

Telemedicine Advisory Committee

DRAFT LANGUAGE AS OF FEBRUARY 24, 2016

SUGGESTED AMENDMENT TO ASMB REGULATION 8:

ASMB Regulation 8

8. ****Requiring minimum standards for establishing physician/patient relationships.**
A physician exhibits gross negligence if he provides and/or recommends any form of treatment, including prescribing legend drugs, without first establishing a proper physician/patient relationship.

Section A.

For purposes of this regulation a proper physician/patient relationship, at a minimum requires that:

1. A. The physician performs a history and an “in person” physical examination of the patient adequate to establish a diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided; OR
B. The physician performs a face-to-face examination using real time audio and visual telemedicine technology that provides information at least equal to such information as would have been obtained by an in-person examination; OR
C. The physician personally knows the patient and the patient’s general health status through an “ongoing” personal or professional relationship;

AND THAT

2. Appropriate follow-up be provided or arranged, when necessary, at medically necessary intervals.

Section B.

For the purposes of this regulation, a proper physician/patient relationship is deemed to exist in the following situations:

1. When treatment is provided in consultation with, or upon referral by, another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient’s treatment, including follow up care and the use of any prescribed medications.
2. On-call or cross-coverage situations arranged by the patient’s treating physician.

Section C.

Exceptions – Recognizing a physician’s duty to adhere to the applicable standard of care, the following situations are hereby excluded from the requirement of this regulation:

1. Emergency situations where the life or health of the patient is in danger or imminent danger.
2. Simply providing information of a generic nature not meant to be specific to an individual patient.
3. This Regulation does not apply to prescriptions written or medications issued for use in expedited heterosexual partner therapy for the sexually transmitted diseases of gonorrhea and/or chlamydia.
4. This Regulation does not apply to the administration of vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Tdap, Td or TT) or inactive influenza vaccines.

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SUGGESTED NEW LANGUAGE FOR A SEPARATE SECTION ON TELEMEDICINE:

**REQUIREMENTS FOR ALL SERVICES PROVIDED BY PHYSICIANS USING
TELEMEDICINE¹**

1. The following requirements apply to all services provided by physicians using telemedicine:
 - A. The practice of medicine via telemedicine shall be held to the same standards of care as traditional in-person encounters.
 - B. The physician must obtain a detailed explanation of the patient's complaint from the patient or the patient's treating physician.
 - C. If a decision is made to provide treatment, the physician must agree to accept responsibility for the care of the patient.
 - D. If follow-up care is indicated, the physician must agree to provide or arrange for such follow-up care.
 - E. A physician using telemedicine may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules II through V unless the physician has seen the patient for an in-person exam or unless a relationship exists through consultation or referral; on-call or cross-coverage situations; or through an on-going personal or professional relationship.
 - F. The physician must keep a documented medical record, including medical history.
 - G. At the patient's request, the physician must make available to the patient an electronic or hardcopy version of the patient's medical record documenting the encounter. Additionally, unless the patient declines to consent, the physician must forward a copy of the record of the encounter to the patient's regular treating physician if that physician is not the same one delivering the service via telemedicine.
 - H. Services must be delivered in a transparent manner, including providing access to information identifying the physician in advance of the encounter, with licensure and board certifications, as well as patient financial responsibilities.
 - I. If the patient, at the recommendation of the physician, needs to be seen in person for their current medical issue, the physician must arrange to see the patient in person or direct the patient to their regular treating physician or other appropriate provider if the patient does not have a treating physician. Such recommendation shall be documented in the patient's medical record.
 - J. Physicians who deliver services through telemedicine must establish protocols for referrals for emergency services.
 - K. All physicians providing care via telemedicine to a patient located within the state of Arkansas shall be licensed to practice medicine in the State of Arkansas.

¹ Arkansas Act 887 of 2015 does not restrict the use of store-and-forward technology, such as X-rays, MRIs, and digital images. Store and forward technology is most commonly used in radiology, pathology, dermatology, and ophthalmology. The Advisory Committee does not believe the examples given by a telemedicine vendor of a patient completing a medical history online and forwarding it to a physician qualifies as store-and-forward technology.