

**Effective 5/3/2023**

**26B-4-704 Scope of telehealth practice -- Enforcement.**

(1) As used in this section:

- (a) "Asynchronous store and forward transfer" means the transmission of a patient's health care information from an originating site to a provider at a distant site.
- (b) "Distant site" means the physical location of a provider delivering telemedicine services.
- (c) "Originating site" means the physical location of a patient receiving telemedicine services.
- (d) "Patient" means an individual seeking telemedicine services.
- (e)
  - (i) "Patient-generated medical history" means medical data about a patient that the patient creates, records, or gathers.
  - (ii) "Patient-generated medical history" does not include a patient's medical record that a healthcare professional creates and the patient personally delivers to a different healthcare professional.
- (f) "Provider" means an individual who is:
  - (i) licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection;
  - (ii) licensed under Title 58, Occupations and Professions, to provide health care; or
  - (iii) licensed under Chapter 2, Part 1, Human Services Programs and Facilities.
- (g) "Synchronous interaction" means real-time communication through interactive technology that enables a provider at a distant site and a patient at an originating site to interact simultaneously through two-way audio and video transmission.
- (h) "Telehealth services" means the transmission of health-related services or information through the use of electronic communication or information technology.
- (i) "Telemedicine services" means telehealth services:
  - (i) including:
    - (A) clinical care;
    - (B) health education;
    - (C) health administration;
    - (D) home health;
    - (E) facilitation of self-managed care and caregiver support; or
    - (F) remote patient monitoring occurring incidentally to general supervision; and
  - (ii) provided by a provider to a patient through a method of communication that:
    - (A) uses asynchronous store and forward transfer or synchronous interaction; and
    - (B) meets industry security and privacy standards, including compliance with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, and the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

(2) A provider offering telehealth services shall:

- (a) at all times:
  - (i) act within the scope of the provider's license under Title 58, Occupations and Professions, in accordance with the provisions of this section and all other applicable laws and rules; and
  - (ii) be held to the same standards of practice as those applicable in traditional health care settings;
- (b) if the provider does not already have a provider-patient relationship with the patient, establish a provider-patient relationship during the patient encounter in a manner consistent with the standards of practice, determined by the Division of Professional Licensing in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including providing the provider's licensure and credentials to the patient;

- (c) before providing treatment or prescribing a prescription drug, establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment after:
  - (i) obtaining from the patient or another provider the patient's relevant clinical history; and
  - (ii) documenting the patient's relevant clinical history and current symptoms;
- (d) be available to a patient who receives telehealth services from the provider for subsequent care related to the initial telemedicine services, in accordance with community standards of practice;
- (e) be familiar with available medical resources, including emergency resources near the originating site, in order to make appropriate patient referrals when medically indicated;
- (f) in accordance with any applicable state and federal laws, rules, and regulations, generate, maintain, and make available to each patient receiving telehealth services the patient's medical records; and
- (g) if the patient has a designated health care provider who is not the telemedicine provider:
  - (i) consult with the patient regarding whether to provide the patient's designated health care provider a medical record or other report containing an explanation of the treatment provided to the patient and the telemedicine provider's evaluation, analysis, or diagnosis of the patient's condition;
  - (ii) collect from the patient the contact information of the patient's designated health care provider; and
  - (iii) within two weeks after the day on which the telemedicine provider provides services to the patient, and to the extent allowed under HIPAA as that term is defined in Section 26B-3-126, provide the medical record or report to the patient's designated health care provider, unless the patient indicates that the patient does not want the telemedicine provider to send the medical record or report to the patient's designated health care provider.
- (3) Subsection (2)(g) does not apply to prescriptions for eyeglasses or contacts.
- (4) A provider offering telemedicine services may not diagnose a patient, provide treatment, or prescribe a prescription drug based solely on one of the following:
  - (a) an online questionnaire;
  - (b) an email message; or
  - (c) a patient-generated medical history.
- (5) A provider may not offer telehealth services if:
  - (a) the provider is not in compliance with applicable laws, rules, and regulations regarding the provider's licensed practice; or
  - (b) the provider's license under Title 58, Occupations and Professions, is not active and in good standing.
- (6)
  - (a) The Division of Professional Licensing created in Section 58-1-103 is authorized to enforce the provisions of this section as it relates to providers licensed under Title 58, Occupations and Professions.
  - (b) The department is authorized to enforce the provisions of:
    - (i) this section as it relates to providers licensed under this title; and
    - (ii) this section as it relates to providers licensed under Chapter 2, Part 1, Human Services Programs and Facilities.

Amended by Chapter 277, 2023 General Session  
Renumbered and Amended by Chapter 307, 2023 General Session