

PUBLICATION

Texas Jumps on Board with Relaxed Telemedicine Practice Requirements

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Over the weekend, the Texas governor signed into law legislation which significantly relaxed Texas's previously restrictive telemedicine laws. (2017 Texas Senate Bill no. 1107). To date, Texas law did not allow for the establishment of a practitioner-patient relationship through a remote consultation and rather required an in-person consultation occur in order to validate the relationship. This state requirement has been the subject of intense debate and litigation, and considered a significant barrier to the expansion of telehealth generally within the state. Under the new law, a practitioner-patient relationship may be established through the use of either: (1) synchronous or "real-time" audio-visual interaction between the patient and practitioner in a remote location; (2) asynchronous store and forward technology (provided the clinical information is clinically relevant photographic or video images, such as diagnostic images or the patients' relevant medical records, such as patient history, laboratory and pathology results or prescriptive histories); and (3) other forms of audiovisual telecommunication.

The law conditions this new flexibility on a practitioner's adherence to the standard of care, which is clearly articulated as the same standards of care in the in-person setting. Further, as in other states, the Texas law requires certain disclosures and patient consents. Specifically, practitioners must address appropriate follow-up care and, provided the patient consents and has a primary care provider, furnish such primary care provider with a report of the telemedicine services inclusive of the practitioner's evaluation, analysis and/or diagnosis as may be appropriate. Though not expressly required by the law, in order to comply with this requirement a practitioner will need to: (1) inquire with the patient as to the existence of a primary care relationship and (2) request consent from the patient regarding the transmission of the patient's records.

The law does state that its application does not extend to mental health services. With the continued focus on mental health issues it will be interesting to see if there is proposed legislation to expand this new found flexibility to the area of mental and behavioral health.

While remote or e-prescribing and the scope of patient consultations permitted are not addressed, the law contains a mandate to the Texas Medical Board, Texas Board of Nursing, the Texas Physician Assistant Board and the Texas Board of Pharmacy to jointly develop regulations relating to the determination of a valid prescription issued in the course of telemedicine services. More to come when those regulations are issued.

For more information about this topic, please contact any member of the Baker Ober Health Law Group.