

Title 10 MARYLAND DEPARTMENT OF HEALTH

Subtitle 32 BOARD OF PHYSICIANS

Chapter 05 Tele[medicine]health

Authority: Health Occupations Article, §§14-205, 14-301, 14-601, and 14-602, Annotated Code of Maryland

.01 Scope.

[A.]This chapter governs the practice of medicine using [telecommunication systems] *telehealth* as an adjunct to, or replacement for, traditional [face-to-face] *in-person* patient visits.

[B. This chapter does not apply to the use of an electronic means by a treating physician licensed in Maryland who is seeking consultative services of another licensed health care professional with respect to an individual patient.]

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "*Asynchronous*" means not occurring at the same time.

[(1) Consultative Service.

(a) "Consultative service" means a service provided by a physician for the sole purpose of offering an expert opinion or advising the treating physician about an individual patient.

(b) "Consultative service" does not include:

(i) Decisions that direct patient care; or

(ii) Interpretation of images, tracings, or specimens on a regular basis.]

(2) ["Face-to-face"] "*In-person*" means within [each other's sight and presence] the physical presence of the patient.

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[(3) "Group practice" means a group of two or more health care practitioners legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association:

(a) In which each health care practitioner who is a member of the group provides substantially the full range of services that the practitioner routinely provides through the joint use of shared office space, facilities, equipment, and personnel;

(b) For which substantially all of the services of the health care practitioners who are members of the group are provided through the group and are billed in the name of the group, and amounts so received are treated as receipts of the group; and

(c) In which the overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined on an annual basis by members of the group.]

[(4)] (3) [Interpretive Services.

(a) "Interpretive services" means [official] reading[s] *and analyzing* [of] images, tracings, or specimens through [a telemedicine link] *telehealth or giving interpretations based on visual, auditory, thermal, ultrasonic patterns or other patterns as may evolve with technology.*

[(b) "Interpretive services" includes remote, real-time monitoring of a patient being cared for within a health care facility].

[(5) "Notice of privacy practices" means a written statement that meets the:

(a) Requirement of the Health Insurance Portability and Accountability Act of 1996; and

(b) Standards found at 45 CFR §164.520, as amended.

(6) "Physician-patient relationship" means a relationship between a physician and a patient in which there is an exchange of individual, patient-specific information.]

(4) *"Remote Patient Monitoring" means the use of telehealth devices to collect medical and other forms of health data from patients that are securely provided to a telehealth practitioner in a different location for assessment, recommendation, and diagnosis.*

(5) *"Store and forward technology" means the asynchronous transmission of digital images, documents and videos electronically through secure means.*

(6) *Surrogate examiner" means an individual examining a patient at the direction of a telehealth practitioner during a synchronous audio-visual telehealth encounter, and providing the telehealth practitioner with observations and information.*

(7) ["Real-time"] *"Synchronous" means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.*

[(8) "Telemedicine" means the practice of medicine from a distance in which intervention and treatment decisions and recommendations are based on clinical data, documents, and information transmitted through telecommunications systems.]

(8) *Telehealth*

(a) *"Telehealth" means the use of interactive audio, video, or other telecommunications or electronic technology by a licensed health care practitioner to deliver clinical services within the scope of practice of the health care practitioner at a location other than the location of the patient.*

(b) *Telehealth includes, but is not limited to:*

(i) *interactive audio-visual synchronous encounters;*

(ii) *store-and-forward technology;*

(iii) *interpretive services; and*

(iv) *remote patient monitoring;*

(c) *"Telehealth" does not include:*

(i) *an audio-only telephone conversation between a health care practitioner and a patient;*

(ii) *an electronic mail message between a health care practitioner and a patient;*
or

(iii) *a facsimile transmission between a health care practitioner and a patient;*

(9) *"Telehealth devices" means devices that gather visual or other data and remotely sends the images or data to a telehealth practitioner in a different location from the patient.*

(10) *"Telehealth Practitioner" means a Maryland licensed physician or licensed allied health practitioner performing telehealth services within their respective scope of practice.*

.03 Licensure.

Except as specified in Health Occupations Article, §14-302, Annotated Code of Maryland, an individual shall be a licensed Maryland *telehealth practitioner* [physician] in order to practice telehealth if one or both of the following occurs:

A. The individual practicing telehealth is physically located in Maryland;

B. The patient is in Maryland.

.04 [Standards Related to Telemedicine] *Specific Telehealth Requirements.*

A. Prior to providing telehealth services, a telehealth practitioner shall first:

(1) Obtain oral or written consent from a patient or person in interest as defined by Health Gen. § 4-301(l), to perform telehealth services, pursuant § D of this Section. The telehealth practitioner, the telehealth practitioner's medical practice, or facility, or school shall obtain and maintain evidence documenting appropriate patient consent to treat through telehealth technology. The telehealth practitioner shall document such consent in the patient's records. In emergency situations consent may be provided after the patient encounter;

(2) Have a procedure for handling emergencies; and

(3) Create a procedure to prevent access to data by unauthorized persons through encryption or other means, pursuant to §E of this regulation.

B. When initiating telehealth services through synchronous audio-visual communication a telehealth practitioner shall:

(1) Confirm whether the patient is in Maryland or outside of Maryland and identify the practice setting of the patient;

(2) Verify the identity of the patient through accepted patient identifiers;

(3) For an initial patient-telehealth practitioner interaction, disclose to the patient the telehealth practitioner's name, location, medical specialty, and any other relevant credentials;

(4) Identify any other individuals present at the telehealth practitioner's location;

(5) Confirm there is no one in the patient's location who is not allowed to hear or share personal health information;

(6) Inform the patient when the telehealth encounter is beginning and that sensitive medical information may be discussed; and

(7) Have a contingency procedure of re-establishing electronic or other connection if communication is terminated.

C. The requirements of §B of this regulation may be delegated.

D. A telehealth consent shall include:

(1) A description of the telehealth modality used by the telehealth practitioner;

(2) An acknowledgement that the telehealth practitioner may determine that telehealth is not clinically appropriate and request that a patient come for a in-person encounter;

(3) A description of telehealth privacy risks, and the telehealth practitioner's data breach policy, including the requirement to timely inform the patient of a data breach and inform the patient of the steps being taken to remediate the problem;

(4) A statement informing the patient that the patient may exclude anyone from any site during the telehealth service;

(5) A statement informing patients that they can decline telehealth service at any time without affecting their right to future care or treatment and that the patients can terminate the telehealth encounter at any time;

(6) an authorization to record the telehealth encounter and maintain and store the recording in accordance with medical retention requirements under state and federal law, if the practitioner records the telehealth encounter; and

E. The telehealth practitioner shall maintain the privacy and confidentiality of telehealth encounters in accordance with federal and state laws and regulations including:

(1) Ensure sufficient privacy and security measures through encryption, password protection, and other security measures to assure confidentiality and integrity of patient-identifiable information;

(2) Ensure a written business associate agreement between the telehealth practitioner and the business associate to appropriately safeguard and protect the privacy and security of a patient's health information; and

(3) Establish and follow processes and procedures in the event of a data breach, to notify patients about the breach of their personal health records and or electronic synchronous communications.

[A. A physician, including a physician in a group practice, who practices telehealth using a website to communicate with patients, shall:

(1) Disclose on the website the following:

(a) Licensure status and Maryland physician license number, which may be accomplished as follows:

(i) For a website sponsored by a group practice, disclosure of the licensure status and physician license number of each physician practicing within the group;

(ii) For a website sponsored by a health insurer or HMO licensed in Maryland, identification of the health plan or HMO that has credentialed the physicians, and the name, Maryland license number, and licensure status for all Maryland-licensed physicians using the website; or

(iii) Disclosure of the names, licensure status, and Maryland physician license numbers of each individual physician practicing through the website;

(b) Physician ownership of the website, if applicable;

(c) Fees for services offered on the website, to be disclosed before a patient incurs any charges;

(d) Financial interest of the physician or group practice in the products or services advertised or offered on the site, if applicable; and

(e) The notice of privacy practices used by the physician, group practice, or HMO, or a statement regarding what user data is being collected and how the data will be used;

(2) Develop a procedure to verify the identification of the individual transmitting a communication;

(3) Develop a procedure to prevent access to data by unauthorized persons through password protection, encryption, or other means; and

(4) Develop a policy on how soon an individual can expect a response from the physician to questions or other requests included in transmissions.

B. A physician, including a physician in a group practice, who practices telehealth using a website to communicate with patients, shall communicate the policies established in §A of this regulation, via the website of the physician or group practice, or by other means, to any individual with whom the physician exchanges or intends to exchange information.]

.05 Patient Evaluation.

A. *Except when providing asynchronous telehealth services or remote patient monitoring, a [A physician] telehealth practitioner shall perform a patient evaluation adequate to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options before providing treatment or prescribing medication.*

B. *A telehealth practitioner may use a surrogate examiner, telehealth devices, live synchronous audio-visual communications, and other methods of performing a medical examination remotely, as well as a patient evaluation performed by another licensed health care practitioner providing coverage, if the evaluation is adequate to comply with §A of this regulation. [A Maryland-licensed physician may rely on a patient evaluation performed by another Maryland-licensed physician if one physician is providing coverage for the other physician.]*

[C. If a physician-patient relationship does not include prior in-person, face-to-face interaction with a patient, the physician shall incorporate real-time auditory communications or real-time visual and auditory communications to allow a free exchange of information between the patient and the physician performing the patient evaluation.]

.06 Standard [of Quality Care] Related to Telehealth.

A. A [physician] telehealth practitioner shall be held to the same standards of practice as those applicable in traditional health care settings and shall ensure that the quality and quantity of data and other information is sufficient in making medical decisions.

[B. Except when a physician is performing interpretive services, the physician shall perform a patient evaluation that meets the requirements set forth in Regulation .05 of this chapter before providing recommendations or making treatment decisions for a patient.]

[C.] B. When a [physician] telehealth practitioner is providing interpretive services, the [physician] telehealth practitioner shall ensure that there is no clinically significant loss of data from image acquisition through transmission to final image display.

[D.] C. A [physician practicing telehealth] telehealth practitioner shall[:

(1) Except when providing interpretive services, obtain and document patient consent;

(2) C] create and maintain adequate medical records *in accordance with Maryland and federal law and regulations.* [;]

(3) Follow requirements of Maryland and federal law and regulations with respect to the confidentiality of medical records and disclosure of medical records; and

(4) Adhere to requirements and prohibitions found in Health Occupations Article, §§1-212, 1-301—1-306, and 14-404, Annotated Code of Maryland.]

D. *A telehealth practitioner may not treat a patient or prescribe medication based solely on an online questionnaire.*

E. A telehealth practitioner shall not prescribe opioids through telehealth except:

(1) for opioids used to treat opioid use disorder;

(2) if the patient is in a “health care facility” as defined in Section 19-114 (d)(1) of the Health General Article; or

(3) if the patient is in the presence of a licensed health care practitioner.

F. This section shall not be construed to authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

.07 [Physician] Telehealth Practitioner Discipline.

The Board shall use the same standards in evaluating and investigating a complaint and disciplining a licensee who practices telehealth as it would use for a licensee who does not use telehealth technology in the licensee's practice.

(1) Telehealth practitioners shall adhere to requirements and prohibitions of the practitioner's practice act, the practitioner's regulations, the practitioner's code of ethics, and Health Occupations Article, §§1-212, 1-301—1-306.

(2) The failure of a telehealth practitioner to comply with regulation .04 or .05 of this Chapter shall constitute unprofessional conduct.