

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS
Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))
24 DE Admin. Code 3700

GENERAL NOTICE

3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

Pursuant to 24 Del.C. §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board") proposes revisions to its rules and regulations.

On October 1, 2015, proposed revisions to the rules and regulations were published in the Delaware *Register of Regulations*, Vol. 19, Issue 4. Specifically, the Board's proposed amendments struck the current Section 9.2.1.4, which addresses practice by telecommunications, and added a new Section 10.0, pertaining to telepractice. The new Section 10.0 sets forth standards and requirements in order to allow licensees to engage in telepractice while protecting the public. A public hearing was held on November 17, 2015 before the Board, and the public comment period for written comment was held open for another 15 days. The Board deliberated on the evidence submitted at its meeting on January 19, 2016. Based on those deliberations, the Board made substantive revisions to the proposed rules and regulations. Therefore, the Board strikes the rules and regulations as proposed in the October 1, 2015 *Register of Regulations* and proposes revised rules and regulations attached hereto as Exhibit A.

A public hearing was originally scheduled for September 20, 2016 but has been rescheduled for November 15, 2016 at 2:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be November 30, 2016, which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its next regularly scheduled meeting, at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

Nature of the Proceedings

A public hearing was held before the Board on November 17, 2015 in the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public were invited to offer comments on the proposed amendments to the rules and regulations. Members of the public were also invited to submit written comments. In accordance with 29 Del.C. §10118(a), the written public comment period was held open until December 2, 2015, which was 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on January 19, 2016.

Summary of the Evidence

At the November 17, 2015 hearing, the following exhibits were made part of the record:

Exhibit 1: *News Journal* Affidavit of Publication.

Exhibit 2: *Delaware State News* Affidavit of Publication.

Exhibit 3: October 22, 2015 letter from Robert Overmiller of the Governor's Advisory Council for Exceptional Citizens. Mr. Overmiller requested a limited exception to Section 10.2.1.2 to permit occasional telepractice sessions with a regular client in the jurisdiction where the client is located.

Exhibit 4: October 28, 2015 letter from Daniese McMullin-Powell of the State Council for Persons with Disabilities. Ms. McMullin-Powell shared the concerns set forth in Exhibit 3.

Exhibit 5: November 6, 2015 letter from Judith Page, of the American Speech Language Hearing Association.

Ms. Page expressed concern regarding the requirement that the client be located in Delaware. She also commented that Delaware licensees, who may be recognized in their field, would be limited to providing services to clients located in Delaware. Ms. Page made a number of suggestions for inclusion in the proposed rules and regulation: Telepractice services must be equivalent to face-to-face services; licensees must comply with professional standards and must have the knowledge and skill to deliver services by telepractice; the use of technology must be appropriate for each client; include calibration of instruments; assess client's candidacy; provide written notification of the right to refuse services by telepractice; and maintain the confidentiality of records;

Exhibit 6: Undated written comments from the Delaware Speech Hearing Association.

The comments include a request that Section 10.2.1.2 be amended to reflect the client's legal status as a Delaware resident and to include a consultation exemption.

Exhibit 7: November 17, 2015 email and written comments from Illene Courtright.

Ms. Courtright objected to the geographic borders requirement and suggested using instead the legal resident status of the client. She requested an exemption to this requirement for episodic services or informal consultation. Ms. Courtright commented that the informed consent requirement should include the risks and limitations of telepractice.

In addition, testimony was presented, as follows:

Leia Heckman, from the Delaware Speech Hearing Association, addressed the Board regarding her concerns with the proposed regulations. Specifically, Ms. Heckman noted that services provided by telepractice must be equivalent to services face-to-face. Ms. Heckman objected to the requirement that the client must be located in the State of Delaware. This proposed language would limit services for clients who leave the state. Ms. Heckman suggested inclusion of ASHA's model language pertaining to informed consent. Ms. Heckman advised the Board that DSHA supports ASHA's model language, and requested that the Board consider adopting the consultation exemption.

Christine Cook, a Delaware speech/language pathologist, addressed the Board regarding her concerns pertaining to proposed Section 10.2.4.2, which requires that consultations be conducted face-to-face. Ms. Cook stated that the Board had advocated for an increase in access to services. This section will limit access. Clients should be able to consult with out of state providers by telepractice. Ms. Cook requested the elimination of Section 10.2.4.2.

Liesel Looney, an audiologist from the Nemours Children's Hospital, addressed the Board with her concerns pertaining to proposed Section 10.2.4.2. Ms. Looney reported that there is only one audiologist in Kent and Sussex County who is conducting follow-ups for newborns who fail hearing screenings. Due to the shortage, children are not getting subsequent follow-up appointments. Section 10.2.4.2 would prevent the provision of services by telepractice to this population. There is a need for providing remote services to families who live far from the hospital and lack transportation. Children in underserved areas aren't getting infant hearing screenings and timely intervention. The professional should be responsible for assessing appropriate care.

During the 15-day window for submission of additional written comments, as required by 29 Del.C. §10118(a), the Board received the following documents, which were marked as Exhibits on January 19, 2016:

Exhibit 8: December 1, 2015 letter from Michael Kurliand of Nemours, Alfred I. DuPont Hospital for Children.

Mr. Kurliand objected to inclusion of Sections 10.2.4.2 and Section 10.2.4.1. These sections require face-to-face meetings for initial evaluation, re-evaluations and scheduled discharges. Mr. Kurliand stated that these Sections will dramatically limit access to care, particularly in underserved southern Delaware. Mr. Kurliand also objected to Section 10.2.1.2, which requires clients to be located within the borders of Delaware. Mr. Kurliand suggested that the proposed rules and regulations be amended to permit a Delaware licensee to follow established patients that are not physically in the state of Delaware.

Exhibit 9: December 1, 2015 letter from Yell Inverso of Nemours, Alfred I. DuPont Hospital for Children.

Ms. Inverso objected to the face-to-face requirements in Section 10.2.4.2. Ms. Inverso stated that this language will limit access to care for many patients, including patients in southern Delaware. Ms. Inverso commented on the impact on audiology services. Due to the limited access to audiology services in southern Delaware, infants are not receiving hearing screenings and recommended follow-up services.

Findings and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations.

Pursuant to 24 Del.C. §3706(a)(1), the Board has statutory authority to promulgate rules and regulations. The proposed changes seek to establish standards for the delivery of services by telepractice for the professions regulated by the Board.

During deliberations, the Board considered the testimony of witnesses and the documents marked as exhibits. The Board addressed the concerns presented through this evidence. The Board discussed the objection to proposed Section 10.2.1, which requires that the licensee shall have an active Delaware license, and during telepractice treatment, the client shall be located within the borders of the State of Delaware. Certain individuals offering public comment expressed reservations with respect to continuity of care and limiting access to needed services.

The Board declined to amend Section 10.2.1. Care occurs where the client is physically located. A licensee who is licensed in Delaware only would be engaging in unlicensed practice if permitted to treat a client who has left Delaware and is located in another state. The Board would have no jurisdiction with respect to care provided in another state. Section 10.2.1 serves the interests of public protection by ensuring that clients located in Delaware receive care from practitioners properly licensed by the Board.

The Board also addressed the benefits and disadvantages regarding Section 10.2.4.2, which requires that all evaluations be done in a face to face setting. The Board recognized the access problem presented by this language, and decided to amend this Section to specify that only initial evaluations must be performed face to face and not through telepractice. The method of treatment for subsequent evaluations will be left to the discretion of the licensed professional.

The Board noted that other concerns voiced by members of the public are addressed in proposed Section 10.0. In the delivery of services by telepractice, the licensee must meet all standards and requirements applicable to onsite care. See Section 10.2.4.3. The licensee who deliver services by telepractice must possess the specialized knowledge and skills needed for the particular technology. See Section 10.2.4.5. The licensee is responsible for determining that telepractice is appropriate for the particular client. See Section 10.2.4.1. The proposed rules and regulations also require that licensees obtain written, informed consent which includes an outline of the risks of telepractice. See Section 10.2.2.

Finally, the Board decided to strike the last sentence of Rule 10.1 as unnecessary.

***Please Note: As the proposed amendments published in the August 2016 issue of the *Register* at page 107 (20 DE Reg. 107) are not being changed, they are not being published. A copy of the text from the proposed amendment is available at:**

<http://regulations.delaware.gov/register/august2016/proposed/20 DE Reg 107 08-01-16.htm>

20 DE Reg. 320 (10/01/16) (Gen. Notice)