

# PUBLICATION

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## Texas Medical Board Proposes New Rules on Heels of Relaxed Telemedicine Laws

October 20, 2017

The Texas Medical Board recently proposed changes to its telemedicine regulations (22 Tex. Admin. Code §§ 174.1 – 174.12) to follow the amendments to Section 111 of the Texas Occupations Code governing the practice of telemedicine and telehealth. (See 2017 Texas Senate Bill 1107.) The statutory amendments, among other things, removed the in-person exam requirement for purposes of establishing a valid practitioner-patient relationship and added a provision allowing the establishment of such relationship through "telemedicine medical services." The revised law also tasks the state regulatory boards for medicine, nursing, physician assistants and pharmacy with the joint promulgation of rules relative to valid prescriptions, with the mandate that such rules allow for the establishment of a practitioner-patient relationship via telemedicine.

The new rules remove the telemedicine and telehealth requirements that were inconsistent with the newly revised Texas law. For example, the services need not be provided at an established medical site, a telepresenter is not required and the concept of a "distant site provider" has been removed. Instead, the rules now reference the newly amended statute's somewhat simplified definitions of *telehealth* and *telemedicine medical service*, which refer generally to the provision of health care service by a licensed health professional or physician located at a different physical location. The rules continue to impose a requirement that physicians provide notification of their privacy practices and make a good faith effort to obtain the patient's acknowledgement of receipt in writing or in electronic form, such as via email. Physicians utilizing telemedicine medical services must also continue to provide notice of how patients can issue complaints with the Board. The proposed rules emphasize that the standards of care in both the telemedicine/telehealth space and the in-person setting are the same and that providers must maintain complete and accurate medical records. The rules also continue to require the establishment of a proper practitioner-patient relationship, which, pursuant to the amended state law, no longer requires an in-person encounter.

The rules make similar assertions related to the standards of care and the creation of the patient relationship in the context of mental health services. While they expressly recognize the provision of mental health services is exempt from the telemedicine statute, such services are considered to be the practice of medicine and therefore the Board has the authority to create rules on the topic. Accordingly, the proposed rules include requirements for licensure and/or certification of providers and allow for the provision of services to, and the establishment of a provider-patient relationship with, patients located remotely via telecommunication technology.

The new rules also address the validity of prescriptions and assert that the same standards in the in-person setting will apply to prescriptions issued as a result of a telemedicine medical service. The prescription provisions also incorporate the new allowance for establishing a patient relationship via telemedicine and telehealth. Likely a result of the growing opioid concerns, the rules prohibit the issuance of prescriptions for controlled scheduled drugs through telemedicine for the treatment of *chronic* pain, which is defined elsewhere under Texas law, unless otherwise allowed under federal and state law. Such prohibition does not apply to the use of controlled scheduled drugs to treat *acute* pain through telemedicine, which is also defined elsewhere under Texas law.

