist who uses a telehealth visit to provide optometry services to a patient located in this state shall either be licensed as an optometrist by the board, shall apply for a temporary credential under the requirements of s. 440.094, Stats, or shall have endorsement and licensure by the board under s. 449.055, Stats and ch. Opt 4.

SECTION 6. 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)
