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Board votes to establish standards for physicians who use telemedicine

DES MOINES, IA – The Iowa Board of Medicine has initiated a rule-making process to establish standards of practice for physicians who use telemedicine in their medical practices.

On October 3, the Board approved a notice of intended action to establish a rule that defines telemedicine, a valid physician-patient relationship, informed consent, and technology requirements for physicians who use electronic communications, information technology or other means of interaction between a physician in one location and a patient in another. The rule requires out-of-state physicians to have a valid Iowa medical license if they diagnose and treat patients located in Iowa.

The rule’s preamble notes that telemedicine is “a useful tool that, if applied appropriately, can provide important benefits to patients.”

The rule will be published in the Iowa Administrative Bulletin on October 29 and a public hearing will be held November 18. For the rule to become effective, the Board must vote to adopt it.

The rule was born out of the Board’s ongoing discussions about telemedicine and in reaction to health care providers who sought advice and guidance on telemedicine practices. Board staff conducted an extensive review of other states’ laws and rules and national reports on telemedicine policies and practice standards, and a Board subcommittee met with representatives of Iowa physician and hospital organizations, medical educators, and other regulatory officials to identify precepts for a rule.

The rule is the first time the Board has broadly addressed the application of telemedicine. In 1996, the Board issued a policy statement that embraced a nationally recognized standard that the practice of medicine is where the patient is located, not where the physician is located.

The following is the proposed amendment for 653 Iowa Administrative Code Chapter 13, “Standards of Practice and Principles of Medical Ethics:”

653—13.11 (147, 148, 272C) Standards of practice—telemedicine. This rule establishes standards of practice for the practice of medicine using telemedicine.

1. The board recognizes that technological advances have made it possible for licensees in one location to provide medical care to patients in another location with or without an intervening health care provider.
2. Telemedicine 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 cautions that licensees using telemedicine will be held to the same standards of care and professional ethics as licensees using traditional in-person medical care.
4. Failure to conform to the appropriate standards of care and/or professional ethics while using telemedicine may subject the licensee to potential discipline by the board.

653—13.11(1) Definitions. As used in this rule:

“Board” means the Iowa Board of Medicine.

“In-person encounter” means that the physician and the patient are in the physical presence of each other and are in the same physical location during the physician-patient encounter.

“Licensee” means a medical physician or osteopathic physician licensed by the board.

“Telemedicine” means the practice of medicine using electronic audio-visual communications and information technologies or other means between a licensee in one location and a patient in another location with or without an intervening health care provider.

Telemedicine shall not include the provision of medical services only through an audio-only telephone, email messages, facsimile transmissions, U.S. mail or other parcel service, or any combination thereof.

“*Telemedicine 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.

653—13.11(2) Nationally recognized telemedicine guidelines. A licensee who uses telemedicine should be aware that nationally recognized medical specialty organizations have established comprehensive telemedicine practice guidelines which address the clinical and technological aspects of telemedicine for many medical specialties. A licensee who uses telemedicine shall utilize evidence-based telemedicine practice guidelines, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes.

653—13.11(3) Iowa medical license required. A physician who uses telemedicine in the diagnosis and treatment of a patient located in Iowa shall hold an active Iowa medical license.

653—13.11(4) Standards of care and professional ethics. A licensee who uses telemedicine shall be held to the same standards of care and professional ethics as a licensee using traditional in-person medical care. Failure to conform to the appropriate standards of care and/or professional ethics while using telemedicine 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.

653—13.11(5) Scope of practice. A licensee who uses telemedicine shall ensure that the services provided are consistent with the licensee’s scope of practice, including their education, training, experience, ability, licensure, and certification.

653—13.11(6) Identification of patient and physician. A licensee who uses telemedicine shall verify the identity of the patient and ensure that the patient has the ability to verify the identity, licensure status, board-certification, credentials, and qualifications of all health care providers who provide telemedicine services prior to the provision of care.

653—13.11(7) Physician-patient relationship. A licensee who uses telemedicine shall establish a valid physician-patient relationship with the person who receives telemedicine services. The physician-patient relationship begins when:

- a. The person with a health-related matter seeks assistance from a licensee;

- b. The licensee agrees to undertake diagnosis and treatment of the person; and
- c. The person agrees to be treated by the licensee whether or not there has been an in-person encounter between the physician and the person.
- d. A valid physician-patient relationship may be established through:
 - (1) An in-person medical interview and a physical examination (when medically necessary), where an in-person encounter would otherwise be required in the provision of the same service not delivered via telemedicine;
 - (2) Consultation with another licensee (or other health care provider) who has an established relationship with the patient and the licensee (or other health care provider) who has an established relationship with the patient agrees to participate in, or supervise, the patient's care; or,
 - (3) Establishing a valid physician-patient relationship in accordance with evidence-based telemedicine practice guidelines established by nationally recognized medical specialty organizations which address the clinical and technological aspects of telemedicine.

653—13.11(8) Medical history and physical examination. A licensee who uses telemedicine shall ensure that the patient is interviewed to collect the patient's relevant medical history and receives a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient prior to providing treatment, including issuing prescriptions, electronically or otherwise. Generally, the licensee shall perform an in-person medical interview and a physical examination for the patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as if the medical interview and physical examination had been performed in-person. An internet questionnaire alone does not constitute an acceptable medical interview and physical examination for providing treatment, including issuing prescriptions, electronically or otherwise.

653—13.11(9) Non-physician health care providers. If a licensee who uses telemedicine relies upon or delegates medical services to a non-physician health care provider who requires physician supervision, the licensee shall:

- a.* Ensure that each non-physician health care provider is qualified and competent to safely perform each medical service being provided by personally assessing the non-physician health care provider's education, training, experience and ability;
- b.* Ensure that each medical service provided is within the scope of practice of the licensee, and the non-physician health care provider, including their education, training, experience, ability, licensure or certification;
- c.* Ensure that the licensee is available electronically to consult with non-physician health care providers, particularly in case of injury or an emergency;

653—13.11(10) Informed consent. A licensee who uses telemedicine shall ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

653—13.11(11) Coordination of care. A licensee who uses telemedicine shall identify the medical home and/or treating physician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The licensee shall provide a copy of the medical record to the patient's medical home and/or treating physician(s).

653—13.11(12) Follow-up care. A licensee who uses telemedicine shall ensure that the patient has access to appropriate follow-up care following a telemedicine encounter. The physician shall have adequate knowledge of the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

653—13.11(13) Emergency services. A licensee who uses telemedicine shall establish written protocols for referral of the patient to an acute care facility or an emergency department when it is necessary for the safety of the patient in case of emergency.

653—13.11(14) Medical records. A licensee who uses telemedicine shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee shall note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee shall ensure that the patient and/or a physician designated by the patient, has timely access to all information obtained during the telemedicine encounter. The licensee shall ensure that the patient receives a summary of each telemedicine encounter in a timely manner, upon request.

653—13.11(15) Privacy and security. A licensee who uses telemedicine shall ensure that all telemedicine encounters comply with the Health Insurance Portability and Accountability Act's privacy and security measures to ensure that all patient communications and records are secure and remain confidential. The licensee shall establish written protocols 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 the communication, including patient name, identification number and type of transaction;
- f.* Archival and retrieval;
- g.* Quality oversight mechanisms; and

h. The written protocols should be periodically evaluated for currency and 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.

653—13.11(16) Technology and equipment. The board recognizes that three broad categories of telemedicine technologies currently exist, including store and forward technologies, remote monitoring, and real-time interactive services. While some telemedicine programs are multispecialty in nature, others are tailored to specific diseases and medical specialties. A licensee who uses telemedicine shall ensure that the technology and equipment utilized for telemedicine complies with the following requirements:

- a.* All technology and equipment utilized must comply with all relevant safety laws, regulations, and codes for technology and technical safety for devices that interact with patients or are integral to diagnostic capabilities;
- b.* All technology and equipment utilized must be of sufficient quality, size, resolution and clarity such that the licensee can safely and effectively provide the telemedicine services; and
- c.* All technology and equipment must be compliant with the Health Insurance Portability and Accountability Act.

653—13.11(17) Disclosures and functionality of telemedicine services. A licensee who uses telemedicine shall clearly disclose the following information to the patient:

- a.* Types of services provided;
- b.* Contact information for the licensee;
- c.* Identity, licensure, board-certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;
- d.* Limitations in the drugs and services that can be provided via telemedicine:

- e.* Fees for services, cost-sharing responsibilities, and how payment is to be made;
- f.* Financial interests, other than fees charged, in any information, products, or services provided by the licensee(s);
- g.* Appropriate uses and limitations of the technologies, including emergency situations;
- h.* Uses and response times for e-mails, electronic messages and other communications transmitted via telemedicine technologies;
- i.* To whom patient health information may be disclosed and for what purpose;
- j.* Rights of patients with respect to patient health information; and
- k.* Information collected and passive tracking mechanisms utilized.

653—13.11(18) Patient access and feedback. A licensee who uses telemedicine shall ensure that the patient has easy access to a mechanism for the following:

- a.* Access, supplement and amend patient-provided personal health information;
- b.* Provide feedback regarding the quality of the telemedicine services provided; and
- c.* Register complaints, including information regarding filing complaints with the board.

653—13.11(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 medical services) is prohibited. Notwithstanding, 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, physicians should be aware of the implied endorsement of the information, services or products offered from such sites. The maintenance of preferred relationships with any pharmacy is prohibited. 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.

653—13.11(20) Circumstances when a physician may not personally examine a patient.

Treating a patient whom the licensee has not personally interviewed, examined and diagnosed may be suitable under the following limited circumstances:

- a. Situations in which the licensee prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;
- b. Institutional settings, including writing initial admission orders for a newly hospitalized patient;
- c. Call situations where a licensee is taking call for another licensee who has an established physician-patient relationship with the patient;
- d. Cross coverage situations where a licensee is providing coverage for another licensee who has an established physician-patient relationship with the patient;
- e. Situations where the patient has been examined in-person by an advanced registered nurse practitioner or a physician assistant or other licensed practitioner with whom the licensee has a supervisory or collaborative relationship;
- f. Emergency situations where the life or health of the patient is in imminent danger;
- g. 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;
- h. Situations where 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; and
- i. Certain nursing home and hospice settings.

653—13.11(21) Prescribing controlled substances—prohibited. Prescribing controlled substances to a patient based solely on an internet request, internet questionnaire or a telephonic evaluation is prohibited.

653—13.11(22) Medications or treatment regimens that can only be administered by a physician. The licensee must be physically present in the same location as the patient when prescribing, administering, or dispensing medications or providing treatment regimens that can

only be administered by a physician, as required by law or administrative rule, protocols approved by the U.S. Food and Drug Administration, or by appropriate standards of care.

Nothing in this rule shall be interpreted to contradict or supersede the rule established in 653—

13.10.