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## Client Alert: Guidance for North Carolina Health Care Providers Practicing Telemedicine

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Terence S. Reynolds

### MEDIA CONTACT

Wendy M. Byrne  
wbyrne@shumaker.com

During the current COVID-19 pandemic, more and more health care providers are using telemedicine to evaluate, diagnose, and treat patients. Below are the relevant guidelines that all North Carolina Health Care Providers who are involved in telemedicine should be aware of.

### AMA Guide for Telemedicine

The American Medical Association (AMA) has prepared a guide to assist with expediting the implementation of telemedicine in the wake of COVID-19. The two most important recommendations within the guide are: (1) to check with your malpractice insurance carrier to ensure your policy covers telemedicine treatment; and (2) familiarize yourself with payment and policy guidelines specific to various telemedicine services. On this second point, it is important to identify a telemedicine vendor that best fits with your practice, including compatibility with your electronic health record ("EHR") software, HIPAA compliance (including data ownership), and telehealth functionality within that software. The North Carolina Medical Board, your specialty-specific medical society, and the American Telemedicine Association can provide guidance on the best vendor options for your practice.

It is important to ensure that you are still documenting telehealth visits, preferably within your existing EHR, to ensure patient records remain current and accurate. It is also important to receive advance consent from your patients, which you should maintain with your patients' records, prior to commencing any telemedicine interactions. Your technology vendor should support electronic consent within the telemedicine application or website. These consents should preferably explain the limitations with telemedicine, including the lack of complete diagnostic testing, and that, if a patient's condition does not improve or worsens, the patient should be seen in-person by a medical provider – either by their primary care provider or to report to the closest emergency department.

The AMA's guide also provides policy, coding, and payment advice to assist with state law and regulation compliance, including billing compliance, licensure compliance in the event out-of-state patients are treated, CMS Medicare requirement waivers, and other relevant topics and resources.

While it is always our recommendation that our clients operate their practices in compliance with regulatory

requirements, it should be noted that, due to the current circumstances of the COVID-19 pandemic, the federal government has announced that regulatory compliance enforcement discretion will be exercised, and HIPAA non-compliance penalties will not be imposed on physicians in connection with the good faith provision of telehealth during the COVID-19 national public health emergency.

- [AMA Quick Guide Telemedicine Practice Link](#)

### **North Carolina Physicians**

In March of 2019, the North Carolina Medical Board updated its Position Statement on telemedicine, which offers guidance for providing medical services via telemedicine.

The Board cautions that physicians providing care to North Carolina patients via telemedicine will be held to the same established standard of care as those practicing in traditional in-person medical settings. Prior to providing telemedicine services, the Board suggests that physicians provide a disclaimer to patients identifying any unique limitations to providing services via telemedicine.

To avoid fraudulent activity or the improper disclosure of confidential patient information, it is important for physicians to properly verify the identity of patients prior to any telemedicine encounter. The Board suggests a physician using telemedicine should verify the identity and location of the patient, as well as provide the patient with their name, location, and professional credentials.

The Board requires its licensees to use accepted medical practices to evaluate a patient via telemedicine prior to diagnosing or treating the patient. Such practices include obtaining patient history, conducting a mental status evaluation and physical examination, and completing appropriate diagnostic and laboratory testing. The Board stresses that a simple questionnaire without an appropriate evaluation could be a violation of law and/or subject the physician to discipline by the Board.

In regard to prescribing medication, it is the position of the Board that it is not consistent with the current standard of care to prescribe controlled substances for the treatment of pain where the only patient encounter is by means of telemedicine and there are no other licensed health care providers involved in the initial and ongoing evaluations of the patient. The prescribing of controlled substances via telemedicine for conditions other than pain should comply with all relevant federal and state laws.

The Board further advises that physicians treating patients via telemedicine must maintain complete records of the patient's care in accordance with the applicable standards which includes, but is not limited to, documenting all aspects of care, maintaining the medical records confidentiality, and providing a copy of the medical record to the patient in a manner consistent with state and federal law. Additionally, the Board recommends that any informed consent documents disclaiming risks and limitations of telemedicine should be included in the medical records.

The Board's Position Statement on telemedicine also provides that any physician using telemedicine to regularly provide medical services to patients located in North Carolina should be licensed to practice in North Carolina. However, in a March 10, 2020 Executive Order, Governor Roy Cooper temporarily waived North Carolina licensure requirements for health care personnel who are licensed in another state to provide health care services within the Emergency Area. In response to the Executive Order, the Board voted to allow recently retired or inactive licensees who inactivated his or her North Carolina license within the past 24 months to quickly obtain a temporary license.

*North Carolina Medical Board Resources Links:*

- Telemedicine
- Retirees

### North Carolina Nurses and Advanced Practitioners

A previously existing North Carolina Nursing Board Position Statement on telehealth, last edited in October of 2018, provides that telehealth/telenursing modalities are within the legal scope of practice for licensed nurses. Licensed nurses practicing via telehealth are required to be licensed or hold the privilege to practice in the state where the patient is located at the time services are being provided.

Telehealth/telenursing includes all elements of an RN and LPN's respective scope of practice as delineated by North Carolina laws and rules.

Roles listed for RN and LPN in the Position Statement include:

1. Report and record pertinent information and communications in relation to all aspects of nursing care provided.
2. Accept responsibility and accountability for client care via telehealth/telenursing modalities only if possess the documented education and validated competence necessary to safely deliver nursing services.
3. Accept orders for medical interventions via telehealth/telenursing from nurse practitioners, certified nurse midwives, physicians, and physician assistants authorized to make medical diagnoses and describe medical regimes.

APRNs may also practice within their designated scope of practice set forth in North Carolina law and rules using telehealth/telemedicine methods.

- [North Carolina Board of Nursing Link](#)

Please do not hesitate to contact Timaura E. Barfield at [tbarfield@shumaker.com](mailto:tbarfield@shumaker.com) or 704.945.2960, or Terence S. Reynolds at [treynolds@shumaker.com](mailto:treynolds@shumaker.com) or 704.945.2909, or Scott M. Stevenson at [sstevenson@shumaker.com](mailto:sstevenson@shumaker.com) or 704.945.2180, if you have any questions.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at [shumaker.com](http://shumaker.com). We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock.