Texas Medical Board Press Release

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TMB Adopts Rules Expanding Telemedicine Opportunities

The Texas Medical Board adopted telemedicine rules last Friday, April 10, representing the best balance of convenience and safety by ensuring quality health care for the citizens of Texas. The rules expand opportunities for patients to interact with their physicians beyond the traditional office visit and clarify that a physician-patient relationship can be established through a "face-to-face" visit held either in person or via telemedicine. Essentially the only scenario prohibited in Texas is one in which a physician treats an unknown patient using telemedicine, without any objective diagnostic data, and no ability to follow up with the patient.

The rules authorize the following types of telemedicine:

- **Patients can interact with their physicians via telemedicine beyond the traditional office visit** including receiving appropriate care from their homes, between multiple health care settings, and from other medical sites like a school nurse’s office, a fire station or even an oil rig.

  **Example:** A patient with a heart condition on an oil rig in the Gulf of Mexico can receive telemedicine treatment from a cardiac specialist in Houston as long as the rig has sufficient diagnostic equipment and a trained medical professional, such as a licensed vocational nurse, available to assist in presenting the patient’s vital signs and other objective medical information needed by the Houston physician.

- **Once a physician has made an initial diagnosis of a patient through a face-to-face visit held either in person or via telemedicine, the physician can treat a patient for their preexisting condition, via telemedicine, for up to one year in their home.** The presence of another medical provider to assist in communicating the patient’s diagnostic information to the physician is only required for the initial consultation.

  **Example:** A patient with diabetes in rural north Texas is treated and prescribed medication at home via telemedicine by a doctor in Dallas. The initial relationship was established through face-to-face videoconferencing at the patient’s home where a medical assistant was present to transmit the patient’s vital signs and other objective diagnostic data to the physician.
A physician can provide mental health services to a patient via telemedicine at the patient's home, which can include a group or institutional setting where the patient is a resident. No other health care provider is required to be with the patient to present the patient's symptoms to the physician unless there is a behavioral emergency.

Example: A west Texas patient in an assisted living facility can be treated for bipolar disorder with a mood stabilizer via telemedicine, in keeping with federal guidelines, by an Austin psychiatrist without an additional medical professional being present.

Given the amount of misinformation published about the rules, below are key clarifications on what the rules do not do. The rules do not:

- limit a patient to an in-person visit to establish a physician-patient relationship before receiving treatment, the relationship can also be established via appropriate face-to-face telemedicine;
- change traditional on-call coverage used by many physicians' offices; physicians, who are in the same medical specialty and provide reciprocal services, may provide on-call telemedicine medical services for each other's active patients;
- severely restrict the types of telemedicine scenarios authorized in Texas; the rules expand the scenarios already allowed to include greater access to treatment from a patient's home and greater access to treatment for behavioral and mental health.
CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines.

The amendment adds language to paragraph (1)(L) in order to clarify a "defined physician-patient relationship" and the requirements for establishing same before prescribing drugs. The amendment clearly defines the minimum elements that are required to establish a defined physician-patient relationship. The elements include a physical examination that must be performed either by a face-to-face visit or an in-person evaluation, as those terms are defined under existing board rules.

The amendments to §190.8 further add new paragraph (8), relating to Texas Occupations Code §164.051(a)(4)(C)'s authority for the board to take disciplinary action based upon a licensee's inability to practice medicine with reasonable skill and safety to patients because of excessive use of drugs, narcotics, chemicals, or another substance. The amendment adds language stating that for the purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481 of the Texas Health and Safety Code, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq., constitutes excessive use of such substance.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to insure patient safety by setting forth specific parameters and requirements for a practitioner to establish a defined physician-patient relationship prior to prescribing drugs. The amendment to §190.8(1)(L) will protect patient health and safety by requiring the use of acceptable medical practices that comply with state law and medical board rules, while still providing ample access to medical treatment. An additional public benefit anticipated will be to clarify requirements for prescribing drugs that are consistent with the board's existing rules related to acceptable medical practices, requirements for medical record documentation of patient evaluations and examinations, and requirements for the practice of telemedicine. The public benefit will also provide clarity as to the definition of excessive use of narcotics, chemicals, or another substance by a physician that would impair a physician's ability to practice with reasonable skill and safety to patients and that would authorize the board to take disciplinary action based upon such impairment, thereby better enabling the board to protect the public.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.
Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of the Texas Occupations Code Annotated, §164.051(a)(4)(C).

No other statutes, articles or codes are affected by this proposal.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) - (K) (No change.)

(L) prescription of any dangerous drug or controlled substance without first establishing a defined physician-patient [proper professional] relationship [with the patient].

(i) A defined physician-patient [proper] relationship must include, at a minimum [requires]:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices, which includes documenting and performing: [such as]

(-a-) patient history;

(-b-) mental status examination;

(-c-) physical examination that must be performed by either a face-to-face visit or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions);[1] and

(-d-) appropriate diagnostic and laboratory testing.
(III) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship;

(IV) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(V) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) - (iii) (No change.)

(M) - (O) (No change.)

(2) - (7) (No change.)

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 305-7016
CHAPTER 174. TELEMEDICINE

22 TAC §§174.2, 174.5, 174.6, 174.8

The Texas Medical Board (Board) proposes amendments to §§174.2, 174.5, 174.6, and 174.8, concerning Telemedicine.

The amendment to §174.2, relating to Definitions, adds language to the definition for "Established Medical Site" under paragraph (2), clarifying that a defined physician-patient relationship is defined by §190.8(1)(L) of this title (relating to Violation Guidelines). Amendments are also made to the rule stating that a patient's private home is not considered to be an established medical site, by striking the phrase "except when the care provided to the patient is limited to mental health" and adding language stating "except as provided in §174.6(d) of this title (relating to Telemedicine Medical Services Provided at an Established Medical Site)." Further amendments provide that an established medical site includes all Mental Health and Mental Retardation Centers (MHMRs) and Community Centers, as defined by Health and Safety Code, Chapter 534, where the patient is a resident and the medical services provided to the patient are limited to mental health services. The amendments further add new paragraph (11), adding a definition for "group or institutional setting," which includes residential treatment facilities, halfway houses, jails, juvenile detention centers, prisons, nursing homes, group homes, rehabilitation centers, and assisted living facilities.

The amendments to §174.5, relating to Notice to Patients, strikes the phrase "and counsel" in subsection (c).

The amendments to §174.6, relating to Telemedicine Medical Services Provided at an Established Medical Site, revise language to be consistent with other parts of this rule and §190.8(1)(L) by substituting the term "defined" for "proper" before the phrase "physician-patient relationship." Subsection (c) is amended to clarify that patient site presenters are not required at established medical sites when mental health services are being provided, unless there are "behavioral emergencies." The term "behavioral emergencies" is defined to provide clarity as to what constitutes a behavioral emergency. Subsection (d)(1) is added to expand which types of patient residential locations may be considered established medical sites, and the limits of services that may be provided at these locations. The amendment allows a patient's private home, which includes a group or institutional setting where the patient is a resident, to be considered an established medical site, if the medical services being provided in this setting are limited to mental health services. Subsection (d)(2) is added, setting forth the requirements that must be met in order for medical services, other than mental health services, to be provided at the patient's home, including a group or institutional setting where the patient is a resident. They include requirements that: a patient site presenter be present; a defined physician-patient relationship be established; and the patient site presenter have sufficient communication and remote medical diagnostic technology to allow the physician to carry out an adequate physical examination while seeing and hearing the patient in real time, with all such examinations being held to the same standard of acceptable medical practices as those in traditional clinical settings. The amendments further clarify that the use of an online questionnaire or questions and answers
exchanged through email, electronic text, chat, telephonic evaluation or consultation with a patient do not meet the requirements to establish a defined physician-patient relationship.

The amendment to §174.8, relating to Evaluation and Treatment of the Patient, changes language to be consistent with other parts of this rule stating that medical treatment and diagnosis via telemedicine is held to the same standards for acceptable medical practices as those in traditional in-person clinical settings. In subsection (a)(2), language is amended related to establishing a diagnosis through the use of acceptable medical practices. Such practices include establishing a defined physician-patient relationship, including documenting and performing a patient history, mental status examination, and physical examination, all of which must be performed as part of a face-to-face or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). This amendment further restates the exception to the requirement for a patient-site presenter that applies to mental health services, except in cases of behavioral emergencies, and the need for appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, to treatment recommended or provided.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the proposal will be to provide Texans increased access to telemedicine services while insuring that the services are being provided at a proper location and that a defined physician-patient relationship is being created when medical services are being provided. The additional public benefit is to expand access to needed mental health services along with providing clear guidance as to the scope of such mental health services that may be provided without conducting a face-to-face visit or in-person evaluation.

Mr. Freshour has also determined that for the first five-year period the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§174.2 Definitions.

The following words and terms, when used in this chapter shall have the following meanings unless the context indicates otherwise.
(1) Distant site provider--A physician or a physician assistant or advanced practice nurse who is supervised by and has delegated authority from a licensed Texas physician, who uses telemedicine to provide health care services to a patient in Texas. Distant site providers must be licensed in Texas.

(2) Established medical site--A location where a patient will present to seek medical care where there is a patient site presenter and sufficient technology and medical equipment to allow for an adequate physical evaluation, as appropriate for the patient's presenting complaint. It requires establishing a defined physician-patient relationship, as defined by §190.8(1)(L) of this title (relating to Violation Guidelines). A patient's private home is not considered an established medical site, except as provided in §174.6(d) of this title (relating to Telemedicine Medical Services Provided at an Established Medical Site). An established medical site includes all Mental Health and Mental Retardation Centers (MHMRs), and Community Centers, as defined by Health and Safety Code, Chapter 534, where the patient is a resident and the medical services provided are limited to mental health services.

(3) - (10) (No change.)

(11) Group or Institutional Setting--These include residential treatment facilities, halfway houses, jails, juvenile detention centers, prisons, nursing homes, group homes, rehabilitation centers, and assisted living facilities.

§174.5.Notice to Patients.

(a) - (b) (No change.)

(c) Necessity of In-Person Evaluation. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of medicine at an acceptable level of safety and quality in the context of that particular medical encounter, then the distant site provider must make this known to the patient prior to the conclusion of the live telemedicine encounter and advise [and counsel] the patient, prior to the conclusion of the live telemedicine encounter, regarding the need for the patient to obtain an additional in-person medical evaluation reasonably able to meet the patient's needs.

(d) (No change.)

§174.6.Telemedicine Medical Services Provided at an Established Medical Site.

(a) Telemedicine medical services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a defined [proper] physician-patient relationship between a distant site provider and a patient.

(b) For new conditions, a patient site presenter must be reasonably available onsite at the established medical site to assist with the provision of care. It is at the discretion of the distant
site physician if a patient site presenter is necessary for follow-up evaluation or treatment of a previously diagnosed condition.

(1) A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter.

(2) A distant site provider delegating tasks to a patient site presenter shall ensure that the patient site presenter to whom delegation is made is properly supervised.

(c) If the only services provided are related to mental health services, a patient site presenter is not required, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions). [where the patient may be a danger to themselves or others.]

(d) For the purposes of this chapter the following shall be considered to be an established medical site:

(1) The patient's home, including a group or institutional setting where the patient is a resident, if the medical services being provided in this setting are limited to mental health services;

(2) For medical services, other than mental health services, to be provided at the patient's home, including a group or institutional setting where the patient is a resident, the following requirements must be met:

(A) a patient site presenter is present;

(B) there is a defined physician-patient relationship as set out in §174.8 of this title (relating to Evaluation and Treatment of the Patient);

(C) the patient site presenter has sufficient communication and remote medical diagnostic technology to allow the physician to carry out an adequate physical examination appropriate for the patient's presenting condition while seeing and hearing the patient in real time. All such examinations will be held to the same standard of acceptable medical practices as those in traditional clinical settings; and

(D) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient do not meet the requirements for subparagraph (C) of this paragraph.


(a) Evaluation of the Patient. Distant site providers who utilize telemedicine medical services must ensure that a defined [proper] physician-patient relationship is established which at a minimum includes:

(1) establishing that the person requesting the treatment is in fact who the person [whom he/she] claims to be;
(2) establishing a diagnosis through the use of acceptable medical practices, including documenting and performing patient history, mental status examination, and physical examination that must be performed as part of a face-to-face or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions) [physical examination (unless not warranted by the patient's mental condition)], and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contraindications, or both, to treatment recommended or provided;

(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.

(b) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of acceptable medical practices [appropriate practice] as those in traditional in-person clinical settings.

(c) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship. [An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of care.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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