



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Damean W.E. Freas, D.O., Chair

NOTICE

Pursuant to the Governor's Proclamation Number 21-06-15-01, End of the State of Emergency

(<https://governor.maryland.gov/wp-content/uploads/2021/06/Termination-Roadmap-6.15.21.pdf>), the state of

emergency will be lifted on **August 15, 2021**, and all COVID-19 exceptions from and modifications to Maryland law discussed in these Frequently Asked Questions will be **terminated** on that date.



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Telehealth – Maryland State of Emergency – COVID-19 **Frequently Asked Questions**

The Maryland Board of Physicians encourages Maryland practitioners regulated by the Board of Physicians to consider how telehealth might be added to their practice during the Maryland State of Emergency.

Q: May I practice telehealth in Maryland without a Maryland license during the Maryland State of Emergency?

A: For the duration of the Maryland State of Emergency, health care practitioners who have an active license in good standing in another state or the District of Columbia may practice telehealth without a Maryland license to provide continuity of care to existing Maryland patients during the state of emergency for the purpose of implementing social distancing. Please see <https://www.mbp.state.md.us/forms/NoticeExecOrder.pdf>

Also, during the state of emergency out-of-state licensees may be able to practice at a Maryland healthcare facility. Please see <https://www.mbp.state.md.us/forms/FAQsExecOrder.pdf> for guidance regarding the Executive Order concerning out-of-state licensees.

Q: What rules must I follow to be reimbursed for Telehealth Services during the Maryland State of Emergency?

A: The Board does not provide reimbursement advice. However, the Governor's April 1, 2020 Executive Order "To further Authorize Additional Telehealth Services" (attached) has the following requirements to qualify for reimbursement from the Maryland Medical Assistance Program for telehealth, telecommunications technology, and audio-only calls or conversations with medical assistance or behavioral health service recipients:

- I. The health care services delivered are:
 - a. Clinically appropriate; and
 - b. Within the scope of practice of the health care practitioner; and
- II. The health care practitioner:
 - a. Is licensed, certified, or otherwise authorized by law to provide health care services in the state;
 - b. Complies with the same standards of practice that are applicable to the provision of health care services in in-person health care settings;
 - c. Documents in a patient's medical record the health care services provided through telehealth or audio-only calls or conversations, according to the same documentation

- standards used for in-patient health care services; and
- d. If using audio-only calls or conversations, can interact with the patient at the time the health care service is provided.
- III. A health care practitioner authorized to use telehealth or audio-only calls or conversations may establish a practitioner–patient relationship through an exchange of information between a patient and a health care practitioner, if:
- a. The health care practitioner:
 - b. Verifies the identity of the patient receiving health care services through telehealth or audio-only calls or conversations;
 - c. Discloses to the patient the health care practitioner’s name, contact information, and the type of health occupation license held by the health care practitioner;
 - d. Obtains oral or written consent from the patient or from the patient’s parent or guardian if state law requires the consent of a parent or guardian; and
 - i. Any audio-only calls or conversation occur in real time.
- IV. Before providing treatment or issuing a prescription through telehealth or audio-only calls or conversations, the health care practitioner shall perform a clinical evaluation that is appropriate for the patient and the condition with which the patient presents.
- V. A health care practitioner who through telehealth or audio-only calls or conversations prescribes a controlled dangerous substance, as defined in § 5–101 of the Criminal Law article of the Maryland Code, is subject to any applicable regulation, limitation, and prohibition in federal and state law relating to the prescription of controlled dangerous substances.

Please note that pursuant to the Governor’s June 15, 2021 Proclamation, “Terminating Various Emergency Orders,” this Executive Order shall be terminated on July 1, 2021.

Q: What privacy requirements for video-phone provider-patient interactions have changed due to the Maryland State of Emergency?

A: The requirement that a link must be a secure and private telehealth connection in accordance with state and federal law and the required use of encryption has been relaxed during the Federal and Maryland states of emergency. During the Federal and Maryland states of emergency a provider shall make good faith efforts to prevent access to data by unauthorized persons. Please refer to the latest state and federal privacy rules for further information, including the following website for information about HIPAA: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

Additionally, the Governor’s April 1, 2020 Executive Order “To further Authorize Additional Telehealth Services” (attached) states that the effect of HG § 4-301 to 4-309 is hereby suspended in connection with the provision of health care services through the telehealth, audio-only calls or conversations, or telemedicine as defined in HG § 15-105.2. Please note that pursuant to the Governor’s June 15, 2021 Proclamation, “Terminating Various Emergency Orders,” this Executive Order shall be terminated on July 1, 2021.

Q: During the Maryland State of Emergency, may I prescribe Opioids for the treatment of pain through telehealth?

A: Yes, during the state of emergency, prescriptions for Opioids may be prescribed for pain. Please see the Office of Controlled Substances Administration frequently asked questions for more details about prescribing Controlled Dangerous Substances during the State of Emergency.

PLEASE BE ADVISED: The suspension of statutes and regulations during the state of emergency and catastrophic health emergency, as approved by the Board in its public notice, as proclaimed by the Governor in the March 16, 2020 Executive Order “Relating to Various Health Care Matters,” and as proclaimed by the Governor in the April 1, 2020 Executive Order “To further Authorize Additional Telehealth Services” will not be considered as a basis for making these temporary changes permanent.

Telehealth – General Frequently Asked Questions

Please review these frequently asked questions about the Board’s regulations regarding Telehealth. The Board’s Telehealth Regulations are in the Code of Maryland Regulations at 10.32.05 http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=10.32.05.*. Please note, while these FAQs reflect recent legislative changes, the regulations do not.

Please note that these frequently asked questions only address the Maryland Board of Physicians’ regulations and do not constitute legal advice.

Is Telehealth Allowed for Treating Patients?

Q: May I practice telehealth in Maryland without a Maryland license?

A: Generally, you must be licensed in Maryland to treat patients in Maryland. For the duration of the Maryland State of Emergency, health care practitioners who have an active license in good standing in another state or the District of Columbia may practice telehealth without a Maryland license to provide continuity of care to existing Maryland patients during the state of emergency for the purpose of implementing social distancing. Health Occ. § 1-1005; COMAR 10.32.05.03.

Q: Do I need a special telehealth license to perform telehealth in the state?

A: No. You do not need a special telehealth license. A Maryland license authorizes you to perform telehealth for Maryland patients without any further authorization from the Board. COMAR 10.32.05.03.

Q: I have a Maryland license; can I treat existing patients who reside outside of Maryland via telehealth, so that they do not have to come into my office?

A: Please consult the statutes and regulations in the state where the patient is located.

Q: May I perform telehealth services via video-phone?

A: Yes. Generally, the link must be a secure and private telehealth connection as required by state and federal law and you should prevent access to data by unauthorized persons through encryption or other means. COMAR 10.32.05.04B. These requirements for a secure and private telehealth connection have been relaxed during the Federal and Maryland states of emergency. During the Federal and Maryland states of emergency you should make good faith efforts to prevent access to data by unauthorized persons. Please refer to the following website for information about HIPAA: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

Q: May I treat patients via telephone calls, emails, or faxes?

A: Yes. The Board's telehealth regulations do not apply to telephone calls, emails or fax. *See* Health Occ. § 1-1001(E)(3). COMAR 10.32.05.02B (8) (b). For the duration of the state of emergency, the April 1, 2020 Executive Order allows treatment and Medicaid reimbursement for audio-only calls and conversations and asynchronous telehealth. *See* Executive Order Number 20-04-01-01. Such interactions may not be reimbursable after the state of emergency is lifted, but are not prohibited or otherwise regulated by the Board's telehealth regulations.

Please Note: The Board does not regulate reimbursement. Changes in reimbursement for the Maryland Medical Assistance Program or for those in a program of the Behavioral Health Administration have been authorized by an Executive Order of the Governor "To further Authorize Additional Telehealth Services" (attached). *See* Executive Order Number 20-04-01-01 (attached). Please see that Executive Order and the links and contact list at the end of this document for further questions about reimbursement for Medicare, Medicaid and Insurance Companies. Please note that pursuant to the Governor's June 15, 2021 Proclamation, "Terminating Various Emergency Orders," that Executive Order shall be terminated on July 1, 2021.

Q: What telehealth modalities may I use?

A: You may use all telehealth modalities, including synchronous or asynchronous telehealth interactions. *See* Health Occ. § 1-1002.

Q: May I prescribe Opioids for the treatment of pain through telehealth?

A: Yes, but only during a declared state of emergency due to a catastrophic health emergency or if the prescription is provided to a patient in a health care facility, as defined in Health-General Article § 19-114(d)(1). You must continue to follow Federal and Maryland law relating to the prescription of Controlled Dangerous Substances. Health Occ. § 1-1003(C); COMAR 10.32.06C.

What Additional Telehealth Rules Must I Follow?

Q: What requirements must be met when performing telehealth?

A: A practitioner performing telehealth should verify the patient's identity, disclose to the patient the health care practitioner's name, contact information, and type of health occupation license, obtain oral or written consent from a patient to perform the telehealth services, utilize encryption to prevent access to data by an unauthorized person, ensure the telehealth connection is secure and complies with state and federal privacy laws, and establish safety protocols in the case of an emergency. *See* Health Occ. § 1-1002; COMAR 10.32.05.04.

Q: How should I verify the patient's identity?

A: A patient may present photo identification, or you may use any other means to identify a patient that you would accept for an in-person encounter.

Q: Why must I provide the patient with my contact information during the initial telehealth encounter?

A: Patients should be informed of the practitioner who is treating them and be able to contact the practitioner again for follow-up care. COMAR 10.32.05.04B (3).

Q: Is written patient consent required before engaging in telehealth?

A: The statute requires oral or written consent from the patient or from the patient's parent or guardian if state law requires consent of a parent or guardian. *See* Health Occ. § 1-1002.

Q: What privacy issues should I be considering?

A: Please consider whether your technology for providing telehealth services includes encryption, password protection, or other security measures to ensure confidentiality and prevent unauthorized people from accessing the confidential visit. A written business associate agreement between the telehealth practitioner and the company providing telehealth services may be necessary to safeguard and protect privacy and security of the patient. COMAR 10.32.05.04A (3), (5).

Q: What safety protocols are required?

A: Just as a health care practitioner has a procedure in their office in the case of emergency, it is even more crucial that the telehealth practitioner have a procedure in place if a patient who is being seen remotely has a medical emergency. COMAR 10.32.05.04A (6).

Q: Are there any special requirements for a real-time telehealth encounter?

A: Yes. A physician should obtain an alternative method of contacting the patient if there is a technological failure, identify the practice setting of the patient and confirm whether the patient is in Maryland, and identify individuals at each location and confirm that they are allowed to hear the personal health information to be discussed. COMAR 10.32.05.04B.

Q: What does “identify practice setting” mean?

A: You should be aware of the location where your patient is contacting you from (a local clinic, hospital, the patient’s home, a nursing home, or other location). COMAR 10.32.05.04B (2).

Q: Do I need to identify information technology staff, medical assistants, and others who are present during the telehealth communication?

A: Yes. Unlike an in person visit, it is not apparent who is in the room and “off-camera” during a patient encounter. To insure patient privacy, all individuals in the room at each location are required to be identified and the patient should consent to discussing confidential information with those individuals present in the room, or you should ask those individuals to leave. COMAR 10.32.05.04B (4).

Standard of Care

Q: What is the standard of care for telehealth?

A: The standard of care for telehealth treatment and documentation recording the health care services provided by telehealth is the same standard as for an in-person health care service visit. The laws regarding confidentiality of health information and a patient’s right to the patient’s health information also apply in the same manner as the laws apply to an in-person health care interaction. The Board uses the same standards for evaluating and investigating complaints regarding telehealth practitioners and practitioners who see patients in-person. The use of telehealth does not excuse a practitioner from failing to comply with certain requirements or failing to conduct required tests because they are not technologically feasible. If the standard of care would require information or treatment that is only obtainable in-person, the practitioner should see the patient in-person. *See* Health Occ. § 1-1003(A)(1); § 1-1004; COMAR 10.32.05.06A, COMAR 10.32.05.07A.

Reimbursement Questions - Including Medicaid

The Board does not provide reimbursement advice. If you have questions about reimbursement please consult the Medicaid regulations at COMAR 10.09.49 and the telephone numbers at the bottom of these FAQs or visit the following websites for Maryland State of Emergency related changes regarding reimbursement:

Governor Hogan’s April 1, 2020 Executive Order To further Authorize Additional Telehealth Services Executive Order Number 20-04-01-01 (attached).

<https://governor.maryland.gov/wp-content/uploads/2020/04/Telehealth-Amended-4.1.20.pdf>

COVID-19 #1: Temporary Expansion of Medicaid Regulations to Permit Delivery of Telehealth Services to the Home to Mitigate Possible Spread of Novel Coronavirus (“COVID-19”), https://phpa.health.maryland.gov/Documents/COVID-19.1_Telehealth%20Guidance_Neall.pdf

Maryland Medicaid Telehealth Program:

<https://mmcp.health.maryland.gov/Pages/telehealth.aspx>

Federal Medicare: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

Or try calling these phone numbers for more information:

Phone Numbers	For Consumers	For Providers
Medicaid Hotline	(800) 284-4510	(800) 766-8692
Optum Behavioral Health ASO	(800) 888-1965	(800) 888-1965
Aetna	(866) 827-2710	(866) 827-2710
Amerigroup	(800) 600-4441	(800) 454-3730
Jai Medical Systems	(888) 524-1999	(888) 524-1999
Kaiser Permanente	(855) 249-5025	(301) 816-6564
Maryland Physicians Care	(800) 953-8854	(410) 401-9504
MedStar Family Choice	(800) 404-3549	(800) 905-1722
Option 6 Priority Partners	(800) 654-9728	(888) 895-4998

UnitedHealthcare	(800) 318-8821	(877) 842-3210
University of Maryland Health Partners	(800) 730-8530	(443) 552-3263