

The Maryland Board of Physicians has proposed regulations relating to telemedicine. Comments may be directed as indicated under “Opportunity for Public Comment.” Comments may also be directed to the Board at the following email address: mbpmail@rcn.com.

The following proposed regulations are taken from the Maryland Register, January 19, 2007, Volume 34, Issue 2, page 172.

Subtitle 32 BOARD OF PHYSICIANS

10.32.05 Telemedicine

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

Notice of Proposed Action

[07-017-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations **.01—.07** under a new chapter, **COMAR 10.32.05 Telemedicine**. This action was considered by the Board of Physicians at a public meeting on August 23, 2006, notice of which was given by publication in 33:17 Md. R. 1478 (August 18, 2006), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to specify requirements for physicians who use telecommunications in their practice, including requirements for licensure, standards for practice, and discipline.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call (410) 767-6499, or email to phinney@dhmh.state.md.us, or fax to (410) 333-7687. Comments will be accepted through February 20, 2007. A public hearing has not been scheduled.

.01 Scope.

A. This chapter governs the practice of medicine using telecommunication systems 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 who is seeking consultative services of another licensed health care provider with respect to an individual patient.

.02 Definitions.

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

B. Terms Defined.

(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.

(b) "Consultative service" does not include decisions that direct patient care.

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

(3) "Interpretive services" means official readings of images, tracings, or specimens through a telemedicine link.

(4) "Physician-patient relationship" means an established relationship between a physician and a patient in which there is an exchange of individual, patient-specific information, including clinical data, symptoms, medical history, and treatment recommendations.

(5) "Real-time" means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.

(6) "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.

.03 Licensure.

An individual shall be a licensed Maryland physician in order to practice telemedicine if one or both of the following occur:

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

B. The patient is in Maryland.

.04 Standards Related to Telemedicine.

A physician who practices telemedicine shall establish policies and communicate the policies to any individual with whom the physician exchanges or intends to exchange information. These policies shall include:

A. Disclosures regarding the following to each individual:

(1) Licensure status of the physician;

(2) Maryland physician license number of the physician;

(3) Any physician ownership or financial interest in the website;

(4) Fees which the physician will charge for services offered on the website;

(5) Any financial interest of the physician in the products or services advertised or offered on the site; and

(6) The user data that is being or will be collected and how the data will be used;

B. A statement of how the physician will verify the identification of the individual transmitting a communication;

C. The identity of any person other than the physician who may have access to the transmissions;

D. A statement of how the physician will prevent access to data by unauthorized persons through password protection, encryption, or other means; and

E. A statement of how soon an individual can expect a response from the physician to questions or other requests included in transmissions.

.05 Patient Evaluation.

A. Before providing treatment or prescribing medication, a physician shall perform a patient evaluation adequate to establish a diagnosis and identify underlying conditions and contraindications to recommended treatment options.

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

.06 Standard of Quality Care.

A. Before making a medical decision, including but not limited to any decision to prescribe medication, a physician shall ensure that the quality and quantity of data and other information received from the patient and from elsewhere are adequate to support the decision.

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

D. A physician practicing telemedicine shall:

(1) Obtain and document patient consent;

(2) Create and maintain adequate medical records;

(3) Follow the 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 the requirements and prohibitions found in Health Occupations Article, §§1-212, 1-301—1-306, and 14-404, Annotated Code of Maryland.

.07 Physician Discipline.

A licensee who practices telemedicine is accountable for disciplinary purposes to meet the same quality standards as a licensee who does not practice telemedicine.

S. ANTHONY McCANN
Secretary of Health and Mental Hygiene
