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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 847
OREGON MEDICAL BOARD

FILED

04/12/2022 2:06 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating telemedicine status license provisions to align with HB 3036 (2021) and HB 4034 (2022).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/23/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

The proposed rule amendments are needed to update the telemedicine status licensee rules to clarify language, add consistent definitions, and incorporate amendments to align with HB 3036 (2021) sections 3 through 6 and HB 4034 (2022) sections 14 and 16.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 677, https://www.oregonlegislature.gov/bills_laws/ors/ors677.html

HB 3036 (2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3036>

HB 4034 (2022), <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/HB4034>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule amendments clarify language to implement HB 3036 (2021) and HB 4024 (2022). The proposed rule will allow prescribing medication via telemedicine when an appropriate provider-patient relationship is established and the standard of care is met. The proposed rule may favorably impact racial equity by supporting overall greater access to health care via telemedicine.

FISCAL AND ECONOMIC IMPACT:

The proposed rule will have no additional fiscal impact beyond the fiscal impacts reported to implement HB 3036 (2021) and HB 4034 (2022). Overall, the proposed rule amendments will have a minimal fiscal and economic impact to the Oregon Medical Board and telemedicine status licensees. The Board will need to update materials and educate staff on rule changes.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the

rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed rule will have no additional fiscal impact to the Oregon Medical Board beyond the fiscal impacts reported to implement HB 3036 (2021) and HB 4034 (2022). The proposed rule amendments will have a minimal economic impact on telemedicine status licensees. (2) The rule amendment applies to individuals choosing to apply or hold a Board telemedicine status license; small businesses are not eligible for a Board license. Some medical practices that employ these telemedicine providers may be small businesses and be impacted by these rules to practice medicine across state lines when providing care to Oregon patients. (b) The rulemaking imposes no additional mandatory reporting, recordkeeping or other administrative requirements on small businesses. (c) The rulemaking imposes no additional requirements regarding equipment, supplies, labor or administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Members of the Board who were consulted in the development of the rule represent small businesses. The rule was reviewed by the Administrative Affairs Committee of the Board on March 9, 2022, as well as the full Board at its quarterly meeting on April 7, 2022.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The rule was reviewed by the Administrative Affairs Committee of the Board on March 9, 2022, as well as the full Board at its quarterly meeting on April 7, 2022. Board members represent the interests of persons and communities likely to be affected by a proposed rule. Overall, board members are licensees of the Oregon Medical Board or public members who represent Oregon patients.

RULES PROPOSED:

847-025-0000, 847-025-0010, 847-025-0020, 847-025-0030, 847-025-0040, 847-025-0050, 847-025-0060

AMEND: 847-025-0000

RULE SUMMARY: The proposed rule amendments update the telemedicine status licensee rules to clarify language, add consistent definitions, and incorporate amendments to align with HB 3036 (2021) sections 3 through 6.

CHANGES TO RULE:

847-025-0000

Preamble ¶¶

(1) A ~~physician or physician assistant granted a license to practice medicine across state lines~~ telemedicine licensee is subject to all the provisions of the Medical Practice Act (ORS Chapter 677), and to all the administrative rules of the Oregon Medical Board.¶¶

(2) A ~~physician or physician assistant granted a license to practice medicine across state lines~~ telemedicine licensee has the same duties and responsibilities and is subject to the same penalties and sanctions as any other physician or physician assistant licensed under ORS Chapter 677, including but not limited to the following:¶¶

(a) The ~~physician or physician assistant shall~~ telemedicine licensee must establish an appropriate provider-patient relationship;¶¶

(b) The ~~physician or physician assistant shall~~ telemedicine licensee must make a judgment based on some type of objective criteria upon which to diagnose, treat, correct, or prescribe;¶¶

(c) The ~~physician or physician assistant shall~~ telemedicine licensee must engage in all necessary practices that are in the best interest of the patient; and¶¶

(d) The ~~physician or physician assistant shall~~ telemedicine licensee must provide for an acceptable continuity of care for patients, including follow-up care, information, and documentation of care provided to the patient or suitably identified care providers of the patient;¶¶

(e) The ~~physician or physician assistant shall refrain from writing prescriptions for medication resulting only from~~

~~a sale or consultation over the Internet.~~

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139, 677.141

AMEND: 847-025-0010

RULE SUMMARY: The proposed rule amendments update the telemedicine status licensee rules to clarify language, add consistent definitions, and incorporate amendments to align with HB 3036 (2021) sections 3 through 6. The proposed rule also includes changes to align with HB 4034 (2022) sections 14 and 16.

CHANGES TO RULE:

847-025-0010

Definitions ¶¶

For the purpose of OAR chapter 847, division 025:¶¶

(1) "Applicant" means an out-of-state physician or physician assistant applying for a license to practice medicine across state lines.¶¶

(2) "Telemedicine licensee" means an out-of-state physician or physician assistant granted a license to practice medicine across state lines under ORS 677.135 through 677.141.¶¶

(3) "The practice of medicine across state lines" means:¶¶

(1a) The rendering directly to a person of a written or otherwise documented medical opinion concerning the diagnosis or treatment of that person located within Oregon for the purpose of patient care by a physician or physician assistant located outside Oregon as a result of the transmission of individual patient data by ~~telectronic or other means~~ medicine as defined in Oregon Laws 2022, chapter 45, section 14, from within Oregon to that physician, the physician's agent, or physician assistant outside Oregon; or¶¶

(2b) The rendering of medical treatment directly to a person located within Oregon by a physician or physician assistant located outside Oregon as a result of the outward transmission of individual patient data by ~~telectronic or other means~~ medicine as defined in Oregon Laws 2022, chapter 45, section 14, from within this state to that physician, the physician's agent, or a physician assistant outside the state.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139, 677.141, Oregon Laws 2022, chapter 45 (HB 4034)

AMEND: 847-025-0020

RULE SUMMARY: The proposed rule amendment updates the telemedicine status licensee rules to clarify language.

CHANGES TO RULE:

847-025-0020

Exemptions ¶¶

A license to practice across state lines is not required of a physician or physician assistant:¶¶

(1) Engaging in the practice of medicine across state lines in an emergency (~~ORS 677.060(5)~~); or¶¶

(2) Located outside this state who consults with another physician or physician assistant licensed to practice medicine in this state, and who does not undertake the primary responsibility for diagnosing or rendering treatment to a patient in Oregon;¶¶

(3) Located outside the state and has an established provider-patient relationship with a person who is in Oregon temporarily and who requires the direct medical treatment by that physician or physician assistant.

Statutory/Other Authority: ORS 677.265, 677.137

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139, 677.141

AMEND: 847-025-0030

RULE SUMMARY: The proposed rule amendments update the telemedicine status licensee rules to clarify language, add consistent definitions, and incorporate amendments to align with HB 3036 (2021) sections 3 through 6. The proposed rule also includes changes to align with HB 4034 (2022) sections 14 and 16.

CHANGES TO RULE:

847-025-0030

Limitations ¶¶

(1) A license for the practice of medicine across state lines does not permit a ~~physician or physician assistant~~ telemedicine licensee to practice medicine in the state of Oregon except when engaging in the practice of medicine across state lines. ¶¶

(2) A license to practice medicine across state lines is not a limited license per ORS 677.132 or ORS 677.535. ¶¶

(3) A ~~physician or physician assistant issued a license to practice medicine across state lines shall~~ telemedicine licensee must not: ¶¶

(a) Act as a dispensing physician as described in ORS 677.010-(5); ¶¶

~~(b) Administer or dispensing physician assistant as described in ORS 677.511;~~ ¶¶

(b) Prescribe controlled substances for the treatment of intractable diagnosed condition causing pain to a person located within in Oregon, per ORS 677.470, 677.489; ¶¶

(c) Provide written documentation for purposes of ORS 475B.797; ¶¶

(d) Employ a physician assistant as defined in ORS 677.495 to treat a person located within Oregon; ¶¶

(e) Assert a lien for services under ORS 87.555; ¶¶

(f) Act as a supervising physician of an Oregon-certified First Responder or Emergency Medical Technician as defined in ORS 682.245; ¶¶

(g) Be eligible for any tax credit provided by ORS 316.076; ¶¶

(h) Participate in the Rural Health Services Program under 442.550 to 442.570; or ¶¶

~~(i) Dispense prescription drug~~ Prescribe medication based only on a sale or form over the Internet, unless as a physician assistant under ORS 677.511 appropriate provider-patient relationship is established and the standard of care described in ORS 677.095 and 677.265 is met.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139, 677.141

AMEND: 847-025-0040

RULE SUMMARY: The proposed rule amendments update the telemedicine status licensee rules to clarify language and add consistent definitions.

CHANGES TO RULE:

847-025-0040

Qualifications ¶¶

(1) To qualify for a license to practice medicine across state lines:¶¶

(a) ~~An out-of-state physician or physician assistant~~ applicant must hold a full, unrestricted license to practice medicine in any other state, must not have been the recipient of a previous disciplinary or other actions by any other state or jurisdiction; ~~or~~¶¶

~~(b) An out-of-state physician or physician assistant~~ and must otherwise meet the standards of licensure under ORS chapter 677.¶¶

(b) An applicant who meets the qualifications for a license to practice medicine across state lines with the exception of being the recipient of previous disciplinary or other action by any other state or jurisdiction may be issued a license for the practice of medicine across state lines if the Board finds that the previous disciplinary or other action does not indicate that the physician or physician assistant applicant is a potential threat to the public interest, health, welfare and safety of the citizens of the state of Oregon; and¶¶

~~(c) Must otherwise meet the standards of licensure under ORS 677.~~¶¶

~~(2) An out-of-state physician or physician assistant would.~~¶¶

(2) An applicant does not qualify for a license to practice medicine across state lines if the applicant is the subject of a pending investigation by a state medical board or another state or federal agency.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139, 677.141

AMEND: 847-025-0050

RULE SUMMARY: The proposed rule amendments update the telemedicine status licensee rules to clarify language and add consistent definitions.

CHANGES TO RULE:

847-025-0050

Application ¶

(1) When applying for a license to practice medicine across state lines, the ~~physician or physician assistant~~ applicant ~~shall~~ must submit to the Board.¶

(a) The completed application, fees, documents, letters, and any other information required by the Board for physician licensure as stated in OAR 847, division 020 or physician assistant licensure as stated in OAR 847, division 50; and¶

(b) A description of the applicant's intended practice of medicine across state lines in the state of Oregon.¶

(2) A ~~physician or physician assistant~~ applicant applying for a license to practice medicine across state lines is subject to the requirements in OAR 847-008-0010.

Statutory/Other Authority: ORS 677.265, 677.139

Statutes/Other Implemented: ORS 677.100, 677.139, 677.265

AMEND: 847-025-0060

RULE SUMMARY: The proposed rule amendments update the telemedicine status licensee rules to clarify language and add consistent definitions and terms.

CHANGES TO RULE:

847-025-0060

Medical Records and Personal Appearance ¶¶

~~A physician or physician assistant granted a license to practice medicine across state lines shall~~ telemedicine licensee must: ¶¶

(1) Comply with all applicable laws, rules, and regulations in this state governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this state are maintained; and ¶¶

(2) Produce patient medical records or other materials as requested by the Board and appear before the Board following receipt of a written notice issued by the Board. Failure of the ~~physician or physician assistant~~ telemedicine licensee to appear or to produce records or materials as requested shall constitute grounds for disciplinary action per ORS 677.190.

Statutory/Other Authority: ORS 677.265

Statutes/Other Implemented: ORS 677.135, 677.137, 677.139, 677.141