

Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: Maine Board of Dental Practice (Affiliated with the Department of Professional and Financial Regulation)

NAME, ADDRESS, PHONE NUMBER, E-MAIL OF AGENCY CONTACT PERSON: Penny Vaillancourt, Executive Director, 143 State House Station, Augusta, ME 04333; 207-287-3333; penny.vaillancourt@maine.gov

CHAPTER NUMBER AND RULE TITLE:

Chapter 15 – “Practice Requirements for Teledentistry Services”

STATUTORY AUTHORITY: 32 M.R.S. §§ 18324, 18394

TYPE OF RULE (*check one*): Routine Technical Major Substantive

DATE, TIME AND PLACE OF PUBLIC HEARING: N/A

COMMENT DEADLINE: July 31, 2022 at 5:00 p.m.

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]:

This is a new rule identifying the practice requirements when dental professionals licensed by the Board utilize teledentistry services. This rule proposal includes language specific to definitions, general requirements, scopes of practice, supervision and delegation, privacy and security, emergency services, codes of professional conduct, technology and equipment, and patient disclosure requirements.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? YES X NO [*see* §8056(1)(B)]:

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]: The rule identifies the practice requirements to competently and safely provide teledentistry services in Maine by dental professionals licensed by the Board.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

- Title 32, Chapter 143 “Dental Professionals”
- Board of Dental Practice Rules Chapter 12 “Practice Requirements”
- Board of Dental Practice Rules Chapter 1 “Definitions”
- Public Law 2021, chapter 291 “An Act Regarding Telehealth Regulations” effective June 21, 2021
- American Dental Association (ADA) 2020 Policy on Teledentistry
- National Network for Oral Health Access “Teledentistry Learning Collaborative – Teledentistry User Guide” (2021)
- Association of State and Territorial Dental Directors (ASTDD) “Teledentistry: Opportunities for Expanding the Capacity and Reach of the Oral Healthcare System” (December 2021)
- Stakeholder process – meetings held April 1, 2022 and on April 15, 2022 with a presentation to the Board of Dental Practice

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]: N/A.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Notice of Agency Rule-making Proposal

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TYPE OF RULE (check one): Routine Technical Major Substantive

CHAPTER NUMBER AND TITLE:

Chapter 15 – “Practice Requirements for Teledentistry Services”

PROPOSED RULE NUMBER (leave blank; to be assigned by Secretary of State):

BRIEF SUMMARY:

This is a new rule identifying the practice requirements when dental professionals licensed by the Board utilize teledentistry services. This rule proposal includes language specific to definitions, general requirements, scopes of practice, supervision and delegation, privacy and security, emergency services, codes of professional conduct, technology and equipment, and patient disclosure requirements.

Date, time and location of PUBLIC HEARING (if any): N/A.

COMMENT DEADLINE: July 31, 2022 at 5:00 p.m.

CONTACT PERSON FOR THIS FILING (include name, mailing address, telephone, fax, TTY, e-mail): Penny Vaillancourt, Executive Director, 143 State House Station, Augusta, ME 04333; 207-287-3333 (tel.); 207-287-8140 (fax); TTY 711

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (if different): N/A.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (if any): N/A.

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 18324, 18394

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different): N/A

AGENCY WEBSITE: www.maine.gov/dental

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: penny.vaillancourt@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT Penny Vaillancourt DATE: June 17, 2022
 (authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02D	0384	01	4946				

MAPA-3 revised 2-2016: additional summary information for web

Notice of Agency Rule-making Proposal

Additional Information for the Web *(if any)*

DETAILED SUMMARY:

Summary: This chapter sets forth the practice requirements for individuals licensed under the *Maine Dental Practice Act* who are authorized to provide teledentistry services. Failure to adhere to the practice requirements of this chapter may result in disciplinary action.

I. DEFINITIONS

- A. **Asynchronous encounter.** “Asynchronous encounter” means an interaction between a patient and a licensee through a system that has the ability to store digital information, including, but not limited to, still images, video files, audio files, text files and other relevant data, and to transmit such information without requiring the simultaneous presence of the patient and the licensee.
- B. **Mobile oral health care.** “Mobile oral health care” means the use of mobile communication devices such as cell phones, tablet computers and personal digital assistants to provide oral health care services and education.
- C. **Remote patient monitoring.** “Remote patient monitoring” means the use of information technology to remotely monitor a patient’s oral health status via electronic means, allowing the licensee to track the patient’s oral health data over time. Monitoring may be synchronous or asynchronous.
- D. **Store and forward transfer.** “Store and forward transfer” means the transmission of a patient’s records through a secure electronic system to a licensee.
- E. **Synchronous encounter.** “Synchronous encounter” means a real-time interaction conducted with an interactive audio or video connection between a patient and a licensee or between a licensee and another dental or health care provider.
- F. **Teledentistry services.** “Teledentistry services” means oral health care services delivered through the use of interactive, real-time visual, audio or other electronic media for the purposes of education, assessment, examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by licensees and includes a synchronous encounter, an asynchronous encounter, a store and forward transfer and remote patient monitoring and mobile oral health care in accordance with this chapter.

II. GENERAL REQUIREMENTS – LICENSE REQUIRED

- A. An individual who delivers teledentistry services to a patient in Maine must hold a current and valid license issued by the Board and/or be authorized to provide care pursuant to the delegation provisions of 32 M.R.S. § 18371(3) and authorized to provide care pursuant the supervision provisions of 32 M.R.S. § 18377(2).

- B. An individual providing teledentistry services to a patient physically located in any other jurisdiction is responsible for ensuring compliance with all laws and rules of that jurisdiction prior to providing services to a patient located in that jurisdiction.

III. SCOPE OF PRACTICE

- A. An individual who uses teledentistry in providing oral health care services must ensure that the services and/or procedures provided are within the authorized scope of practice, including the individual's level of education, training, experience, ability, licensure, and certification.
- B. Teledentistry services do not expand the scope of practice provisions or alter required levels of supervision, supervision agreements, or authorized delegated duties.

IV. SUPERVISION AND DELEGATION

An individual who uses teledentistry must adhere to the supervision, delegation, and scopes of practice provisions authorized by the Dental Practice Act when providing teledentistry services. The use of teledentistry services by an individual must not be construed to alter the scope of practice, change the level of supervision required, change a supervision agreement, or alter delegation authorities.

V. PATIENT RELATIONSHIP REQUIRED

Prior to establishing a patient relationship as defined by Board Rules, Chapter 1(I)(N) and prior to providing teledentistry services, a dentist, denturist, or a dental hygienist (when the dental hygienist is providing services as an independent practice dental hygienist, public health dental hygienist, dental therapist, or and provisional dental therapist) must take reasonable steps to verify the patient's physical location.

VI. PRACTICE REQUIREMENTS SPECIFIC TO TELEDENTISTRY SERVICES

- A. Principles of Ethics, Code of Professional Conduct and Patient Care. Pursuant to 32 M.R.S. § 18325(1) and Board Rules, Chapter 12, oral health services must be provided competently and professionally. Below are additional requirements that must be followed to ensure public safety when providing teledentistry services:
 - (1) Deliver teledentistry services with the same standards of care and professional ethics as in-person encounters with patients. Professional judgment must be made in all aspects of care consideration when aspects of care can be provided safely using teledentistry technology. The use of teledentistry technologies may not be appropriate in some circumstances.
 - (2) Delegate and supervise through a teledentistry service no more than ten individuals simultaneously;

- (3) Establish and maintain competence in the use of teledentistry through continuing education, consultation, or other available resources;
- (4) Provide informed consent to the patient for public display and in writing. Information on the informed consent must include the following:
 - i. the licensee's name, license number, credentials, qualifications, contact information, and practice location involved in the patient's care;
 - ii. the name, license number, credentials, and qualifications of all dental personnel involved in the patient's care; and
 - iii. a dentist who delegates a teledentistry service must ensure that the informed consent of the patient includes disclosure to the patient that the dentist has delegated the service.

VII. EMERGENCY SERVICES

Emergency contact information and/or telephone contact information of the patient must be obtained and maintained in a patient's record. A referral of a patient to an acute care facility or an emergency department must be made when referral is necessary for the safety of the patient or in the case of an emergency.

VIII. PRACTICE REQUIREMENTS SPECIFIC TO PRESCRIBING MEDICATIONS

- A.** The validity when prescribing medication to a patient as a result of a teledentistry service is determined by the same standards that would apply when prescribing medication to a patient in an in-person setting.
- B.** This section does not limit the professional judgment, discretion or decision-making authority when prescribing medication to a patient. It is the expectation that the standard of care is met with demonstrated professional practice standards and judgment, consistent with all applicable statutes and rules when prescribing medication as a result of a teledentistry service.
- C.** Prescribing medication must be for a legitimate dental purpose as part of an established patient relationship and must meet all other applicable laws and rules governing prescribing practices, including the use of controlled substances.

IX. PRIVACY AND SECURITY

- A.** All teledentistry encounters when providing oral health care services must comply with the privacy and security measures of the Health Insurance Portability and Accountability Act and other applicable law to ensure that all patient communications and records are secure and remain confidential.
 - (1) Written protocols must be established that address the following:
 - i. Privacy;
 - ii. Dental personnel who will process messages;

- iii. Hours of operation;
- iv. Types of transactions that will be permitted electronically;
- v. Required patient information to be included in any communication, including patient name, identification number and type of transaction;
- vi. Archiving and retrieval; and
- vii. Quality oversight mechanisms.

- (2) The written protocols must be evaluated annually for accuracy and be maintained in an accessible and readily available manner for review. The written protocols must include sufficient privacy and security measures to ensure the confidentiality and integrity of patient-identifiable information, including password protection, encryption or other reliable authentication techniques.

X. TECHNOLOGY AND EQUIPMENT

- A. The Board recognizes that certain technology and equipment exists for teledentistry and when utilized for teledentistry services, a licensee must comply with the following requirements:

- (1) The technology and equipment utilized in the provision of teledentistry services must comply with all applicable safety laws, rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic or assessment capabilities;
- (2) The technology and equipment utilized in the provision of teledentistry services must be of sufficient quality, size, resolution, and clarity such that the licensee can safely and effectively provide the teledentistry services;
- (3) The technology and equipment utilized in the provision of teledentistry services must be compliant with the Health Insurance Portability and Accountability Act and other applicable law; and
- (4) The technology and equipment utilized in the provision of teledentistry services must be able to verify the identity and location of the patient.

XI. DISCLOSURE AND FUNCTIONALITY OF TELEDENTISTRY SERVICES

- A. Except for professional consultation, an individual who uses teledentistry services must ensure that the following information is clearly disclosed to the patient:

- (1) Types of services provided;
- (2) Identity, licensure, certification, credentials and qualifications of all licensees and/or dental personnel who are providing the teledentistry services, including contact information;
- (3) Limitations in the services that can be provided via teledentistry;
- (4) Fees for services, cost-sharing responsibilities, and how payment is to be made;

- (5) Appropriate uses and limitations of the technologies, including in emergency situations;
- (6) Uses of and response times for e-mails, electronic messages and other communications transmitted via teledentistry technologies;
- (7) To whom patient health information may be disclosed and for what purpose;
- (8) Rights of patients with respect to patient health information; and
- (9) Information collected and passive tracking mechanisms utilized.

B. An individual who uses teledentistry services must document into the patient's record disclosure information as set forth in Section XI(A).

XII. PENALTIES FOR VIOLATIONS. A violation of this chapter pertaining to the use of teledentistry services shall constitute unprofessional conduct pursuant to 32 M.R.S. § 18325(1)(E) and may result in disciplinary action.

STATUTORY AUTHORITY: 32 M.R.S. §§ 18324, 18394

EFFECTIVE DATE: