

# **Title 10 MARYLAND DEPARTMENT OF HEALTH**

## **Subtitle 32 BOARD OF PHYSICIANS**

### **Chapter 05 Telemedicine**

**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] *synchronous visual and auditory communications, interpretive services, store-and-forward technology, and remote patient monitoring via electronic communications* as an adjunct to, or replacement for, traditional face-to-face 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) *“Business associate” is a third party who provides services to the physician or (hospital/office/practice/entity) who may have access to a patient’s protected health information.*

[(1)] (2) 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)] (3) "Face-to-face" means within each other's sight and presence.

[(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)] (5) Interpretive Services.

(a) "Interpretive services" means definitive readings of images, tracings, or specimens through a telemedicine link or giving interpretations based on visual patterns.

(b) "Interpretive services" includes remote, [real-time] synchronous monitoring of a patient being cared for within a health care facility, *electrocardiograms, ultrasound imaging, retinal imaging, tele-neurology, and radiology.*

[(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 *or has been* an exchange of individual, patient-specific information.

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

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

[(7) "Real-time"] (9) "*Synchronous*" means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.

[(8)] (10) "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.] *the use of interactive audio,*

*video, or other telecommunications or electronic technology, store-and-forward technology, interpretive services, and remote patient monitoring by a licensed health care professional to deliver clinical services within the scope of practice of the health care professional at a location other than the location of the patient. “Telemedicine” does not include:*

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

*(b) an electronic mail message between a health care professional and a patient; or*

*(c) a facsimile transmission between a health care professional and a patient.*

*(11) (a) “Telemedicine devices” means medical equipment that gathers visual or other data and remotely sends the images or data to a telemedicine professional in a different location from the patient.*

*(b) “Telemedicine devices” includes examination cameras, tele-otoscopes, electronic stethoscopes, digital ophthalmoscopes, electrocardiograms that integrate with the telecommunications devices, digital pulse oximetry and other tele-medical scopes or devices for use during an examination that transmits the information from the location of the patient to the location of the telemedicine professional.*

*(12) “Telemedicine Professional” means a Maryland licensed physician or physician assistant performing telemedicine services.*

*(13) “Teletherapy” means telemedicine used to deliver behavioral health services by a licensed physician or licensed physician assistant.*

### **.03 Licensure.**

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

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

B. The patient is in Maryland.

### **.04 Standards Related to Telemedicine.**

*A. Prior to providing telemedicine services, a telemedicine professional shall first:*

*(1) Obtain consent from patients to perform telemedicine services, pursuant § C of this Section;*

*(2) Except for interpretive services, create an emergency plan and provide the plan to the patient when the care provided indicates that a referral to an acute care facility or Emergency Department for treatment is necessary for the safety of the patient.*

*(3) Create a procedure to prevent access to data by unauthorized persons through encryption or other means, pursuant to §D; and*

*(4) Attend a Board-approved online or in-person tutorial regarding providing telemedicine services.*

*B. When initiating telemedicine services through synchronous audio-visual communication a telemedicine professional 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-physician interaction, disclose to the patient the telemedicine professional's name, location, medical specialty, and any other relevant credentials;*

*(4) Identify any other individuals present at the telemedicine professional's location;*

*(5) Inform the patient when the telemedicine encounter is beginning and that sensitive medical information may be discussed;*

*(6) Have received informed consent from the patient specific to providing telemedicine with information pursuant § C of this Section. The telemedicine professional shall document such consent in the patient's records. In emergency situations informed consent/information may be provided after the patient encounter;*

*(7) For an initial patient-physician interaction, make documentation of the encounter using telemedicine technologies easily available to the patient and available immediately after the encounter; and*

*(8) The telemedicine encounter shall be recorded, kept by the physician for 1 year, and available to the patient upon request.*

*C. Except when providing interpretive services, the telemedicine professional shall obtain and maintain evidence documenting appropriate patient consent to treat through telemedicine technology. The consent to treat through telemedicine shall contain:*

*(1) A description of the types of transmissions utilized by the telemedicine professional through telemedicine (e.g. synchronous audio-visual communications, store-and-forward communications, remote patient monitoring);*

*(2) An acknowledgement that the telemedicine professional may determine that telemedicine is not clinically appropriate and request that a patient come for a face-to-face encounter;*

*(3) A description of privacy risks that concern telemedicine, security measures taken by the telemedicine professional to protect the privacy, and the telemedicine professional's policy in case of a data breach;*

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

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

*(6) Consent that the telemedicine encounter be recorded and be part of their medical record, if recorded;*

*D. The telemedicine professional shall undertake efforts to maintain the privacy and confidentiality of telemedicine encounters including the following:*

*(1) meet federal and state legal requirements of medical/health information privacy, including:*

*(a) compliance with The Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), and the Omnibus Final Rule of 2013 (collectively, "HIPAA") and their implementing regulations; and*

*(b) compliance with State privacy, confidentiality, security, and medical retention rules including:*

*(i) Maryland Confidentiality of Medical Records Act (MCMRA) of 1990 Health Gen. Art. § 4-391 et seq.; and*

*(ii) State Government Article § 10-1301 et seq.;*

*(2) Ensure sufficient privacy and security measures through encryption, password protection, and other security measures to assure confidentiality and integrity of patient-identifiable information pursuant to the federal and state requirement referenced in D(1);*

*(3) Ensure a written business associate agreement between the telemedicine professional and the business associate to appropriately safeguard and protect the privacy and security of a patient's health information pursuant to the federal and state requirement referenced in D(1); and*

*(4) 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. The processes shall comply with the federal and state requirement referenced in D(1).*

[A. A physician, including a physician in a group practice, who practices telemedicine 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 telemedicine 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 interpretive services, remote patient monitoring, or using store-and-forward technologies, a [A physician] telemedicine professional 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 telemedicine professional may use a surrogate examiner, telemedicine devices, live synchronous audio-visual communications, and other methods of performing a medical examination remotely, as well as a patient evaluation performed by another telemedicine professional providing coverage, so long as the evaluation is adequate to comply with §A. [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.] Except when providing interpretive services, remote patient monitoring, or using store-and-forward technologies, a physician-patient relationship shall be established through:*

*(1) An in-person, face-to-face interaction with a patient; or*

*(2) Telemedicine using a synchronous visual and auditory communication to allow a free exchange of information between the patient and the physician performing the patient evaluation.*

D. *A physician shall not issue certification for medical cannabis through telemedicine.*

E. *A telemedicine professional shall not prescribe opioids through telemedicine.*

F. *A telemedicine professional shall have had an in-person, face-to-face patient evaluation before prescribing benzodiazepines. A psychiatrist or a physician assistant providing care under the supervision of a psychiatrist may prescribe benzodiazepines without an in-person, face-to-face patient evaluation.*

G. *A telemedicine professional may not treat a patient or prescribe medication based solely on an online questionnaire.*

#### **.06 Standard of Quality Care.**

A. *A [physician] telemedicine professional 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.]*

[B.] B. When a [physician] *telemedicine professional* is providing interpretive services, the [physician] *telemedicine professional* 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 telemedicine] *telemedicine professional* shall:

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

[(2)] (1) Create and maintain adequate medical records, *including, but not limited to, all patient related electronic communications, physician-patient messages, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telemedicine technologies, and information required by § D(1)*;

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

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

(4) *This section shall not be construed to alter the scope of practice of any health care professional regulated by the Board or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.*

#### **.07 [Physician] Telemedicine Professional Discipline.**

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

(1) *Treatment and recommendations made in a telemedicine setting are held to the same standards of care and standard of appropriate practice as those in in-person settings and may be disciplined under the violation for standard of care.*

(2) *Records made or kept for a telemedicine encounter shall be held to the same standards as those kept in in-person settings and a violation of these standards may subject the telemedicine professional to discipline under the violation for medical recordkeeping.*

(3) *The failure of a health care professional to comply with Section .04 or .05 shall constitute unprofessional conduct.*