

1 **Wyoming Healthcare Licensing Boards’**

2 **Uniform Policy for the Appropriate Use of Telehealth Technologies in the Delivery of**
3 **Healthcare**

4 Created for consideration by Wyoming healthcare licensing boards

5 **Section One. Preamble**

6 The advancements and continued development of healthcare and communications technology
7 have had a profound impact on the delivery of healthcare and offer opportunities for improving
8 delivery and accessibility. Telehealth is defined as the delivery of healthcare using electronic
9 communication, information technology or other means of interaction between a healthcare
10 provider in one location and a patient in another location with or without an intervening
11 healthcare provider. However, state healthcare licensing Boards (Boards), in fulfilling their duty
12 to protect the public, face complex regulatory challenges and patient safety concerns in adapting
13 regulations and standards historically intended for the in-person provision of healthcare to new
14 delivery models involving telehealth technologies, including but not limited to: 1) determining
15 when a provider-patient relationship is established; 2) assuring privacy of patient data; 3)
16 guaranteeing proper evaluation and treatment of the patient; and 4) guiding the prescribing and
17 dispensing of certain medications.

18 Boards recognize using telehealth technologies in the delivery of healthcare services offers
19 potential benefits. The appropriate application of these technologies can enhance healthcare by
20 facilitating communication with providers and their patients or other healthcare providers,
21 including prescribing medication, obtaining laboratory results, scheduling appointments,
22 monitoring chronic conditions, providing healthcare information, and clarifying healthcare
23 advice.

24 These guidelines should not be construed to alter the scope of practice of any healthcare provider
25 or authorize the delivery of healthcare services in a setting, or in a manner, not otherwise
26 authorized by law. In fact, these guidelines support a consistent standard of care and scope of
27 practice notwithstanding the delivery tool or business method in enabling Provider-to-Patient
28 communications. For clarity, a provider using telehealth technologies in the provision of
29 healthcare services to a patient (whether existing or new) must take appropriate steps to establish
30 the provider-patient relationship and conduct all appropriate evaluations and history of the
31 patient consistent with traditional standards of care for the particular patient presentation. As
32 such, some situations and patient presentations are appropriate for the utilization of telehealth
33 technologies as a component of, or in lieu of, in-person provision of healthcare, while others are
34 not.

35 Wyoming has considered these guidelines to educate licensees as to the appropriate use of
36 telehealth technologies in the delivery of healthcare. Wyoming’s healthcare licensing Boards are

committed to assuring patient access to the convenience and benefits afforded by telehealth technologies, while promoting the responsible delivery of healthcare by healthcare providers.

It is the expectation of the Boards that providers who provide healthcare, electronically or otherwise, maintain the highest degree of professionalism and should:

- Place the welfare of patients first;
- Maintain acceptable and appropriate standards of practice;
- Adhere to recognized ethical codes governing their respective professions;
- Properly supervise non-provider clinicians; and
- Protect patient confidentiality.

Section Two. Establishing the Provider-Patient Relationship

The health and well-being of patients depends upon a collaborative effort between the healthcare provider and patient. The relationship between the provider and patient is complex and is based on the mutual understanding of the shared responsibility for the patient's healthcare. Although the Boards recognize that it may be difficult in some circumstances to precisely define the beginning of the provider-patient relationship, particularly when the provider and patient are in separate locations, it tends to begin when an individual with a health-related matter seeks assistance from a provider who may provide assistance. However, the relationship is clearly established when the provider agrees to undertake diagnosis and treatment of the patient, and the patient agrees to be treated, whether or not there has been an encounter in person between the provider (or other appropriately supervised healthcare practitioner) and patient.

This relationship is fundamental to the provision of acceptable healthcare. It is the expectation of the Boards that providers recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a provider-patient relationship. A provider should not render healthcare advice and/or care using telehealth technologies without (1) fully verifying and authenticating the location and identity of the requesting patient; (2) disclosing and validating the provider's identity and applicable credential(s); and (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telehealth technologies. An appropriate provider-patient relationship has not been established when the identity and credentials, including license status, of the provider may be unknown to the patient. Except in exigent circumstances, a patient must be able to select an identified provider for telehealth services and not be assigned to a provider at random.

Section Three. Definitions

For the purpose of these guidelines, the following definitions apply:

1 “Telehealth” means the delivery of healthcare services using electronic communications,
2 information technology or other means between a healthcare provider in one location, and a
3 patient in another location with or without an intervening healthcare provider. Generally,
4 telehealth is not an audio-only, telephone conversation, e-mail/instant messaging conversation,
5 or fax. It typically involves the application of secure videoconferencing or store-and-forward
6 technology to provide or support healthcare delivery by replicating the interaction of a
7 traditional, encounter in person between a provider and a patient.

8 “Telehealth Technologies” means technologies and devices enabling secure electronic
9 communications and information exchange between a healthcare provider in one location and a
10 patient in another location with or without an intervening healthcare provider.

11 **Section Four. Guidelines for the Appropriate Use of Telehealth Technologies in Healthcare** 12 **Practice**

13 The Wyoming healthcare licensing Boards have considered the following guidelines for
14 providers utilizing telehealth technologies in the delivery of patient care, regardless of an
15 existing provider-patient relationship prior to an encounter:

16 Licensure:

17 A healthcare provider must be licensed by, or otherwise under the jurisdiction of, the appropriate
18 State of Wyoming licensing board. The delivery of healthcare occurs where the patient is
19 located at the time telehealth technologies are used. Providers who treat or prescribe through
20 online services sites are practicing healthcare and must possess appropriate licensure in all
21 jurisdictions where patients are located and receive care.

22 Establishment of a Provider-Patient Relationship:

23 Where an existing provider-patient relationship is not present, a healthcare provider must take
24 appropriate steps to establish a provider-patient relationship consistent with the guidelines
25 identified in Section Two, and, while each circumstance is unique, such provider-patient
26 relationships may be established using telehealth technologies provided the standard of care is
27 met.

28 Evaluation and Treatment of the Patient:

29 A documented healthcare evaluation and collection of relevant clinical history commensurate
30 with the presentation of the patient to establish diagnoses and identify underlying conditions
31 and/or contra-indications to the treatment recommended/provided must be obtained prior to
32 providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and
33 consultation recommendations made in an online setting, including issuing a prescription via
34 electronic means, will be held to the same standard of care as those in traditional (encounter in

person) settings. Treatment, including issuing a prescription, based solely on an online questionnaire does not meet the standard of care.

Informed Consent:

Evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and maintained. Appropriate informed consent should, at a minimum, include the following terms:

- Identification of the patient, the provider and the provider's credentials;
- Types of transmissions permitted using telehealth technologies (e.g. prescription refills, appointment scheduling, patient education, etc.);
- The patient agrees that the provider determines whether or not the condition being diagnosed and/or treated is appropriate for a telehealth encounter;
- Details on security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures, and adherence to all applicable HIPAA standards.

Continuity of Care:

Patients should be able to seek, with relative ease, follow-up care or information from the provider [or provider's designee] who conducts an encounter using telehealth technologies. Providers solely providing services using telehealth technologies with no existing provider-patient relationship prior to the encounter must make documentation of the encounter using telehealth technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient immediately after the encounter.

Referrals for Emergency Services:

An emergency plan is required and must be provided by the provider to the patient when the care provided using telehealth technologies indicates that a referral to an acute care facility or ER for treatment is necessary for the safety of the patient. The emergency plan should include a formal, written protocol appropriate to the services being rendered via telehealth technologies.

Healthcare Records:

The healthcare record should include, if applicable, copies of all patient-related electronic communications, including patient-provider communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the healthcare record. The patient record established during the use of telehealth technologies must

1 be accessible and documented for both the provider and the patient, consistent with all
2 established laws and regulations governing patient healthcare records.

3 Privacy and Security of Patient Records & Exchange of Information:

4 Providers should meet or exceed applicable federal and state legal requirements of
5 medical/health information privacy, including compliance with the Health Insurance Portability
6 and Accountability Act (HIPAA) and state privacy, confidentiality, security, and healthcare
7 retention rules. Providers are referred to “Standards for Privacy of Individually Identifiable
8 Health Information,” issued by the Department of Health and Human Services (HHS). Guidance
9 documents are available on the HHS Office for Civil Rights Web site at:

10 www.hhs.gov/ocr/hipaa.

11 Written policies and procedures should be maintained at the same standard as traditional face-to-
12 face encounters for documentation, maintenance, and transmission of the records of the
13 encounter using telehealth technologies. Such policies and procedures should address (1)
14 privacy, (2) healthcare personnel (in addition to the provider addressee) who will process
15 messages, (3) hours of operation, (4) types of transactions that will be permitted electronically,
16 (5) required patient information to be included in the communication, such as patient name,
17 identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight
18 mechanisms. Policies and procedures should be periodically evaluated for currency and be
19 maintained in an accessible and readily available manner for review.

20 Sufficient privacy and security measures must be in place and documented to assure
21 confidentiality and integrity of patient-identifiable information. Transmissions, including patient
22 e-mail, prescriptions, and laboratory results must be secure within existing technology (i.e.
23 password protected, encrypted electronic prescriptions, or other reliable authentication
24 techniques). All patient-provider e-mail, as well as other patient-related electronic
25 communications, should be stored and filed in the patient’s healthcare record, consistent with
26 traditional record-keeping policies and procedures.

27 Disclosures and Functionality on Online Services Making Available Telehealth Technologies:

28 Online services used by providers providing medical services using telehealth technologies
29 should clearly disclose:

- 30
- 31 • Specific services provided;
- 32 • Contact information for provider;
- 33 • Licensure and qualifications of provider(s) and associated providers;
- 34 • Fees for services and how payment is to be made;
- 35 • Financial interests, other than fees charged, in any information, products, or services
- 36 provided by a provider;
- 37 • Appropriate uses and limitations of the site, including emergency health situations;

- Uses and response times for e-mails, electronic messages and other communications transmitted via telehealth technologies;
- To whom patient health information may be disclosed and for what purpose;
- Rights of patients with respect to patient health information; and
- Information collected and any passive tracking mechanisms utilized.

Online services used by providers providing healthcare services using telehealth technologies should provide patients a clear mechanism to:

- Access, supplement and amend patient-provided personal health information;
- Provide feedback regarding the site and the quality of information and services; and
- Register complaints, including information regarding filing a complaint with the applicable state healthcare licensing board(s).

Online services must have accurate and transparent information about the website owner/operator, location, and contact information, including a domain name that accurately reflects the identity.

Advertising or promotion of goods or products from which the provider receives direct remuneration, benefits, or incentives (other than the fees for the healthcare services) is prohibited. Notwithstanding, online services may provide links to general health information sites to enhance patient education; however, the provider should not benefit financially from providing such links or from the services or products marketed by such links. When providing links to other sites, providers 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. Providers shall not transmit prescriptions to a specific pharmacy, or recommend a pharmacy, in exchange for any type of consideration or benefit from that pharmacy.

Prescribing:

Telehealth technologies, where prescribing may be contemplated, must implement measures to uphold patient safety in the absence of traditional physical examination. Such measures should guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical evaluation and resulting prescription is both enforced and independently kept. Measures to assure informed, accurate, and error prevention prescribing practices (e.g. integration with e-Prescription systems) are encouraged.

Prescribing medications, in-person or via telehealth, is at the professional discretion of the provider. The indication, appropriateness, and safety considerations for each telehealth visit prescription must be evaluated by the provider in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an

1 encounter in person. However, where such measures are upheld, and the appropriate clinical
2 consideration is carried out and documented, providers may exercise their judgment and
3 prescribe medications as part of telehealth encounters.

4 **Section Five. Parity of Professional and Ethical Standards**

5 Healthcare providers are encouraged to comply with nationally-recognized health online service
6 standards and codes of ethics, such as those promulgated by the American Medical Association,
7 American Osteopathic Association, American Nurses Association, Health Ethics Initiative 2000,
8 Health on the Net and the American Accreditation HealthCare Commission (URAC).

9 There should be parity of ethical and professional standards applied to all aspects of a provider's
10 practice.

11 A provider's professional discretion as to the diagnoses, scope of care, or treatment should not be
12 limited or influenced by non-clinical considerations of telehealth technologies, and provider
13 remuneration or treatment recommendations should not be materially based on the delivery of
14 patient-desired outcomes (i.e. a prescription or referral) or the utilization of telehealth
15 technologies.

16 [END].

This document was based on the Report of the State Medical Boards' Appropriate Regulation of Telehealth (SMART) Workgroup chaired by Dr. Kenneth Simons for the Federation of State Medical Boards. It was modified to be an appropriate document suitable for consideration for adoption by Wyoming's healthcare licensing Boards. Members of the workgroup writing this document are James Bush MD, Wyoming Medicaid Medical Director; Kevin Bohnenblust, Wyoming Board of Medicine; Cynthia LaBonde, Wyoming State Board of Nursing; Mary Walker, Wyoming Board of Pharmacy; Denise Burke, Wyoming Department of Insurance and Ralph Hayes, Employees Group Insurance.

