

## Insights

### Texas Medical Board Unveils New Rules to Expand Telemedicine

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In May 2017, the Texas Senate passed Senate Bill 1107,<sup>[1]</sup> which cleared a path for the State's various health care professional boards, including the Texas Medical Board ("TMB") and Texas State Board of Pharmacy ("TBP"), to offer greater, easier access to telemedicine services. On September 15, 2017, the Texas Medical Board issued proposed rules<sup>[2]</sup> that impact both telemedicine and mental health services in Texas. The telemedicine rules come after a long battle and debate in Texas surrounding the provision of telehealth to Texas residents.

The TMB's proposed rules are significant on two fronts. First, as required by Senate Bill 1107, the proposed rule does away with existing requirements that telemedicine services for new patients be provided at an established medical site with a "patient site presenter." Alternatively, the proposed rules create the same standard of care for telemedicine services as exists for in-person services, meaning that services can initiate in the telemedicine encounter. TMB fortifies this requirement by also requiring the provider to establish a practitioner-patient relationship, maintain medical records, and to ensure that patient information and communications are secured as required by state and federal privacy laws. Although the proposed rule does not specify how practitioners can satisfy the requirement to establish a practitioner-patient relationship in a telemedicine platform, Senate Bill 1107 does provide guidance on establishing this relationship and must be read in conjunction with the proposed rules. For example, Senate Bill 1107 discusses in the context of the practitioner-patient relationship when the physician must provide guidance on appropriate follow-up care and provide records to a patient's primary care physician.

Second, the TMB proposes creating the same standard for validation of a telemedicine prescription as applies to prescriptions received for in-person services. Specifically, the proposed telemedicine rules make acceptable the treatment of acute pain with scheduled drugs, but do not create additional steps (e.g., practitioner review of the Texas Prescription Monitoring Program) in order to generate the telemedicine prescription. On the other hand, and consistent with concerns generated by the nation's ongoing opioid crisis, the proposed rules do not allow for treatment of chronic pain with scheduled drugs.

In addition to the above, the rules propose that providers must inform patients of the physician's privacy practices and make a good faith attempt to obtain the patient's written or electronic acknowledgement of those privacy practices. Further, the proposed rules also require providers to inform patients as to how they may file a complaint with the TMB. It is important to note that the proposed rules do not impact out-of-state telemedicine licenses.

The TMB is considering the proposed rules at its October 19 meeting, meaning that a Final Rule may be available shortly. Krieg DeVault's Health Care Practice Group is prepared to assist health care providers in successful implementation of telemedicine programs. Please contact Stephanie Eckerle at (317) 238-6373 or [seckerle@kdlegal.com](mailto:seckerle@kdlegal.com) should you have any questions.

[1] <https://legiscan.com/TX/bill/SB1107/2017>

[2] <https://www.sos.state.tx.us/texreg/pdf/backview/0915/0915is.pdf>