

# Navigating the Texas Telemedicine Rulemaking

---

November 8, 2017

---

**PRACTICES** Healthcare and Life Sciences, Healthcare Transactions and Regulatory

---

Texas is on the road to modernizing its telemedicine and telehealth regulations after Governor Greg Abbott signed into law Senate Bill 1107 as previously covered in [Health Law Vitals](#). While most of the provisions of the new law were effective in late May 2017, sections five, six and seven addressing changes to Chapter 1455 of the Texas Insurance Code will be effective on January 1, 2018.

The Texas Medical Board (“TMB”), the first of several state agencies impacted by the new law, began its rulemaking process by publishing revised telemedicine rules in the [Texas Register on September 15, 2017](#).<sup>1</sup> After the 30-day comment period, the new rules were adopted at the TMB Board meeting on October 20, 2017. Thereafter, the Texas Board of Nursing, Texas State Board of Pharmacy, Texas Physician Assistant Board, Health and Human Services Commission (“HHSC”), and Texas Department of Insurance (“TDI”) will develop new rules to comport with the new law. Additionally, the Division of Workers Compensation at the TDI released informal rules in September 2017 and will release formal rules at a later date.

Key issues addressed in the TMB rulemaking include:

- Removing the requirements for “in-person or face-to-face visits” to establish patient-physician relationships, “established medical sites” and “patient-site presenters.” These changes remove the significant limitations to providing telemedicine and provide new opportunities to increase access to care regardless of the location of the patient.<sup>2</sup>
- Clarifying standards of care delivered through telemedicine medical services or in an in-person setting must be the same.<sup>3</sup>
- Requiring a notice to privacy practices must be given prior to treatment or evaluation and consistent with federal standards.<sup>4</sup>
- Clarifying standards for valid prescriptions are the same if done through telemedicine or an in-person and setting a limitation on the use of chronic pain treatment through a telemedicine medical service.<sup>5</sup>

## Texas Medicaid

While the TMB was quick to release their proposed rules, HHSC, the state Medicaid agency, has indicated that they will release information on their rulemaking in late October or early November 2017. HHSC anticipates an estimated 10-month implementation with the following activities: (i) a State Plan Amendment amending the state definition of telemedicine services will need to be submitted to The Centers for Medicare and Medicaid (or CMS), (ii) amendments to the State’s Medicaid managed care agreements with managed care organizations will need to be implemented to strike conflicting language, (iii) amendments to the programmatic administrative rules in 1 Texas Administrative Code Section 354.1430 and Section 354.142 will need to be completed, and (iv) the Texas Medical Policy and Texas Medicaid Provider Procedures Manual will need to be updated.

As HHSC and other state agencies tackle implementing the new law, healthcare providers and stakeholders interested in providing telemedicine services to patients are encouraged to consult their lawyer for clear guidance on permissible activities.

Haynes Boone lawyers will continue to monitor and provide timely updates on additional telemedicine rulemaking activities.

---

<sup>1</sup> [Proposed Rule Changes](#)

<sup>2</sup> Amendments to § 174.2

<sup>3</sup> Amendments to § 174.6

<sup>4</sup> New to § 174.4

<sup>5</sup> Amendment to § 174.5