

# Notice of Agency Rulemaking Proposal

AGENCY: 02-373 Board of Licensure in Medicine; 02-380 State Board of Nursing; 02-383 Board of Osteopathic Licensure

CHAPTER NUMBER AND TITLE: 11 Joint Rule Regarding Telehealth Standards of Practice

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

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

BRIEF SUMMARY: On June 21, 2021, Public Law Chapter 291 “An Act Regarding Telehealth Regulations” became law following emergency enactment. The new law included definitions for telehealth and expanded them to include “interactive audio or video connection” between a patient and health care provider. In addition, it required licensing boards, including the Board of Licensure in Medicine (BOLIM), Board of Osteopathic Licensure (BOL), and State Board of Nursing (BON) to adopt rules governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.” At the time of the enactment of P.L. Chapter 291, the BOLIM and BOL had an existing joint “telemedicine” rule (effective December 10, 2016) that established “definitions” and “practice guidelines” including but not limited to licensure requirements, standards of care and professional ethics, scope of practice, identification requirements, the physician-patient relationship, practice standards, informed consent, record keeping, privacy and security requirements, and prescribing practices. The BOLIM and BOL propose amendments to the existing joint rule, which will also be adopted by the BON. The proposed amendments: change the chapter number and title of the rule from “Chapter 6 Telemedicine Standards of Practice” to “Chapter 11 Joint Rule Regarding Telehealth Standards of Practice”; update definitions to comport with definitions in P.L. Chapter 291; and include terminology and requirements applicable to nurses.

Date, time and location of PUBLIC HEARING (*if any*): None planned. Requests to hold a public hearing by any interested party may be submitted in writing to the identified agency contact person.

COMMENT DEADLINE: Friday, December 10, 2021 by 4:30 p.m.

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*):

Dennis E. Smith, Executive Director, Board of Licensure in Medicine 137 State House Station, Augusta, ME 04333-0137, tel. (207) 287-3605, fax (207) 287-6590, [dennis.e.smith@maine.gov](mailto:dennis.e.smith@maine.gov)

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Susan E. Strout, Executive Secretary, Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142, tel. (207) 287-2480, fax (207) 536-5811, [susan.e.strout@maine.gov](mailto:susan.e.strout@maine.gov)

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*):

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*):

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 3269(3), 3269(7), 3300-AA-3300-EE (Board of Licensure in Medicine); 32 M.R.S. §§ 2102(2-A), 2153-A(1), 2266-2270 (State Board of Nursing); 32 M.R.S. §2562, 2600-AA-2600-EE (Board of Osteopathic Licensure)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): PL. 2021, c. 291

AGENCY WEBSITE: [www.maine.gov/md](http://www.maine.gov/md) (Board of Licensure in Medicine); [www.maine.gov/boardofnursing](http://www.maine.gov/boardofnursing) (State Board of Nursing); [www.maine.gov/osteo](http://www.maine.gov/osteo) (Board of Osteopathic Licensure)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [maureen.s.lathrop@maine.gov](mailto:maureen.s.lathrop@maine.gov) (Board of Licensure in Medicine); [kim.esquibel@maine.gov](mailto:kim.esquibel@maine.gov) (State Board of Nursing); [susan.e.strout@maine.gov](mailto:susan.e.strout@maine.gov) (Board of Osteopathic Licensure)

\* 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 rulemaking 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 \_\_\_\_\_ DATE: \_\_\_\_\_  
 (authorized signature)

**Please split cost equally among the Boards.**

**Board of Licensure in Medicine**

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02M	0376	01					

**State Board of Nursing**

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02N	1310	01					

**Board of Osteopathic Licensure**

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02C	0383	01					

# Rulemaking Fact Sheet

(5 M.R.S.A §8057-A)

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DATE, TIME AND PLACE OF PUBLIC HEARING: None planned. Requests to hold a public hearing by any interested party may be submitted in writing to the identified agency contact person.

COMMENT DEADLINE: Friday, December 10, 2021 by 4:30 p.m.

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

On June 21, 2021, Public Law Chapter 291 “An Act Regarding Telehealth Regulations” became law following emergency enactment. The law required licensing boards, including the Board of Licensure in Medicine (BOLIM), Board of Osteopathic Licensure (BOL), and State Board of Nursing (BON) to adopt rules governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.”

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_YES \_\_\_x\_\_\_NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

This is a consolidated rulemaking proceeding of the Board of Licensure in Medicine and the Board of Osteopathic Licensure to amend an existing joint rule. The State Board of Nursing will also adopt the rule. The proposed amendments to the joint rule will implement P.L. 2021, c. 291, which required licensing boards, including the Board of Licensure in Medicine, Board of Osteopathic Licensure and State Board of Nursing to adopt rule governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.”

The proposed amendments: change the chapter number and title of the rule from “Chapter 6 Telemedicine Standards of Practice” to “Chapter 11 Joint Rule Regarding Telehealth Standards of Practice”; update definitions to comport with definitions in P.L. Chapter 291; and include terminology and requirements applicable to nurses.

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] The original rule (previously Chapter 6) was developed using the professional judgment of the Board of Licensure in Medicine and Board of Osteopathic Licensure; research conducted on telemedicine rules in other jurisdictions, including a telemedicine rule adopted by the Iowa Board of Medicine; the Federation of State Medical Board’s Model Policy for the Appropriate Use of Telemedicine Technologies in

the Practice of Medicine; the Board of Licensure in Medicine's Telemedicine Guidelines; and input solicited from representatives of the Maine Medical Association and the Maine Hospital Association. The amendments to the rule (now Chapter 11) were based upon Public Law Chapter 291 "An Act Regarding Telehealth Regulations."

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] Minimal

***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.*

ECONOMIC IMPACT STATEMENT  
[5 M.R.S. § 8052 (5-A)]

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TYPES AND NUMBER OF SMALL BUSINESSES SUBJECT TO THE RULE:

The Board of Licensure in Medicine licenses 7,883 physicians and physician assistants; The State Board of Nursing licenses 33,023 advanced practice registered nurses, registered professional nurses and licensed practical nurses; and the Board of Osteopathic Licensure licenses 1,521 physicians and physician assistants.

Title 5 M.R.S. § 8052(5-A) defines “small business” as businesses that have 20 or fewer employees. The Boards do not collect sufficient information to reliably estimate the number of licensees that are small businesses as defined in 5 M.R.S. § 8052 (5-A).

PROJECTED REPORTING, RECORDKEEPING AND OTHER ADMINISTRATIVE COSTS REQUIRED FOR COMPLIANCE WITH THE PROPOSED RULE, INCLUDING THE TYPE OF PROFESSIONAL SKILLS NECESSARY FOR PREPARATION OF THE REPORT OR RECORD:

The proposed rule includes a provision regarding maintenance of patient records which reflects the current standard. There are not any recordkeeping or other compliance costs that licensees do not currently bear.

PROBABLE IMPACT ON AFFECTED SMALL BUSINESSES: Minimal

LESS INTRUSIVE OR LESS COSTLY, REASONABLE ALTERNATIVE METHODS OF ACHIEVING THE PURPOSES OF THE PROPOSED RULE: None

## PROPOSED AMENDMENTS

### 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

#### 373 BOARD OF LICENSURE IN MEDICINE

*a joint rule with*

#### 383 BOARD OF OSTEOPATHIC LICENSURE

#### 380 STATE BOARD OF NURSING

### Chapter 116: JOINT RULE REGARDING TELEHEALTHMEDICINE STANDARDS OF PRACTICE

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SUMMARY: Chapter 116 establishes standards for ~~the practice of medicine~~ using tele~~health~~medicine in providing health care.

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#### SECTION 1. STATEMENT REGARDING TELE~~HEALTH~~MEDICINE

1. The Board recognizes that technological advances have made it possible for licensees in one location to provide health care to patients in another location with or without an intervening health care provider.
2. Tele~~health~~medicine is a useful tool that, if applied appropriately, can provide important benefits to patients, including increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and potential cost savings.
3. The Board advises that licensees using tele~~health~~medicine in providing health care will be held to the same standards of care and professional ethics as licensees providing traditional in-person health care.
4. Failure to conform to the appropriate standards of care or professional ethics while using tele~~health~~medicine in providing health care may subject the licensee to potential discipline by the Board.

#### SECTION 2. DEFINITIONS

1. “Asynchronous ~~encounter~~”~~store and forward transmission~~” means an interaction between an individual 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 individual and licensee. the collection of a patient’s relevant health information and the subsequent transmission of the information from an originating site to a health care provider at a distant site without the presence of the patient.
2. “Board” means the Maine Board of Licensure in Medicine, ~~or~~ the Board of Osteopathic Licensure, or the State Board of Nursing.
3. ~~“Distant site” means the location of the licensee providing telemedicine services.~~

3. “Health care services” means services provided by a licensed or registered physician, physician assistant, or nurse according to the applicable scope of practice and standard of care.
4. “In-person encounter” means that the licensee and the patient are in the physical presence of each other and are in the same physical location during the ~~clinician~~physician-patient encounter.
5. “Licensee” means a physician, ~~or~~ physician assistant, licensed practical nurse, registered professional nurse, or advanced practice registered nurse licensed or registered by the Board.
6. ~~“Originating site” means the location of the patient at the time of the examination, diagnosis, consultation or treatment.~~
6. “Licensee-patient relationship” means the relationship established between a licensee and a patient according to this rule and the laws, rules, and standards of practice applicable to a licensee.
7. ~~“Patient Physician Relationship” has the same meaning as defined by Opinion 10.015 in the American Medical Association Code of Medical Ethics 2014 2015 Edition.~~
7. “Nurse compact state” means a state that has enacted the Nurse Licensure Compact as revised by the National Council of State Boards of Nursing.
8. ~~“Synchronous” means an interactive telemedicine encounter between a patient and a licensee that occurs at the same time.~~
8. “Nursing assessment” means a pertinent assessment of a patient conducted by a registered professional nurse in accordance with the laws and rules of the Board and nursing standards of care for the purpose of the patient visit.
9. ~~“Telemedicine” means the practice of medicine or the rendering of health care services using electronic audio visual communications and information technologies or other means, including interactive audio with asynchronous store and forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telemedicine includes asynchronous store and forward technologies, remote monitoring, and real time interactive services, including teleradiology and telepathology. Telemedicine shall not include the provision of medical services only through an audio only telephone, e mail, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof.~~
9. “Physical examination” means a pertinent physical examination of a patient conducted by a licensed physician, physician assistant, or advanced practice registered nurse in accordance with the standard of care for the purpose of the patient visit.
10. “Store and forward transfer” means the transmission of an individual’s records through a secure electronic system to a licensee.

11. “Synchronous encounter” means a real-time interaction conducted with an interactive audio or video connection between an individual and a licensee or between a licensee and another health care provider.
12. “Telehealth” means the provision of health care services using electronic audio-visual communications and information technologies or other means, including interactive audio with asynchronous store-and-forward transmission, between a licensee in one location and a patient in another location with or without an intervening health care provider. Telehealth includes asynchronous store-and-forward technologies, telemonitoring, and real-time interactive services, including teleradiology and telepathology. Telehealth shall not include the provision of health care services only through e-mail, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof.
130. “Tele~~health~~medicine technologies” means technologies and devices enabling secure electronic communications and information exchanges between a licensee in one location and a patient in another location with or without an intervening health care provider.
14. “Telemonitoring” means the use of information technology to remotely monitor a patient’s health status via electronic means, allowing the licensee to track the patient’s health data over time Telemonitoring may be synchronouse or asynchronous.

### SECTION 3. PRACTICE GUIDELINES

1. A licensee who uses tele~~health~~medicine shall utilize evidence-based tele~~health~~medicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes. The Board acknowledges that some nationally recognized medical specialty and nursing specialty organizations have established comprehensive tele~~health~~medicine practice guidelines that address the clinical and technological aspects of tele~~health~~medicine for many ~~medical~~ health care specialties.

2. MAINE ~~MEDICAL~~ LICENSE REQUIRED

~~A licensee who uses telemedicine in the examination, diagnosis, consultation or treatment of a patient located in Maine shall hold an active Maine medical license or shall hold an active registration in Maine to provide interstate consultative telemedicine services.~~

A. Physicians, physician assistants and advanced practice registered nurses who use telehealth in the examination, diagnosis, consultation or treatment of a patient located in Maine shall hold an active Maine license or shall hold an active registration in Maine to provide interstate consultative telemedicine services.

B. Licensed practical nurses and registered professional nurses who use telehealth to provide nursing care services to a patient located in Maine shall hold an active Maine nursing license or an active multistate license in a nurse compact state.

3. STANDARDS OF CARE AND PROFESSIONAL ETHICS

A licensee who uses tele~~health~~medicine in providing health care shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients. Failure to conform to the appropriate standards of care or professional ethics



while using tele~~health~~~~medicine~~ may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to potential discipline by the Board.

4. SCOPE OF PRACTICE

A. Neither this rule nor telehealth as a delivery model expands the scope of practice of any licensee or changes the scope and process regarding delegation of health care services by physicians, physician assistants or nurses. A licensee must comply with applicable Board laws and rules related to the coordination, supervision, collaboration, direction, oversight of and delegation to other licensed or certified personnel and unlicensed health care assistive personnel.

B. A licensee who uses tele~~health~~~~medicine~~ in providing health care shall ensure that the services provided are consistent with the licensee’s scope of practice, including the licensee’s education, training, experience, ability, licensure, registration and certification.

C. A licensee providing telehealth services must comply with all State and federal laws, rules and regulations as well as applicable standards of practice.

5. IDENTIFICATION OF PATIENT AND ~~LICENSEE~~~~PHYSICIAN~~

A licensee who uses synchronous tele~~health~~~~medicine~~ technology in providing health care shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, registration, certification, and credentials of all health care providers who provide tele~~health~~~~medicine~~ services prior to the provision of care.

6. ~~PHYSICIAN~~~~LICENSEE~~-PATIENT RELATIONSHIP

A. A licensee who uses tele~~health~~~~medicine~~ in providing health care shall establish a valid ~~physician~~~~licensee~~-patient relationship with the person who receives tele~~health~~~~medicine~~ services. The ~~physician~~~~licensee~~-patient relationship begins when:

- (1) The person with a health-related matter seeks assistance from the licensee;
- (2) The licensee agrees to undertake examination, diagnosis, nursing assessment, consultation or treatment of the person; and
- (3) The person agrees to receive health care services from the licensee whether or not there has been an in-person encounter between the licensee and the person.

B. A valid ~~physician~~~~licensee~~-patient relationship may be established between a licensee who uses tele~~health~~~~medicine~~ in providing health care and a patient who receives tele~~health~~~~medicine~~ services through any of the following circumstances:

- (1) **Consultation with another licensee.** Through consultation with another licensee (or other health care provider) who has an established relationship with the patient upon agreement to participate in, or supervise, the patient’s care; or

- (2) **Telehealthmedicine encounter.** Through telehealthmedicine, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telehealthmedicine practice guidelines that address the clinical and technological aspects of telehealthmedicine.

## 7. MEDICAL HISTORY AND PHYSICAL EXAMINATION

Generally a physician, physician assistant, and advanced practice registered nurse shall perform an in-person medical clinical interview and physical examination for each patient. However, the medical clinical interview and physical examination may not be in-person if the technology utilized in a telehealthmedicine encounter is sufficient to establish an informed diagnosis as though the medical clinical interview and physician clinician examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telehealthmedicine in providing health care shall interview the patient to collect the relevant medical history and perform a pertinent physical examination, as defined by the standard of care for the purpose of the visit, when medically clinically necessary, sufficient for the diagnosis and treatment of the patient. An internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive interactive and responsive online interview, does not constitute an acceptable medical clinical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by the licensee.

## 8. NURSING ASSESSMENT

Generally a licensed practical nurse or a registered professional nurse shall perform an in-person clinical interview and pertinent nursing assessment for each patient. However, the clinical interview and nursing assessment may not be in-person if the technology utilized in a telehealth encounter is sufficient to establish an informed nursing assessment as though the clinical interview and nursing assessment had been performed in-person. Prior to providing treatment, a licensee who uses telehealth in providing health care shall interview the patient to collect the relevant medical history and perform a pertinent nursing assessment as defined by the standard of care for the purpose of the visit, when clinically necessary, sufficient for the nursing assessment of the patient. An internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive interactive and responsive online interview, does not constitute an acceptable clinical interview and nursing assessment for the provision of treatment by the licensee.

## 98. NON-CLINICIANPHYSICIAN HEALTH CARE PROVIDERS

- A. If a licensee who uses telehealthmedicine in providing health care relies upon or delegates the provision of telehealthmedicine services to a non-clinicianphysician health care provider, the licensee shall:

- (1) Ensure that systems are in place to ensure that the non-~~clinician~~physician health care provider is qualified, trained, and authorized to provide that service; and
- (2) Ensure that the licensee is available in person or electronically to consult with the non-~~clinician~~physician health care provider, particularly in the case of injury or an emergency.

109. INFORMED CONSENT

A licensee who uses tele~~health~~medicine in providing health care shall ensure that the patient provides appropriate informed consent for the health care services provided, including consent for the use of tele~~health~~medicine to conduct a nursing assessment or physical examination, consultation, and diagnosis and treatment, examine, consult, diagnose and treat the patient, and that such informed consent is timely documented in the patient's ~~telehealth~~medical record.

110. COORDINATION OF CARE

A licensee who uses tele~~health~~medicine in providing health care shall, when medically appropriate, identify the location and treating ~~physician~~ clinicians(s) for the patient, when available, where in-person services can be delivered in coordination with the tele~~health~~medicine services. The licensee shall provide a copy of the medical records to the location or treating ~~physician~~ clinician(s).

124. FOLLOW-UP CARE

A licensee who uses tele~~health~~medicine in providing health care shall have access to, or adequate knowledge of, the nature and availability of local ~~medical~~ clinical resources to provide appropriate follow-up care to the patient following a tele~~health~~medicine encounter.

132. EMERGENCY SERVICES

A licensee who uses tele~~health~~medicine in providing health care shall:

- A. Obtain emergency contact information and/or telephone contact information of the patient; and
- B. Refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency.

143. MEDICAL PATIENT TELEHEALTH RECORDS

A licensee who uses tele~~health~~medicine in providing health care shall ensure that complete, accurate and timely ~~medical~~ patient records are maintained for the ~~telehealth~~ encounter ~~patient~~ when appropriate, including all patient-related electronic communications, records of past care, ~~physician~~ licensee-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of tele~~health~~medicine technologies. ~~The~~ A licensee shall note in the patient's record when tele~~health~~medicine is used to provide a

nursing assessment or diagnosis and treatment, whichever is applicable. The A licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telehealthmedicine encounter. The A licensee shall ensure that the patient receives, upon request, a summary of each telehealthmedicine encounter in a timely manner and in accordance with applicable law.

#### 154. PRIVACY AND SECURITY

A. A licensee who uses telehealthmedicine in providing health care shall ensure that all telehealthmedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act and applicable law to ensure that all patient communications and records are secure and remain confidential.

(1) Written protocols shall be established that address the following:

- (a) Privacy;
- (b) Health care personnel who will process messages;
- (c) Hours of operation;
- (d) Types of transactions that will be permitted electronically;
- (e) Required patient information to be included in any communication, including patient name, identification number and type of transaction;
- (f) Archiving and retrieval; and
- (g) Quality oversight mechanisms.

(2) The written protocols should be periodically evaluated for currency and should be maintained in an accessible and readily available manner for review. The written protocols shall 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.

#### 165. TECHNOLOGY AND EQUIPMENT

A. The Board recognizes that three broad categories of telehealthmedicine technologies currently exist, including asynchronous store-and-forward technologies, remote telemonitoring, and real-time interactive services. While some telehealthmedicine programs are multispecialty in nature, others are tailored to specific diseases and medical specialties. The technology and equipment utilized for telehealthmedicine shall comply with the following requirements:

(1) The technology and equipment utilized in the provision of telehealthmedicine services must comply with all relevant safety laws,

rules, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;

- (2) The technology and equipment utilized in the provision of telehealth services must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telehealth services;
- (3) The technology and equipment utilized in the provision of telehealth services must be compliant with the Health Insurance Portability and Accountability Act and other applicable law;
- (4) The technology and equipment utilized in the provision of telehealth services must be able to verify the identity and location of the patient; and
- (5) The technology and equipment utilized in the provision of telehealth services must be able to specify and disclose the identity and credentials of the health care provider(s).

#### 176. DISCLOSURE AND FUNCTIONALITY OF TELEHEALTH SERVICES

- A. Except for health care provider to health care provider direct consultation, a licensee who uses telehealth in providing health care shall ensure that the following information is clearly disclosed to the patient:
  - (1) Types of services provided;
  - (2) Contact information for the licensee;
  - (3) Identity, licensure, certification, registration, credentials and qualifications of all health care providers who are providing the telehealth services;
  - (4) Limitations in the drugs and services that can be provided via telehealth;
  - (5) Fees for services, cost-sharing responsibilities, and how payment is to be made;
  - (6) Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);
  - (7) Appropriate uses and limitations of the technologies, including in emergency situations;
  - (8) Uses of and response times for e-mails, electronic messages and other communications transmitted via telehealth technologies;

- (9) To whom patient health information may be disclosed and for what purpose;
- (10) Rights of patients with respect to patient health information; and
- (11) Information collected and passive tracking mechanisms utilized.

#### 187. PATIENT ACCESS AND FEEDBACK

- A. A licensee who uses telehealthmedicine in providing health care shall ensure that the patient has easy access to a mechanism for the following purposes:
- (1) To access, supplement and amend patient-provided personal health information;
  - (2) To provide feedback regarding the quality of the telehealthmedicine services provided; and
  - (3) To register complaints. The mechanism shall include information regarding the filing of complaints with the Board.

#### 198. FINANCIAL INTERESTS

Advertising or promotion of goods or products from which the licensee(s) receives direct remuneration, benefit or incentives (other than the fees for the health care services) is prohibited to the extent that such activities are prohibited by state or federal law. Notwithstanding such prohibition, Internet services may provide links to general health information sites to enhance education; however, the licensee(s) should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, licensees should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of a preferred relationship with any pharmacy is prohibited unless pursuant to a collaborative practice agreement. Licensees shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from the pharmacy unless pursuant to a collaborative practice agreement.

#### 2049. CIRCUMSTANCES WHERE THE STANDARD OF CARE MAY NOT REQUIRE A LICENSEE TO PERSONALLY INTERVIEW OR CONDUCT A NURSING ASSESSMENT OR PHYSICAL EXAMINATION OF A PATIENT

- A. Under the following circumstances, whether or not such circumstances involve the use of telehealthmedicine in providing health care, a licensee may treat a patient who has not been personally interviewed, examined, assessed and diagnosed by the licensee:
- (1) Situations in which the licensee prescribed medications on a short-term basis for a new patient and has scheduled an appointment to personally examine the patient;
  - (2) For institutional settings, including writing initial admission orders for a newly hospitalized patient;

- (3) Call situations in which a licensee is taking call for another licensee who has an established physician licensee-patient relationship with the patient;
- (4) Cross-coverage situations in which a licensee is taking call for another licensee who has an established physician licensee-patient relationship with the patient;
- (5) Situations in which the patient has been examined in person by an advanced practice registered nurse practitioner or a physician assistant or other licensed practitioner with whom the licensee has a supervisory or collaborative relationship;
- (6) Emergency situations in which the life or health of the patient is in imminent danger;
- (7) Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;
- (8) Situations in which the licensee has diagnosed a sexually transmitted disease in a patient and the licensee prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the U.S. Centers for Disease Control and Prevention;
- (9) Situations where the patients are in a licensed or certified long term care facility, nursing facility, residential care facility, intermediate care facility, assisted living facility or hospice setting and doing so is within the practice standards for that setting; and
- (10) Circumstances in which a patient's treating physician clinician determines that a radiology or pathology consultation is warranted.

**219. PRESCRIBING BASED SOLELY ON AN INTERNET REQUEST, INTERNET QUESTIONNAIRE OR A TELEPHONIC INTERVIEW PROHIBITED**

Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e. static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited. Absent a valid physician licensee-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited, with the exception of the circumstances described in Section 349, subsection 320, subparagraph A(3) of this rule.

Telehealthmedicine 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 required. Measures to assure informed, accurate and error

prevention prescribing practices (e.g. integration with e-Prescription systems) are encouraged. All applicable law shall be complied with.

Prescribing medications, in-person or via tele~~health~~~~medicine~~, is at the professional discretion of the ~~licensee~~~~physician~~. The ~~physician~~ ~~licensee~~ prescribing via tele~~health~~~~medicine~~ must ensure that the clinical evaluation, indication, appropriateness, and safety consideration for the resulting prescription are appropriately documented and meet the applicable standard of care. Consequently, prescriptions via tele~~health~~~~medicine~~ carry the same 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, ~~licensees~~~~physicians~~ may exercise their judgment and prescribe medications as part of tele~~health~~~~medicine~~ encounters.

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STATUTORY AUTHORITY:

32 M.R.S. §§ 3269(3), 3269(7), 3300AA-3300EE (Board of Licensure in Medicine)

32 M.R.S. §§ 2562, 2600AA-2600EE (Board of Osteopathic Licensure)

32 M.R.S. §§ 2102(2-A), 2153-A(1), 2266 - 2270 (State Board of Nursing)

EFFECTIVE DATE:

December 10, 2016 – filings 2016-209, 210