

## Blog Post

# Texas Telemedicine Updates in Response to COVID-19

March 27, 2020

As with other states, in response to the COVID-19 pandemic and the guidance that the federal government has issued (*see [here](#)*), Governor Abbott of Texas issued a disaster declaration on March 13, 2020 (the Disaster Declaration) resulting in the loosening of certain existing telemedicine and telehealth related requirements in Texas.

### **Licensure**

For current license holders, the Texas Medical Board (TMB) will automatically extend any medical licenses expired or set to expire between February 28, 2020 and May 31, 2020 until August 31, 2020 and waive any late fees.

Out-of-state licensed physicians may also receive a Texas limited emergency license or hospital-to-hospital credentialing for no more than 30 days from the date the physician is licensed or until the Disaster Declaration is withdrawn or ends. Additionally, the Governor instructed the TMB and Texas Board of Nursing to “fast-track” licensing for all out-of-state medical professionals.

Further, any retired physicians who have been retired for less than four years are encouraged to apply for licensure to assist with the pandemic. The TMB will expedite any such requests it receives.

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## **Telemedicine Practice Requirements**



In response to the TMB's request, the Governor approved the temporary suspension of the existing requirements related to the establishment of a physician-patient relationship for the provision of "telemedicine medical services" (i.e., healthcare service provided by a licensed Texas physician or health care professional under the delegation or supervision of the physician and acting within his or her scope of practice at a different location than the patient) under Texas Occupations Code §111.005 (a)-(b) and Title 22, Ch. 174.6 (a)(2)-(3) of the Texas Administrative Code. The temporary suspension is in effect until terminated by the Governor or the expiration or lifting of the Disaster Declaration.

Specifically, during the declared disaster period: (i) audio-only (i.e., telephone) encounters initiated by patients may be used to establish a physician-patient relationship. Under current requirements, a physician-patient relationship cannot be established through the use of audio-only communication; and (ii) physicians providing telemedicine medical services do not have to provide: (a) patients with guidance on follow-up care; or (b) patient medical records/reports regarding the physician's evaluation of the patient to the patient's primary care physician within 72 hours of the telemedicine visit.

However, all other telemedicine practice delivery requirements remain including, but not limited to, holding a valid Texas license to provide telemedicine services, ensuring patient informed consent is obtained (consent may be verbal or written, but should be documented in the patient's record), maintaining the privacy and security of the patient's medical information, and applying the same standard of care as used for the services provided in-person.

## **Teleprescribing Requirements**

The Governor also temporarily suspended Title 22, Ch. 174.5(e)(2)(A) of the Texas Admin. Code until April 10, 2020. Under this temporary suspension, a licensed physician may provide an established chronic pain patient with a prescription refill of chronic pain medication via telephone. Refills for other medication may be done via telemedicine as long as an existing physician-patient relationship exists, which may now be established via telephone, as noted above.

### **Medicaid Reimbursement**

Effective March 20, 2020 and through April 30, 2020, Texas Medicaid and managed care organizations must reimburse:

- Medical evaluation and management services (E&M) provided by physicians via telephone. Telephonic E&M services may not be billed if: (i) it is determined that an in-person or telemedicine visit is needed within 24 hours or at the next available appointment, as these telephone services will be considered part of the subsequent office or telemedicine visit; or (ii) the telephone call follows an office visit performed and reported within the past 7 calendar days for the same diagnosis as these telephone services, as these services will be considered part of the previous office or telemedicine visit.
- Certain behavioral health services delivered via telephone only (g., psychiatric diagnostic evaluation; psychotherapy; substance use disorder services).
- Federally Qualified Health Centers as distant site providers of telemedicine and telehealth (i.e., healthcare services, other than telemedicine medical services, delivered by health care professionals licensed, certified, or otherwise entitled to practice in Texas and acting within the scope of their license/certification at a different location as the patient).

Providers are not to charge for copays for tests or telehealth services provided to Medicaid and CHIP beneficiaries.

### **Third Party Payor Reimbursement**

On March 18, 2020, an emergency rule was issued by the Texas Department of Insurance under which state regulated health plans (e.g., health plans regulated by the state, but does not include self-funded employer-sponsored health plans) must: (i) pay in-network health professionals at least the same rate for telehealth services as in-person services, including covered mental health services; (ii) cover telehealth services using any platform permitted by state law; and (iii) not require more documentation for telehealth services than what is required for in-person services. The emergency rule is in effect for a period of up to 120 days (which can be extended for an additional 60 days, if needed). Additionally, based on the Texas Department of Insurance website, most third party payors are waiving patient cost-sharing obligations for telehealth services; however, providers should review their applicable third party payor agreements and policies to confirm.

Please review our previously issued articles on federal telehealth updates issued in response to the COVID-19 crisis. For questions or more information for these new and developing telehealth requirements and implications in Texas, please contact any member of the Akerman Healthcare team.

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