

PROPOSED REGULATION PUBLICATION FORMS

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle 32 BOARD OF PHYSICIANS

10.32.05 [Telemedicine] *Telehealth*

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

Code of Maryland

Is There Emergency Text That Is Identical To The Proposed Text:

Yes No

Is There An Incorporation By Reference Document Associated With This Proposal?

Yes No

Does This Proposal Have An Impact On Environmental Hazards Affecting The Health Of Children As Defined In Health-General Article, §13-1501(c)?

Yes (explain) No

Does This Proposal Include An Increase Or Decrease In A Fee For A License?

Yes, complete (1)—(8) No, skip (1)—(8) and proceed to Notice of Proposed Action.

(1) Explain/justify why an increase or decrease is necessary:

(2) How much money is needed to operate effectively or to eliminate an operating fund deficit?

(3) In what year was the most recent fee increase?

(4) Is the fee revenue retained by the Proposing Unit or passed through to a national organization that administers a uniform licensing exam?

(5) Describe any measures taken to mitigate the need for increased revenue:

(6) Describe any special circumstances that have had an adverse impact on the Proposing Unit's.

(7) Describe any consideration given by the Proposing Unit as to the hardship a fee increase may have on the regulated profession.

(8) Describe any efforts to solicit the opinions of licensees regarding the Proposing Unit effectiveness and performance.

Notice of Proposed Action

The Secretary of Health proposes to repeal Regulations .01—.07, and adopt new Regulations .01—.07, under COMAR 10.32.05 Telehealth. The action was considered at public meeting on August 22, 2018 notice of which was provided by posting on the Board’s website.

Statement of Purpose

The purpose of this proposal is to improve patient safety, authorize other health occupations under the Board’s jurisdiction to do telehealth and to reflect technological innovations, and the increasing use of telehealth in more settings. These regulations also implement the requirements of SB 1106 (Chapter 610)-Health Care Practitioners-Use of Teletherapy, from the 2017 Legislative session.

Comparison to Federal Standards

(Check one option)

No There is no corresponding federal standard to this proposed action.

or

_____ There is a corresponding federal standard to this proposed action, but the proposed action **is not** more restrictive or stringent.

The corresponding federal standard is: _____

EXPLAIN why the proposed action **is not** more restrictive or stringent than the corresponding federal standard:

or

_____ In compliance with Executive Order 01.01.1996.03, this proposed action is more restrictive or stringent than corresponding federal standards as follows:

(1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:

- (2) Benefit to the public health, safety or welfare, or the environment:
- (3) Analysis of additional burden or cost on the regulated person:
- (4) Justification for the need for more restrictive standards:

**Impact Statements
Part A
(check one option)**

Estimate of Economic Impact

X The proposed action has no economic impact.

Or

___ The proposed action has an economic impact. (**IF** this is checked, complete the following form in its entirety)

I. Summary of Economic Impact. (INSERT SHORT SUMMARY)

II.	Types of Economic Impact.	Revenue (R+/R-) <u>Expenditure (E+/E-) Magnitude</u>
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A. On issuing agency:

B. On other State agencies:

C. On local governments:

Benefit (+)

Cost (-) Magni

D. On regulated industries or trade groups:

E. On other industries or trade groups:

F. Direct and indirect effects on public:

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

Part B

Economic Impact on Small Businesses (check one option)

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

or

___ The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Impact on Individuals with Disabilities (check one option)

No The proposed action has no impact on individuals with disabilities.

or

___ The proposed action has an impact on individuals with disabilities as follows:

Opportunity for Public Comment

Comments may be sent to Mark Woodard, Health Policy Analyst II, Maryland Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215 or call 410-764-2460 or email to mark.woodard@maryland.gov or fax to 410-358-2252. Comments will be accepted through (leave blank). A public hearing has not been scheduled.

Part C

(For legislative use only; not for publication)

A. Fiscal Year in which regulations will become effective: FY 2019

B. Does the budget for fiscal year in which regulations become effective contain funds to implement the regulations?

Yes No N/A

C. If “yes”, state whether general, special (exact name), or federal funds will be used:

D. If “no”, identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly: These regulations do not have any fees nor require any health occupation or any other entity to incur any new costs.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason. The regulations authorize, but does not require any health occupation under the Board of Physicians to practice through telehealth and establishes no new fee.

10.32.05.01 (June 8, 2017)

.01 Scope.

This chapter governs the practice of medicine using telehealth as an adjunct to, or replacement for, in-person patient visits.

.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.

(2) “In-person” means within the physical presence of the patient.

(3) “Interpretive services” means reading and analyzing images, tracings, or specimens through telehealth or giving interpretations based on visual, auditory, thermal, ultrasonic patterns or other patterns as may evolve with technology.

(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 telehealth services” means the asynchronous response or interpretation of digital images, documents, and audio, videos transmitted 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) “Synchronous” means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.

(8) *Telehealth.*

(a) “Telehealth” means the use of interactive audio, video, audio-visual, 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” 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 telehealth practitioner in order to practice telehealth 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 Specific Telehealth Requirements.

A. Before providing telehealth services, a telehealth practitioner shall develop and follow a procedure to:

- (1) Verify the identification of the patient receiving telehealth services;*
- (2) Except for interpretive services, obtain oral or written acknowledgement from a patient or person in interest as defined by Health General Article. §4-301(l), to perform telehealth services;*
- (3) Prevent access to data by unauthorized persons through encryption, or other means;*
- (4) Notify patients in the event of a data breach;*
- (5) Ensure that the telehealth practitioner provides a secure and private telehealth connection and complies with federal and state privacy laws; and*
- (6) Establish safety protocols to be used in the case of an emergency.*

B. Except when providing store and forward telehealth services or remote patient monitoring, a telehealth practitioner shall:

- (1) Obtain or confirm an alternative method of contacting the patient in case of a technological failure;*
- (2) Determine whether the patient is in Maryland and identify the patient's practice setting;*
- (3) For an initial patient-telehealth practitioner interaction only, disclose the telehealth practitioner's name, location, license number, contact information, and medical specialty; and*
- (4) Identify all individuals present at each location and confirm they are permitted to hear personal health information.*

.05 Patient Evaluation.

A. Except when providing asynchronous telehealth services or remote patient monitoring, a 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. If the evaluation is adequate to comply with §A of this regulation, a telehealth practitioner may use:

- (1) A surrogate examiner;*
- (2) Telehealth devices;*
- (3) Live synchronous audio-visual communication;*

(4) Other methods of performing a medical examination remotely; or

(5) A patient evaluation performed by another licensed health care practitioner providing coverage.

.06 Standard Related to Telehealth.

A. A telehealth practitioner shall be held to the same standards of practice and documentation as those applicable in in-person health care settings.

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

C. A telehealth practitioner may not prescribe opioids for the treatment of pain through telehealth except if the patient is in a health care facility as defined in Health General Article, §19-114(d)(1), Annotated Code of Maryland.

.07 Telehealth Practitioner Discipline.

A. 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.

B. The failure of a telehealth practitioner to comply with Regulation .04, .05, or .06 of this chapter shall constitute unprofessional conduct.