



## Texas Medical Board Releases Proposed Rules to Implement New Telemedicine Law

The Texas Medical Board ("TMB") recently released [proposed rules to implement Senate Bill 1107](#), which became law in May 2017 and allows for physician-patient relationships to be created solely through the provision of telemedicine services.

As required by the new statute, the rulemaking eliminates the TMB's earlier requirements that telemedicine services for new patients be provided at an established medical site with a "patient site presenter." Instead, the proposed rules create the same standard of care for telemedicine services as exists for in-person services. Also, the provider is required to establish a practitioner-patient relationship, maintain complete and accurate medical records, and implement adequate measures to ensure that communications are protected consistent with state and federal privacy laws. The rulemaking is less specific than the statute in terms of how a practitioner provides care through telemedicine technology and did not offer additional details on how to establish a practitioner-patient relationship through telemedicine.

The statute required that the TMB, Texas Board of Nursing, Texas Physician Assistant Board, and Texas State Board of Pharmacy jointly adopt rules regarding the determination of valid prescriptions. The TMB proposes creating the same standard for the validity of a telemedicine prescription as applies to an in-person service prescription. Notably, the proposed rules allow for telemedicine treatment of acute pain with scheduled drugs but do not allow for treatment of chronic pain with scheduled drugs. The TMB states that chronic pain "needs to be treated but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths." Although the proposed rules do not specifically address the Texas Prescription Monitoring Program ("PMP"), if the rules take effect, it would be prudent for telemedicine providers to review PMP data for certain acute pain prescriptions to evaluate whether the patient has previously received medication from a different provider for the same condition.

The proposed rulemaking includes two notice requirements not required by statute. First, the rule proposes that telemedicine providers must notify patients of the physician's privacy practices before evaluation or treatment. "In addition, a good faith effort must be made to obtain the patient's written or electronic acknowledgement, including by e-mail, of the notice." Second, patients must be informed of how they may file a complaint with the TMB.

Telemedicine providers may wish to comment on the lack of specificity in the rulemaking in terms of how telemedicine services are to be rendered. Providers should also consider whether the limitations on scheduled drug prescriptions are appropriate. To comment, submit feedback to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). Feedback must be submitted by October 13, 2017, to be considered at the TMB's October 19, 2017 meeting.

For more information on Senate Bill 1107, please read our [Digital Health Legal](#) article.

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