

40-27 **Guidelines for the Appropriate Use of Telehealth Technologies in the Practice of Medicine**

Date Issued: 8/20/15

Date(s) Revised:

Purpose: To provide guidance regarding the appropriate use of telehealth technologies in the practice of medicine.

Policy: The Colorado Medical Board (“Board”) has adopted the following guidelines for providers utilizing telehealth technologies in the delivery of patient care.

I. Introduction

The advancements and continued development of medical and communications technology offer opportunities for improving the delivery and accessibility of health care, particularly in the area of telehealth, which includes the practice of medicine using electronic communication, information technology, or other means of interaction between a healthcare provider in one location and a patient in another location with or without an intervening healthcare provider.¹ The Colorado Medical Board (“Board”) recognizes that using telehealth technologies in the delivery of medical services offers potential benefits in the provision of medical care. However, in fulfilling its duty to protect the public, the Board must also consider patient safety concerns in adapting rules and policies historically intended for the in-person provision of medical care to new delivery models involving telehealth technologies.

The Board is committed to assuring patient access to the convenience and benefits afforded by telehealth technologies, while promoting the responsible practice of medicine by providers. The Board has developed guidelines to educate licensees as to the appropriate use of telehealth technologies in the delivery of medical services directly to patients. These guidelines do not set a standard of care, do not alter generally accepted standards of medical practice, the scope of practice of any health care provider, or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law. It is the expectation of the Board that providers of medical care, electronically or otherwise, maintain the highest degree of professionalism and should:

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

This policy does not apply to the use of telehealth technologies when solely providing consulting services to another provider who maintains the primary provider-patient relationship with the patient, the subject of the consultation.

II. Definitions

For the purpose of this policy, the following terms are defined as:

¹ See *Center for Telehealth and eHealth Law (Ctel)*, <http://ctel.org/>

- A. "TELEHEALTH"
1. "Telehealth" means a mode of delivery of health care services through telecommunications systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a person's health care while the person is located at an originating site and the provider is located at a distant site. The term includes synchronous interactions and store-and-forward transfers.
 2. "Telehealth" includes "Telemedicine" as defined in section 12-36-102.5(8), C.R.S.
 3. This policy defines "telehealth" for purposes of compliance with the Medical Practice Act. Telehealth may be defined differently in different statutory contexts, including but not limited to, insurance requirements or reimbursement.
- B. "TELEHEALTH TECHNOLOGIES" means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location with or without an intervening healthcare provider.
- C. "DISTANT SITE" means a site at which a provider is located while providing health care services by means of telehealth.
- D. "ORIGINATING SITE" means a site at which a patient is located at the time health care services are provided to him or her by means of telehealth.
- E. "STORE-AND-FORWARD TRANSFER" means the electronic transfer of a patient's medical information or an interaction between providers that occurs between an originating site and distant site when the patient is not present.
- F. "SYNCHRONOUS INTERACTION" means a real-time interaction between a patient located at the originating site and a provider located at a distant site.
- G. "PROVIDER" means a licensee regulated by the Colorado Medical Board.
- H. "PROVIDER-PATIENT RELATIONSHIP" means the relationship as defined in Board Policy 40-3.

III. Guidelines

- A. Licensure
Providers who evaluate, treat or prescribe through telehealth technologies are practicing medicine. The practice of medicine occurs where the patient is

located at the time telehealth technologies are used. Therefore, a provider must be licensed to practice medicine in the state of Colorado in order to evaluate or treat patients located in Colorado utilizing telehealth technologies or otherwise.

B. Establishment of a Provider-Patient Relationship

Where an existing provider-patient relationship is not present, a provider must take appropriate steps to establish a provider-patient relationship consistent with the guidelines identified in Board Policy 40-3. Provider-patient relationships may be established using telehealth technologies so long as the relationship is established in conformance with generally accepted standards of practice.

C. Evaluation and Treatment of the Patient

An appropriate medical evaluation and review 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, should be performed 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.

D. Informed Consent

Appropriate informed consent should be obtained for a telehealth encounter including those elements required by law and generally accepted standards of practice.

E. Continuity of Care

Physicians should adhere to generally accepted standards of medical practice as it relates to continuity and coordination of care.

F. Referrals for Emergency Services

An emergency plan should be provided by the provider to the patient when the care provided using telehealth technologies indicates that a referral to an acute care facility or Emergency Department for treatment is necessary for the safety of the patient.

G. Medical Records

The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-provider communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the

medical record. The patient record established during the use of telehealth technologies must be accessible and documented for both the provider and the patient, consistent with all established laws and regulations governing patient healthcare records.

H. Privacy and Security of Patient Records & Exchange of Information

Providers 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 record retention rules.

Written policies and procedures should be maintained at the same standard as traditional in-person encounters for documentation, maintenance, and transmission of the records of the encounter using telehealth technologies.

I. Disclosures and Functionality for Providing Online Services

Disclosures and advertising should be made in accordance with state and federal law.

J. Prescribing

Prescribing medications, in-person or via telehealth technologies, is at the professional discretion of the provider. The indication, appropriateness, and safety considerations for each telehealth visit prescription must be evaluated by the provider 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, providers may exercise their judgment and prescribe medications as part of telehealth encounters.

The recommendation of medical marijuana via telehealth technologies is prohibited.

K. Parity of Professional and Ethical Standards

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

A provider's professional discretion as to the diagnoses, scope of care, or treatment should not be limited or influenced by non-clinical considerations of telehealth technologies, and provider 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 telehealth technologies.

Date Issued: 11/13/97
Date(s) Revised: 7/1/10; 8/20/15

Purpose: To clarify the Colorado Medical Board's definition of, and position concerning, the provider-patient relationship

POLICY: The Colorado Medical Board ("Board") adopts the following policy regarding the provider-patient relationship:

The Board defines "Provider" to include licensees regulated by the Board and the "Provider-Patient Relationship" as the mutual understanding, between a provider and patient, of the shared responsibility for the patient's healthcare. This relationship is established when:

- A. The provider agrees to undertake diagnosis and treatment of the patient, and the patient, or a medical proxy for the patient, agrees to be treated- whether or not there has been an in-person encounter between the patient and the provider; and,
- B. The provider:
 - i. Verifies and authenticates the patient's identity and location;
 - ii. Discloses his or her identity and applicable credential(s) to the patient; and,
 - iii. Obtains appropriate informed consent after any relevant disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telehealth technologies.

A "Provider-Patient Relationship" has not been established when either the identity of the provider is unknown to the patient or the identity of the patient is not known to the provider.

Further, the Board finds the relationship between a provider and a patient is fundamental, and is not to be constrained or adversely affected by any considerations other than what is best for the patient. The existence of other considerations, including financial or contractual concerns is, and must be, secondary to the fundamental relationship. Prevailing models of medical practice may result in an inappropriate restriction of the provider's' ability to practice quality medicine, creating negative consequences for the patient. It is the expectation of the Board that providers take those actions they consider necessary to assure that the procedures in question do not adversely affect the care that they render to their patients.

40-9

Guidelines For Prescribing for Unknown Patients

Date Issued: 11/16/00

Date(s) Revised: 5/11/06; 7/1/10; 8/20/15

Purpose: To provide guidance regarding prescribing of medications for patients unknown to the provider.

POLICY: It is the position of the Colorado Medical Board (“Board”) that it is unprofessional conduct for a provider to provide treatment and consultation recommendations, including issuing a prescription, via any means, unless a provider-patient relationship, as defined in Board Policy 40-3, has been established.

Prescribing for a patient whom the provider has not personally examined may or may not be suitable under certain circumstances. Such circumstances may include, but are not limited to, admission orders for a newly hospitalized patient, prescribing for a patient of another provider for whom the provider is taking call, or continuing medication on a short-term basis for a new patient prior to the patient's first appointment. Providers of medical care through telehealth technologies should adhere to the guidelines articulated in Board Policy 40-27.