

**NOTICE OF INTENT**  
**Department of Health and Hospitals**  
**Board of Medical Examiners**  
**Physician Licensure and Practice;**  
**Telemedicine—(LAC 46:XLV.408, 7503,**  
**7505, 7507, 7509 and 7513)**

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 *et seq.*, and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, the Board intends to amend its Rules governing the use of telemedicine as to patients who are located in this state, LAC 46XLV.408 and .7501 *et seq.* The proposed amendments are needed to conform the Board's telemedicine rules to Acts 630 and 252 of the 2016 Regular Session of the Louisiana Legislature. Among other items, the proposed changes: remove the requirement that a physician practicing medicine by telemedicine maintain a physical practice location in this state or have an arrangement with physician who does (408A, 408D.3; 7503A, 7507A.1.-2); authorize the use of telemedicine by interactive audio, without the need for video, provided certain conditions are satisfied (7503A, 7505B); delete the requirement for at least one in-person visit by a physician who prescribes controlled substances by telemedicine for patients being treated in a healthcare facility required to be licensed by this state, which possesses a current registration with the U.S. Drug Enforcement Administration (7513C.3.a); provide that a physician refer a patient to another physician in this state or arrange for follow-up care within the state if indicated (7507B.2.d); and better provide for Board access to patient records (7509A.5). The amendments also clarify the status of a telemedicine permit (408A), and provide for documentation of telemedicine encounters (7509A.1).

**TITLE 46**  
**PROFESSIONAL AND**  
**OCCUPATIONAL**  
**STANDARDS**

**Part XLV. Medical Professions**

**Subpart 2. Licensure and**  
**Certification**

**Chapter 3. Physicians**

**Subchapter H. Restricted**  
**Licensure, Permits**

**§408. Telemedicine Permit Qualifications,**  
**Procedure, Issuance, Expiration and**  
**Renewal**

A. Requirement for Permit/Qualifications. A physician who does not possess a Louisiana medical license shall not engage in the practice of medicine in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. A telemedicine permit is a limited license that provides lawful authority to a physician who does not hold a current, unrestricted Louisiana medical license to practice telemedicine with respect to patients located in this state. To be eligible for a telemedicine permit an applicant shall:

A.1.-C. ...

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1.-2. ...

3. the primary location(s) from which telemedicine will be utilized by the applicant;

D.4.-G. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009), amended 41:2144 (October 2015), LR

**Title 46**  
**PROFESSIONAL AND**  
**OCCUPATIONAL**  
**STANDARDS**

**Part XLV. Medical Professions**

**Subpart 3. Practice**

**Chapter 75. Telemedicine**

**Subchapter A. General**  
**Provisions**

**§7503. Definitions**

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

\* \* \*

*Medical Practice Act or the Act*—R.S. 37:1261-92, as may from time to time be amended.

*Physician*—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or a telemedicine permit duly issued by the board.

\* \* \*

*Telemedicine*—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither an electronic mail message between a physician and a patient, or a true consultation constitutes *telemedicine* for the purposes of this Part. A physician practicing by telemedicine may utilize interactive audio without the requirement of video if, after access and review of the patient's medical records, the physician determines that he or she is able to meet the same standard of care as if the healthcare services were provided in person.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical

Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015), LR

**§7505. Patient Relationship; Standard of Care; Location of Participants**

A. ...

B. **Standard of Care.** The practice of medicine by telemedicine, including the issuance of any prescription via electronic means shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message does not satisfy the standards of appropriate care.

C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015) LR

**§7507. Prerequisite Conditions; Disclosures**

A. The practice of medicine is deemed to occur at the location of the patient. Therefore, no physician shall utilize telemedicine to provide medical services to patients located in this state unless the physician:

1. holds an unrestricted Louisiana medical license; or
2. holds a telemedicine permit as provided in §408 of these rules.

B. A physician utilizing telemedicine with respect to patients located in this state shall have:

1. ...
2. if required by the standard of care applicable to the diagnosis or treatment of the patient's complaints in a traditional (face-to-face) setting, the ability:

a.-c. ...

d. to refer the patient to another physician in this state or arrange for follow-up care within this state as may be indicated for that purpose.

C.1.-6. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2145 (October 2015), LR

**§7509. Patient Records**

**A. Patient records shall be:**

1. created and maintained for every telemedicine visit according to the same standards of care as in an in-person visit. The record shall clearly reflect and state that the patient encounter occurred by telemedicine;

2.-3. ...

4. made available to the patient or a physician to whom the patient may be referred within a reasonable period of time; and

5. made available to the board upon request.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended 41:2146 (October 2015), LR

**§7513. Prohibitions**

**A.-B. ...**

**C. No physician shall utilize telemedicine:**

1.-2. ...

3. to authorize or order the prescription, dispensation or administration of any controlled substance unless;

a. the physician has had at least one in-person visit with the patient within the past year; provided, however, the requirement for an in-person visit shall not apply to a physician who holds an unrestricted license to practice medicine in this state and who practices telemedicine upon any patient being treated at a healthcare facility that is required to be licensed pursuant to the laws of this state and which holds a current registration with the U.S. Drug Enforcement Administration;

C.3.b.-F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009), amended LR 41:2146 (October 2015), LR

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated

that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

**Provider Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

**Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4:00 p.m., November 21, 2016.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 28, 2016 at 10:30 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Eric D. Torres  
Executive Director