

4731-37-01

Telehealth.

(A) As used in Chapters 4730, 4731, 4759, 4761, and 4778 of the Administrative Code:

- (1) Telehealth services means health care services provided through the use of information and communication technology by a health care professional licensed in Ohio, within the professional's scope of practice, who is located at a site other than the site where the patient is receiving the services or the site where another health care professional with whom the provider of the services is consulting regarding the patient is located.
- (2) Synchronous communication technology means audio and/or video technology that permits two-way, interactive, real-time electronic communication between the health care professional and the patient or between the health care professional and the consulting health care professional regarding the patient.
- (3) Asynchronous communication technology, also called store and forward technology, means the transmission of a patient's stored clinical data from an originating site to the site where the health care professional is located. The health care professional at this distant site can review the stored clinical data at a later time from when the data is sent and without the patient being present. Stored clinical data that may be transmitted via asynchronous communication technology means video clips, sound/audio files, and photo images that may be sent along with electronic records and written records about the patient's medical condition. Asynchronous communication technology in a single media format does not include telephone calls, images transmitted via facsimile machines, and text messages, such as in electronic mail, without visualization of the patient. Photographs or video images that are visualized by a telecommunications system must be both specific to the patient's medical condition and sufficient for furnishing or confirming a diagnosis and/or a treatment plan.
- (4) Remote monitoring device means a medical device cleared or approved by the United States food and drug administration for the specific purpose which the health care professional is using it and which reliably transmits data electronically and automatically.
- (5) Health care professional means:
  - (a) a physician assistant licensed under Chapter 4730. of the Revised Code;
  - (b) a physician licensed under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
  - (c) a dietitian licensed under Chapter 4759. of the Revised Code;

(d) a respiratory care professional licensed under Chapter 4761. of the Revised Code; or

(e) a genetic counselor licensed under Chapter 4778. of the Revised Code.

(6) "Certified nurse practitioner" means an advanced practice registered nurse who holds a current, valid license issued under Chapter 4723. of the Revised Code and is designated as a certified nurse practitioner in accordance with section 4723.42 of the Revised Code.

(7) "Informed consent" means a process of communication between a patient or the parent or guardian of a patient and the health care professional discussing the risks and benefits of, and alternatives to, treatment through a remote evaluation that results in the patient's or parent or guardian's agreement or signed authorization for the patient to be treated through an evaluation conducted through appropriate technology, as specified in this rule, when the health care professional is in a location remote from the patient.

(B) A health care professional may provide telehealth services to a patient located in this state. The health care professional shall comply with all of the following requirements:

(1) The standard of care for a telehealth visit is the same as the standard of care for an in-person visit.

(2) The health care professional shall follow all standard of care requirements which include but are not limited to the standard of care requirements in paragraph (C) of this rule.

(3) The health care professional may provide the telehealth services through the use of synchronous or asynchronous communication technology provided that the standard of care for an in-person visit can be met for the patient and the patient's medical condition through the use of the technology selected. Telephone calls, as a synchronous communication technology, may only be used for telehealth services when all of the elements of a bona fide health care visit meeting the standard of care are performed. Telephone calls that are routine or simply involve communication of information without patient interaction do not constitute a telehealth service.

(4) If a health care professional determines at any time during the provision of telehealth services that a telehealth visit will not meet the standard of care for the medical condition of the patient or if additional in-person care is necessary, the health care professional shall do all of the following:

(a) The health care professional shall immediately schedule the patient for an in-person visit with the health care professional and promptly conduct

that visit or refer the patient for an in-person visit with one of the following licensed health care professionals who can provide the services in-person that are appropriate for the patient and the condition for which the patient presents:

(i) another health care professional with whom the health care professional has a cross-coverage agreement,

(ii) in the case of a physician, a physician assistant with whom the physician has a supervision agreement or a certified nurse practitioner with whom the physician has a standard care arrangement; or

(iii) in the case of a physician assistant, a physician with whom the physician assistant has a supervision agreement.

(b) The health care professional shall document the in-person visit or the referral in the patient's medical record.

(C) A health care professional must comply with all standard of care requirements to provide telehealth services to a patient including but not limited to:

(1) The health care professional shall verify the patient's identity and physical location in Ohio and communicate the health care professional's name and licensure information to the patient;

(2) The health care professional shall obtain the patient or the patient's parent or guardian's informed consent for treatment through telehealth;

(3) The health care professional shall provide the telehealth services in a manner that complies with the privacy and security requirements for the patient and their protected health information required by the law of this state and federal law. Also, the health care professional shall ensure that any username or password information and any electronic communications between the health care professional and the patient are securely transmitted and stored.

(4) The health care professional shall request the patient's consent and, if granted, forward the medical record to the patient's primary care provider or other health care provider, if applicable, or refer the patient to an appropriate health care provider or health care facility;

(5) The health care professional shall, through interaction with the patient, complete a medical evaluation that is appropriate for the patient and the condition with which the patient presents and that meets the minimal standards of care for an in-person visit, which may include portions of the evaluation having been conducted by other Ohio licensed healthcare providers acting within the scope of their professional license;

- (6) The health care professional shall establish or confirm, as applicable, a diagnosis and treatment plan, which for those health care professionals designated as prescribers in section 4729.01 of the Revised Code, includes documentation of the necessity for the utilization of a prescription drug. The diagnosis and treatment plan shall include the identification of any underlying conditions or contraindications to the recommended treatment;
- (7) The health care professional shall promptly document in the patient's medical record the patient's informed consent to treatment through telehealth, pertinent history, evaluation, diagnosis, treatment plan, underlying conditions, any contraindications, and any referrals to appropriate health care providers, including primary care providers or health care facilities;
- (8) The health care professional shall provide appropriate follow-up care or recommend follow-up care with the patient's primary care provider, other appropriate health care provider, or health care facility in accordance with the minimal standards of care;
- (9) The health care professional shall make the medical record of the visit available to the patient upon request.
- (D) A health care professional must comply with the following requirements to provide telehealth services that involve consultation with another health care professional:

  - (1) The referring health care professional shall obtain the informed consent of the patient before seeking the telehealth services consultation with the consulting health care professional;
  - (2) The consulting health care professional must meet the licensure or certification requirements in division (C) of section 4743.09 of the Revised Code; and
  - (3) The health care professionals involved in the consultation must have received and reviewed all medical records of the patient relevant to the medical condition which is the subject of the consultation before the consultation occurs.
- (E) While providing telehealth services, a health care professional that is a physician or a physician assistant who holds a valid prescriber number issued by the state medical board and who has been granted physician-delegated prescriptive authority shall comply with the following requirements regarding prescription drugs:

  - (1) the physician or physician assistant may only prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug that is not a controlled substance to a patient through the provision of telehealth services by complying with all requirements of this rule;

(2) the physician or physician assistant may only prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug to a patient that is a controlled substance through the provision of telehealth services by complying with the following requirements:

(a) federal law governing prescription drugs that are controlled substances;

(b) the requirements of this rule; and

(c) the requirements in rule 4731-11-09 of the Administrative Code.

(F) A health care professional that is a physician or physician assistant may provide the following additional telehealth services:

(1) A physician or physician assistant may provide telehealth services to a patient outside of this state if the physician or physician assistant confirms and documents in the medical record both of the following:

(a) the location of the patient; and

(b) that the laws of the state in which the patient is located permit the physician or physician assistant to provide telehealth services in that state.

(2) A physician or physician assistant may provide telehealth services through the use of remote monitoring devices provided that:

(a) the patient gives informed consent to the use of remote monitoring devices;

(b) the medical devices that enable remote monitoring have been cleared or approved by the United States food and drug administration for the specific purpose for which the physician or physician assistant are using it for the patient, and the remote monitoring devices otherwise comply with all federal requirements.

(G) A violation of any provision of this rule, as determined by the board, shall constitute any or all of the following:

(1) For a physician:

(a) "Failure to maintain minimal standards applicable to the selection or administration of drugs," as that clause is used in division (B)(2) of section 4731.22 of the Revised Code;

(b) "Selling, giving away, personally furnishing, prescribing, or administering

drugs for other than legal and legitimate therapeutic purposes," as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; or

(c) "A departure from or the failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

(2) For a physician assistant:

(a) "A departure from, or failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established," as that clause is used in division (B)(19) of section 4730.25 of the Revised Code;

(b) "Failure to comply with the requirements of this chapter, Chapter 4731, of the Revised Code, or any rules adopted by the board," as that clause is used in division (B)(2) of section 4730.25 of the Revised Code; or

(c) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731, of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4730.25 of the Revised Code.

(3) For a dietitian:

(a) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or the rules adopted by the board," as that clause is used in division (A)(1) of section 4759.07 of the Revised Code; or

(b) "A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (A)(11) of section 4759.07 of the Revised Code.

(4) For a respiratory care professional:

(a) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or the rules adopted by the board," as that clause is used in division (A)(7) of section 4761.09 of the Revised Code; or

(b) "A departure from, or failure to conform to, minimal standards of care of

similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in division (A)(10) of section 4761.09 of the Revised Code.

(5) For a genetic counselor:

(a) "Failure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board." as that clause is used in division (B)(2) of section 4778.14 of the Revised Code;

(b) "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, Chapter 4731. of the Revised Code, or the rules adopted by the board," as that clause is used in division (B)(3) of section 4778.14 of the Revised Code; or

(c) "A departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances whether or not actual injury to the patient is established," as that clause is used in division (B)(4) of section 4778.14 of the Revised Code.