

## 8 Tips for Navigating New Wisconsin Telemedicine Rules

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The ***State of Wisconsin Medical Examining Board*** recently held a hearing to consider a proposed rule that, if enacted, would provide the first administrative requirements around the use of telemedicine services in Wisconsin. Wisconsin's current administrative code is silent as to telemedicine practice. Some of the provisions in the proposed rules would impose operational, business, and clinical restrictions on the use of telemedicine in the Dairy State. The proposed rules address the establishment of a valid physician-patient relationship, the requirement for Wisconsin medical licensure, and the use of appropriate technology.

Here are 8 steps telemedicine providers and companies should take when looking to enter the Wisconsin market if the proposed rule is implemented without changes:

1. **Ensure appropriate physician licensure.** Physicians providing telemedicine to diagnose and treat patients located in Wisconsin must hold an active Wisconsin medical license. Health care providers should review the licensing laws in Wisconsin and understand whether certain specialties have specific requirements to ensure that, pursuant to the rule's mandate, providers using telemedicine operate within their scope of practice, including their education, licensure, and certification.
2. **Establish a physician-patient relationship.** Every initial encounter should start with a proper procedure: (1) the physician should verify the identity of the patient seeking care, and (2) the physician should ensure that the patient can verify the identity, licensure status, certification, and credentials of the health care provider.
3. **Reinforce standard of care obligations.** The new rule explicitly requires that a physician using telemedicine be held to the same standard of care and professional ethics as a physician that is using traditional in-person methods. A valid physician-patient relationship in accordance with the standard of care may be established through one of three methods: 1) an in-person medical interview and physical examination where the standard of care requires an in-person encounter; 2) a consultation with another physician or health care provider who has an established relationship with the patient; or 3) telemedicine, if the standard of care does not require an in-person encounter and is in accordance with evidence-based standards of practice and telemedicine practice guidelines. The rule specifically references nationally recognized medical specialty organizations that have established telemedicine practice

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guidelines that address the clinical and technological aspects of telemedicine for many medical specialties.

4. **Evaluate that the technology used will be sufficient to establish an informed diagnosis.** A medical interview and physical examination may be performed through telemedicine under the parameters of the new rule if the technology utilized is sufficient to establish an informed diagnosis as though the interview and diagnosis had been conducted in-person. The rule specifically states that the use of Internet questionnaires with a static set of questions, to which the patient responds with a static set of answers, is not sufficient for conducting an acceptable medical interview and examination for the provision of treatment. Similarly, audio-only telephone, e-mail messages, and faxes are expressly excluded from the definition of “telemedicine” in the new rule. This does not mean, however, that the technology must be entirely interactive; the definition includes asynchronous store-and-forward technologies and remote monitoring in addition to real-time interactive services. In addition to category type, the technology must meet certain requirements for safety, privacy, and quality (e.g. sufficient size, resolution, and clarity to effectively provide services) under the new rule.
5. **Supervise nonphysician health care providers appropriately.** The rule permits a physician to rely upon or delegate the provision of telemedicine services to a nonphysician health care provider if two conditions are met: 1) systems are in place to ensure that the nonphysician health care provider is qualified and trained to provide that service within the scope of his or her practice; and 2) the physician is available in person or electronically to consult, particularly in the case of injury or an emergency.
6. **Maintain patient medical records.** Telemedicine providers must adhere to [Wisconsin laws](#) governing the requirements for patient medical records. A telemedicine physician must note in the patient record when telemedicine is used to provide diagnosis and treatment and must ensure that the patient receives, upon request, a summary of each telemedicine encounter. The physician must also provide a copy of the medical record to the patient’s medical home or treating physician(s).
7. **Ensure patient communications remain secure and confidential.** The new rule requires telemedicine providers to establish written protocols that address the following factors: privacy; health care personnel who will process messages; hours of operation; types of transactions that will be permitted electronically; required patient information to be included in the communication; archiving and retrieval; and quality oversight mechanisms. These protocols must be periodically evaluated for currency and readily available for review. They should also address privacy and security measures to ensure that patient-identifiable information remains confidential, including the use of password protection, encryption, or other authentication techniques.
8. **Limit links to other sites and avoid preferred relationships.** While telemedicine services may provide links to general health information sites to enhance health education, physicians may not benefit financially from providing such links or from the services or products marketed by such links. In addition, physicians should be aware of any implied endorsements of information, services, or products offered from such sites. While physicians may prescribe medications to a patient via telemedicine in accordance with the rule, physicians are expressly prohibited from maintaining a preferred relationship with any pharmacy.

The proposed telemedicine rules are not the only recent development in Wisconsin. Last month, Wisconsin became the 12th state to adopt the Federation of State Medical Boards' Interstate Medical Licensure Compact, which aims to expedite physician licensing for uses like telemedicine in states that adopt the compact. Member states now include Alabama, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia, and Wyoming.

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