

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING BOARD
MEDICAL EXAMINING	:	ADOPTING RULES
BOARD	:	(CLEARINGHOUSE RULE 15-087)

PROPOSED ORDER

An order of the Medical Examining Board to create ch. Med 24, relating to telemedicine.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

None.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 448.40 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides examining boards, “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency, “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 448.40 (1), Stats., provides that the Medical Examining 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 current administrative code is silent with regards to telemedicine practice. The proposed rule will define telemedicine, explain how a valid physician-patient relationship can be established in a telemedicine setting, and identify technology requirements for

physicians who use electronic communications, information technology or other means of interaction with patients who are not physically present. The proposed rule will specify out-of-state physicians to hold a valid Wisconsin medical license in order to diagnose and treat patients located in Wisconsin.

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

2015 HR 691 - Telehealth Modernization Act of 2015 – the proposed bill seeks to establish a federal standard for telehealth and serve as guidance for states, subject to a number of specified conditions.

Comparison with rules in adjacent states:

Illinois: Illinois statutes require an individual who engages in telemedicine to hold a medical license issued by the state of Illinois. Telemedicine is defined as including but not limited to rendering written or oral opinions concerning diagnosis or treatment of a patient in Illinois by a person located outside the State of Illinois as a result of transmission of individual patient data by telephonic, electronic, or other means of communication from within this State. Telemedicine specifically does not include periodic consultations between a licensee and a person outside the State of Illinois, a second opinion provided to a licensee; and the diagnosis or treatment services provided to a patient in Illinois following care or treatment originally provided to the patient in the state in which the provider is licensed to practice medicine (225 Ill. Comp. Stat. Ann. s. 60/49.5). The telemedicine provisions are scheduled to be repealed on December 31, 2016.

Iowa: Iowa Administrative Code 653-13.11 establishes the standards of practices of physicians who use telemedicine. The rules define telemedicine, explain how a valid physician-patient relationship can be established in a telemedicine setting, and identify technology requirements for physicians who use electronic communications, information technology or other means of interaction with patients who are not physically present. The rules require out-of-state physicians to have a valid Iowa medical license in order to diagnose and treat patients located in Iowa.

Michigan: Michigan statutes and administrative code are silent with regards to the provision of telemedicine services. The standards are the same as in-person care.

Minnesota: Minnesota does not have any unique laws regulating the practice of telemedicine. Standards are the same as in person care (Minn. Stat. s. 147.032).

Summary of factual data and analytical methodologies:

Other states' requirements as well as the Federation of State Medical Boards model policy were reviewed when drafting the proposed rule change.

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

The rule were posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals, for a period of 14 days. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document is 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 by email at Jeffrey.Weigand@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at Dale2.Kleven@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708, or by email to Dale2.Kleven@wisconsin.gov. Comments must be received on or before the public hearing on November 16, 2016 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter Med 24 is created to read:

CHAPTER MED 24

TELEMEDICINE

Med 24.01 Authority and scope. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11, and 448.40, Stats., and govern the standards of the practice of medicine using telemedicine. The rules in this chapter may not be construed to prohibit:

(1) Consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians related to the care of Wisconsin patients.

(2) Patient care in consultation with another physician who has an established physician-patient relationship with the patient.

(3) Patient care in on-call or cross-coverage situations in which the physician has access to patient records.

(4) Treating a patient with an emergency medical condition. In this subsection, “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention will result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.

(5) Use of telemedicine by a Wisconsin licensed physician assistant to provide patient care, treatment, or services within the licensee’s scope of practice under s. Med 8.07.

Med 24.02 Definition of telemedicine. In this chapter, “telemedicine” means the practice of medicine where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine does not include the provision of health care services only through an audio-only telephone, email messages, text messages, facsimile transmission, mail or parcel service, or any combination thereof.

Med 24.03 Physician-patient relationship. A physician-patient relationship may be established through telemedicine.

Med 24.04 Wisconsin medical license required. A physician who uses telemedicine in the diagnosis and treatment of a patient located in Wisconsin shall hold an active Wisconsin medical license.

Med 24.05 Standards of practice and conduct. A Wisconsin licensed physician shall be held to the same standards of practice and conduct, including patient confidentiality and recordkeeping, regardless of whether health care services are provided in person or by telemedicine.

Med 24.06 Equipment and technology. A Wisconsin licensed physician providing health care services by telemedicine is responsible for the quality and safe use of equipment and technology that is integral to patient diagnosis and treatment. The equipment and technology used by a Wisconsin licensed physician to provide health care services by telemedicine shall be able to provide, at a minimum, information that will enable the physician to meet or exceed the standard of minimally competent medical practice.

Med 24.07 Internet diagnosis and treatment. (1) When a physician uses a website to communicate to a patient located in Wisconsin, the physician may not provide treatment recommendations, including issuing a prescription, unless the following requirements are met:

(a) The physician holds an active Wisconsin medical license as required under s. Med 24.04.

(b) The physician's name and contact information have been made available to the patient.

(c) Informed consent as required under s. 448.30, Stats., and ch. Med 18.

(d) A documented patient evaluation has been performed. A patient evaluation shall include a medical history and, to the extent required to meet or exceed the standard of minimally competent medical practice, an examination or evaluation, or both, and diagnostic tests.

(e) A patient health care record is prepared and maintained as required under ch. Med 21.

(2) Providing treatment recommendations, including issuing a prescription, based solely on a static electronic questionnaire does not meet the standard of minimally competent medical practice.

SECTION 2. 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

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Med 24 Telemedicine

3. Subject

Relating to telemedicine

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The current administrative code is silent with regards to telemedicine practice. The proposed rule will define telemedicine, explain how a valid physician-patient relationship can be established in a telemedicine setting, and identify technology requirements for physicians who use electronic communications, information technology or other means of interaction with patients who are not physically present. The proposed rule will specify out-of-state physicians to hold a valid Wisconsin medical license in order to diagnose and treat patients located in Wisconsin.

10. 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.

This proposed rule was posted for a period of 14 days to solicit comments from the public. No businesses, business sectors, associations representing businesses, local governmental units, or individuals contacted the department about the proposed rule during that time period.

11. Identify the local governmental units that participated in the development of this EIA.

None. This rule does not affect local government units.

12. 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 rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local government units, or the state's economy as a whole.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Telemedicine is a rapidly growing practice. These rules will provide medical practitioners with necessary guidance with

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

regards to the standards for telemedicine practice.

14. Long Range Implications of Implementing the Rule

This rule will allow medical practitioners to utilize telemedicine with the confidence of complying with clear requirements delineated in administrative code.

15. Compare With Approaches Being Used by Federal Government

2015 HR 691 - Telehealth Modernization Act of 2015 – the proposed bill seeks to establish a federal standard for telehealth and serve as guidance for states, subject to a number of specified conditions.

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

Illinois statutes require an individual who engages in telemedicine to hold a medical license issued by the state of Illinois. Telemedicine is defined as including but not limited to rendering written or oral opinions concerning diagnosis or treatment of a patient in Illinois by a person located outside the State of Illinois as a result of transmission of individual patient data by telephonic, electronic, or other means of communication from within this State. Telemedicine specifically does not include periodic consultations between a licensee and a person outside the State of Illinois, a second opinion provided to a licensee; and the diagnosis or treatment services provided to a patient in Illinois following care or treatment originally provided to the patient in the state in which the provider is licensed to practice medicine (225 Ill. Comp. Stat. Ann. s. 60/49.5). The telemedicine provisions are scheduled to be repealed on December 31, 2015.

Iowa Administrative Code 653-13.11 establishes the standards of practices of physicians who use telemedicine. Similar to the proposed rule, Iowa Administrative Code defines telemedicine, explains how a valid physician-patient relationship can be established in a telemedicine setting, and identifies technology requirements for physicians who use electronic communications, information technology or other means of interaction with patients who are not physically present. The rule requires out-of-state physicians to have a valid Iowa medical license in order to diagnose and treat patients located in Iowa.

Michigan statutes and administrative code are silent with regards to the provision of telemedicine services. The standards are the same as in-person care.

Minnesota does not have any unique laws regulating the practice of telemedicine. Standards are the same as in person care (Minn. Stat. s. 147.032).

17. Contact Name

Katie Vieira

18. Contact Phone Number

(608) 261-4472

This document can be made available in alternate formats to individuals with disabilities upon request.

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Section 448.40 (1), Stats., provides that the Medical Examining 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.”

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Fiscal Estimate and Economic Impact Analysis:

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Effect on small business:

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

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TEXT OF RULE

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CHAPTER MED 24

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Med 24.01 Authority and scope. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11, and 448.40, Stats., and govern the standards of the practice of medicine using telemedicine.

The rules in this chapter may not be construed to prohibit any of the following:

- (1) Consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians related to the care of ~~Wisconsin~~ patients in this state.

Note: Statute drafting style is to use “in this state, rather than using Wisconsin as an adjective. In addition, in this case Wisconsin patient could create an ambiguity as whether it means any patient in the state, which I am assuming is the case, or Wisconsin residents who are patients.

(2) Patient care in consultation with another physician who has an established physician-patient relationship with the patient.

(3) Patient care in on-call or cross-coverage situations in which the physician has access to patient records.

(4) Treating a patient with an emergency medical condition. In this subsection, “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention will result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.

(5) Use of telemedicine by a ~~Wisconsin licensed~~ physician assistant licensed by the medical examining board to provide patient care, treatment, or services within the licensee’s scope of practice under s. Med 8.07.

Note: Each place I say licensed by the medical examining board, licensed in this state would also probably be appropriate.

Med 24.02 Definition of telemedicine. In this chapter, “telemedicine” means the practice of medicine ~~when~~where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine does not include the provision of health care services only through an audio-only telephone, email messages, text messages, facsimile transmission, mail or parcel service, or any combination thereof.

NOTE: In statutory drafting style, “where” is limited to geographic references.

Med 24.03 Physician-patient relationship. A physician-patient relationship may be established through telemedicine.

Med 24.04 Wisconsin medical license required. A physician who uses telemedicine in the diagnosis and treatment of a patient located in this state Wisconsin shall ~~hold an~~be active Wisconsin medical licensed to practice medicine and surgery by the medical examining board.

Note: Inserts statutory terminology consistent with 448.03(1)(a), which reads: No person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license to practice medicine and surgery granted by the board.

Med 24.05 Standards of practice and conduct. A ~~Wisconsin licensed~~ physician licensed to practice medicine and surgery by the medical examining board shall be held to the same standards of practice and conduct, including patient confidentiality

and recordkeeping, regardless of whether health care services are provided in person or by telemedicine.

Med 24.06 Equipment and technology. A ~~Wisconsin licensed~~ physician licensed to practice medicine and surgery by the medical examining board who provides health care services by telemedicine is responsible for the quality and safe use of equipment and technology that is integral to patient diagnosis and treatment. The equipment and technology used by ~~thea Wisconsin licensed~~ physician to provide health care services by telemedicine shall ~~be able to~~ provide, at a minimum, information that will enable the physician to meet or exceed the standard of minimally competent medical practice.

Note: I removed “be able to” because I think it makes the standard “squishy.” Is it ok if the equipment is able to provide the information but does not actually provide it, for whatever reason? That is a comment on substance rather than form so not really in my domain.

Med 24.07 Internet diagnosis and treatment. (1) When a physician uses a website to communicate to a patient located in this state Wisconsin, the physician may not provide treatment recommendations, including issuing a prescription, unless the following requirements are met:

(a) The physician ~~shall be holds an active Wisconsin medical licensed to practice medicine and surgery by the medical examining board~~ as required under s. Med 24.04.

(b) The physician’s name and contact information have been made available to the patient.

(c) Informed consent as required under s. 448.30, Stats., and ch. Med 18.

(d) A documented patient evaluation has been performed. A patient evaluation shall include a medical history and, to the extent required to meet or exceed the standard of minimally competent medical practice, an examination or evaluation, or both, and diagnostic tests.

(e) A patient health care record is prepared and maintained as required under ch. Med 21.

(2) Providing treatment recommendations, including issuing a prescription, based solely only on a static electronic questionnaire does not meet the standard of minimally competent medical practice.

Note: Solely was incorrectly spelled, but only is generally used in statutory drafting.

SECTION 2. 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)
