

Dear Senators HEIDER, Souza, Jordan, and
Representatives WOOD, Packer, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Bureau of Occupational Licenses - State Board of Psychologist Examiners:
IDAPA 24.12.01 - Rules of the State Board of Psychologist Examiners - Proposed Rule (Docket No. 24-1201-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 11/07/2017. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/07/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Senior Legislative Research Analyst - Kristin Ford

DATE: October 19, 2017

SUBJECT: Bureau of Occupational Licenses - State Board of Psychologist Examiners

IDAPA 24.12.01 - Rules of the State Board of Psychologist Examiners - Proposed Rule (Docket No. 24-1201-1701)

The Bureau of Occupational Licenses submits notice of proposed rulemaking relating to the Rules of the State Board of Psychologist Examiners. The proposed rule ensures that temporary licensees hold a certificate of prescriptive authority issued by the Board before they can issue a prescription. It amends the length of face-to-face supervision time required for certain service extenders, provides recordkeeping requirements and provides availability requirements for the licensed psychologist. The rule also provides for the type and method of telepsychology services that may be provided, as well as requiring telehealth providers to obtain consent of a patient upon initial contact regarding the risks of telepsychology services. The Bureau states that negotiated rulemaking was not conducted because the proposed changes were discussed during noticed, open meetings of the Board. The proposed rule appears to be within the Board's statutory authority pursuant to sections 54-2303, 54-2305 and 54-5713, Idaho Code.

cc: Bureau of Occupational Licenses - State Board of Psychologist Examiners
Tana Cory

IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

24.12.01 – RULES OF THE IDAHO STATE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2305 and 54-5713, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rule will ensure that temporary licensees hold a certification of prescriptive authority issued by the Board before issuing a prescription. It shortens the length of face-to-face supervision time required for category III service extenders, and it amends the telepsychology rules to refine the definition of telepsychology and clarify the informed consent provisions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes to these rules were discussed during noticed, open meetings of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dicsie Gullick at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 1st day of September, 2017.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State St.
P.O. Box 83720
Boise, ID 83720-0063
Phone: (208) 334-3233
Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1201-1701
(Only Those Sections With Amendments Are Shown.)

300. TEMPORARY LICENSES (RULE 300).

Persons not licensed in this state who desire to practice psychology under the provisions of this chapter for a period not to exceed thirty (30) days within a calendar year may do so if they hold an interjurisdictional practice certificate (IPC) from the association of state and provincial psychology boards (ASPPB). As such, in order to practice temporarily under the IPC psychologists would be required to notify the Board of their intent to practice and provide documentation of their status. It is the IPC holders responsibility to contact the ASPPB to send verification of IPC status, including verification of no discipline. Persons authorized to practice under this section must hold a certification of prescriptive authority issued by the Idaho Board of Psychologist Examiners to issue a prescription. (3-29-10)(____)

(BREAK IN CONTINUITY OF SECTIONS)

450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (RULE 450).

The Board recognizes that licensed psychologists may choose to extend their services by using service extenders. The Board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

01. General Provisions for Licensed Psychologists Extending Their Services Through Others. (7-1-93)

- a.** The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)
- i.** Have the authority to cause termination of compensation for the service extender. (7-1-93)
 - ii.** Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)
- b.** The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)
- i.** Prior to employing the service extender, formulate and provide to the Board a written supervisory plan for each service extender and obtain approval for the plan. The plan shall include provisions for supervisory sessions and chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan shall be accompanied by a completed application form and appropriate application fee. (3-29-17)

- ii.** Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. For service extenders in Categories I and II, there will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. For service extenders in Category III, there will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the

service extender during each calendar month that services are provided by the service extender. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. The licensed psychologist will also be available for consultation either face-to-face, by phone, or by other means of contact on any day that services are provided by the service extender. (7-1-93)()

iii. Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

c. Supervision of service extenders through electronic communications, including video conferencing, cannot replace face-to-face supervision. Psychologists will ensure that the service that they provide through the use of service extenders is provided according to all applicable laws and rules. (3-29-17)

02. Qualifications for Service Extenders. (7-1-93)

a. Category I: A service extender will be placed in Category I if: (7-1-93)

i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the Board; or (7-1-93)

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board. (3-29-17)

c. Category III: A service extender will be placed in Category III if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the Board that the service extender holds a master's degree or equivalent from a program in psychology, counseling, or human development as determined by the Board, and the service extender will only provide psychometrician services. Such services are defined as administrating, scoring, and/or summarizing psychological or neuropsychological tests and test data that require specialized training. Interpretation of the testing data must be performed by the licensed psychologist. Service extenders in Category III will not be allowed to perform psychotherapy, intake assessments, or other services outside the scope of psychometric services defined above. The licensed psychologist wishing to employ the service extender must also verify in writing to the satisfaction of the Board that the service extender has been properly trained in all of the testing instruments that the service extender will administer at the start of employment and will continue to receive proper training in any new testing instruments utilized by the service extender over the course of employment. (3-29-17)

03. Conditions for Use of Service Extenders. (7-1-93)

a. All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist." (5-8-09)

b. Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public shall be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or

contacts. (7-1-93)

d. Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

e. All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

h. Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service extenders in the Category III may deliver as much as, but not more than seventy-five percent (75%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from the on-site provisions of Section 450 of this rule. Without notification to the Board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the Board on written request by the licensed psychologist to the Board. (3-29-17)

j. The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the Board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist shall submit for each service extender the appropriate fee together with certification to the Board that they possess: (3-19-07)

i. A written record of supervisory contact for the previous twelve (12) months; and (3-20-04)

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (3-20-04)

iii. An updated plan for the supervision of each of his service extenders. (3-20-04)

m. Documentation of supervisory notes, hours of supervision, number of hours on-site while the service extender provided services, and plan of supervision shall be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the Board upon request. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

601. TELEPSYCHOLOGY.

This rule supplements Title 54, Chapter 57, Idaho Code, the Idaho Telehealth Access Act, the American Psychological Association Guidelines for the Practice of Telepsychology, and all other laws and rules applicable to the practice of telepsychology in this state. (3-29-17)

01. Definitions. For purposes of telepsychology services, the following terms are defined as follows: (3-29-17)

a. Emergency. Emergency means a situation in which there is an occurrence that poses an imminent threat of a life threatening condition or severe bodily harm. (3-29-17)

b. Information Technology. Information technology means the production, storage, and communication of information using computers and microelectronics including but not limited to telephones, mobile devices, interactive videoconferencing, email, chat, text, social media, and other Internet based services. (3-29-17)

c. Telehealth Provider. Telehealth provider means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho by Title 54, Chapter 23, Idaho Code and who provides or offers to provide telepsychology services to persons who are located in or who reside in Idaho. (3-29-17)

d. Telepsychology Services. Telepsychology services mean psychological services provided ~~to a person through the use of information technology for the purpose of assessing, testing, diagnosing, treating, educating, or consulting. Telepsychology services may be synchronous or asynchronous~~ by a provider through the use of electronic communications, information technology, asynchronous store and forward transfer of information or synchronous interaction between the provider at a distant site and a service recipient at an originating site. Such services include, but are not limited to, assessing, testing, diagnosing, treating, educating, and consulting. (3-29-17)()

02. General. (3-29-17)

a. When telepsychology services are contemplated, a telehealth provider will document individualized potential benefits and potential risks to the service recipient(s). (3-29-17)

b. Before telepsychology services are provided, a telehealth provider will document an emergency plan in the service recipient's record. The plan will specify the procedure for dealing with emergencies that will in an effective and timely way, provide for the service recipient's welfare. (3-29-17)

c. Except for psycho-educational purposes, the use of avatars for telepsychology services is prohibited. (3-29-17)

03. Initial Contact. Telehealth providers will, upon initial contact with the service recipient except in an emergency, prior to providing telepsychology services, obtain the written, informed consent of the service recipient(s), consistent with accepted professional and legal requirements concerning: ()

a. The limitations and challenges of using information technology to provide telepsychology services; ()

b. The potential for breaches in confidentiality of information while delivering telepsychology services; ()

c. The risks of sudden and unpredictable disruption of telepsychology services and the alternative means by which communication may be re-established. ()

034. Informed Consent. Telehealth providers will, upon initial and subsequent contact with the service recipient: (3-29-17)

- a. Make reasonable efforts to verify the identity of the service recipient; (3-29-17)
- b. Provide to the service recipient alternative means of contacting the telehealth provider should communications be disrupted during the provision of services. (3-29-17)
- ~~e. Except in an emergency, prior to providing telepsychology services, obtain the written, informed consent of the service recipient(s), consistent with accepted professional and legal requirements concerning;~~ (3-29-17)
- ~~i. The limitations and challenges of using information technology to provide telepsychology services;~~ (3-29-17)
- ~~ii. The potential for breaches in confidentiality of information while delivering telepsychology services;~~ (3-29-17)
- ~~iii. The risks of sudden and unpredictable disruption of telepsychology services and the alternative means by which communication may be re-established;~~ (3-29-17)
- ~~d.c.~~ Discuss who, in addition to the provider and the service recipient, may have access to the content of telecommunications between the provider and service recipient; (3-29-17)
- ~~e.d.~~ Inform the service recipient of when and how the provider will respond to electronic messages; (3-29-17)
- ~~f.e.~~ Ensure that a written agreement has been executed with service recipient(s) concerning compensation, billing, and payment arrangements. (3-29-17)
- 045. Security and Confidentiality.** Telehealth providers must: (3-29-17)
 - a. Use secure communications when providing telepsychology services *whenever feasible* and document consent for the use of non-secure communication means when they are necessary; ~~(3-29-17)~~ ()
 - b. Document how electronic communications are stored and maintain confidentiality of communications with service recipients; (3-29-17)
 - c. Ensure that unauthorized persons cannot recover or access confidential electronically-stored information when retained by the provider and after the data or equipment in which the data is stored has been discarded. (3-29-17)
 - d. Inform service recipients how electronic communications may be sent to the provider and how the provider will store these communications. (3-29-17)
- 056. Assessment.** (3-29-17)
 - a. When conducting psychological assessments using telepsychology services, telehealth providers must only use test and assessment procedures that are empirically supported for the patient population being evaluated. (3-29-17)
 - b. Telehealth providers using telepsychology for assessment must ensure that the identity of service recipients remains secure, that test security is maintained, that test-taking conditions are conducive to quiet and private test administration, and that the parameters of the test(s) are not compromised. (3-29-17)
 - c. Telehealth providers will explain to service recipients the potential limitations of conclusions and recommendations drawn from the results on online assessments and will document these limitations in the findings or report. Treatment will not be based solely upon the results of online assessments. (3-29-17)
- 067. Interjurisdictional Practice.** (3-29-17)

a. Before delivering telepsychology services to recipients across state, territorial, and international boundaries, telehealth providers should familiarize themselves and ensure that they comply with all applicable laws. (3-29-17)

b. Telehealth providers who are licensed to practice psychology pursuant to Title 54, Chapter 23, Idaho Code are under the jurisdiction of the Board when providing telepsychology services to Idaho residents located either within or outside of Idaho and to all recipients located within the state of Idaho. (3-29-17)

c. Except when providing telepsychology services in response to an emergency, telehealth providers who are not licensed to practice psychology in this state, who do not hold a temporary license under Section 300, or who are not otherwise exempt by law, but who are nevertheless providing telepsychology services to recipients located in this state, are guilty of a misdemeanor crime under Chapter 23, Title 54, Idaho Code. (3-29-17)