

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	HEARING AND SPEECH
HEARING AND SPEECH	:	EXAMINING BOARD
EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-058)

PROPOSED ORDER

An order of the Hearing and Speech Examining Board to amend HAS 5.01, and to create HAS 5.013, 5.015, 5.02 (2) (i) and (3), and 6.15 relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 459.12, Stats.

Statutory authority: Sections 15.08 (5) (b), 459.12 (1), and 459.34 (2) h, Stats.

Explanation of agency authority:

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. [s. 15.08 (5) (b), Stats.]

The examining board may make rules not inconsistent with the laws of this state which are necessary to carry out the intent of this chapter. [s. 459.12 (1), Stats.]

The examining board may reprimand a licensee or permittee or deny, limit, suspend or revoke a license or permit under this subchapter if it finds that the applicant, licensee or permittee has been engaged in unprofessional conduct as defined by rule by the examining board. [s. 459.34 (2) (h), Stats.]

Related statute or rule: Chapters HAS 5 and 6

Plain language analysis:

The objective of the rule is to provide greater clarity for hearing instrument specialists, speech-language pathologists, audiologists, and temporary licensees regarding the practice of telehealth.

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

The US Food and Drug Administration has, in response to the FDA Reauthorization act of 2017 (FDARA), created a new category of Over-the-Counter (OTC) hearing aids. The act also explicitly preempts any state or local requirements relating to OTC hearing aids, including any provision requiring the supervision, prescription, or other order, involvement, or intervention of a licensed person for consumers to access OTC hearing aids.

Section 521(b) of the FD&C Act provides that the Commissioner of Food and Drugs may, upon application of a State or local government, exempt a requirement from preemption, if the State or local requirement for the device is more stringent than the requirement under the FD&C Act, or if the requirement is necessitated by compelling local conditions and compliance with it would not cause the device to be in violation of a requirement under the FD&C Act. However, because FDARA does not provide a parallel mechanism to exempt State or local requirements from its express preemption provision, FDA is not considering exemptions under section 709(b)(4) of FDARA for OTC hearing aids.

Comparison with rules in adjacent states:

Illinois:

In the Illinois Compiled Statutes Chapter 225, the Telehealth Act provides a definition for “Health care professional” which includes speech-language pathologists, audiologists, and hearing instrument dispensers. This Act also provides a definition of “Telehealth” as “the evaluation, diagnosis, or interpretation of electronically transmitted patient-specific data between a remote location and a licensed health care professional that generates interaction or treatment recommendations. ‘Telehealth’ includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system, as defined in subsection (a) of Section 356z.22 of the Illinois Insurance Code.” If the patient being treated is in Illinois, then the healthcare professional providing treatment via telehealth must be licensed to practice in Illinois (225 ILCS 150).

Illinois Executive Order 2020-09 expanded the definition of “Telehealth Services” to include provision of healthcare to a patient in any location through electronic or telephonic methods, in response to the COVID-19 pandemic for the duration of the Illinois Gubernatorial Disaster Proclamation. Executive Order 2021-14 re-issued Executive Order 2020-09 and extended it through at least July 24, 2021.

Iowa:

The Iowa Administrative Code Chapter 300, rule 645.300.2 includes that the provision of speech pathology or audiology services in Iowa via telephonic, electronic, or other methods, requires an Iowa license (IAC 645.300.2(147)).

Michigan:

The Michigan Compiled Laws, Chapter 333, Act 368 provides that Telehealth is defined as long-distance health care through telecommunication technologies. Telehealth may include telemedicine, which is defined in MCL 500.3476 (MCL 300.26283). Act 368 includes Michigan laws relating to the practice of speech-language pathology and audiology.

Minnesota:

The practice of speech-language pathology and audiology are provided for in Minnesota Statutes ss.148.511 to 148.5198. Telehealth, telemedicine, or telepractice is not specifically mentioned.

The Minnesota Department of Health provides the following definition related to Telehealth: “The provision of speech-pathology or audiology services in Minnesota through telepractice, electronic, or other means, regardless of the location of the speech-language pathologist or audiologist, shall constitute the practice of speech-language pathology or audiology and shall require Minnesota licensure.” (source: <https://www.health.state.mn.us/facilities/providers/slpa/telepractice.html>)

Summary of factual data and analytical methodologies:

The Board reviewed chs. HAS 5 and HAS 6 to clarify the provision of telehealth services. The Board also referenced Wisconsin Administrative Code s. Med 24.02 when creating a definition of Telehealth specifically for the practice of speech-language pathology and audiology in the state. The Board also reviewed and considered the definition relating to telehealth provided by the American Speech-Language- Hearing Association (ASHA) and the Wisconsin Speech-Language Pathology and Audiology Association (WSHA).

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.

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 Jennifer.Garrett@wisconsin.gov.

Agency contact person:

Dana Denny, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; telephone 608-287-3748; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dana Denny, 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, to be held on October 10, 2022, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. HAS 5.01 is amended to read:

Authority. The rules in this chapter are adopted pursuant to the authority in ss. 15.08 (5) (b), 227.11, 459.10 (1) (k), ~~and~~ 459.12 (1), and 459.34 (2) (h), Stats.

SECTION 2. HAS 5.013 is created to read:

HAS 5.013 Scope. The standards of practice and professional conduct in this chapter apply to a licensee regardless of whether services are provided in person or by telehealth.

Note: Pursuant to ch. 459, Stats. any person engaging in the practice of selling or fitting hearing aids to a patient located in this state shall be licensed under ch. 459, Stats. as a hearing instrument specialist or audiologist.

SECTION 3. HAS 5.015 is created to read:

HAS 5.015 In this chapter, “telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

Note: Section 440.01 (1) (hm), Stats., reads: “Telehealth” means a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used either during a patient visit or a consultation or are used to transfer medically relevant data about a patient. “Telehealth” includes asynchronous telehealth services, interactive telehealth, and remote patient monitoring.”

SECTION 4. HAS 5.02 (2) (i) and 5.02 (3) are created to read:

HAS 5.02 (i) Failing to utilize equipment and technology to provide telehealth services which enable the hearing instrument specialist to meet or exceed the standard of minimally competent practice.

(3) A person engaging in the practice of selling or fitting prescription hearing aids to a patient located in this state shall be licensed under ch. 459, Stats., as a hearing instrument specialist or audiologist.

SECTION 5. HAS 6.15 is created to read:

HAS 6.15 Scope: The licensure and conduct rules in this chapter and ch. 459, Stats., apply to any person providing services to patients located in this state without regard to whether services are provided in person or via telehealth.

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)

This Proposed Order of the Hearing and Speech Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Chair
Hearing and Speech Examining Board