

Kansas State Board of Healing Arts	
Policy Title: Telemedicine	Policy Number: #21-02
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PURPOSE:

The Kansas State Board of Healing Arts (“Board”) recognizes that advancements of medical and communications technology have made it possible for licensees to provide healthcare services to patients who are not at the same location as the provider. In addition, telemedicine use has rapidly expanded this year in response to the COVID-19 pandemic, meeting the urgent need to ensure access while limiting in-person encounters.¹ Telemedicine is a useful practice model, that if employed appropriately, can provide important benefits to patients, including: increased access to healthcare, decreased infection risk, expanded utilization of specialty expertise, increased efficiency, continuity of care, and improved overall healthcare outcomes. The Board is committed to assuring patient access to the convenience and benefits afforded by telemedicine, while promoting the responsible practice of the healthcare professions the Board licenses and regulates. This Board policy is intended to provide guidance to its licensees in providing healthcare services via telemedicine.

AUTHORITY:

K.S.A. 40-2,210 *et seq.*; K.A.R. 100-77-1 through K.A.R. 100-77-3.

DEFINITIONS:

1. **Telemedicine:** The delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine shall be provided by means of real-time two-way interactive audio, visual, or audio-visual communications. **The term telemedicine incorporates the practice of telehealth.**
2. **Originating site:** The site at which a patient is located at the time of healthcare services are provided by means of telemedicine.
3. **Distant site:** Site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

¹ As this is a rapidly evolving area of healthcare, the Board intends to revisit this policy as needed to reflect changes that emerge both in clinical practice and law.

4. **Licensee:** A healthcare provider licensed to practice their profession by the Kansas State Board of Healing Arts.

POLICY:

The Board considers the practice of telemedicine to be a modality with which to provide healthcare. All licensees providing healthcare services to patients in Kansas via telemedicine are expected to meet the standard of care.² There is not a separate standard of care for telemedicine. Accordingly, a licensee can provide telemedicine to a patient, so long as they are able to maintain the same standard of care as they would in person.

Telemedicine has inherent limitations. When practicing telemedicine, it is important for a licensee to know and recognize when not to practice telemedicine. Patients may present with concerns that cannot safely be evaluated or treated from a distance, even with remote-exam strategies. When this occurs, and it is clear the licensee would not be able to maintain the same standard of care via telemedicine, the licensee should request the patient to be seen in person. Additionally, the licensee should share with the patient the risks of delaying care. If after a licensee has requested a patient to be seen in person, and the patient refuses to do so or is unable due to a barrier to care, the licensee should document that such request was made, the risks were explained, and the refusal.

Licensure

Kansas law and the Board deem the delivery of healthcare services to occur where the patient is located. Therefore, any healthcare practitioner whose profession is regulated by the Board, who uses telemedicine to provide healthcare services to patients located in Kansas, should be licensed to practice their profession in Kansas.³ Kansas licensees intending to practice telemedicine to patients located outside of Kansas should check with the applicable state regulatory agency. Nearly every state requires licensees engaging in telemedicine to be licensed to practice in the state in which the patient is located.⁴

Means of Communication

Whenever possible and when available, the licensee should use both audio and visual communication for a telemedicine visit. However, the Board recognizes both means are not always available due to a myriad of barriers, including but not limited to, insufficient broadband width or

² A licensee has a duty to use the learning and skill ordinarily used by other members of that same field [of healthcare] in the same or similar communities and circumstances. In using this learning and skill, the licensee must also use ordinary care and diligence. Pattern Jury Instructions for Kansas – Civil 4th, 123.01, Duty of Health Care Provider (2014).

³ Currently, and at least until January 26, 2021, the Board has emergency temporary licenses and telemedicine waivers available to healthcare practitioners who qualify. To see if a healthcare provider qualifies, visit <http://www.ksbha.org/covid.shtml>.

⁴ In response to COVID-19, many states have modified their licensure requirements or implemented waivers for out-of-state licensees to provide telemedicine to a patient located in their state. The Board advises licensees to contact the applicable state regulatory agency in the state where the patient is located to determine what options exist.

lack of internet access. Audio only telemedicine visits may be used where evidence demonstrates it to be effective, safe and appropriate, or where it is likely to be so and offers access to care that would otherwise be unavailable to a patient. The licensee should document what means of communication were used for each telemedicine visit.

Disclaimer and Consent

Licensees providing telemedicine should provide a statement to patients such as identifying risks, limitations, alternatives, and benefits of the telemedicine encounter. After providing such statement to the patient, the Licensee should obtain the patient's consent to proceed with that visit via telemedicine. Such consent, whether verbal or in writing, should be documented. In the event a licensee has requested a patient be seen in person, and the patient refuses to do so or is unable to do so as a result of barriers, the licensee should document that such request was made, risks were explained, and the refusal.

Licensee-Patient Relationship

A licensee using telemedicine in the provision of healthcare services to a patient (whether existing or new) must take appropriate steps to establish and maintain the licensee-patient relationship. The Board stresses the importance of each licensee using telemedicine to verify the identity and location of the patient, and, provide the licensee's name, location and professional credentials to the patient.

Prescribing

Licensees prescribing medication, including controlled substances, by means of telemedicine are expected to comply with all state and federal laws, including licensure. When prescriptions via telemedicine are permissible, the licensee should 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 are clearly established and there is detailed documentation for the clinical evaluation and resulting prescription. Measures to assure informed, accurate, and error prevention prescribing practices are encouraged.⁵

Medical Records

Licensees treating a patient via telemedicine should maintain a complete record of the telemedicine visit according to established medical record requirements. The licensee must maintain the medical records' confidentiality and provide a copy for the medical record to the patient when requested in a manner consistent with state and federal law. The licensee should document what means of communication were used for each telemedicine visit.

⁵ Kansas House Bill 2016, Section 20(a): Until January 26, 2021, a physician may issue a prescription for or order the administration of medication, including a controlled substance, for a patient without conducting an in-person examination of such patient.

Privacy and Security Information

Risks associated with privacy and security of information may be increased with the use of telemedicine. Licensee's should meet or exceed applicable federal and state legal requirements of medical and health information privacy, including compliance with the Health Insurance Portability and Accountability Act ("HIPAA") and state privacy, confidentiality, security, and medical retention rules. The licensee should use a HIPAA-compliant electronic platform to provide telemedicine.⁶ When providing care to a patient via telemedicine, the Board encourages licensees to ask the patient at the beginning of the visit to identify anyone who is within hearing distance. If anyone other than the patient is identified at any point in the encounter, the licensee should obtain patient consent to proceed with the encounter.

Miscellaneous

These guidelines should not be construed to alter the scope of practice of any licensee or authorize the delivery of healthcare services in a setting, or in a manner, not otherwise authorized by law.

Approved by the Kansas State Board of Healing Arts this 9th day of October 2020.

KANSAS STATE BOARD OF HEALING ARTS



Tucker Poling, Acting Executive Director

⁶ The Office for Civil Rights ("OCR") at the Department of Health and Human Services ("HHS") is responsible for enforcing certain regulations issued under HIPAA, and as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act. During the COVID-19 national emergency and nationwide public health emergency, OCR has announced enforcement discretion for telehealth remote communications. It is unknown when this will conclude. See <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.