



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Dentistry WV Board of TITLE-SERIES: 5-16
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule:
RULE NAME: 5-16 Teledentistry

PRIMARY CONTACT

NAME: WV Board of Dentistry
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CITE STATUTORY AUTHORITY: §30-1-26

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§30-1-26 is the provision authorizing licensing Boards to promulgate rules concerning telehealth practice.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/17/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/17/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The notice of proposed rule was placed on the Board's website. It was sent to the WV Dental and Hygiene Associations to pass along to their members as well as the State Dental Director for review and comment.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule regulates teledentistry and carries out the purposes and enforces the provisions set forth in §30-1-26.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The entire rule is new and in response to HB2024, which passed during the 2021 legislative session. The Board has been reviewing teledentistry over the last couple of years. The agency approved rule has been amended in response to comments received.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None expected.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There may be an increase in revenues for the Board, but it is unknown to what extent.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None expected.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

It is unknown how much of an impact this rule may have. It is unknown if we will have an influx of applicants for registration for teledentistry.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes
Susan Combs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTISTRY

SERIES 16
TELEDENTISTRY

§5-16-1. General.

1.1. Scope. This rule regulates teledentistry and carries out the purposes and enforces the provisions of W. Va. Code §§30-1-1 et seq and 30-4-1 et seq which are applicable to the W. Va. Board of Dentistry.

1.2. Authority. -- W. Va. Code §§30-1-26.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027.

§5-16-2. Definitions.

2.1. "Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

2.2. "Interstate telehealth services" means the provision of telehealth services to a patient located in West Virginia by a registered dental professional located in any other state or commonwealth of the United States.

2.3. "Practitioner" means a registered or licensed dentist or dental hygienist for purposes of this rule.

2.4. "Registration" means an authorization to practice dentistry or dental hygiene pursuant to §30-4-1 et seq. of the West Virginia Code, which authorization is limited to providing interstate telehealth services within the registrant's scope of practice.

2.5. "Registrant" means an individual who has been issued a registration from the Board.

2.6. "Store-and-forward technologies" means the asynchronous computer-based communication of medical data or images from an originating location to a dentist at another site for the purpose of diagnostic or therapeutic assistance

2.7. "Teledentistry" or "Teledentistry services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a dentist or dental hygienist to provide

health care services, within their scope of practice, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

§5-16-3. Application for Registration and Annual Renewal.

3.1. A dentist or dental hygienist desiring to provide teledentistry services in this state via interstate telehealth services, shall make application for a registration on a form prescribed by the Board. The requirements for such application shall be the same as an initial licensure to practice dentistry or dental hygiene in this state as set forth in the Board's rules 5CSR9.

3.2. The application fee for registration shall be equal to an initial out-of-state dental or dental hygiene application fee as set forth in the Board's rules 5CSR3.

3.3. On or before the first day of February each year, every dentist or dental hygienist registered to practice teledentistry in this state, shall transmit to the director of the board upon a form prescribed by the board, his or her signature, or electronic signature, post-office address, office address, serial number of his or her registration certificate, whether he or she has been engaged during the preceding year in the active and continuous practice of teledentistry, whether within or without this state, and any other information required by the board, together with a renewal application and renewal fee.

3.4. The renewal fee for a registrant shall be equal to the renewal fee of a dental or dental hygiene renewal fee as set forth in the Board's rules 5CSR3.

3.5. Upon receipt of the required information and the payment of the proper renewal fee, the board shall issue a renewal certificate authorizing the registrant to continue the practice of teledentistry in this state for a period of one year from the first day of February.

3.6. Upon failure of any registrant to submit the required information and pay the annual renewal fee as required by the first day of February, the board shall attempt to notify the registrant in writing by mailing to his or her address of record a notice of the expiration of his or her registration on the statutory date: Provided, that the Board's failure to mail or receive the notice shall not affect the expiration of his or her registration.

3.7. A registration to practice teledentistry expires on the first day of February if the registrant fails to secure a current renewal certificate by that day. Any registrant whose registration is expired by reason of the failure, neglect or refusal to secure the proper renewal certificate may have his or her registration reinstated by the board at any time within one year from the date of the expiration of the registration upon the payment of the proper renewal fee and a penalty fee as set by the board's fee schedule 5CSR3. If the registrant does not apply for renewal of his or her registration as required by this section within one year, that person shall, at the discretion of the board, file an application for reinstatement.

3.8. A registration with the Board does not authorize a dentist or dental hygienist to practice from a physical location within the State of West Virginia without first obtaining appropriate licensure.

§5-16-4. Delivery of Teledentistry.

4.1. To deliver teledentistry services in this state, one must hold a current, valid dental or dental hygiene license or registration issued by the Board. The practice of dentistry occurs where the patient is located at the time teledentistry services are provided.

4.2. No person shall practice teledentistry unless a bona fide practitioner-patient relationship is established. A bona fide practitioner-patient relationship shall exist if the dentist has (i) obtained or caused to be obtained a health and dental history of the patient; (ii) performed or caused to be performed an appropriate examination of the patient, either physically, through use of instrumentation and diagnostic equipment by which digital scans, photographs, images, and dental records are able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies; (iii) provided information to the patient about the services to be performed; and (iv) initiated additional diagnostic tests or referrals as needed. In cases in which a dentist is providing teledentistry, the examination required by clause (ii) shall not be required if the patient has been examined in person by a dentist licensed by the board within the twelve months prior to the initiation of teledentistry and the patient's dental records of such examination have been reviewed by the practitioner providing teledentistry.

4.3. No person shall deliver dental services in this state through teledentistry unless he or she has established written or electronic protocols for the practice of teledentistry that include (i) methods to ensure that patients are fully informed about services provided through the use of teledentistry, including obtaining informed consent; (ii) safeguards to ensure compliance with all state and federal laws and regulations related to the privacy of health information; (iii) documentation of all dental services provided to a patient through teledentistry, including the full name, address, telephone number, and state license number of the dentist providing such dental services; (iv) procedures for providing in-person services or for the referral of patients requiring dental services that cannot be provided by teledentistry to another licensed dentist who actually practices dentistry in an area the patient can readily access; (v) provisions for the use of appropriate encryption when transmitting patient health information via teledentistry; and (vi) any other requirements set forth by the board. A dentist who delivers dental services using teledentistry shall, upon request of the patient, provide health records to the patient or a dentist of record in a timely manner in accordance with applicable federal or state laws or regulations. All patients receiving dental services through teledentistry shall have the right to speak or communicate with the licensed dentist providing such services upon request.

4.4. Nothing in this section shall be construed to alter the scope of practice of any licensed dentist or dental hygienist or to authorize the delivery of health care services in a setting, or in a manner, not authorized by law. Licensees or registrants delivering teledentistry services in this State shall comply with all rules of professional conduct and state and federal statutes and regulations relevant to dentistry and dental hygiene. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

4.5. A patient in this State may be treated via teledentistry by (i) a dentist licensed or registered by the Board; (ii) a dental hygienist who is licensed or registered by the Board and is either supervised by, and has delegated authority from, a dentist licensed or registered by the Board; or (iii) a dental hygienist who is licensed by the Board and holds a General Supervision or Public Health Practice Permit.

4.6. In providing teledentistry services, a licensee or registrant shall, to the extent possible:

4.6.a. Confirm the identity of the requesting patient;

4.6.b. Collect the patient's health history;

4.6.c. Disclose the licensee's or registrant's identity, applicable credentials, and contact information including a current phone number; and

4.6.d. Obtain an appropriate informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the risk and limitations of:

4.6.d.1. The use of electronic and communications in the provision of care;

4.6.d.2. The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;

4.6.d.3. The potential disruption of electronic and digital communication in the use of teledentistry;

4.6.d.4. The types of activities permitted using teledentistry services;

4.6.d.5. The patient or legal guardian's understanding that it is the role of the licensee or registrant to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter; and

4.6.d.6. A requirement for explicit patient or legal guardian consent to forward patient-identifiable information to a third party.

4.7. The licensee or registrant shall ensure that any electronic or digital communication used in the practice of teledentistry is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all other applicable laws, administrative regulations, and guidance. Confidentiality shall be maintained through appropriate processes, practices and technology, including the disposal of electronic and digital equipment and data.

4.8. Any dental record made through teledentistry shall be held to the same record retention standards as a record made through a traditional in-person dental encounter. An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record. The patient record established during the use of teledentistry services shall be accessible to both the licensee or registrant and the patient or legal guardian, consistent with all established laws and administrative regulations governing patient healthcare records. The licensee shall document or record in the file:

4.8.a. The patient's presenting problem;

4.8.b. The licensee's or registrant's chief concern;

4.8.c. The patient's diagnosis;

4.8.d. The patient's treatment plan; and

4.8.e. A description of all services provided by teledentistry.

4.9. The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with applicable law and current standards of care, including those for appropriate documentation. A licensee's use of teledentistry carries the same professional accountability as when a prescription is issued in connection with an in-person encounter. A licensee shall not prescribe schedule II drugs via teledentistry.

4.10. A licensee or registrant who provides teledentistry services in this State shall not:

4.10.a. Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services;

4.10.b. Allow fee-splitting for the use of teledentistry services; or

4.10.c. Charge for a general consultation or giving advice without a definitive diagnosis.

§5-16-5. Complaints; investigations; due process procedure; grounds for disciplinary action.

5.1. By registering to provide teledentistry services in this State via interstate telehealth services, a registrant is subject to:

5.1.a. The laws, rules, and regulations regarding the practice of dentistry and dental hygiene in this State, including the State judicial system and all professional conduct rules and standards contained within W. Va. Code § 30-4-1 et seq. and the rules promulgated thereunder; and

5.1.b. The jurisdiction of the Board, including but not limited to the Board's complaint, investigation, and hearing processes.

5.2. A registrant shall notify the Board within 30 days of any restrictions placed upon, or actions taken against, his or her license to practice in any other state or jurisdiction.