

Notice of Public Hearing

The Optometry Examining Board announces that it will hold a public hearing on the rule revising Opt 1, 5, and 6, related to Telehealth, at the time and place shown below.

Hearing Information

Date: April 4, 2024

Time: 9:00 A.M.

Location: Information concerning the location of the hearing will be available at:

<https://dsps.wi.gov/Pages/BoardsCouncils/Optometry/Meetings.aspx>

Appearances at the Hearing and Submittal of Written Comments

The rule may be reviewed and comments submitted at:

<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Comments may also be submitted to Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov.

Comments must be received at or before the public hearing to be included in the record of rulemaking proceedings.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

The Department's Regulatory Review Coordinator may be contacted by calling (608) 266-2112.

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	OPTOMETRY EXAMINING BOARD
OPTOMETRY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

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 rules were developed in consultation with the Optometry Examining Board by reviewing Section 5 of 2021 Wisconsin Act 121, reviewing the current Optometry rules and statutes, and discussing current practice in the profession.

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. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

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 at Jennifer.Garrett@wisconsin.gov or at (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)

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 February 6, 2024								
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Opt 1, 5, 6									
4. Subject Telehealth for Optometry									
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(1)(g)								
7. Fiscal Effect of Implementing the Rule <table style="width: 100%;"><tr><td><input type="checkbox"/> No Fiscal Effect</td><td><input type="checkbox"/> Increase Existing Revenues</td><td><input checked="" type="checkbox"/> Increase Costs</td><td><input type="checkbox"/> Decrease Costs</td></tr><tr><td><input checked="" type="checkbox"/> Indeterminate</td><td><input type="checkbox"/> Decrease Existing Revenues</td><td colspan="2"><input type="checkbox"/> Could Absorb Within Agency's Budget</td></tr></table>		<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs	<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget	
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<input checked="" 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) <table style="width: 100%;"><tr><td><input type="checkbox"/> State's Economy</td><td><input type="checkbox"/> Specific Businesses/Sectors</td></tr><tr><td><input type="checkbox"/> Local Government Units</td><td><input type="checkbox"/> Public Utility Rate Payers</td></tr><tr><td colspan="2"><input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</td></tr></table>		<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)			
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<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). \$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 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.									
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. N/A									
13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A									
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) DSPS estimates a total of \$4,800 in one-time costs for staffing to implement the rule. The estimated need for 0.1 limited term employees is attributed to rule promulgation and update of forms and webpages. The estimated costs cannot be absorbed in the currently appropriated agency budget.									
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule Reviewing and updating these requirements will enhance clarity regarding current technological methods of delivery and ensure that standards of conduct are followed. The alternative to not updating the rules would be that licensees would not have clear guidance regarding virtual optometric delivery care service and current professional conduct requirements.									
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is that optometrists are allowed to practice telehealth and are compliant with standards of conduct.									
17. Compare With Approaches Being Used by Federal Government									

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

None.

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

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.”

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19. Contact Name

Jake Pelegrin, Administrative Rules Coordinator

20. Contact Phone Number

(608) 267-0989

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
