

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 04-14-14
Rule ID(s): 5697
File Date: 4/10/14
Effective Date: 4/9/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission: Board of Communications Disorders and Sciences
Division:
Contact Person: Andrea Huddleston, Interim Chief Deputy General Counsel
Address: Office of General Counsel
665 Mainstream Drive, Nashville, Tennessee
Zip: 37243
Phone: (615)741-1611
Email: Andrea.Huddleston@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1370-01	Rules for Speech Pathology and Audiology
Rule Number	Rule Title
1370-01-.21	Use of Telecommunication Technology

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1370-01
Rules for Speech Pathology and Audiology

New Rule

1370-01-.21 Use of Telecommunication Technology

- (1) Policy Statement. Audiologists and Speech Language Pathologists often use telecommunication technology to deliver services to clients in Tennessee who are physically present at a different location in the state at the time they receive the services. Such use of telecommunication technology by Audiologists and Speech Language Pathologists is in the public interest provided the practitioners comply with the requirements of this rule.
- (2) Audiologists and Speech Language Pathologists licensed in Tennessee may deliver services to clients in Tennessee through the use of telecommunication technology, including but not limited to dedicated video systems, computers, and other similar devices linked via hardwired or internet connections.
- (3) The services delivered through the use of telecommunication technology shall be equivalent in quality to services delivered face-to-face.
- (4) Audiologists and Speech Language Pathologists using telecommunication technology to deliver services must have the necessary knowledge and skills, obtained through education, training, and experience, to utilize such technology in a competent manner.
- (5) The use of telecommunication technology, including but not limited to the equipment, connectivity, software, hardware, and network compatibility, must be appropriate for the particular service being delivered and must be able to address the unique needs of the client. A licensed audiologist or speech language pathologist must always be physically present at the hub site while interactive telecommunication technology is being utilized to deliver services to a client who is physically present at the distant (remote) site. No asynchronous use of telecommunication technology is permitted by this rule.
- (6) An Audiologist or Speech Language Pathologist utilizing telecommunication technology to deliver services to a client is responsible for:
 - (a) Assessment of the ability of the client to participate meaningfully in the services delivered in this manner, including but not limited to the client's physical, cognitive, and behavioral abilities; and
 - (b) Proper calibration of the clinical instruments utilized to deliver services in accordance with standard operating procedures and manufacturer's specifications.
- (7) The client and/or the client's family members or caregivers shall be informed of the available service delivery options and shall give consent to the use of telecommunication technology for the delivery of services before that method of service delivery is utilized.
- (8) When delivering services through the use of telecommunication technology, the Audiologist or Speech Language Pathologist shall:
 - (a) Comply with all laws and rules governing the maintenance of client records, including but not limited to client confidentiality requirements; and
 - (b) Comply with all professional standards governing the delivery of services by Audiologists and Speech Language Pathologists, including but not limited to the applicable Code of Ethics and other relevant professional policy documents.
- (9) An Audiologist or Speech Language Pathologist shall not deliver services to a client solely through the use of regular mail, facsimile, or electronic mail, although these methods of communication may be used

to supplement the delivery of services face-to-face or through the use of telecommunication technology.

- (10) This rule applies only to the delivery of services through the use of telecommunication technology within the state of Tennessee. It does not apply to the delivery of services when either the client or the Audiologist or Speech Language Pathologist is physically located outside the state of Tennessee.

Authority: T.C.A. §§ 63-17-103 and 63-17-105

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Lynne Harmon Burgess	X				
Valeria Matlock	X				
John Ashford	X				
Terri Philpot Flynn	X				
Whitney Mauldin				X	
Ronald Eavey				X	
O.H. "Shorty" Freeland				X	

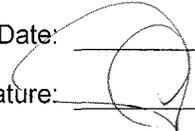
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communication Disorders and Sciences (board/commission/ other authority) on 02/12/2013 and 06/03/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/13/12

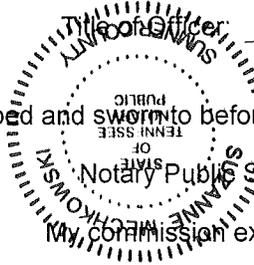
Rulemaking Hearing(s) Conducted on: (add more dates). 02/12/13 and 06/03/13

Date: 4-3-14

Signature: 

Name of Officer: Andrea Huddleston
Interim Chief Deputy General Counsel
Department of Health

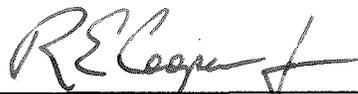
Subscribed and sworn to before me on: 4-2-14



Notary Public Signature: Suzanne Meckler

My commission expires on APRIL 19, 2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


 Robert E. Cooper, Jr.
 Attorney General and Reporter

4-7-14
 Date

Department of State Use Only

Filed with the Department of State on: 4/10/14

Effective on: 7/19/14


 Tre Hargett
 Secretary of State

RECEIVED
 2014 APR 10 PM 4:16
 OFFICE OF
 SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Public Hearing Comments from February 12, 2013 (Original Rulemaking Hearing Date)

John Williams, a representative of the Tennessee Association of Audiologists and Speech-Language Pathologists (TAASLP), asked that rule 1370-01-.21(5) be amended to read: "a licensed audiologist or speech language pathologist must always be physically present at the hub site while interactive telecommunication technology is being utilized to deliver services to a client who is physically present at the distant (remote) site. No asynchronous use of telecommunication technology is permitted by this rule." Mr. Williams also asked the Board to leave the hearing open for public comment until the next Board meeting.

This comment was addressed at the June 3, 2013 meeting.

Devin McCaslin, a representative of Vanderbilt University, asked the Board to consider adding language to the definition of the "face to face" requirement. Additionally, he asked the Board to table these rules to give practitioners more time to comment. Vanderbilt partnered with the Department of Health to provide services to Union County in order to expand services and treat and fit children more quickly for hearing aids. These services are provided by a local technician who is operating under the supervision of an audiologist at Vanderbilt. Vanderbilt fears that some of the rules would prevent this practice and require an audiologist to be onsite.

The Board felt that the comments by Dr. McCaslin should be addressed at a later time. The Board did not further address his comments and concerns. The Board voted to table the rulemaking hearing to allow more time for comments to be submitted. The rulemaking hearing was reset for June 3, 2013.

Public Hearing Comments from June 3, 2013 (Continued from Rulemaking Hearing on February 12, 2013: held over for public comments)

The Rulemaking Hearing that was delayed at the previous Board meeting on February 12, 2013 was continued, in order to allow additional public comments regarding Rule 1370-01-.21 (Use of Telecommunication Technology).

On June 3, 2013, the Board voted to continue the Rulemaking Hearing, previously delayed at the February 12, 2013 meeting, in order to allow additional public comments regarding Rule 1370-01-.21 (Use of Telecommunication Technology).

John Williams, a representative of TAASLP, submitted a written comment, listed below, seeking to have the Board include language to paragraph (5). He supported the Board's effort and the remaining rule amendments.

Ann Marie Thorpe commented on asynchronous.

Holly Christopher, a representative of Stellar Therapy Services, commented on supervision. Stellar Therapy Services is a contract company that provides services to school systems in Chattanooga. The company is concerned that SLPAs in the school systems are not being correctly supervised. The company asked the Board to consider allowing the contract company to provide such supervision.

The Board reviewed the comment from Holly Christopher and decided to address the comment at the next Board meeting as there was a task force reviewing concerns over SLPA supervision.

After reviewing the comment from Holly Christopher, the Board decided to address the comment at the next

Board meeting as there was a task force reviewing concerns over SLPA supervision.

The comments made by John Williams and Ann Marie Thorpe were accepted and incorporated into the amendments in the following language of 1370-01-.21 (5), "[a] licensed audiologist or speech language pathologist must always be physically present at the hub site while interactive telecommunication technology is being utilized to deliver services to a client who is physically present at the distant (remote) site. No asynchronous use of telecommunication technology is permitted by this rule."

After all comments and discussion were heard, a motion was made by Dr. Matlock, seconded by Dr. Ashford, to approve the proposed rule with the additional wording suggested by TAASLP in paragraph 5 of the proposed rule. This additional wording is regarding physical presence of the licensed Speech Pathologist or Audiologist when interactive telecommunication technology is being utilized to provide therapy service. A roll call vote was held and the motion carried.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

REGULATORY FLEXIBILITY ANALYSIS OF RULES BEING CONSIDERED FOR AUTHORIZATION TO HAVE A RULEMAKING HEARING

The Board must consider whether the rules or rule amendments being proposed are such that in relation to small businesses (businesses with 50 or fewer full time employees) the proposed language of the rules or amendments and/or the procedures contained therein meet all of the following requirements:

- (1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.
- (3) The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans.
- (4) The compliance requirements throughout the proposed rules are as user-friendly as possible while still allowing the Board to achieve its mandated mission in regulating audiologists and speech language pathologists. There is sufficient notice between the rulemaking hearing and the final promulgation of rules to allow services and providers to come into compliance with the proposed rules.
- (5) Compliance requirements are not consolidated and simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.
- (6) The standards of care required in the proposed rules are the same as existing standards for the delivery of audiology and speech language pathology and do not necessitate the establishment of performance standards for small businesses.
- (7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Communication Disorders and Sciences

Rulemaking hearing date: June 3, 2013

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

Tennessee Licensed Audiologists and Speech Language Pathologists who currently deliver or plan to deliver audiology and speech language pathology services via telecommunication.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

Reporting, recordkeeping and other administrative costs required for compliance with this proposed rule would not significantly differ from the requirements of delivering traditional face-to-face audiology and speech language pathology services.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

This proposed rule should have little adverse impact on small business as the rule will primarily affect licensed audiologists and speech language pathologists. The proposed rule will likely provide additional safe guards that Tennessee consumers are receiving safe, appropriate and effective audiology and speech language pathology services.

- 4. Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

The Tennessee Board of Communications Disorders and Sciences does not believe there are less burdensome alternatives to the proposed rule amendments.

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: No known comparable federal law.

State: No known existing state law.

- 6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.**

The vast majority of audiologists and speech language pathologists operate out of small businesses. Thus, exempting small businesses would largely render this proposed rule moot.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

The proposed rule will likely not have a major impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These amendments clarify the use of telecommunication technology in the practice of audiology and speech pathology as well as establish safeguards for the use of telecommunication technology in the practice of audiology and speech language pathology.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

None

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These amendments affect those who practice in the field of Communications Disorders and Sciences. Public comments were heard on these rules, and after a rulemaking hearing, the adoption of the new rules based on those comments were given support by the affected group.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

Unknown.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There should be no increase or decrease in state and local government revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Andrea Huddleston, Interim Chief Deputy General Counsel, Department of Health, possesses substantial knowledge and understanding of the rule.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Andrea Huddleston, Interim Chief Deputy General Counsel, Department of Health, will explain the rule at a scheduled meeting of the committees.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, Department of Health, 665 Mainstream Drive, Nashville, TN 37243, (615) 741-1611, Andrea.Huddleston@tn.gov.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.