

Time for a Checkup: Recent North Carolina Efforts Regarding Telehealth - Part II

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In my previous article, I discussed how the public health emergency (PHE) for COVID-19 changed telehealth on the federal level. This is Part II of that series. [Click here for Part I.](#)

The pandemic has also overhauled how physicians and health care providers

practice in North Carolina, with many offices switching to virtual exams to help stop the spread of the coronavirus.

This article focuses on those recent changes. *Disclaimer: For consistency, the term "telehealth" is used throughout this article (except where the North Carolina Medical Board's Position Statement on telemedicine is discussed) and is intended to include telemedicine, telepsychiatry, and telenursing.*

North Carolina Medical Board's Position Statement on Telemedicine

The Policy Committee of the North Carolina Medical Board (Medical Board) regularly reviews and, if needed, revises the Board's position statements. In March 2019, the Board updated its Position Statement on telemedicine. The revised version includes more information about the acknowledged benefits of telehealth but makes no significant substantive changes.

The Position Statement confirms the following:

Definition of Telemedicine: the practice of medicine using electronic communication, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening health care provider.

The Medical Board's position is that:

- **Licensure:** The practice of medicine occurs in the state where the patient is located. Therefore, any licensee using telemedicine to regularly provide medical services to patients located in North Carolina should be licensed to practice medicine in North Carolina. Licensees need not reside in North Carolina if they have a valid, current North Carolina license.
- **Standard of Care:** There is no separate, lower standard of care for medical treatment delivered via telemedicine.
- **Training of Staff:** Staff involved in the telemedicine visit should be trained in the use of the technology being used to deliver care and competent in its operation.
- **Evaluations and Examinations:** Licensees must provide, or rely upon, an appropriate evaluation prior to diagnosing and/or treating the patient. This evaluation need not be in-person if the licensee employs technology sufficient to accurately diagnose and treat the patient in conformity with the applicable standard of care.
- **Licensee-Patient Relationship:**
 - Licensee must ensure proper patient identification prior to any telemedicine encounter.
 - Licensee should provide his/her name, location, and professional credentials to the patient.
 - Licensee should ensure the availability for appropriate follow-up care and maintain a complete medical record that is available to the patient and other treating health care providers.
- **Prescribing:**
 - Licensees should practice in accordance with the Board's Position Statement on contact with patients before prescribing.
 - Prescribing for a patient whom the licensee has not personally examined may be suitable under certain circumstances. These may include an appropriate prescription in a telemedicine encounter where the threshold information to make an accurate diagnosis has been obtained.
 - However, it is not consistent with the current standard of care to prescribe controlled substances for the treatment of pain in which the only patient encounter is by means of telemedicine, and there are no other licensed healthcare providers involved in the initial and ongoing evaluations of the patient.
 - Licensees prescribing controlled substances by means of telemedicine for other conditions should comply with all relevant federal and state laws and are expected to participate in the Controlled Substances Reporting System.
- **Medical Records:**
 - Licensee must maintain a complete record of the telemedicine patient's care consistent with the prevailing medical record standards.
 - Licensee will be held to the same standards of professionalism concerning the transfer of medical records and communications with the patient's primary care provider and medical home as those licensees practicing via traditional means.

Since the emergence of the COVID-19 pandemic, the Medical Board has not relaxed any existing requirements regarding the provision of telemedicine. However, the Medical Board's current broad definition of "telemedicine" likely already includes audio-only communications.

On March 17, 2020, the Medical Board reminded licensees of their obligations to provide telemedicine services with the same standard of care as in-person services and in accordance with the Medical Board's existing Position Statement on telemedicine. The Medical Board summarized its position on telemedicine as follows: "If it is possible to gather sufficient clinical information from the patient during a telemedicine consultation to provide care that meets at least minimum acceptable standards of care, then the Board considers it appropriate to use telemedicine."

Similarly, the Medical Board has not needed to relax its prescribing requirements with respect to non-controlled substances, because prescriptions for non-controlled substances generally may be issued without an in-person examination under existing Medical Board guidance. The Medical Board's Position Statement on contact with patients before prescribing permits a licensee to issue a prescription for a non-controlled substance to a patient whom the licensee has not personally examined under certain circumstances, including in a telemedicine encounter where the threshold information to make an accurate diagnosis has been obtained.

For guidance on the prescription of controlled substances via telemedicine during the COVID-19 pandemic, the Medical Board has deferred to and encourages licensees to review, guidance issued by the federal Drug Enforcement Administration (DEA). Specifically, based upon such DEA guidance, as of March 16, 2020, and continuing for as long as the PHE remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following three conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable federal and state laws.

However, if the prescribing practitioner previously has conducted an in-person medical evaluation of the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine, or any other means, regardless of whether the PHE is in effect, so long as the prescription is issued for a legitimate medical purpose, the practitioner is acting in the usual course of the practitioner's professional practice, and the practitioner otherwise complies with applicable federal and state laws.

North Carolina Board of Nursing's Position Statement on Telehealth

The North Carolina Board of Nursing's Position Statement on telehealth provides that the practice of nursing using telehealth is within the legal scope of practice for licensed nurses – registered nurses, licensed practical nurses, and advanced practice registered nurses – provided all licensure criteria within the Position Statement are met. The Position Statement defines telehealth as the practice of healthcare within a professionally designated scope of practice using electronic communication, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening healthcare provider.

Licensed nurses practicing via telehealth are required to be licensed or hold the privilege to practice in the state where the patient is located. Licensed nurses are responsible and accountable for knowing, understanding, and practicing in compliance with the laws, rules, and standards of practice of the state where the patient is located.

North Carolina Medicaid

Under North Carolina law:

- Both the facility in which the Medicaid beneficiary is located and the facility from which the provider furnishes the telehealth services must be Medicaid-enrolled service sites. The North Carolina Department of Health and Human Services does not reimburse for telehealth services performed in a recipient's home or delivered from a licensed practitioner's home.
- A referral is required for the use of telehealth services.
- The telehealth consultation must take place by a two-way real-time interactive audio and video telecommunications system. Telephone conversations and video cell phone interactions are not covered.
- Clinical pharmacists, licensed clinical social workers, licensed clinical mental health counselors, licensed marriage and family therapists, licensed clinical addiction specialists, and licensed psychological associates may not bill Medicaid for telehealth services.

On March 30, 2020, North Carolina Medicaid issued temporary modifications to its existing Telemedicine and Telepsychiatry Coverage Policies to expand the availability of telehealth services during the pandemic. These changes are effective retroactive to March 10, 2020, and will end the earlier of the cancellation of the North Carolina state of emergency declaration or when the changes are rescinded. The existing policies continue to apply, which provide for the reimbursement for telehealth services at the same rate as in-person services.

The following temporary modifications regarding telehealth services are in effect:

- There are no restrictions on where the patient or the provider may be located. The telehealth services may be performed in a recipient's home and/or delivered from a licensed practitioner's home. Providers must ensure that patient privacy is protected (e.g., taking calls from private, secure spaces; using headsets).
- A referral is not required prior to a patient's receiving telehealth services.
- North Carolina Medicaid has eliminated the restriction that telehealth services cannot be conducted via "video cell phone interactions." These services can now be delivered via any HIPAA-compliant, secure technology with audio and video capabilities, including but not limited to smartphones, tablets, and computers.
- North Carolina Medicaid has expanded the list of eligible distant site telehealth providers to include clinical pharmacists, licensed clinical social workers, licensed clinical mental health counselors, licensed marriage and family therapists, licensed clinical addiction specialists, and licensed psychological associates.

There have been many recent changes – both at the federal level and at the state level – that have expanded patients' access to telehealth. It appears that many of these changes will be made permanent as we eventually move beyond COVID-19.

[Ed. Note: This is a two-part series. Click here to read Part I.]

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