

Texas Medical Board Press Release

FOR IMMEDIATE RELEASE

April 14, 2015

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.

1 **CHAPTER 190. DISCIPLINARY GUIDELINES**

2 **SUBCHAPTER B. VIOLATION GUIDELINES**

3 **22 TAC §190.8**

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

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

12 The amendments to §190.8 further add new paragraph (8), relating to Texas Occupations Code
13 §164.051(a)(4)(C)'s authority for the board to take disciplinary action based upon a licensee's
14 inability to practice medicine with reasonable skill and safety to patients because of excessive
15 use of drugs, narcotics, chemicals, or another substance. The amendment adds language stating
16 that for the purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a
17 substance listed in Schedule I, as established by the Commissioner of the Department of State
18 Health Services under Chapter 481 of the Texas Health and Safety Code, or as established under
19 the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.,
20 constitutes excessive use of such substance.

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

36 Mr. Freshour has also determined that for the first five-year period the section is in effect there
37 will be no fiscal implication to state or local government as a result of enforcing the section as
38 proposed. There will be no effect to individuals required to comply with the rule as proposed.
39 There will be no effect on small or micro businesses.

40 Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas
41 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be
42 held at a later date.

43 The amendment is proposed under the authority of the Texas Occupations Code Annotated,
44 §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to:
45 govern its own proceedings; perform its duties; regulate the practice of medicine in this state;
46 enforce this subtitle; and establish rules related to licensure. The amendments are also proposed
47 under the authority of the Texas Occupations Code Annotated, §164.051(a)(4)(C).

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

49 *§190.8.Violation Guidelines.*

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

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

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

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

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

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

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

63 (-a-) patient history;[;]

64 (-b-) mental status examination;[;]

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

69 (-d-) appropriate diagnostic and laboratory testing.

70 (III) An online questionnaire or questions and answers exchanged through email, electronic text,
71 or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a
72 defined physician-patient relationship [by questionnaire is inadequate];

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

75 (V) [(IV)] ensuring the availability of the licensee or coverage of the patient for appropriate
76 follow-up care.

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

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

79 (2) - (7) (No change.)

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

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

86 Filed with the Office of the Secretary of State on February 23, 2015.

87 TRD-201500621

88 Mari Robinson, J.D.

89 Executive Director

90 Texas Medical Board

91 Earliest possible date of adoption: April 5, 2015

92 For further information, please call: (512) 305-7016

1 **CHAPTER 174. TELEMEDICINE**

2 **22 TAC §§174.2, 174.5, 174.6, 174.8**

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

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

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

21 The amendments to §174.6, relating to Telemedicine Medical Services Provided at an
22 Established Medical Site, revise language to be consistent with other parts of this rule and
23 §190.8(1)(L) by substituting the term "defined" for "proper" before the phrase "physician-patient
24 relationship." Subsection (c) is amended to clarify that patient site presenters are not required at
25 established medical sites when mental health services are being provided, unless there are
26 "behavioral emergencies." The term "behavioral emergencies" is defined to provide clarity as to
27 what constitutes a behavioral emergency. Subsection (d)(1) is added to expand which types of
28 patient residential locations may be considered established medical sites, and the limits of
29 services that may be provided at these locations. The amendment allows a patient's private home,
30 which includes a group or institutional setting where the patient is a resident, to be considered an
31 established medical site, if the medical services being provided in this setting are limited to
32 mental health services. Subsection (d)(2) is added, setting forth the requirements that must be
33 met in order for medical services, other than mental health services, to be provided at the
34 patient's home, including a group or institutional setting where the patient is a resident. They
35 include requirements that: a patient site presenter be present; a defined physician-patient
36 relationship be established; and the patient site presenter have sufficient communication and
37 remote medical diagnostic technology to allow the physician to carry out an adequate physical
38 examination while seeing and hearing the patient in real time, with all such examinations being
39 held to the same standard of acceptable medical practices as those in traditional clinical settings.
40 The amendments further clarify that the use of an online questionnaire or questions and answers

41 exchanged through email, electronic text, chat, telephonic evaluation or consultation with a
42 patient do not meet the requirements to establish a defined physician-patient relationship.

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

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

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

67 Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas
68 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be
69 held at a later date.

70 The amendments are proposed under the authority of the Texas Occupations Code Annotated,
71 §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to:
72 govern its own proceedings; perform its duties; regulate the practice of medicine in this state;
73 enforce this subtitle; and establish rules related to licensure.

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

75 *§174.2.Definitions.*

76 The following words and terms, when used in this chapter shall have the following meanings
77 unless the context indicates otherwise.

78 (1) Distant site provider--A physician or a physician assistant or advanced practice nurse who is
79 supervised by and has delegated authority from a licensed Texas physician, who uses
80 telemedicine to provide health care services to a patient in Texas. Distant site providers must be
81 licensed in Texas.

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

92 (3) - (10) (No change.)

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

96 *§174.5. Notice to Patients.*

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

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

106 (d) (No change.)

107 *§174.6. Telemedicine Medical Services Provided at an Established Medical Site.*

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

111 (b) For new conditions, a patient site presenter must be reasonably available onsite at the
112 established medical site to assist with the provision of care. It is at the discretion of the distant

113 site physician if a patient site presenter is necessary for follow-up evaluation or treatment of a
114 previously diagnosed condition.

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

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

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

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

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

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

129 (A) a patient site presenter is present;

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

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

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

140 *§174.8.Evaluation and Treatment of the Patient.*

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

144 (1) establishing that the person requesting the treatment is in fact who the person [whom he/she]
145 claims to be;

146 (2) establishing a diagnosis through the use of acceptable medical practices, including
147 documenting and performing patient history, mental status examination, and physical
148 examination that must be performed as part of a face-to-face or in-person evaluation as defined
149 in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or
150 in-person evaluation does not apply to mental health services, except in cases of behavioral
151 emergencies, as defined by 25 TAC §415.253 (relating to Definitions) [physical examination
152 (unless not warranted by the patient's mental condition)], and appropriate diagnostic and
153 laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-
154 indications, or both, to treatment recommended or provided;

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

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

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

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

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

168 Filed with the Office of the Secretary of State on February 23, 2015.

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171 Executive Director

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

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