

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND
AUDILOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through VII telepractice of) PROPOSED ADOPTION
speech-language pathology and)
audiology and NEW RULE VIII)
military training or experience)

TO: All Concerned Persons

1. On March 24, 2014, at 11:00 a.m., a public hearing will be held in the Basement Conference Room, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption 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 Speech-Language Pathologists and Audiologists (board) no later than 5:00 p.m., on March 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Cyndi Reichenbach, Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlibsdspl@mt.gov (board e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2013 Montana Legislature enacted Chapter 162, Laws of 2013 (Senate Bill 230), an act revising audiology and speech-language pathology licensing to allow for telepractice. The bill was signed by the Governor on April 5, 2013, and became effective on October 1, 2013. The board is proposing to adopt New Rules I through VII to implement the legislation by establishing standards for telepractice in Montana. Specifically, the board is proposing these new rules to establish minimum safe standards for both delivery and quality of telepractice services provided to Montana patients. Additionally, the new rules establish minimum qualifications for audiologists and speech-language pathologists to satisfy prior to providing telepractice services, and parameters for establishing the practitioner-patient relationship.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Asynchronous" means a method of exchanging information that does not require the patient and the provider to be available at the same time. Examples of such communication, also known as "store-

and-forward" transmission, include e-mails, faxes, recorded video clips, audio files and virtual technologies and e-learning programs.

(2) "Synchronous" means interactive transmission of data occurring bi-directionally in real time and requiring the patient and the provider be available at the same time.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE II PROVISION OF TELEPRACTICE SERVICES (1) The provision of speech-language pathology or audiology services in this state through telepractice, regardless of the physical location of the speech-language pathologist or audiologist, constitutes the practice of speech-language pathology or audiology and is subject to state licensure requirements and regulation by the board.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE III LIMITS ON TELEPRACTICE (1) No person licensed as a speech-language pathologist or audiologist in another state may engage in the practice of speech-language pathology or audiology in Montana, including telepractice services, unless a license to practice has been issued in Montana.

(2) A person located outside this state who provides speech-language pathology or audiology telepractice services to any patient in Montana shall be appropriately licensed in the jurisdiction in which the person providing telepractice services is located.

(3) All telepractitioners must abide by any statute or rule of this state governing the maintenance of patient records and patient confidentiality, regardless of the state where the records are maintained.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE IV DELIVERY OF TELEPRACTICE SERVICES

(1) Telepractice services may be delivered in a variety of ways, including:

(a) Asynchronous transmission:

(i) store-and-forward model/electronic transmission of stored clinical data from one location to another usually by the Internet via e-mail or fax; and

(ii) video and audio transmission through regular mail service delivery and express delivery services; and

(b) Synchronous transmission:

(i) clinician interactive model is a real time interaction between provider and patient that may occur via audio or audio/video transmission over telecommunication links such as telephone, Internet, or other methods for distance communication, including:

(A) videoconferencing;

(B) remote control software applications;

(C) computer applications;
(D) e-mail correspondence, including attachments; or
(E) self-monitoring/testing model, which refers to the patient who receives the services and provides data to the provider without a facilitator present at the site of the patient.

(2) Live versus stored data refers to the actual data transmitted during the telepractice. Live, real time, and stored clinical data may be included during the telepractice.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE V QUALITY OF TELEPRACTICE SERVICES (1) Elements of quality assurance include the competency of licensees, selection of patients, appropriateness of technology to the service being delivered, identification of appropriate outcome measures, collection of data, and satisfaction of the patient, caregiver, and provider.

(2) Telepractice services must conform to professional standards, including all appropriate and applicable codes of ethics.

(3) Licensees shall not engage in false, misleading, or deceptive advertising of telepractice services.

(4) Telepractice services may not be provided solely by correspondence, e.g., mail, e-mail, and faxes, although such may be adjuncts to telepractice.

(5) Licensees shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

(6) Licensees must be competent in delivering telepractice services via an electronic communications environment.

(7) The scope, nature, and quality of telepractice services must be the same as those provided by the licensee during in-person sessions.

(8) Optimal audio and video quality is dependent on the consistent and reliable operation and connection of telepractice equipment and networks.

(9) Telepractice service delivery includes the responsibility for calibration and maintenance of clinical instruments and telepractice equipment in accordance with standard operating procedures of the telepractice site(s) and manufacturer's specifications.

(10) Telepractice services must be in compliance with safety and infection control policies and procedures.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE VI ESTABLISHING THE PRACTITIONER-PATIENT RELATIONSHIP (1) A practitioner-patient relationship may commence via telepractice following a practitioner's in-person evaluation of the prospective patient to assess the patient's:

(a) need for services; and

(b) candidacy for telepractice, including behavioral, physical, and cognitive abilities to participate in telepractice services. Telepractice services may be provided by the patient's evaluator or another qualified speech-language pathologist or audiologist by the board.

(2) Prior to initiating services, a speech-language pathologist or audiologist shall:

- (a) make reasonable attempts to verify the identity of the patient;
- (b) obtain alternative means of contacting the patient other than electronically;
- (c) provide to the patient alternative means of contacting the licensee other than electronically;
- (d) document whether the patient has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee;
- (e) determine the availability of a facilitator, if needed, with the necessary level of training to assist at the patient's location;
- (f) provide orientation and training to the patient in the use of telepractice equipment and the telepractice protocol at an appropriate level for the patient; and
- (g) inform the patient in writing of the following:
 - (i) the limitations of using technology in the provision of telepractice;
 - (ii) the potential risks to the confidentiality of information due to technology used in telepractice;
 - (iii) the potential risks of disruption in the use of telepractice;
 - (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 may elect to discontinue the provision of telepractice services.

(3) The written document required by (2)(g) shall be signed by both the licensee and the patient and maintained in the clinical record. If the patient is a minor, the document shall be signed by the patient's parent or guardian.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE VII COMPETENCE - PRACTICE LIMITS - MAINTENANCE AND RETENTION OF RECORDS (1) A licensee using telepractice to deliver services shall:

- (a) complete four hours of board-approved telepractice training prior to engaging in telepractice in Montana;
- (b) limit telepractice services to the licensee's scope of practice;
- (c) maintain continuing competency or associate with a group who has experience in telepractice delivery of care;
- (d) use methods for protecting health information that include authentication and encryption technology;

- (e) limit access to protected health information to only those necessary for the provision of services or those required by law; and
 - (f) ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.
- (2) A speech-language pathology or audiology aide or assistant may function as a facilitator, but may not provide telepractice services.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

NEW RULE VIII MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a speech-language pathologist or audiologist.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a speech-language pathologist or audiologist. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it

was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule VIII to coincide with and further implement the legislation.

5. 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 Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdspl@mt.gov, and must be received no later than 5:00 p.m., March 28, 2014.

6. An electronic copy of this notice of public hearing is available at www.slpaud.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. 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 Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdspl@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for the new telepractice rules was contacted on April 26, 2013, by regular mail. The primary bill sponsors for the military training rule were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I-VIII will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail dlibsdspl@mt.gov.

10. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

Board of Speech-Language Pathologists
and Audiologists
Lynn Harris, AuD, Chair

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 18, 2014