

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. As originally proposed, the BOLIM and BOL propose amendments to the existing joint rule, which will also be adopted by the BON (Boards). The originally 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.

Following receipt and review of written comments to the proposed amendments to the rule, the Boards made the following substantive changes to the proposed amendments to the rule: amending section 2.12 regarding the definition of telehealth to include the use of audio-only technology for the delivery of telehealth under certain circumstances, and clarifying that telehealth shall not include the provision of health care services only through email, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof between a licensee and a patient with or without an intervening health care provider; amending section 3.8 regarding “Nursing Assessment” by removing “licensed practical nurse;” amending section 3.9 by changing “non-clinician health care providers” to “non-clinician health care personnel;” amending section 3.14 regarding “Patient Telehealth Records” by adding “the need for follow-up care or emergency services;” amending section 3.17.A regarding “Disclosure and Functionality of Telehealth Services” to add “(8) privacy and security risks of the technologies and equipment;” and amending section 3.17.A.7 regarding “Disclosure and Functionality of Telehealth Services” to add “and equipment.”

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. This is a publication of substantive proposed changes to a proposed rule in order to allow public comment on the proposed changes as required by Title 5 M.R.S. § 8052(5)(B).

COMMENT DEADLINE: Friday, April 29, 2022 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

Kimberly S. Esquibel, Executive Director, State Board of Nursing, 158 State House Station, Augusta, ME 04333-0158, tel. (207) 287-1148, fax (207) 287-1149, kim.esquibel@maine.gov

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

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 (Board of Licensure in Medicine); www.maine.gov/boardofnursing (State Board of Nursing); www.maine.gov/osteo (Board of Osteopathic Licensure)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: maureen.s.lathrop@maine.gov (Board of Licensure in Medicine); kim.esquibel@maine.gov State Board of Nursing); 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 MRS §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. This is a publication of substantive proposed changes to a proposed rule in order to allow public comment on the proposed changes as required by Title 5 M.R.S. § 8052(5)(B).

COMMENT DEADLINE: Friday, April 29, 2022 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 originally 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 (Boards) to adopt rule governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.”

The originally 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.

Following receipt and review of written comments to the proposed amendments to the rule, the Boards made the following substantive changes to the proposed amendments to the rule: amending section 2.12 regarding the definition

of telehealth to include the use of audio-only technology for the delivery of telehealth under certain circumstances, and clarifying that telehealth shall not include the provision of health care services only through email, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof between a licensee and a patient with or without an intervening health care provider; amending section 3.8 regarding “Nursing Assessment” by removing “licensed practical nurse;” amending section 3.9 by changing “non-clinician health care providers” to “non-clinician health care personnel;” amending section 3.14 regarding “Patient Telehealth Records” by adding “the need for follow-up care or emergency services;” amending section 3.17.A regarding “Disclosure and Functionality of Telehealth Services” to add “(8) privacy and security risks of the technologies and equipment;” and amending section 3.17.A.7 regarding “Disclosure and Functionality of Telehealth Services” to add “and equipment.”

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 originally proposed 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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CHAPTER NUMBER AND RULE TITLE: Chapter 11 Joint Rule Regarding Telehealth Standards of Practice

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

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 11: JOINT RULE REGARDING TELEHEALTH STANDARDS OF PRACTICE

SUMMARY: Chapter 11 establishes standards for using telehealth in providing health care.

SECTION 1. STATEMENT REGARDING TELEHEALTH

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. Telehealth 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 telehealth 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 telehealth in providing health care may subject the licensee to potential discipline by the Board.

SECTION 2. DEFINITIONS

1. “Asynchronous encounter” 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.
2. “Board” means the Maine Board of Licensure in Medicine, the Board of Osteopathic Licensure or the State Board of Nursing.
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-patient encounter.
5. “Licensee” means a physician, physician assistant, licensed practical nurse, registered professional nurse, or advanced practice registered nurse licensed or registered by the Board.
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. “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. “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. “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. When necessary and appropriate under the circumstances and if in compliance with the applicable standard of care, telehealth includes the use of audio-only technology. Telehealth shall not include the provision of health care services between a licensee in one location and a patient in another location with or without an intervening health care provider only through e-mail, instant messaging, facsimile transmission, or U.S. mail or other parcel service, or any combination thereof.
13. “Telehealth 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 synchronous or asynchronous.

SECTION 3. PRACTICE GUIDELINES

1. A licensee who uses telehealth shall utilize evidence-based telehealth 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 telehealth practice guidelines that address the clinical and technological aspects of telehealth for many health care specialties.

2. **MAINE LICENSE REQUIRED**

- 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 telehealth 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 telehealth 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 telehealth 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**

A licensee who uses synchronous telehealth 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 telehealth services prior to the provision of care.

6. LICENSEE-PATIENT RELATIONSHIP

- A. A licensee who uses telehealth in providing health care shall establish a valid licensee-patient relationship with the person who receives telehealth services. The 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 licensee-patient relationship may be established between a licensee who uses telehealth in providing health care and a patient who receives telehealth 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) **Telehealth encounter.** Through telehealth, if the standard of care does not require an in-person encounter, and in accordance with evidence-based standards of practice and telehealth practice guidelines that address the clinical and technological aspects of telehealth.

7. MEDICAL HISTORY AND PHYSICAL EXAMINATION

Generally a physician, physician assistant, and advanced practice registered nurse shall perform an in-person clinical interview and physical examination for each patient. However, the clinical interview and physical examination may not be in-person if the technology utilized in a telehealth encounter is sufficient to establish an informed diagnosis as though the clinical interview and clinician examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telehealth 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 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 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~~ 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.

9. NON-CLINICIAN HEALTH CARE ~~PROVIDERS~~PERSONNEL

- A. If a licensee who uses telehealth in providing health care relies upon or delegates the provision of telehealth services to ~~a~~ a non-clinician health care ~~provider~~personnel, the licensee shall:
- (1) Ensure that systems are in place to ensure that the non-clinician health care ~~provider~~personnel ~~is~~ are 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 health care ~~provider~~personnel, particularly in the case of injury or an emergency.

10. INFORMED CONSENT

A licensee who uses telehealth 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 telehealth to conduct a nursing assessment or physical examination, consultation, and diagnosis and treatment, and that such informed consent is timely documented in the patient's telehealth record.

11. COORDINATION OF CARE

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

12. FOLLOW-UP CARE

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

13. EMERGENCY SERVICES

A licensee who uses telehealth 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.

14. PATIENT TELEHEALTH RECORDS

A licensee who uses telehealth in providing health care shall ensure that complete, accurate and timely patient records are maintained for the telehealth encounter when appropriate, including all patient-related electronic communications, records of past care, licensee-patient communications, laboratory and test results, evaluations and consultations, prescriptions, the need for follow-up care or emergency services, and instructions obtained or produced in connection with the use of telehealth technologies. A licensee shall note in the patient's record when telehealth is used to provide a nursing assessment or diagnosis and treatment, whichever is applicable. A licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telehealth encounter. A licensee shall ensure that the patient receives, upon request, a summary of each telehealth encounter in a timely manner and in accordance with applicable law.

15. PRIVACY AND SECURITY

- A. A licensee who uses telehealth in providing health care shall ensure that all telehealth 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.

16. TECHNOLOGY AND EQUIPMENT

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

17. 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 and equipment, including in emergency situations;
- (8) Privacy and security risks of the technologies and equipment;
- ~~(98)~~ Uses of and response times for e-mails, electronic messages and other communications transmitted via telehealth technologies;
- ~~(109)~~ To whom patient health information may be disclosed and for what purpose;
- ~~(110)~~ Rights of patients with respect to patient health information; and
- ~~(124)~~ Information collected and passive tracking mechanisms utilized.

18. PATIENT ACCESS AND FEEDBACK

- A. A licensee who uses telehealth 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 telehealth services provided; and
 - (3) To register complaints. The mechanism shall include information regarding the filing of complaints with the Board.

19. 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.

20. 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 telehealth 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 licensee-patient relationship with the patient;
 - (4) Cross-coverage situations in which a licensee is taking call for another licensee who has an established licensee-patient relationship with the patient;
 - (5) Situations in which the patient has been examined in person by an advanced practice registered nurse 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 clinician determines that a radiology or pathology consultation is warranted.
21. 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 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 3, subsection 20, subparagraph A(3) of this rule.

Telehealth 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 telehealth, is at the professional discretion of the licensee. The licensee prescribing via telehealth 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 telehealth 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 may exercise their judgment and prescribe medications as part of telehealth encounters.

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