

ATA's Standardized Telehealth Terminology and Policy Language for States on Medical Practice

INTRODUCTION

The standardized telehealth terminology and policy language for states on medical practice were developed by the American Telemedicine Association (ATA) to serve as a toolkit for state policymakers throughout the country as they grapple with crafting telehealth laws that work in the best interest of their constituents. The suggested terminology and policies are rooted in ATA's vision: we promote a healthcare system where people can access safe, effective, and appropriate care when and where they need it while enabling clinicians to do more good for more people. States face significant challenges due to rising healthcare costs, an aging population, variation in quality and outcomes, and an inadequate number of clinicians. The ATA advocates using technology to reimagine care and supports policies that allow practitioners to use all available telehealth modalities – synchronous or asynchronous – to ensure all people receive care when and where they need it. The policy options delineated below, if adopted by state legislatures, will expand patient access to healthcare services, improve the quality of care, and reduce costs through the use of telehealth.

DEFINITIONS

"Telehealth" is a mode of delivering healthcare services through the use of telecommunications technologies, including, but not limited to, asynchronous and synchronous technology, and remote patient monitoring technology, delivered by a healthcare practitioner to a patient or to another practitioner at a different physical location than the healthcare practitioner.

"Practitioner" shall mean a licensed, registered, certified, authorized, or exempted individual with the authority to deliver health or wellness services to consumers of this state.

"Asynchronous" means an exchange of information regarding a patient that does not occur in real-time, including the secure collection and transmission of a patient's medical information, clinical data, clinical images, laboratory results, or a self-reported medical history.

"Synchronous" means an exchange of information regarding a patient occurring in real-time.

"Remote patient monitoring" means the remote monitoring of a patient's vital signs, biometric data, or other objective or subjective data by a device that transmits such data electronically to a healthcare practitioner.

TELEHEALTH STANDARDS OF PRACTICE

Standard of Care

A practitioner utilizing telehealth shall be held to the same standards of professional practice as a practitioner practicing the same profession in an in-person setting for the services being provided. Nothing in this section is intended to create new or different standards of care. However, it must be acknowledged that standards of care vary based on the site of care, time of day/night, location of the patient, and data available to the provider.

Establishing Practitioner-Patient Relationship

A valid practitioner-patient relationship may be established via synchronous or asynchronous telehealth without a prior in-person exam. As a condition of establishing a valid practitioner-patient relationship, the practitioner must:

- (1) Obtain the patient's consent for the use of telehealth as an acceptable mode of delivering healthcare services. Acknowledgement of such consent shall be documented in the patient's medical record; and
- (2) Verify the patient's identity and disclose the practitioner's identity and applicable credentials.

Telehealth Evaluation

Before diagnosing, providing treatment, or making recommendations, including issuing a prescription, the practitioner must obtain an applicable history and physical evaluation of the patient that is adequate to establish a diagnosis and identify underlying conditions or contraindications to any treatment or prescription recommended/provided. The history and clinical evaluation may be conducted via synchronous or asynchronous telehealth communication, provided the relevant standard of care is met.

Prescribing Drugs via Telehealth

When prescribing based on a telehealth encounter, a practitioner may prescribe the patient a legend drug, including a controlled substance, if the practitioner is authorized to prescribe such legend drug under applicable state and federal laws. A prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's professional practice to be valid. All prescribing must comply with applicable state and federal requirements.

Continuity of Care and Care Escalation

A practitioner utilizing telehealth must provide the patient a reasonable mechanism to contact the practitioner, or a covering practitioner, for follow-up care related to the patient's telehealth encounter. If a patient is inappropriate for care via telehealth technologies or experiences an emergent situation, complication, or side effect after an encounter using telehealth technologies, it should be the provider's responsibility to escalate to a higher level of care (or otherwise initiate appropriate recommendations).

Professional Licensing Board Authority

The board or licensing entity governing any healthcare practitioner covered by this section may adopt and promulgate rules and regulations consistent with, but not more restrictive than, the telehealth practice standards set forth in this section. Rules adopted under this section should not establish a separate

standard of care for telehealth and must allow for the establishment of a provider-patient relationship through a synchronous or asynchronous telehealth interaction, provided the practitioner complies with the professional standard of care. Rules adopted under this section should not mandate telehealth practitioners to also offer in-person care – or require telehealth practitioners to have a relationship with an in-person provider – as a condition of practice unless clinically necessary.

Privacy and Security

All telehealth interactions and transactions must comply with applicable state and federal privacy and security requirements.

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Please do not hesitate to contact the ATA to let us know how we can be helpful to efforts to advance common sense telehealth policies in the states. If you have any questions or would like to further discuss the telehealth industry's perspective on state legislation, please contact Kyle Zebley, the ATA's Senior Vice President, Public Policy at kzebley@americantelemed.org.