

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.189.301 definitions,)
24.189.607 required supervised)
experience, 24.189.2107 continuing)
education implementation, the)
adoption of New Rule I requirements)
for licensees providing telehealth)
services, and the repeal of 24.189.620)
licensees from other states or)
Canadian jurisdictions)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On October 16, 2019, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists no later than 5:00 p.m., on October 9, 2019, to advise us of the nature of the accommodation that you need. Please contact the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2300; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpsy@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.189.301 DEFINITIONS (1) remains the same.

(2) "Asynchronous store-and-forward" means the transmission, via store-and-forward technology as defined in 33-22-138, MCA, of a patient's medical information from an originating site to a health care provider at a distant site without the presence of the patient.

(2) through (4) remain the same but are renumbered (3) through (5).

(6) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(7) "Health care provider" means health care provider as defined in 33-22-138, MCA.

(8) "In-person encounter" means that a licensee and the patient are in the physical presence of each other during the licensee-patient encounter.

(9) "Licensee" means the holder of a current license issued under 37-17-302 or 37-17-403, MCA.

(10) "Licensee-patient relationship" means that:

(a) the licensee agrees to undertake diagnosis and/or treatment of a person seeking services from the licensee; and

(b) the person agrees to be diagnosed and/or treated by the licensee whether or not there has been an in-person encounter between the licensee and the person.

(5) and (6) remain the same but are renumbered (11) and (12).

(13) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where an asynchronous store-and-forward service originates.

(7) remains the same but is renumbered (14).

(15) "Synchronous interaction" means a real-time interaction between a patient located at an originating site and a health care provider located at a distant site.

(16) "Telehealth" means the mode of delivering health care services via electronic information and communication technologies while a patient is at an originating site and a licensee is at a distant site, with or without an intervening health care provider. Telehealth includes synchronous interactions and asynchronous store-and-forward transfers delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq. The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission.

AUTH: 37-1-131, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-17-101, 37-17-302, 37-17-402, 37-17-403, 37-17-404, 37-17-406, MCA

REASON: The board determined it is reasonably necessary to amend this rule to add several definitions that appear in NEW RULE I as proposed in this notice. Additionally, the board is defining several terms that are used in the broader definition of "telehealth" at (16). The board intends to locate all pertinent definitions in this single location.

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) through (6) remain the same.

(7) An acceptable postdoctoral training setting shall have ~~two~~ at least one other board-approved licensed mental health ~~professionals~~ professional, in addition to the supervisor, participating in the training of the supervisee. ~~The two additional~~ At least one mental health ~~professionals~~ professional must be on-site when the supervisor is not on-site.

(8) through (13) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: The board is amending this rule to address a perceived barrier to licensees obtaining postdoctoral supervision in rural Montana. Supervisors and postdoctoral applicants for rural clinic settings contacted board staff when they were unable to comply with the current requirements. Following consideration, the board determined that allowing one mental health professional on-site when an applicant's supervisor is off-site addresses the issue while still ensuring the public's protection.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) remains the same.

(2) A Starting November 1, 2019, a licensed psychologist must earn, within a two-year renewal cycle, a minimum of 40 continuing education credits on or before the renewal date set by ARM 24.101.413. Continuing education credits may not be carried over from one two-year cycle to another. at least 40 continuing education credits during two consecutive calendar years. Continuing education credit shall be reported as follows:

~~(a) Licensees with even-numbered licenses shall obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each even-numbered calendar year. Licensees in this category will not report continuing education on the odd-numbered years but must renew their licenses each year.~~

~~(b) Licensees with odd-numbered licenses shall obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each odd-numbered calendar year. Licensees in this category will not report continuing education on the even-numbered years but must renew their licenses each year.~~

~~(c) through (e) remain the same but are renumbered (a) through (c).~~

AUTH: 37-1-131, 37-1-319, ~~37-17-202~~, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, ~~37-17-202~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address licensee questions by simplifying and clarifying continuing education (CE) requirements. The amendments also align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use for the reader.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I REQUIREMENTS FOR LICENSEES PROVIDING TELEHEALTH SERVICES (1) A licensee who provides psychology or behavior analysis services via telehealth shall:

(a) maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on patients, supervisees, or other professionals;

(b) maintain compliance with Title 37, chapter 17, MCA, ARM Title 24, chapter 189, and all other applicable federal, state, and local laws;

(c) adhere to the same standards of care required for in-person encounters;

(d) at the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the patient so that those contacts shall be readily accessible in the event of an emergency;

(e) protect and maintain the confidentiality of data and information; and

(f) dispose of data and information only in a manner that protects the data and information from unauthorized access.

(2) Licensees shall not commence a licensee-patient relationship via telehealth without an initial meeting for the licensee and patient who prospectively utilize telehealth. The licensee shall, at that initial meeting with the patient:

(a) verify the identity of the patient;

(b) make available to the patient verification of the licensee's identity and credentials;

(c) obtain alternative means of contacting the patient other than electronically;

(d) provide to the patient alternative means of contacting the licensee other than electronically;

(e) document if the patient has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and

(f) inform the patient in writing about and obtain the patient's informed written consent regarding:

(i) the limitations of using technology in the provision of services;

(ii) potential risk to confidentiality of information due to technology in the provision of services;

(iii) potential risks of disruption in the use of telehealth technology;

(iv) when and how the licensee will respond to routine electronic messages;

(v) in what circumstances the licensee will use alternative communications for emergency purposes;

(vi) who else may have access to patient communications with the licensee;

(vii) how communications can be directed to a specific licensee;

(viii) how the licensee stores electronic communications from the patient; and

(ix) that the licensee or patient may elect to discontinue the provision of services through telehealth at any time.

(3) A licensee-patient relationship may be established for purposes of telehealth:

(a) by an in-person interview and examination when the standard of care requires an in-person encounter;

(b) by consultation with another licensee or health care provider who has a documented relationship with the patient and who agrees to participate in, or supervise, the patient's care; or

(c) through telehealth if the standard of care does not require an in-person encounter.

(4) A person providing services via telehealth to a person physically located in Montana while services are provided shall be licensed by the board.

(5) A person providing services via telehealth from a physical location in Montana shall be licensed by the board and may be subject to licensure requirements in other states where the services are received by the patient.

AUTH: 37-1-131, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-17-102, 37-17-402, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I to clearly set forth the standards for practicing psychology and behavior analysis services via telehealth methods. Noting that telephonic communications have long been an integral part of the practice of psychology, the board is proposing this new rule to acknowledge the development of other electronic communication methods. The board has been researching and discussing telehealth delivery for several years and has determined it is reasonably necessary to now adopt the standards to address the ever-increasing need for effective mental health services in Montana, most critically in the more rural areas of our state.

5. The rule proposed to be repealed is as follows:

24.189.620 LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-304, 37-17-304, MCA

REASON: The board is repealing this unnecessary rule because it is outdated, confusing to applicants and licensing staff, and the subject matter is adequately addressed in existing statutes.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibspsy@mt.gov, and must be received no later than 5:00 p.m., October 18, 2019.

7. An electronic copy of this notice of public hearing is available at www.psy.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibspsy@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.301, 24.189.607, and 24.189.2107 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.189.620 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2300; facsimile (406) 841-2305; or to dlibspsy@mt.gov.

11. Jeff Sealey, board counsel, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
LORETTA BOLYARD, Ph.D.
CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 10, 2019.