

UPDATED
Texas Medical Board (TMB) Frequently Asked Questions
(FAQs) Regarding Telemedicine During Texas Disaster
Declaration for COVID-19 Pandemic

***Disclaimer – The COVID-19 Disaster is a fluid and rapidly evolving situation. Please check these FAQs often as, events may warrant frequent updates.**

September 1, 2020
(Question #9 Updated)

1. What is telemedicine?

Telemedicine is a health care service:

- Delivered by a physician licensed in Texas, or a health professional acting under the delegation and supervision of a physician licensed in Texas, acting within the scope of the physician's or health professional's license.
- Provided to a patient at a different physical location than the physician or health professional
- Provided using telecommunications or information technology.

More information on telemedicine requirements can be found in Texas Occupations Code 111 and Texas Administrative Code, Title 22, Chapter 174.

2. How has telemedicine changed due to the Governor's disaster declaration?

Governor Abbott approved TMB's request to temporarily allow the use of telephone-only encounters to establish a physician-patient relationship. This expanded use of telemedicine may be used for diagnosis, treatment, ordering of tests, and prescribing for all conditions. ([See announcement.](#)) This waiver of the existing requirements is meant to help Texas patients and allow for greater social distancing during this time.

The temporary expansion to include audio-only encounters by telephone extends to encounters initiated by patients (or patient's proxy decision makers) only.

These temporary relaxed regulations for telemedicine, including the Texas Department of Insurance rule on payments, should be used appropriately to serve public health needs and the welfare of patients.

3. What types of care can be provided by a phone-only encounter?

Physicians may now use phone-only encounters to establish a doctor-patient relationship. Physicians may also continue to do follow-up care by phone-only encounters.

Texas Medical Board regulations on advertising remain in effect. False, misleading or deceptive statements violate the Board's disciplinary guidelines. Board rules prohibit uninvited solicitation, such as door to door solicitation of a given population, cold-calling, or other such tactics, for "drumming" patients.

4. Does the standard of care still apply in a telemedicine visit during the disaster declaration?

Yes, the standard of care applies whether a patient is seen via telemedicine or an in-person visit. The standard is no different whether the encounter is via technology or in-person. To that end, physicians should always attempt to ensure patient continuity of care.

5. Can a Physician Assistant (PA) or Advanced Practice Registered Nurse (APRN) perform telemedicine, since the disaster declaration?

Yes, the emergency measures have not changed these requirements. PAs and APRNs can perform telemedicine under the delegation of a Texas-licensed physician. Delegate-performed telemedicine visits are also included in the Governors' declaration, which allows the use of telephone-only encounters to establish a physician-patient relationship. The delegate must follow all the laws and rules regarding telemedicine that have not been waived due to the disaster declaration.

6. What are the requirements for documenting a telemedicine visit?

The medical record standards do not change based on the setting by which the patient is seen. Items such as relevant findings, tests ordered, treatment recommendations, and consent should be documented. Verification of a patient's identity is extremely important in a telephone-only encounter. For example, collection of a patient's driver license number and comparison to practice records is a possible method of identification.

Appropriate and detailed medical records are also needed to support billing for services. Board regulations regarding improper billing remain in effect.

“Improper” means the billing is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards. Complete medical record documentation guards against such accusations.

If a physician determines that telemedicine treatment is needed due to the COVID-19 pandemic, the physician may issue a refill prescription to established chronic pain patients for a controlled substance prescription utilizing telemedicine. For such chronic pain treatment, the provider must document:

- Whether the patient is being seen due to the COVID-19 pandemic or under the authority of other state or federal law which would allow the physician to issue a controlled substance prescription for the treatment of chronic pain; and
- Why a telemedicine visit was necessary instead of an in-person visit.

For more information, please see Question #9, below.

In addition, whether treating chronic pain patients via telemedicine or through an in-person visit, [Chapter 170 of the Board Rules](#), includes additional documentation. These documentation requirements apply to chronic pain patients whether they are seen via telemedicine or in-person.

Finally, always review the elements of the CPT code you expect to use and reflect those in the medical record.

7. How does a physician get a patient’s consent if using telemedicine?

A patient may give written or oral consent to the physician via telemedicine. This consent must be documented in the patient’s medical record.

8. What about HIPAA and telemedicine?

President Trump announced on March 17, 2020 that the federal government would temporarily not enforce penalties associated with telemedicine and HIPAA for certain communication platforms. As such, telemedicine is now available through never before allowed mediums, such as FaceTime, without penalty. However, protecting patient’s health information is still important and physicians must take reasonable steps to avoid unauthorized disclosure of patients’ information. This provision does not extend to public platforms such as TikTok, Twitch, Facebook Live, Periscope, or other platforms that are public facing. For more information, see [the U.S. Health and Human Services website](#).

9. What kinds of prescriptions can a physician do via telemedicine?

Chronic pain treatment with controlled substances is not allowed via telemedicine, subject to limited exceptions. Physicians may prescribe controlled substances via telemedicine for chronic pain patients if:

- The patient is an established chronic pain patient; and
- The patient is seeking a refill of an existing prescription;

In addition, the patient can only be seen via telemedicine if:

- The physician determines that the telemedicine treatment is needed due to the COVID-19 pandemic; or
- The prescription is otherwise allowed under state or federal law.

Finally, the physician must determine that a telemedicine visit as opposed to an in-person visit is necessary. Some factors to consider when deciding whether to see a chronic pain patient via telemedicine vs. an in-person visit include:

- The date of the patient's last in-person visit;
- Patient co-morbidities; and
- Occupational related COVID-19 risks.

Other factors may also be considered.

This exception to the prohibition against prescribing controlled substances via telemedicine for the treatment of chronic pain is allowed **until November 1, 2020 (11:59 pm)**, or until the Governor's disaster declaration of March 13, 2020 in response to the COVID-19 pandemic expires, whichever is shorter.

Refills for other medications can be done via technology as long as there is an existing doctor-patient relationship. This is more important than ever in view of COVID-19. A PMP check is required for the four listed medications of opioids, benzodiazepines, carisoprodol, and barbiturates.

For more information on federal requirements, check [here](#).

10. What does the Texas Department of Insurance emergency telemedicine rule do?

Under the Texas Department of Insurance (TDI) [emergency rule](#), state-regulated health insurers and health maintenance organizations must:

- Pay in-network health professionals at least the same rate for telemedicine services as for in-person services, including covered mental health services.
- Cover telemedicine services using any platform permitted by state law.
- Not require more documentation for telemedicine services than they require for in-person services.

The rule does not affect how the claim for the service should be coded or submitted. Claims must use the codes reflecting the services actually provided and the method of care delivery actually used.

For more details, including information about which health plans are subject to this rule, see TDI's [frequently asked questions on the rule](#).

11. How does a physician bill for telemedicine?

Claim and billing questions for state-regulated insurance plans should be directed to the insurance plan provider. The standard of care and medical record documentation requirements for physicians are the same whether the physician provides care for the patient in-person or via telemedicine.

Your patient's plan ID card will have the letters "TDI" or "DOI" if it is state regulated and subject to the TDI [emergency rule](#). Otherwise, a physician should contact the plan administrator listed on the patient ID card for information about whether telemedicine is covered by the plan.

Claim and billing questions for Medicaid clients should be directed to the Texas Health and Human Services Commission, which administers the program.

Physicians must submit claims in accordance with CPT and other coding requirements for the services and through the modes of delivery actually provided. There are several different CPT codes required for in-person visits, telemedicine services, and telephone consultations, and those should accurately reflect the mode of delivery.

All claims related to testing or treatment for COVID-19 must include the correct COVID-19 modifiers based on federal guidance when available. Check [here](#) for updates.

There are specific codes that should be used for telephone-only consultations (different from those for audio/visual telemedicine services). Physicians should review CPT coding requirements as well as the billing guidelines for each health insurer and ensure that they are using the right code for the right service, plus any required modifiers or place of service codes.

Examples of CPT codes that can be billed as a telemedicine office visit include:

- New patient visit codes: 99201 99202 99203 99204 99205
- Established patient visit codes: 99211 99212 99213 99214 99215

Insurance plans may also ask for the claim to include a modifier (either -GQ, GT, or -95) and a place of service code (2 if the service is provided by telemedicine).

Telephone specific evaluation and management CPT codes are, similar to office visit E&M codes, partially time based. They include:

- 99441 (5-10-minute encounter),
- 99442 (11-20-minute encounter)
- 99443 (21-30-minute encounter).

CMS adopted two CPT codes, (U0001) and (U0002), for COVID-19 *testing*. Some commercial plans, but not all, will accept CPT code 87635.

***Note: On March 30, 2020, CMS expanded the types of services that can be offered by telehealth and provided billing codes for these services. ([See announcement.](#))**

This is provided for general information purposes only. The codes to be used and information on submission are changing quickly. Please refer to the information each health insurer has made available to ensure accurate billing and check often with the CMS website for Medicare.

TMB rules require all physicians using telemedicine medical services in their practices to adopt protocols to prevent fraud and abuse through the use of telemedicine medical services.

12.How does a physician bill for a telemedicine visit to establish the doctor-patient relationship?

If the telemedicine visit was to establish a new patient, then the physician must follow the standard of care and medical documentation requirements for such a visit and should bill for that type of visit by telephone or telemedicine, as applicable. Items such as relevant findings, tests ordered, treatment

recommendations, consents, etc. are the types of information needed in a medical record. Again, always review the elements of the CPT code you expect to use and reflect those in the medical record. The billing physician is accountable for the correct submission of claims for payment and the documentation to support the claim.

13. How does a physician bill for a telemedicine consultation for follow-up care?

If the telemedicine consultation was for follow-up care, then the physician must follow the standard of care and medical documentation for such a visit and should bill for that type of visit. Items such as relevant findings, tests ordered, treatment recommendations, consents, etc. are the types of information needed in a medical record.

Once again, always review the elements of the CPT code you expect to use and reflect those in the medical record. The billing physician is accountable for the correct submission of claims for payment and the documentation to support the claim.

14. What phone calls are not billable?

To be eligible for payment, services provided through a telemedicine visit, including audio-only telephone calls, must be medical services that would be billable if provided in person. Telephone calls with office staff and other calls for administrative purposes, including requests for refills, scheduling, payment or billing issues are not billable services. It is also important that physicians not double bill for services. For example, many follow-up visits are considered part of a global package or are considered to be already covered by the fact an in-person visit takes place shortly before or after the telemedical encounter. Please review the CPT code in question for those encounters which may not be billed separately from a recent (or subsequent) office visit.