

Changes to Telemed Laws in Virginia: Physician, Patient and Payer Implications

According to a legislative amendment approved during the Virginia General Assembly's 2015 Session, telemedicine services in the Commonwealth specifically do not include audio-only telephone conversations, email messages, transmissions by a facsimile machine, or online questionnaires. This is an important distinction for providers, especially as Virginia has required insurers to reimburse for the costs of the delivery of telehealth services for a number of years.

Effective July 1, 2015, Va. Code § 38.2-3418.16 defines telemedicine services as, "the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient or consulting with other health care providers regarding a patient's diagnosis or treatment. 'Telemedicine services' does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire."

In addition, legislative changes were made that address establishment of a patient-practitioner relationship for the purpose of prescribing Schedule VI controlled substances via telemedicine services (Va. Code § 54.1-3303(A)). Also, the Virginia Board of Medicine adopted Guidance Document 85-12 regarding telemedicine services that notes "where an existing practitioner-patient relationship is not present, a practitioner must take the appropriate steps to establish a practitioner-patient relationship" for prescribing purposes.

In the Guidance Document, issued Feb. 19, 2015, the Board made clear for the first time that the practitioner-patient relationship may be established using telemedicine services "provided the standard of care is met." It also outlines criteria for the appropriate use

of telemedicine services, including the following:

- A practitioner must be licensed by the regulatory board of the state where the patient is located and the state where the practitioner is located.
- A practitioner must obtain and document the relevant clinical history prior to providing treatment, including the issuance of prescriptions. An online questionnaire does not constitute an acceptable standard of care.
- A practitioner must document and maintain evidence of appropriate patient informed consent for the use of telemedicine services, and the consent must include specific details mandated by the Board.
- A practitioner must maintain a medical record concerning the use of telemedicine services that is accessible to the practitioner and the patient and consistent with established laws and regulations pertaining to patient health records.
- The telemedicine services must be provided in a manner that ensures the privacy and security of patient records and the exchange of information in accordance with appropriate policies and procedures.
- Prescriptions must comply with requirements set forth in Va. Code §§ 54.1-3408.01 and 54.1-3303(A). Appropriate documentation of the considerations leading to prescribing must be noted in the medical record consistent with state and federal law.

In the past, the Virginia Board of Medicine has taken action against practitioners deemed to have violated laws and regulations regulating telemedicine. With the issuance of the Guidance Document, it is important that physicians and others involved with the delivery of telehealth services become familiar with Virginia requirements prior to entering the market in person or via the Internet.



CHRISTIAN & BARTON, LLP
ATTORNEYS AT LAW

For additional
information, contact:

Jonathan M. Joseph
Christian & Barton, LLP
909 East Main Street
Suite 1200
Richmond, Virginia 23219

joseph@cblaw.com
804.697.4125

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