



WASHINGTON

**Medical  
Commission**

Licensing. Accountability. Leadership.

# Rules Workshop

---

Telemedicine

December 18, 2020

*GoToWebinar*



# Table of Contents

---

	Page
Meeting Notice .....	3
Agenda .....	5
CR-101.....	7
Telemedicine Definition Discussion .....	9
Comments.....	12
OCHIN .....	13
Albert Wertz, DO .....	15
Proposed Language .....	18

# Rule Workshop Notice



WASHINGTON  
**Medical  
Commission**  
Licensing. Accountability. Leadership.

Meeting Announcement  
For the Washington Medical Commission  
\*CR-101 for Telemedicine Rules  
WAC 246-919-XXX Physicians  
WAC 246-918-XXX Physician Assistants

## **Rulemaking**

The Washington Medical Commission (commission) has officially filed a [CR-101](#) with the Office of the Code Reviser on September 17, 2019. The WSR# is 19-19-072.

The commission is considering rulemaking to address the practice of physicians and physician assistants engaging in telemedicine with Washington patients. Possible subjects the commission may address are: what, if any requirements for licensure; record keeping requirements; establishing a patient-practitioner relationship; prescribing issues; and standard of care. Regulating the use of telemedicine would place the commission in an active patient safety role.

## **Proposed Telemedicine Rules Workshop Meeting**

In response to the filing, the Commission will conduct an open public rules workshop on Friday, December 18, beginning at 3:00 pm via GoToWebinar.

Please register for Telemedicine Rules Workshop on Dec 18, 2020 3:00 PM PST at:  
<https://attendee.gotowebinar.com/register/5733584114325478155>

After registering, you will receive a confirmation email containing information about joining the webinar.

This meeting will be open to the public.

In response to the COVID-19 public health emergency, and to promote social distancing, the Medical Commission will not provide a physical location for this meeting. A virtual public meeting, without a physical meeting space, will be held instead.

The purpose of the rules workshop will be to:

- Discuss the definition of “Telemedicine”
- Discuss some stakeholder/public comments

Interested parties, stakeholders, and the general public are invited to participate in the rules workshops or provide comments on draft rules. For continued updates on rule development, interested parties are encouraged to join the [Commission’s rules GovDelivery](#).

For more information, please contact Amelia Boyd, Program Manager, Washington Medical Commission at (360) 236-2727 or by email at [amelia.boyd@wmc.wa.gov](mailto:amelia.boyd@wmc.wa.gov).

Attachments:

[CR-101](#)

Proposed draft language

\*CR means Code Reviser

# Rules Workshop Agenda



WASHINGTON  
**Medical  
Commission**  
Licensing. Accountability. Leadership.

*In response to the COVID-19 public health emergency, and to promote social distancing, the Medical Commission will not provide a physical location for this meeting. A virtual public meeting, without a physical meeting space, will be held instead. The registration link can be found below.*

**Friday, December 18, 2020 – 3:00 pm to 5:00 pm**

## **Telemedicine Pre-Proposal Rules**

- Housekeeping
- Open workshop
- Discuss definition of “Telemedicine”
- Address comments:
  - OCHIN
  - Albert Wertz, DO
- Next steps
- Close workshop

Please register for Telemedicine Rules Workshop on Dec 18, 2020 3:00 PM PST at:

<https://attendee.gotowebinar.com/register/5733584114325478155>

After registering, you will receive a confirmation email containing information about joining the webinar.

The most recent draft language is available in the workshop packet but, will not be discussed at this workshop. If you have comments about the draft, please send them to [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov).

To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email [civil.rights@doh.wa.gov](mailto:civil.rights@doh.wa.gov).



# CR-101

---

**WSR 19-19-072**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF HEALTH**  
(Medical Quality Assurance Commission)  
[Filed September 17, 2019, 10:06 a.m.]

Subject of Possible Rule Making: WAC 246-919-XXX Allopathic physicians and 246-918-XXX Allopathic physician assistants, the Washington medical commission (commission) is considering creating new rule sections to regulate the use of telemedicine.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW [18.71.017](#), [18.130.050](#), and [18.71A.020](#).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The commission will consider rule making to address the practice of physicians and physician assistants engaging in telemedicine with Washington patients. Possible subjects the commission may address are: What, if any requirements for licensure; recordkeeping requirements; establishing a patient-practitioner relationship; prescribing issues; and standard of care. Regulating the use of telemedicine would place the commission in an active patient safety role.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, TTY 360-833-6388 or 711, email [amelia.boyd@wmc.wa.gov](mailto:amelia.boyd@wmc.wa.gov), web site [wmc.wa.gov](http://wmc.wa.gov).

Additional comments: To join the interested parties email list, please visit [https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic\\_id=WADOH\\_153](https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153).

September 13, 2019  
Melanie de Leon  
Executive Director



# Telemedicine Definition Discussion

---



## December 18, 2020 Telemedicine Rules Workshop

### Telemedicine Definition Discussion

#### Consider:

- a) Should it exclude phone calls? The parity statute and the HCA rule both exclude phone calls, etc., as do many states.
- b) Should it include store and forward?
- c) Should it include remote monitoring?
- d) Should it include teleradiology and telepathology?

#### Comments

##### *98point6*

The Appropriate Use of Telemedicine Guideline, issued on October 3, 2014, states the Commission “[r]ecogniz[es] that technology changes are developed and become applied to practice with dazzling speed, and the intent is to delineate general principles applicable both to existing and future technologies, rather than focusing on specific current technologies.”

98point6 recommends any rules adopted continue to remain neutral to the types of technology leveraged to facilitate care, in accordance to the 2014 Guideline.

98point6 delivers care by leveraging innovative technologies not contemplated when many of the rules and regulations governing telemedicine services were first promulgated throughout the United States. We encourage any forthcoming rule to focus on the principles that support balancing the quality of care and continuity of care provided via telemedicine, rather than concentrate on a prescriptive approach to the technologies that may be utilized. A prescriptive statement regarding the technologies that may be leveraged or a narrow focus on how technologies must be used may inadvertently stifle the development of innovative techniques and emerging technologies that could ultimately vastly improve the quality, affordability and accessibility of care for patients in Washington state. Indeed, the definition as proposed fails to address 98point6’s primary methodology of delivering care, which is text-based interactions between our patients, our software and our physicians within our secure mobile application.

##### *Telemedicine definition - 98point6’s suggested replacement text*

The practice of medicine and delivery of health care services through the use of interactive ~~audio and video~~ technology, permitting ~~real time~~ communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

~~Telemedicine does not include the use of audio only, telephone, facsimile, or email.~~

##### *OCHIN*

We encourage the Commission to modify the definition of “telemedicine” to include asynchronous store and forward technologies. Allowing the utilization of asynchronous

technologies will ensure patients receive essential medical services, particularly specialty care, that underserved patient populations would not otherwise have the ability to access. It also enhances care coordination and increases efficiencies of practitioners to the benefit of patient care and the healthcare system. This modified definition would ensure continued access to electronic consult (eConsult) services utilized by OCHIN members as well as other peer-to-peer consultations addressed in the draft rules.

#### *Vision Care Innovation*

Telemedicine: The practice of medicine and delivery of health care services through the use of [store and forward technology](#) or interactive audio and video technology, permitting ~~real-time communication~~ [interaction](#) between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine does not include the use of audio-only, telephone, facsimile, or email.

#### *American Telemedicine Association*

Telemedicine: A mode of delivering healthcare services through the use of telecommunications technologies, including but not limited to asynchronous and synchronous technology, and remote patient monitoring technology, by a healthcare practitioner to a patient or a practitioner at a different physical location than the healthcare practitioner.

#### *Hims & Hers*

Telemedicine: A mode of delivering healthcare services through the use of telecommunications technologies, including but not limited to asynchronous and synchronous technology by a healthcare practitioner to a patient or a practitioner at a different physical location than the healthcare practitioner.

#### *Teladoc Health*

“Telemedicine” means a mode of delivering health care services through the use of telecommunications technologies by a health care practitioner to a patient at a different physical location than the health care practitioner.

#### *TechNet*

Proposed definition of telemedicine by the Commission:

“...through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine does not include the use of audio-only, telephone, facsimile, or email.”

This definition is outdated, fails to reflect the recent experience with telemedicine across the country during the COVID-19 pandemic and neither reflects nor encourages technological innovations in remote patient care.

Suggested language:

Telemedicine: means a mode of delivering health care services through the use of telecommunications technologies, including but not limited to direct and real-time

communication and store and forward technology, by a health care practitioner to a patient at a different physical location than the health care practitioner.

*Zoom+Care/The Holt Company*

Telemedicine definition: We believe telemedicine rules should be modality agnostic, and the rules should allow both synchronous and asynchronous means. The draft definition is too limited in this regard.



# Comments

---



*A driving force for health equity*

*Transmittal via electronic mail*

November 20, 2020

Washington Medical Commission  
Post Office box 47866  
Olympia, WA 98504

Dear Members of the Washington Medical Commission:

On behalf of OCHIN, we appreciate your rule-making to prioritize telehealth and virtual services to preserve access for patients in community health clinics. OCHIN is a Portland, Oregon based 501(c)(3) not-for-profit community-based health information technology and research network, and a national leader in promoting high-quality health care in historically underserved communities across the country. We have two decades of experience transforming health care delivery. We provide leading-edge technology, data analytics, research, and support services to more than 500 health care organizations serving nearly 6 million patients. In Washington state, OCHIN serves several members, including King County Public Health Department, King County Department of Corrections, Bastyr Center for Natural Health, Country Doctor Community Health Centers, NeighborCare Health, and Asian Counseling and Referral Services. Additionally, we are in discussions with potential Indigenous community partners. We are writing to comment on the draft rule definitions related to telemedicine.

#### **RECOMMEND: MODIFICAITON OF DEFINITION OF PRACTICE OF MEDICINE**

We encourage the Commission to modify the proposed definition of “practice of medicine.” We recommend striking the reference to payment. The draft definition interjects payment policy with the regulation of medical practice. The definition provides that practitioners must have an expectation of payment in order to practice medicine using telemedicine. Unfortunately, this would prevent safety-net clinics in the OCHIN network as well as other providers of underserved communities from using telemedicine. Safety-net clinics provide uncompensated care to a segment of patients who may not be able to pay the practitioner and may not have health insurance coverage. Nevertheless, they should still be able to obtain access to evaluation, diagnosis, or treatment through telemedicine technologies that are available to them. We recommend eliminating the reference to an “expectation of compensation” from the definition of the practice of medicine.

#### **RECOMMEND: MODIFICATION OF DEFINITION OF TELEMEDICINE**

We encourage the Commission to modify the definition of “telemedicine” to include asynchronous store and forward technologies. Allowing the utilization of asynchronous technologies will ensure patients receive essential medical services, particularly specialty care, that underserved patient populations would not otherwise have the ability to access. It also enhances care coordination and increases efficiencies of practitioners to the benefit of patient care and the healthcare system. This modified definition would ensure continued access to electronic consult (eConsult) services utilized by OCHIN members as well as other peer-to-peer consultations addressed in the draft rules.

**RECOMMEND: REMOVE RESTRICTIONS ON AUDIO-ONLY TECHNOLOGIES**

Finally, we strongly encourage the Commission to remove restrictions in the draft rules that disallow audio-only technologies from consideration as telemedicine. Audio-only modalities should not be excluded as for some patients this is the only way a patient is able to access practitioner. This is particularly the case for elderly patients. Among the patients OCHIN collaborative members see, the patient might not receive care if this is disallowed. This definition simply does not reflect what we have learned about telemedicine through the experience of the coronavirus public health emergency, particularly with people in the state who lack access to broadband or devices to take advantage of technology.

Thank you for the opportunity to comment. We welcome the opportunity to discuss these items with members of the Commission or staff if that is helpful.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Stoll". The signature is written in a cursive style with a large initial "J".

Jennifer Stoll  
Executive Vice President  
Government Affairs and Public Relations

## Boyd, Amelia (WMC)

---

**From:** Albert Wertz <albertwertz@gmail.com>  
**Sent:** Friday, October 9, 2020 2:22 PM  
**To:** Boyd, Amelia (WMC)  
**Subject:** conference today on telepsych rule making

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Amelia, I am a psychiatrist and I work virtually for both corporations and my own private practice.

In reading the packet I am very pleased with a majority of the wording written in the first draft.

Its very important that we allow patients to establish care with **live face to face video options and not just in person.** We need to prevent prescribing based on surveys, which unfortunately is already taking place in offices due to medicare specifically paying for the PHQ9,

**We must be inclusive of options for independent physician practices and not limiting of technology that requires providers to join large corporate conglomerates.** let's preserve and promote independent practice. This increases competition and drives costs to patients down.

In review of the packet, I agree with language in sections A, B with one question. Why are we allowing peer to peer teleconsults without a state license? How do you expect to hold the provider accountable and take a proactive approach to patient safety if you dont require the provider to have a state license first? My fear is this is a slippery slope to reactive discipline and not proactive safety. I do not believe section C is enforceable without mandating state licensure before providing care. I can understand this being needed in an emergency, or a state of emergency, but not as a basic standard practice. unless they are of a specialty of critical need?

I agree with the wording of section 1

**section 2 is questionable, this is saying you cant see a patient unless they provide written consent first, but if you are establishing care in the live video meeting, is verbal consent ok? is verbal consent at the beginning of the appointment ok? is written consent in email from a patient not implied by just accepting the appointment and seeking care?**

**There are several medical situations where evaluations without consent are very important. for example, delirium, Altered mental status, violent psychosis, danger to self or others. In these settings a psychiatrist may need to do a chart review, lay eyes on a patient and evaluate without consent. Currently in Texas, this is a barrier. I do not believe it should be a barrier in our state in the setting of situations of public safety, psychosis, delirium, or medical emergency.**

Otherwise I agree with sections 3-6. All wording appears to allow providers to still operate with little investment needed to see patients. I just wanted to make sure we were not going to force providers to join tech conglomerates just to provide patient care.

thanks for your time, and allowing me to participate in that conference. Psychiatry is very different from most other fields of medicine in that a majority of it can be performed through live video feed. but also, so much can be done peer to peer over the phone. Even UW medicine offers 24/7 phone consultation.

--

Albert Wertz, DO

C 210-986-4740

F 509-213-0812

[albertwertz@gmail.com](mailto:albertwertz@gmail.com)

[www.saddlerockvirtualpsychiatry.com](http://www.saddlerockvirtualpsychiatry.com)







# Proposed Language

---

This language will not be discussed at this workshop.  
If you have comments about the draft, please send  
them to [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov).

**Washington Medical Commission**

**Draft Language for chapter 246-919 WAC - Physicians**

**Telemedicine**

**WAC 246-919-650 Purpose and Scope.** The purpose of this rule is to establish consistent standards for physicians who use telemedicine to evaluate, diagnose, monitor or treat patients in Washington. The commission distinguishes between telemedicine, which is focused on the clinical aspects of care, and telehealth, a broader term that encompasses clinical care plus health-related education, public health and health administration. This rule does not apply to digital health which involves digital, mobile, wearable technologies that facilitate the tracking and monitoring of health status and behavior outside the clinical encounter.

**WAC 246-919-651 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artificial or assistive intelligence" (AI) means the use of complex algorithms and software to emulate human cognition in the analysis of complicated medical data. Specifically, AI computer algorithms that approximate conclusions without direct human input. Because AI can identify meaningful relationships in raw data, it can be used to support diagnosing, treating and predicting outcomes in many medical situations.

(2) "In-person encounter" means that the physician and the patient are in the physical presence of each other and are in the same physical location during the physician-patient encounter.

(3) "Interpretive services" means reading and analyzing images, tracings, or specimens through telemedicine or giving interpretations based on visual, auditory, thermal, ultrasonic patterns or other patterns as may evolve with technology.

(4) "Practice of medicine" has the same meaning as in RCW 18.71.011. The practice of medicine takes place at the location

of the patient. A physician using a web portal to engage in the activity listed in RCW 18.71.011 with a patient located in Washington is considered to be practicing medicine in Washington.

(5) "Remote monitoring" means the use of digital technologies to collect health data from a patient in one location and electronically transmit that information securely to a health care provider in another location for evaluation and informing treatment decisions.

(6) "Store-and-forward technology" means the use of an asynchronous or non-simultaneous transmission of a patient's medical information from an originating site to the health care provider at a distant site that results in medical diagnosis and management of the patient, and does not include the use of audio-only telephone, facsimile, or email.

(7) "Telemedicine" means the delivery of healthcare services through the use of telecommunications technology by a health care provider in one location and a patient in another

location. Telemedicine includes real-time interactive services, store-and-forward technologies, interpretive services, and remote monitoring. For the purposes of this rule, telemedicine does not include providing medical services only through an audio-only telephone, email messages, facsimile transmissions, or U.S. mail or other parcel service, or any combination thereof. These types of communications with patients are not prohibited, but do not fall within the requirements of this rule.

**WAC 246-919-652 License required. Exemptions.**

(1) Except as provided in (2) of this subsection, a physician using telemedicine to diagnose or treat a patient in Washington must hold an active license to practice as a physician and surgeon in Washington.

(2) Exemption for established patient. A physician not licensed in Washington may use telemedicine to provide medical care to a patient in Washington if the following conditions are met:

(a) The physician holds an active license to practice medicine in another state or United States territory;

(b) The physician has an established physician-patient relationship with the patient and provides follow-up care to treatment previously provided when the patient was located in a state or United States territory where the physician is holds an active license; and

(c) The physician does not set up an office or place of meeting patients in Washington.

(3) Exemption for peer-to-peer consultation. A physician not licensed in Washington may consult with a health care provider licensed in Washington to provide medical care to a Washington patient if the following conditions are met:

(a) The physician holds an active license to practice medicine in another state or United States territory;

(b) The Washington-licensed health care provider remains professionally responsible for the primary diagnosis and any testing or treatment provided to the Washington patient; and

(c) The non-Washington-licensed physician does not set up an office or place of meeting patients, physical or virtual, in Washington.

**WAC 246-919-653 Standard of care.** The commission will hold a physician who uses telemedicine to the same standards of care and professional ethics as a physician using a traditional in-person encounter with a patient. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject the licensee to discipline by the commission.

**WAC 246-919-654 Scope of practice.** A physician who uses telemedicine shall ensure that the services provided are consistent with the physician's scope of practice, including the physician's education, training, experience, and ability.

**WAC 246-919-655 Identification of patient and physician.** A physician who uses telemedicine shall verify the identity of the patient and ensure that the patient has the ability to verify

the identity, licensure status, and credentials of all health care providers who provide telemedicine services prior to the provision of care.

**WAC 246-919-656 Physician-patient relationship.** A

physician who uses telemedicine must establish a valid physician-patient relationship with the person who receives telemedicine services. A valid physician-patient relationship may be established through:

(a) An in-person medical interview and physical examination where the standard of care would require an in-person encounter; or

(b) Telemedicine, if the standard of care does not require an in-person encounter.

**WAC 246-919-657 Medical history and physician examination.**

Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a physician who uses telemedicine shall interview the patient to collect the relevant medical history and perform a physical examination, when medically



necessary, sufficient for the diagnosis and treatment of the patient. The technology used in a telemedicine encounter must be sufficient to establish an informed diagnosis as though the medical interview and physical examination had been performed in-person. A physician may not delegate an appropriate history and physical examination to unlicensed personnel. An Internet questionnaire does not constitute an acceptable medical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically or otherwise, by a physician.

**WAC 246-919-658 Appropriateness of telemedicine.** A

physician must consider the patient's health status, specific health care needs, and specific circumstances, and use telemedicine only if the risks do not outweigh the potential benefits and it is in the patient's best interest. If a physician determines that the use of telemedicine is not appropriate, the physician shall advise the patient to seek in-person care. Only the treating physician is empowered to make the decision to use telemedicine with a given patient.

**WAC 246-919-659 Nonphysician health care providers.** If a physician who uses telemedicine relies upon or delegates the provision of telemedicine services to a nonphysician health care provider, the physician shall:

(a) Ensure that systems are in place to ensure that the nonphysician health care provider is qualified, trained, and credentialed to provide that service within the scope of the nonphysician health care provider's practice;

(b) Ensure that the physician is available in person or electronically to consult with the nonphysician health care provider, particularly in the case of injury or an emergency.

**WAC 246-919-660 Informed consent.** A physician who uses telemedicine shall ensure that the patient provides appropriate informed consent for the medical services provided, including consent for the use of telemedicine to diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record.

**WAC 246-919-661 Coordination of care.** A physician who uses telemedicine shall, when medically appropriate, identify the medical home or treating physician(s) for the patient, when available, where in-person services can be delivered in coordination with the telemedicine services. The physician shall provide a copy of the medical record to the patient's medical home or treating physician(s).

**WAC 246-919-662 Follow-up care.** A physician who uses telemedicine shall have access to, or adequate knowledge of, the nature and availability of local medical resources to provide appropriate follow-up care to the patient following a telemedicine encounter.

**WAC 246-919-663 Emergency services.** A physician who uses telemedicine shall refer a patient to an acute care facility or an emergency department in a timely manner when referral is necessary for the safety of the patient or in the case of an emergency.

**WAC 246-919-664 Medical records.** A physician who uses telemedicine shall maintain complete, accurate and timely medical records for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The physician shall document in the patient's record when telemedicine is used to provide diagnosis and treatment. The physician shall provide a copy of all the information obtained during the telemedicine encounter to the patient or another health care provider designated by the patient immediately following the telemedicine encounter. The physician shall comply with the uniform health care information act, chapter 70.02 RCW, with respect to disclosure of health care information and a patient's right to access and correct a medical record.

**WAC 246-919-665 Privacy and security.** A physician who uses telemedicine shall ensure that all telemedicine encounters

comply with the privacy and security measures in the uniform health care information act, chapter 70.02 RCW, and of the federal health insurance portability and accountability act to ensure that all patient communications and records are secure and remain confidential.

**WAC 246-919-666 Disclosure and functionality of telemedicine services.** A physician who uses telemedicine shall ensure that the following information is clearly disclosed to the patient:

- (a) Types of services provided;
- (b) Contact information for the physician;
- (c) Identity, licensure, certification, credentials, and qualifications of all health care providers who are providing the telemedicine services;
- (d) Limitations in the prescriptions and services that can be provided via telemedicine;

(e) Fees for services, cost-sharing responsibilities, and how payment is to be made, if these differ from an in-person encounter;

(f) Financial interests, other than fees charged, in any information, products, or services provided by the physician(s);

(g) Appropriate uses and limitations of the technologies, including in emergency situations;

(h) Uses of and response times for emails, electronic messages and other communications transmitted via telemedicine technologies;

(i) To whom patient health information may be disclosed and for what purpose;

(j) Rights of patients with respect to patient health information under chapter 70.02 RCW; and

(k) Information collected and passive tracking mechanisms utilized.

**WAC 246-919-667 Circumstances in which the standard of care may not require a physician to personally interview or**

**examine a patient.** Under the following circumstances, whether or not such circumstances involve the use of telemedicine, a physician may treat a patient who has not been personally interviewed, examined and diagnosed by the physician:

(a) Situations in which the physician prescribes medications on a short-term basis for a new patient and has scheduled or is in the process of scheduling an appointment to personally examine the patient;

(b) For institutional settings, including writing initial admission orders for a newly hospitalized patient;

(c) Call situations in which a physician is taking call for another physician who has an established physician-patient relationship with the patient;

(d) Cross-coverage situations in which a physician is taking call for another physician who has an established physician-patient relationship with the patient;

(e) Situations in which the patient has been examined in person by an advanced registered nurse practitioner or a physician assistant or other licensed healthcare provider with

whom the physician has a supervisory or collaborative relationship;

(f) Emergency situations in which the life or health of the patient is in imminent danger;

(g) Emergency situations that constitute an immediate threat to the public health including, but not limited to, empiric treatment or prophylaxis to prevent or control an infectious disease outbreak;

(h) Situations in which the physician has diagnosed a sexually transmitted disease in a patient and the physician prescribes or dispenses antibiotics to the patient's named sexual partner(s) for the treatment of the sexually transmitted disease as recommended by the United States Centers for Disease Control and Prevention; and

(i) For licensed or certified nursing facilities, residential care facilities, intermediate care facilities, assisted living facilities and hospice settings.

**WAC 246-919-668 Prescribing based solely on an Internet request, Internet questionnaire or a telephonic evaluation-**



**prohibited.** Prescribing to a patient based solely on an Internet request or Internet questionnaire (i.e., a static questionnaire provided to a patient, to which the patient responds with a static set of answers, in contrast to an adaptive, interactive and responsive online interview) is prohibited.

**WAC 246-919-669 Mobile medical technology.** The federal food and drug administration (FDA) regulates the safety and efficacy of medical devices, including mobile medical applications (apps) that meet the definition of "device" under the FDA Act, particularly apps that pose a higher risk if they do not work as intended.

A physician who uses a mobile medical technology application that meets the definition of a device under the federal food and drug act, or rely upon such technology, shall ensure the application has received approval by the federal food and drug administration or is in compliance with applicable federal law.

**WAC 246-919-670 Artificial intelligence.**

(1) A physician who uses artificial intelligence (AI) tools as part of telemedicine to diagnose or treat a patient in Washington must:

(a) Understand that use of the AI tools is at the discretion of the physician;

(b) Understand the limitations of AI including the potential for bias or testing on populations that are not adequately represented.

(c) Inform the patient that an AI tool is being used for their care;

(d) Use judgment to decide whether to accept the diagnosis or treatment plan of the AI tool;

(e) Understand that by using AI, the physician is responsible for the primary diagnosis and any testing or treatment provided to the patient.

(2) A physician who uses AI should complete a self-directed CME (category II-V) on bias and underrepresented populations in health care technology applications such as AI.