

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY

10.28.01 Telehealth

Authority: Health Occupations Article, §§1-1001—1-1006, Annotated Code of Maryland

Notice of Proposed Action

[22-205-P]

The Secretary of Health proposes to adopt new Regulations .01—.06 under a new chapter, **COMAR 10.28.01 Telehealth**. This action was considered by the Board of Optometry at a public meeting held on September 30, 2020, notice of which was given by publication on the Board's website at <https://health.maryland.gov/optometry/Pages/index.aspx> pursuant to General Provisions Article, §3–302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to provide new guidelines for optometrists for the practice of telehealth pursuant to Chs. 15 and 16 (H.B. 448 and S.B. 402), Acts of 2020.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jourdan Green, Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through January 17, 2023. A public hearing has not been scheduled.

.01 Scope.

- A. *This chapter governs the practice of optometry using telehealth as an adjunct to, or replacement for, in-person patient visits.*
- B. *Nothing in this chapter restricts or limits reimbursement requirements pursuant to Health-General Article and Insurance Article, Annotated Code of Maryland.*

.02 Definitions.

- A. *In this chapter, the following terms have the meanings indicated.*
- B. *Terms Defined.*
 - (1) *“Asynchronous” means not occurring in real time.*
 - (2) *“In-person” means within the physical presence of the patient.*
 - (3) *“Interpretive services” means reading and analyzing images, tracings, or specimens through telehealth or giving interpretations based on visual, auditory, thermal, or ultrasonic patterns or other patterns as may evolve with technology.*
 - (4) *“Synchronous” means occurring in real time.*
 - (5) *“Telehealth” has the meaning stated in Health Occupations Article, §1-1001, Annotated Code of Maryland.*
 - (6) *“Telehealth practitioner” means a Maryland licensed optometrist performing telehealth services within the scope of practice.*

.03 Licensure.

- A. *Subject to the provisions of Health Occupations Article, §11-301, Annotated Code of Maryland, a telehealth practitioner shall be licensed in Maryland when providing telehealth services to a patient located in the State.*

B. Telehealth practitioners licensed in this State are subject to the jurisdiction of the State and shall abide by the telehealth requirements of this chapter if either the telehealth practitioner or patient is physically located in this State.

.04 Standards of Practice for Telehealth.

A. Before performing telehealth services, a telehealth practitioner shall develop and follow a procedure to:

(1) Verify the identification of the patient receiving telehealth services within a reasonable degree of certainty through the use of:

(a) A government-issued photograph identification;

(b) An insurance, Medicaid, or Medicare card; or

(c) Documentation of the patient's:

(i) Date of birth; and

(ii) Home address;

(2) For an initial patient-telehealth practitioner interaction, disclose the telehealth practitioner's

(a) Name;

(b) Contact information;

(c) Maryland license number; and

(d) Medical specialty, if applicable;

(3) Except for interpretive services, obtain oral or written consent from a patient or patient's parent or guardian if State law requires the consent of a parent or guardian, including informing patients of the risks, benefits, and side effects of prescribed treatments;

(4) Securely collect and transmit a patient's medical information, clinical data, clinical images, laboratory results, and self-reported medical history, as necessary, and prevent access to data by unauthorized persons through encryption or other means;

(5) Notify patients in the event of a data breach;

(6) Ensure that the telehealth practitioner provides a secure and private telehealth connection that complies with federal and state privacy laws; and

(7) Establish safety protocols to be used in the case of an emergency.

B. Except when providing asynchronous telehealth services, a telehealth practitioner shall:

(1) Obtain or confirm an alternative method of contacting the patient in case of a technological failure;

(2) Confirm whether the patient is in Maryland and identify the practice setting in which the patient is located; and

(3) Identify all individuals present at each location and confirm they are allowed to hear personal health information.

C. A telehealth practitioner shall be held to the same standards of practice and documentation as those applicable for in-person health care settings.

D. The requirements set forth under §§A and B of this regulation may be delegated.

.05 Patient Evaluation.

A. Subject to the provisions of Health Occupations Article, §11-208, Annotated Code of Maryland, a telehealth practitioner shall:

(1) Perform a synchronous or asynchronous clinical patient evaluation that is appropriate for the patient and the condition with which the patient presents before providing treatment or issuing a prescription through telehealth; and

(2) If clinically appropriate for the patient, provide or refer a patient to:

(a) In-person health care services; or

(b) Another type of telehealth service.

B. A telehealth practitioner may not treat a patient or issue a prescription based solely on a static online questionnaire.

.06 Telehealth Practitioner Discipline.

A. The Board shall use the same standards of evaluating and investigating a complaint about and in disciplining a licensee who practices telehealth as it would use for a licensee who does not use telehealth technology in the licensee's practice.

B. The failure of a telehealth practitioner to comply with Regulations .04 and .05 of this chapter shall constitute unprofessional conduct and may be subject to disciplinary action by the Board.

DENNIS R. SCHRADER
Secretary of Health