

# Title 10 MARYLAND DEPARTMENT OF HEALTH

## Subtitle 32 BOARD OF PHYSICIANS

### Chapter 05 Telehealth

10.32.05.02

#### **.02 Definitions.**

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

B. Terms Defined.

(1) “Asynchronous” means not occurring *in real* [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, or ultrasonic patterns or other patterns as may evolve with technology.

(4) [“Remote patient monitoring” means the use of telehealth devices to collect from patients medical and other forms of health data that are securely provided to a telehealth practitioner in a different location for assessment, recommendation, and diagnosis.

(5) “Store and forward telehealth services” means a type of asynchronous telehealth service involving a response to or interpretation of digital images, documents, audio files, or 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.] *occurring in real time*.

[(8)] (5) Telehealth.

(a) “Telehealth” *means a mode of delivering health care services through the use of telecommunications technologies by a health care practitioner to a patient at a different physical location than the health care practitioner. [means the use of interactive audio, video, audio-visual, or other telecommunications or electronic technology by a Maryland licensed physician or licensed allied health practitioner to deliver clinical services within the scope of practice of the Maryland licensed physician or licensed allied health practitioner at a location other than the location of the patient.]*

(b) *“Telehealth” includes synchronous and asynchronous interactions.*

[b] (c) “Telehealth” does not include *the provision of health care services solely through audio-only calls, e-mail messages, or facsimile transmissions.*[:

- (i) An audio-only telephone conversation between a Maryland licensed physician or licensed allied health practitioner and a patient;
- (ii) An electronic mail message between a Maryland licensed physician or licensed allied health practitioner and a patient; or
- (iii) A facsimile transmission between a Maryland licensed physician or licensed allied health practitioner and a patient.]

[(9)](6) “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 that of the patient.

[(10)] (7) “Telehealth practitioner” means a Maryland licensed physician or licensed allied health practitioner performing telehealth services within their respective scope of practice.

10.32.05.03

### **.03 Licensure**

Except as specified in Health Occupations Article section 14-302, Annotated Code of Maryland, a *Maryland license is required to* [telehealth practitioner may] practice telehealth if [one or both of the following occurs]:

- A. The [individual practicing] telehealth *practitioner* is physically located in Maryland; or
- B. The patient is in Maryland.

10.32.05.04

### **.04 Specific Telehealth Requirements.**

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

- (1) Verify the identification of the patient receiving telehealth services;
- (2) *For an initial patient-telehealth practitioner interaction only, disclose the telehealth practitioner’s name, contact information, license type, and medical specialty, if any;*
- [2](3) Except for interpretive services, obtain oral or written [acknowledgement] *consent* from a patient or [person in interest as defined by Health-General Article § 4-301(m), Annotated Code of Maryland, to perform telehealth services] *patient’s parent or guardian if State law requires the consent of a parent or guardian;*
- [3] (4) *Securely collect and transmit a patient’s medical information, clinical data, clinical images, laboratory results, and self-reported medical history, as necessary and [P]prevent access to data by unauthorized persons through encryption or other means;*
- [4] (5) Notify patients in the event of a data breach;

[5] (6) Ensure that the telehealth practitioner provides a secure and private telehealth connection that complies with federal and state privacy laws; and

[6] (7) Establish safety protocols to be used in the case of an emergency.

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

(1) Obtain or confirm an alternative method of contacting the patient in case of a technological failure;

(2) Confirm whether the patient is in Maryland and identify the practice setting in which the patient is located;

(3) [For an initial patient-telehealth practitioner interaction only, disclose the telehealth practitioner's name, contact information, *license type* and medical specialty; and

(4)] Identify all individuals present at each location and confirm they are allowed to hear personal health information.

C. The requirements set forth under §§A and B of this regulation may be delegated.

10.32.05.05

#### **.05 Patient Evaluation.**

A. A telehealth practitioner shall perform a synchronous[, audio-visual] *or asynchronous clinical patient evaluation [adequate to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options] that is appropriate for the patient and the condition with which the patient presents before providing treatment or issuing a prescription through telehealth. [prescribing medication. ]*

B. *A telehealth practitioner shall, if clinically appropriate for the patient, provide or refer a patient to in-person health care services or another type of telehealth service.* [Subject to Regulation .06 of this chapter, the requirements of §A of this regulation do not apply to:

(1) Interpretive services where a prior patient evaluation was performed by another provider;

(2) Remote patient monitoring; or

(3) Asynchronous telehealth services for a patient who has had a prior sync 10.32.05.06

C. To comply with section A of this regulation, a health care practitioner may use:

(1) a surrogate examiner; or

(2) a patient evaluation performed by another licensed health care practitioner providing coverage.]

10.32.05.06

#### **.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 a *static* online questionnaire.

C. A telehealth practitioner may not prescribe [opioids] *an opiate described in the list of Schedule II substances under section 5-403 of the Criminal Law Article* for the treatment of pain through telehealth *unless*: [except if]

(1) the patient is in a health care facility as defined in Health-General Article, §19-114(d)(1), Annotated Code of Maryland[.]; *or*

(2) *the governor has declared a state of emergency due to a catastrophic health emergency.*

D. *A telehealth practitioner shall comply with all laws related to dispensing including the prohibition on mail order dispensing.*

10.32.05.07

#### **.07 Telehealth Practitioner Discipline**

A. The Board shall use the same standards of evaluating and investigating a complaint about and in 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.