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Arkansas New Proposed Rules Allow Telemedicine Exams

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Arkansas was ranked last among all states in a recent report by the American Telemedicine Association on telemedicine practice standards. [Earlier this year, we reported](#) on the Arkansas Board of Medicine's plans to remedy its ranking through the issuance of new telemedicine rules. Draft rules articulating telemedicine principles were circulated [last October](#), and the Board recently issued proposed amendments to its regulations, specifically revising [Regulation 2](#) and creating a new [Regulation 38](#).

Currently, [Arkansas Code 17-80-117](#), enacted in April 2015, and Regulation No. 2 require an initial in-person encounter to establish a valid physician-patient relationship. The new proposal revises the text of Regulation No. 2(8)(A) and (B). Proposed Regulation 38 acts as a complement to the statutory requirements. If enacted, it will allow a doctor to establish a valid relationship with a patient, without the need for an in-person exam, if the doctor "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." The doctor must also provide or arrange for the patient to receive follow-up care, when medically necessary.

The Board will hold a [public hearing](#) involving the proposed amendment to Regulation 2.8 and new Regulation 38 on Thursday, June 9, 2016 at 8:30 a.m. in Little Rock. Interested telemedicine companies and healthcare providers looking to offer telemedicine services in Arkansas should review the proposed regulations and consider submitting comments to make your voice heard regarding the changes. Important considerations remain to be discussed. For example, the proposed regulations fail to address the "originating site" restrictions included under Arkansas Code 17-80-117(a)(3),(6) and how the Board would apply that to situations where the patient is located at his or her home.

Under the proposed rules, the following requirements would apply to all services provided by physicians via telemedicine:

1. Physicians providing care via telemedicine to a patient located within the State of Arkansas must be licensed to practice medicine in the State of Arkansas.
2. The practice of medicine via telemedicine is held to the same standards of care as traditional in-person encounters.
3. 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 ongoing personal or professional relationship.
4. The physician must keep a documented medical record, including medical history.
5. 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. 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



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if that physician is not the same one delivering the service via telemedicine.

6. 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.
7. 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 must be documented in the patient's medical record.
8. Physicians who deliver services via telemedicine must establish protocols for referrals for emergency services.
9. The distant site physician must obtain a detailed explanation of the patient's complaint from the patient or the patient's treating physician.
10. If a decision is made to provide treatment, the physician must agree to accept responsibility for the care of the patient.
11. If follow-up care is indicated, the physician must agree to provide or arrange for such follow-up care.
12. Store-and-forward technology, such as X-rays, MRIs, and digital images is permitted, and most commonly used in radiology, pathology, dermatology, and ophthalmology. However, a patient completing a medical history online and forwarding it to a physician does not qualify as store-and-forward technology.

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