Potential Revisions to North Carolina Medical Board Telemedicine Position Statements on the Horizon

By Leah D’Aurora Richardson and Richard P. Church

The Policy Committee of the North Carolina Medical Board (“NCMB”) issued proposed revisions to its “Telemedicine” and “Contact with Patients before Prescribing” position statements on September 23, 2014. In short, the proposed revisions:

- Clarify that there is one standard of care for providers based on their specialty, and telemedicine providers are subject to the same standard of care as non-telemedicine providers;
- Revise the standard regarding when telemedicine providers need not conduct an in-person examination, such that the licensee need not conduct an in-person examination if he or she “employs technology and peripherals sufficient to provide an examination that is equal or superior to an in-person examination”;
- Clarify that it is the telemedicine provider’s responsibility to verify the identity and location of the patient;
- Specifically state that prescribing controlled substances for pain treatment via telemedicine is disfavored; and
- Specifically add the potential for a more general ability for telemedicine providers to prescribe for a patient when not personally examining the patient by including language that prescriptions may be made “where the threshold information to make any accurate diagnosis has been obtained.”

The proposed changes are in follow up to an NCMB-hosted roundtable discussion on August 20, 2014, to gather feedback from stakeholders—including private practitioners, academic medical centers, government officials, and insurers—regarding its current telemedicine position statement. The comment period is open until November 5, 2014.

Proposed Telemedicine Revisions

The NCMB has proposed revisions to the following subsections of the current position statement:

Standard of Care. The proposed revisions reemphasize that current standards of medical practice in North Carolina, as well as professional accountability and consequences for failing to meet such standards, apply equally to the traditional practice of medicine and the practice of medicine via telemedicine. This includes current standards regarding practice improvement and outcome monitoring.

In-Person Evaluations Not Required When Examination is “Equal or Superior to an In-Person Examination.” The NCMB has proposed to remove language that required an examination via telemedicine provide “the same information…as if the exam had been performed face to face,” and instead suggests that an physical examination would not be required if he or she
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“employs technology and peripherals sufficient to provide an examination that is equal or superior to an in-person examination.” This change raises a number of questions as to how this standard may be satisfied. In this regard, it is noteworthy that the revisions to the position statement did not remove a statement that telemedicine may require another licensed professional to be available to provide physical findings in order to complete an appropriate assessment, again suggesting that information typically obtained via a physical examination may still be required.

Accordingly, while it could be interpreted that practitioners have more flexibility to determine treatment via telemedicine, it also provides a high standard for telemedicine providers to meet without specifying how such a standard would be satisfied.

**Patient and Practitioner Identification.** The revisions also propose to no longer require that a practitioner practicing telemedicine have “some means of verifying” patient identity, but rather simply require that a practitioner should both verify the identity and location of a potential patient and provide the patient his or her own name, location and professional credentials.

**Prescribing.** The proposed position statement contains a new “Prescribing” section, which requires practitioners to practice telemedicine in accordance with the NCMB’s prescribing policy (discussed further below) and specifically cautions practitioners that prescribing controlled substances via telemedicine for the treatment of pain is “disfavored.”

**Medical Records.** Proposed additions serve as a reminder that the current standards of care regarding communication and the transfer of medical records to a primary care provider or facility also apply to practitioners practicing telemedicine.

**Contact with Patients before Prescribing**

As in the telemedicine position statement, the NCMB statement on prescribing has traditionally emphasized the standard of care as the guiding principal with respect to prescribing medications. While the NCMB continues to state that prescribing under certain circumstances is inappropriate, the proposed changes include an acknowledgement that prescribing drugs to patients is permissible if an evaluation is performed “to the extent necessary for an accurate diagnosis.” In addition, the proposed changes would explicitly state that telemedicine is included in the list of examples of circumstances in which prescribing without an in-person, physical examination may be appropriate. Specifically, the proposed revisions allow “an appropriate prescription in a telemedicine encounter where the threshold information to make an accurate diagnosis has been obtained.” Again, this raises questions as to how such a standard might be met.

**Implications**

The NCMB appears to be opening the door for telemedicine providers to potentially be able to meet the standard of care without an in person examination (but rather, through the appropriate use of technology); however, at the same time, it is reaffirming that the standard of care is not different. Ultimately, this appears to place the responsibility squarely on practitioners to distinguish those situations in which treatment of a patient via telemedicine is appropriate based on a patient’s clinical presentation (and how such telemedicine occurs) and when it is not.
The short, yet significant, revisions to the prescribing position statement contemplate that prescribing for a patient with whom the practitioner has never had a face-to-face visit may be permitted if the practitioner determines that sufficient information has been obtained. However, it leaves open the question as to what constitutes obtaining sufficient information.

Moreover, the NCMB specifically stated that prescribing controlled substances via telemedicine is disfavored. In addition, NCMB has not changed its position with regards to prescribing based solely on an Internet questionnaire or a telephone conversation, which the proposed statement still states is inappropriate.

In sum, the proposed revisions to both position statements potentially provide practitioners additional flexibility, but the premise remains unchanged: the use of telemedicine to treat and diagnose illness and prescribe to patients is appropriate in cases in which a practitioner determines that he or she can meet the standard of care and appropriately care for a patient from a distance, except when it involves controlled substances.

While flexibility will be welcomed by practitioners, clarity is equally important. Hopefully, following the comment period, the NCMB will attempt to draw more bright-line standards.

Comments

The proposed revisions to the telemedicine and prescribing position statements can be viewed here and here.

The NCMB is soliciting comments regarding the proposed revisions to both position statements. Comments may be emailed to telemedicine@ncmedboard.org. Please indicate “telemedicine” in the subject line. Comments are due by the end of business on November 5, 2015.

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