

Telemedicine Frequently Asked Questions

What is telemedicine?

In Texas, telemedicine is a health care service delivered by a physician licensed in Texas, or a health professional acting under the delegation and supervision of a physician licensed in Texas, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology.

Who may treat a patient in Texas using telemedicine?

A physician, or a physician assistant or advanced practice nurse who is supervised by and has delegated authority from a physician, may treat a patient using telemedicine under his or her respective license.

When can telemedicine medical services be provided?

Telemedicine medical services may be provided when:

1. a valid patient-practitioner relationship is established; and
2. the practitioner is able to meet the standard of care for an in-person setting.

How is a patient-practitioner relationship established in telemedicine?

There are three (3) ways a patient-practitioner relationship can be established:

1. there is a preexisting practitioner-patient relationship;
2. the practitioner communicated with the patient as part of a call coverage agreement with the patient's established practitioner; or
3. The practitioner communicates with the patient using:
 - a. real-time audiovisual interaction, such as through video calls;
 - b. real-time audio (telephone), along with having access to clinically relevant information, such as videos/images, medical records, and test results; or
 - c. any other audiovisual telecommunication technology that allows the practitioner to meet the standard of care for an in-person setting.

In addition, practitioners should be providing proper follow-up care guidance and potentially notifying the patient's primary care physician of the treatment if the patient consents.

When is telemedicine prohibited?

First, the medical standard of care is the same for both in-person and telemedicine, which may exclude certain medical services that would require an in-person evaluation to meet the standard of care.

Second, there are two treatment specific prohibitions on telemedicine:

1. A practitioner-patient relationship is **not** present if a practitioner prescribes an abortifacient or any other drug or device that terminates a pregnancy.¹
2. Treatment for chronic pain with scheduled drugs using telemedicine is not allowed.²

¹ Occ. Code § 111.005(c).

² 22 Tex. Admin. Code (TAC) § 174.5(e)(2)(A).

How does telemedicine change the practice of pharmacy? And what constitutes a “reasonable effort” to determine if a valid patient-practitioner relationship exists?

In short, not very much has changed. Texas State Board of Pharmacy Rules still require that a “pharmacist shall make every reasonable effort to ensure that any prescription drug order, regardless of the means of transmission, has been issued for a legitimate medical purpose by a practitioner in the course of medical practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the order for such drug was issued without a valid pre-existing patient-practitioner relationship...or without a valid prescription drug order.”³

The key difference under the new law is that a physical in-person meeting between the patient and the practitioner is not always required to form the patient-practitioner relationship. A pharmacist still must consider whether:

1. a valid patient-practitioner relationship exists;
2. the prescription is for the patient;
3. there is an established diagnosis through the use of acceptable medical practices;
4. there is a valid medical need or therapeutic purpose for the prescription; and
5. the prescription was issued in the usual course of medical practice.

The professional responsibility standard for pharmacists is the same for in-person and telemedicine prescriptions—as is the standard of care. A pharmacist must still make a “reasonable effort” to ensure a prescription is valid and ordered pursuant to a patient-practitioner relationship. And any prescription drug orders issued as the result of a telemedicine medical service, are still subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

While every individual pharmacist must exercise his or her own professional judgment, for telemedicine patients, depending on the circumstances, it may be reasonable to inquire about:

1. Was there a preexisting patient-practitioner relationship?
2. Was the patient seen by another practitioner because his or her established provider was unavailable?
Note: As the patient will likely not be aware of a call coverage agreement between physicians, follow-up with the practitioner’s office may be necessary.
3. What type of telecommunication was used during the interaction?
4. Was the patient given any follow-up instructions?
Note: This would be relevant for patients without an established patient-practitioner relationship.
5. Was the patient being treated for chronic pain?
6. Was an abortifacient or any other drug or device that terminates a pregnancy prescribed?

What about mental health services and prescribing?

In Texas, mental health services are specifically exempt from the provisions of the Texas Occupations Code governing telemedicine.⁴ Mental health services may be provided to a patient at a different location from the location of the licensed or certified provider using telecommunications or information technology.⁵ The provider must still establish the provider-patient relationship, which can be established through use of telecommunications

³ See 22 TAC § 291.29(b).

⁴ Occ. Code § 111.008.

⁵ 22 TAC § 174.9(2).

or information technology.⁶ As with other medical services, the standard of care for an in-person setting still applies.⁷

What about mental health services and chronic pain treatment?

While mental health services are exempt from the restrictions placed on telemedicine in general, the Texas Medical Board's rules explicitly prohibits the treatment of chronic pain with scheduled drugs through the use of telecommunications or information technology.⁸

Pharmacists should be aware that treatment for chronic pain can involve mental health treatment, which is a common comorbidity. For example, a patient suffer chronic back pain that limits function might develop depression that requires medication, and in some cases, a benzodiazepine will be prescribed. If a controlled substances, such as a benzodiazepine (Alprazolam/Xanax, Diazepam/Valium) is prescribed as part of chronic pain treatment, then telemedicine may not be permitted under the Medical Board's rule.⁹

⁶ 22 TAC § 174.9(3).

⁷ 22 TAC § 174.9(4).

⁸ 22 TAC §§ 174.5(e)(2)(A) and 174.9(6).

⁹ 22 TAC § 174.9(6).