

APPROVED BY THE CMS BOD ON JULY 11, 2014

**Discussion and Action
Proposed Colorado Medical Society
Guidelines for Appropriate Use of Telemedicine
Version: June 16, 2014**

The question before the BOD is approval of the following policy proposed by the Committee on Physician Practice Evolution

Advances in telemedicine and technology are rapidly transforming today's medical practice. Telemedicine and telemedicine technologies can enable physicians to enhance access to care safely, improve care quality, reduce costs and improve patient and physician satisfaction. While these advances offer opportunities to improve the delivery of health care, they also present a number of risks and challenges to physicians and patients. The following policy provides guidance and a basic roadmap for physicians to consider as it relates to telemedicine.

These guidelines, which are based upon model policy from the Federation of State Medical Boards¹ and peer-review literature, focus on physician-to-patient communications using telemedicine within established *or* new physician-patient relationships. These guidelines are not meant as legal advice and physicians are encouraged to bring any specific questions or issues related to online communication to their legal counsel. This policy provides guidelines and does not establish a standard of care for physicians practicing through telemedicine.

These guidelines are intended to address some of the patient safety challenges inherent to telemedicine, including but not limited to:

- Determining when a physician-patient relationship is established;
- Assuring privacy of patient data;
- Guaranteeing proper evaluation and treatment of the patient; and
- Limiting the prescribing and dispensing of certain medications.

Physicians who provide medical care, electronically or otherwise, are expected to maintain the highest degree of professionalism and should:

- Place the welfare of patients first;
- Maintain acceptable and appropriate standards of practice;
- Adhere to recognized ethical codes governing the medical profession;
- Properly supervise non-physician clinicians; and
- Protect patient confidentiality.

Definitions

“Telemedicine” means the practice of medicine using electronic communications, information technology or other means between a licensed health care provider in one location, and a patient in another location with or without an intervening healthcare provider. It typically involves the application of secure videoconferencing or store and forward technology to provide or support health care delivery by replicating the interaction of a traditional, encounter in person between a

¹ Significant sections of this policy are excerpted from *Model Policy for Appropriate Use of Telemedicine Technologies in the Practice of Medicine* by the Federation of State Medical Boards, April 26, 2014.

physician and a patient. *Generally*, telemedicine is not an audio-only, telephone conversation, e-mail/instant messaging conversation, or fax, although the use of such technology may be appropriate where there is an existing physician-patient relationship.

“Telemedicine technologies” means technologies and devices enabling secure electronic communications and information exchange between a physician in one location and a patient in another location *with or without* an intervening health care provider.

Licensure

The practice of medicine occurs where the patient is located at the time telemedicine technologies are used. Physicians and other health care providers who treat or prescribe through online services sites are practicing medicine and must possess appropriate licensure in all jurisdictions where patients receive care.

Establishing the Physician-Patient Relationship

The health and well being of patients depends upon a collaborative effort between the physician and patient. The relationship between the physician and patient is complex and is based on the mutual understanding of the shared responsibility for the patient’s health care. It may be difficult in some circumstances to precisely define the beginning of the physician-patient relationship, particularly when the physician and patient are in separate locations, it tends to begin when an individual with a health-related matter seeks assistance from a physician who may provide assistance. However, the relationship is clearly established when the physician agrees to undertake diagnosis and treatment of the patient, and the patient agrees to be treated, whether or not there has been an encounter in person between the physician (or other appropriately supervised health care practitioner) and patient.

The physician-patient relationship is fundamental to the provision of acceptable medical care. A physician is discouraged from rendering medical advice and/or care using telemedicine technologies without:

- Fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient;
- Disclosing and validating the provider’s identity and applicable credential(s); and
- Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telemedicine technologies.

An appropriate physician-patient relationship has *not* been established when the identity of the physician may be unknown to the patient. Where appropriate, a patient must be able to select an identified physician for telemedicine services and not be assigned to a physician at random.

Where an existing physician-patient relationship is *not* present, a physician must take appropriate steps to establish a physician-patient relationship, and, while each circumstance is unique, such physician-patient relationships may be established using telemedicine technologies.

Evaluation and Treatment of the Patient

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and

consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings. Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care.

Informed Consent

Evidence documenting appropriate patient informed consent for the use of telemedicine technologies must be obtained and maintained. Appropriate informed consent to help establish a physician-patient relationship should include the following terms:

- Identification of the patient, the physician and the physician's credentials;
- Types of transmissions permitted using telemedicine technologies (e.g. prescription refills, appointment scheduling, patient education, etc.);
- The patient agrees that the physician determines whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- Details on security measures taken with the use of telemedicine technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express patient consent to forward patient-identifiable information to a third party.

Continuity of Care

Patients should be able to seek, with relative ease, follow-up care or information from the physician (or physician's designee) who conducts an encounter using telemedicine technologies. Physicians solely providing services using telemedicine technologies with no existing physician-patient relationship prior to the encounter must make documentation of the encounter using telemedicine technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient immediately after the encounter.

Medical Records

The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-physician communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telemedicine technologies. Informed consents obtained in connection with an encounter involving telemedicine technologies should also be filed in the medical record. The patient record established during the use of telemedicine technologies must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records.

Privacy and Security of Patient Records and Exchange of Information

Physicians should meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical retention rules.

Written policies and procedures should be maintained at the same standard as traditional face-to-face encounters for documentation, maintenance, and transmission of the records of the encounter using telemedicine technologies. Such policies and procedures should address:

1. Privacy;
2. Health-care personnel (in addition to the physician addressee) who will process messages;
3. Hours of operation;
4. Types of transactions that will be permitted electronically;
5. Required patient information to be included in the communication, such as patient name, identification number and type of transaction;
6. Archival and retrieval; and
7. Quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Sufficient privacy and security measures must be in place and documented to assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient e-mail, prescriptions, and laboratory results must be secure within existing technology (i.e. password protected, encrypted electronic prescriptions, or other reliable authentication techniques). All patient-physician e-mail, as well as other patient-related electronic communications, should be stored and filed in the patient's medical record, consistent with traditional record-keeping policies and procedures.

Disclosures and Functionality of Online Services:

Online services used by physicians providing medical services using telemedicine technologies should clearly disclose:

- Specific services provided;
- Contact information for physician;
- Licensure and qualifications of physician(s), associated physicians and other qualified health care providers;
- Fees for services and how payment is to be made;
- Financial interests, other than fees charged, in any information, products, or services provided by a physician;
- Appropriate uses and limitations of the site, including emergency health situations;
- Uses and response times for e-mails, electronic messages and other communications transmitted via telemedicine technologies;
- To whom patient health information may be disclosed and for what purpose;
- Rights of patients with respect to patient health information; and
- Information collected and any passive tracking mechanisms utilized.

Online services used by physicians providing medical services using telemedicine technologies should provide patients a clear mechanism to:

- Access, supplement and amend patient-provided personal health information;
- Provide feedback regarding the site and the quality of information and services; and
- Register complaints, including information regarding filing a complaint with the applicable state medical and osteopathic board(s).

Online services must have accurate and transparent information about the website owner/operator, location, and contact information, including a domain name that accurately reflects the identity.

Advertising or promotion of goods or products from which the physician or other qualified health care provider receives direct remuneration, benefits, or incentives (other than the fees for

the medical care services) may raise conflict of interest issues. Online services may provide links to general health information sites to enhance patient education and physicians should limit potential conflicts of interest, minimize the risk of brand endorsement and ensure a focus on benefits to patients by disclosing the nature of their financial arrangement and informing patients about the availability of a product elsewhere.

Prescribing

Telemedicine technologies, where prescribing may be contemplated, must implement measures to uphold patient safety in the absence of traditional physical examination. Such measures should guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical evaluation and resulting prescription is maintained. Measures to assure informed, accurate, and error prevention prescribing practices (e.g. integration with e-prescription systems) are encouraged. Issuing a prescription via electronic means will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings.

Prescribing medications, in-person or via telemedicine, is at the professional discretion of the physician. The indication, appropriateness, and safety considerations for each telemedicine visit prescription must be evaluated by the physician in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, physicians may exercise their judgment and prescribe medications as part of telemedicine encounters.

Parity of Professional and Ethical Standards

There should be parity of ethical and professional standards applied to all aspects of a physician's practice.

A physician's professional discretion as to the diagnoses, scope of care, or treatment should not be limited or influenced by non-clinical considerations of telemedicine technologies, and physician remuneration or treatment recommendations should not be materially based on the delivery of patient-desired outcomes (i.e. a prescription or referral) or the utilization of telemedicine technologies.

Background:

The BOD on March 14, 2014 directed the Committee on Physician Practice Evolution to:

1. Continue efforts currently underway to review and update CMS policy, as appropriate, on telemedicine and electronic communications with an update to the board of directors in July and a report direct to the HOD in September.
 - a. In performing such a review and update of CMS policy, CPPE shall take into consideration:
 - i. Current law and Colorado Medical Board regulations regulating telemedicine;
 - ii. Telemedicine marketplace solutions inhibited by state law and regulations;
 - iii. The physician-patient relationship;
 - iv. Other state experiences;

- v. Workforce;
- vi. Consumer and business perspective; and,
- vii. Other factors as appropriate.