

**STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
PSYCHOLOGY EXAMINING BOARD : CR 21 - 016**

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 current Psychology Examining Board rules are silent on telehealth. This rule will include a uniform definition of telehealth given by 2021 Wisconsin Act 121, and specify psychologists are to hold a Wisconsin license or have valid certificates through the Psychology Interjurisdictional Compact or PSYPACT (2021 Wisconsin Act 131) in order to diagnose and treat patients located in Wisconsin and are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth. The Psychology Examining Board seeks to revise its rules to provide greater clarity for psychologists with regards to the practice of telehealth.

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

The Psychology Examining Board held a public hearing on March 31, 2021. We received a public comment from Danielle McGinnis. The comment did not contain any recommendations on the rule.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Back in March of 2021, the Clearinghouse Report recommended specifying the forms of communication that would be included under the definition of telehealth. At that time, the Board accepted all the Clearinghouse comments. However, Clearinghouse comment number 3 regarding the forms of communication is no longer applicable due to 2021 Wisconsin Act 121 enacted in February of 2022. Act 121 provides a uniform definition of

telehealth and instructs all examining boards to reference this definition if working on a telehealth rule project. In order to comply, the uniform definition reference has replaced the original definition provided in the 2021 preliminary rule draft.

Additionally, also in February of 2022 2021 Wisconsin Act 131 was enacted and ratified the Psychology Interjurisdictional Compact or PSYPACT, which provides ways to facilitate the process for licensed psychologist to provide telepsychological services across state lines through a certificate called "E.Passport". These stipulations were added to the other requirements for telehealth practice presented in the 2021 preliminary rule draft.

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 type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date April 12, 2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Psy 5	
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 20.165 (1) (g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" 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). \$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 current Psychology Examining Board rules are silent on telehealth. This rule will include a uniform definition of telehealth given by 2021 Wisconsin Act 121, and specify psychologists are to hold a Wisconsin license or have valid certificates through the Psychology Interjurisdictional Compact or PSYPACT (2021 Wisconsin Act 131) in order to diagnose and treat patients located in Wisconsin and 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. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.	
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) The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole. The Department estimates one-time administrative costs of \$653.03. These costs may be absorbed in the agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is established standards of conduct for providing psychological services using telehealth. If the rule is not implemented, these standards will remain unclear.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is established standards of conduct for providing psychological services using telehealth.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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: 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. Psychologists 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 interactive audio and video.” “Telehealth” does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission. Services must comply all rules adopted by the appropriate professional licensing board, having oversight of the health care professional providing the health care services. Mental health 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 statutorily compliant, secure interactive audio or video, or both, telecommunications system. Psychologists are included in the definition of “health care professionals.”

Minnesota: Minnesota’s Governor issued an Executive Order authorizing and requesting “... out-of state mental healthcare providers who hold a current license, certificate, or other permit in good standing issued by a state of the United States or the District of Columbia evidencing the meeting of qualifications and competencies for licensees to render aid involving those skills in Minnesota by telehealth to meet the needs of this emergency.” Out-of-state practitioners must submit to the jurisdiction of the Minnesota health related regulatory and licensing boards. The relevant board may revoke a provider’s authorization to practice under this Executive Order at the board’s discretion. Minnesota’s telehealth law applies to physicians and is silent as to psychologists practicing telehealth.

19. Contact Name

Sofia Anderson

20. Contact Phone Number

(608) 261-4463

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
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 21-016)

PROPOSED ORDER

An order of the Psychology Examining Board to create Psy 1.02 (11), 2.14 (2m), and 5.02 (1) and (2), relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 440.01 (1) (hm), 455.03 (2) and (3), Stats.

Statutory authority: Section 15.08 (5) (b), Stats., and section 5 of 2021 Wisconsin Act 121.

Explanation of agency authority:

Section 15.08 (5) (b), Stats.: “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.”

Section 227.11 (2) (a), Stats.: “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...”

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:

The current Psychology Examining Board rules are silent on telehealth. This rule will include a uniform definition of telehealth given by 2021 Wisconsin Act 121, and specify psychologists are to hold a Wisconsin license or have valid certificates through the Psychology Interjurisdictional Compact or PSYPACT (2021 Wisconsin Act 131) in order

to diagnose and treat patients located in Wisconsin and 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:

None received.

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. Psychologists are included in the definition of “health care professionals.”

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Summary of factual data and analytical methodologies:

The Psychology Examining Board reviewed and seeks to revise its rules to provide greater clarity for psychologists 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 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 is attached.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Psy 1.02 (11) is created to read:

Psy 1.02 (11) “Telehealth” is defined under s. 440.01 (1) (hm), Stats.

SECTION 2. Psy 2.14 (2m) is created to read:

Psy 2.14 (2m) A psychologist practice interjurisdictional telepsychology as established in s. 455.03 (3).

SECTION 3. Psy 5.02 is created to read:

Psy 5.02 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) A psychologist who uses a telehealth visit to provide psychological services to a patient located in this state shall either be licensed as a psychologist by the board, or shall meet the requirements to exercise the authority to practice interjurisdictional telepsychology under s. 455.50 (4).

SECTION 4. 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 Psychology Examining Board is approved for submission to the Governor and Legislature.

Dated 05.20.2022



Chairperson
Psychology Examining Board