



WASHINGTON

**Medical  
Commission**

Licensing. Accountability. Leadership.

# Rules Workshop

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Telemedicine

April 19, 2021

*GoToWebinar*



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# Rule Workshop Notice



WASHINGTON  
**Medical  
Commission**  
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\*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 Monday, April 19, beginning at 1:00 pm via GoToWebinar.

Please register for Telemedicine Rules Workshop at:

<https://attendee.gotowebinar.com/register/8654098106755625483>

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:

- Invite committee members and members of the public to present draft rule language;
- Discuss interested parties and public comments; and
- Discuss next steps.

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



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*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.*

**Monday, April 19, 2021, 1:00 pm to 3:00 pm**

## **Telemedicine Pre-Proposal Rules**

- Housekeeping
- Open workshop
- Answer the following:
  - Should the exemptions to licensure for following up with established patients and peer-to-peer consultation be in WMC's rule?
  - Circumstances in which the standard of care may not require an interview or examination of a patient.
- Address comments:
  - Americans for Vision Care Innovation
  - Berry Edwards, MD
  - Eric Fader
- Next steps
- Close workshop

Please register for this rules workshop at:

<https://attendee.gotowebinar.com/register/8654098106755625483>

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

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).

**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



October 5, 2020

Washington Medical Commission  
P.O. Box 47866  
Olympia, WA 98504-7866

Dear Members of the Washington Medical Commission,

Americans for Vision Care Innovation is a bipartisan coalition of consumer and taxpayer groups, think tanks, and vision care companies who compete against each other in the contact lens marketplace. Together we represent the rights of the 46 million Americans who wear contact lenses, and we have worked closely with leading consumer, civic and medical organizations in states across the country to protect the rights of consumers to get prescriptions for contact lenses and glasses renewed online.

We are writing to express our concerns with the draft rule language for consideration released by the Washington Medical Commission (Commission) as part of the Telemedicine Rule Workshop Notice. Generally, we believe that the draft language aligns with the state's telemedicine payment law instead of general telemedicine practice law and guidance previously adopted by the Commission.<sup>1</sup> The intent of the telemedicine guidance is to allow practitioners to determine how best to deliver care to each individual patient, based on their unique medical history and needs. We agree that practitioners should use telemedicine as one of the tools in their tool box, and that any care delivered remotely should align with the standard of care for the same service provided in person. We believe that the draft telemedicine definitions and rules are tied too closely to reimbursement/coverage instead of appropriate clinical use.

The term telemedicine is generally accepted to include both the synchronous and asynchronous technologies. This includes recognition by both the American Medical Association (AMA) and American Telemedicine Association (ATA).<sup>2,3</sup> Additionally, the definitions of practice of medicine and store and forward technology should not include any reference to compensation. The Commission should expect practitioners to deliver quality care to a patient based on medical need and not on compensation. To this end, we propose the following changes in the definition section:

**Practice of medicine:** For the purposes of this rule, this is evaluation, diagnosis or treatment of a patient ~~for which the practitioner receives, or would reasonably be expected to receive, compensation in some form.~~ The practice of medicine occurs at the location of the patient.

**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.

**Store and forward technology:** means use of an asynchronous transmission of a ~~covered person's patient's~~ medical information from an originating site to the health care provider at a distant site which results in medical

<sup>1</sup> "Appropriate Use of Telemedicine," Washington Medical Commission, <https://wmc.wa.gov/sites/default/files/public/Telemedicine%20Guideline.pdf>.

<sup>2</sup> "AMA Telehealth Quick Guide," American Medical Association, <https://www.ama-assn.org/practice-management/digital/ama-telehealth-quick-guide>.

<sup>3</sup> "Telehealth: Defining 21<sup>st</sup> Century Care," American Telemedicine Association, <https://www.americantelemed.org/resource/why-telemedicine/>.

diagnosis, and **management, or referral** of the **patient covered person**, and does not include the use of audio-only telephone, facsimile, or email.

We agree that a valid relationship must be established before a practitioner can deliver care to a patient through telemedicine services. As currently drafted, the proposed rule would require a real-time interaction even though this is not required under Washington State's telemedicine law. In fact, store and forward technologies can be used to establish a relationship, and are routinely used in many specialties. The AMA and ATA both recognize that a real-time interaction is not necessary for all services. The rule should recognize that synchronous and asynchronous technologies can be used to establish a relationship so long as the practitioner is meeting the standard of care for the delivered service. Finally, not all telemedicine technologies require approval by the Food and Drug Administration (FDA). Many technologies currently in the marketplace are predicated on a technology previously approved by the FDA and only require registration. We request that the rule be revised to recognize this distinction. As such, we propose the following changes to the draft rule language:

**1. Practitioner-Patient Relationship:** When practicing telemedicine, a practitioner ~~must~~ may establish a practitioner-patient relationship with the patient through direct and real-time communication **or store and forward technology** as defined in statute. Patient completion of a questionnaire does not, by itself, establish a practitioner-patient relationship. Treatment, including prescriptions, based solely on a questionnaire does not constitute acceptable standard of care.

We urge the Commission to make these simple yet necessary changes to the proposed telemedicine rule. Adopting these recommendations will allow Washington to continue to have the most flexible, forward thinking and pro-innovative telemedicine policies in the country.

Sincerely,

Americans for Vision Care Innovation



## Boyd, Amelia (WMC)

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**From:** Berry Edwards <behavenet@gmail.com>  
**Sent:** Monday, October 5, 2020 2:12 PM  
**To:** Boyd, Amelia (WMC)  
**Subject:** Re: Telemedicine Rules

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

Does this work for you?

Terms defined but not found in body of document:  
Enabling Technology  
Store and forward technology

TELEphone was the first TELEmedicine. Rules should apply to audio-only communication unless only used for setting or cancelling appointments, requesting refills, etc.. Using videoconference technology does not guarantee continuous visual contact. If there are few or no rules governing audio-only, it gives incentive to avoid use of superior video technology.

Whether an encounter constitutes "Practice of medicine" should not be restricted based on compensation.

"Practitioner-Patient Relationship: The relationship between a provider of medical services (practitioner) and a receiver [recipient] of medical services"

"Establishment..." deserves a separate definition.

Patient "agreement" precludes unconscious pts or those unable to communicate or comprehend.

"The parameters of the practitioner-patient relationship for telemedicine should mirror those that would be expected for similar in-person medical encounters." not part of the definition. The term "parameter" is vague.

"The use of the term "established patients" assumes the history and documentation necessary for informed health management." Nonsense: please rewrite this sentence.

Store and forward technology: Define "covered person." Covered how or by what? "Audio-only telephone"??? Should "texting" be included with other exclusions? Transmission of photograph or video? "online service sites"?? Define, please.

Missing from definitions:

online service sites

non-Washington-licensed practitioners: Use language to imply licensure in another jurisdiction is required. Define.

Appropriate use of Telemedicine

A: (1) "treat or prescribe" These are not mutually exclusive. Prescribing IS a kind of treatment. Why "1" if there is no "2"?

B:

Continuity of Care

2: "follow-up care to treatment previously performed" redundant. Implies illegal for practitioners in other countries.

3: Define "infrequent or episodic"

4: "does not set up an office or place of meeting patients in Washington" When? This implies occurrence after the fact.

Do you expect the ability to predict the future??

#### GENERAL

Location? How to determine remotely. Rely on patients' claims? Begs the question of how the practitioner can ascertain the patient's location in WA, another state or country or international waters. Furthermore, the patient's location could easily change during the encounter with use of mobile devices.

#### Peer-to-Peer Consultations

Change "are making" to make.

Reality: practitioners routinely "consult" on Internet fora with practitioners all around the world.

4: "non-Washington-licensed physician": should be practitioner? See B4 above.

Define: "normal specialty consult" & "over-read situation"

C: standard of care does not depend on type of encounter. It includes type of encounter. Care rendered by telephone does not meet standard of care if the patient's status demands videoconference or in-person encounter.

1: Define: "direct and real-time communication as defined in statute."

2: Define: "credentials of the practitioner"

3: "history and evaluation" History is part of evaluation. Define: "surrogate examination"

4: Define: "traditional setting" & "telemedicine practitioner"

5: "Such records should be permanent ": No record is permanent. Digital records can be deleted. Paper records can be shredded or burned. What are you trying to say here? Records should be kept for 10 years? Indefinitely?

6: "telemedicine prescription" does not exist. If you think it does, define it! Prescribing can be done via paper, fax, telephone or online order via app or web site. WHAT to prescribe may be based on a telemedicine encounter, but that is NOT prescribing.

"e-Prescription": Why the capital P?? eprescription or e-prescription

#### Mobile Medical Technology

The FDA's mistakes notwithstanding, "apps" (programs or applications) are not "devices". They are software. Devices are hardware.

#### Artificial Intelligence

"radiologic over read" Definition, pleas.

" based all or in part by" Did you mean " based all or in part ON"?

"The Commission may also investigate and take disciplinary action against a practitioner or who..." Omit "or".

Thanks

Berry Edwards, MD

[BehaveNet, LLC](#)

On Mon, Oct 5, 2020 at 8:47 AM Boyd, Amelia (WMC) <[Amelia.Boyd@wmc.wa.gov](mailto:Amelia.Boyd@wmc.wa.gov)> wrote:

Good morning Dr. Edwards,

## Boyd, Amelia (WMC)

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**From:** Berry Edwards <behavenet@gmail.com>  
**Sent:** Friday, December 18, 2020 2:30 PM  
**To:** Boyd, Amelia (WMC)  
**Subject:** Telemedicine Rules

This message has originated from an External Source. Please use caution when opening attachments, clicking links, or responding to this email. Contact your desktop support or IT security staff for assistance and to report suspicious messages.

I believe I submitted comments previously, but since I did not find them in the notice, please accept the following:

### Defining Telemedicine

We should define telemedicine as the provision of medical assessment and/or recommendations via electronic media, including "store and forward" technologies like email, texting and electronic fax. It should not include use of such technologies for setting appointments, requesting refills, and other purely administrative communications.

In crafting rules, we must keep in mind that the provider cannot tell what device the patient uses. The provider could use a desktop computer to conduct an audio-only encounter with a patient using a cell phone. Telemedicine includes store and forward, audio-only, and teleconference technologies. Keep in mind that an encounter that starts out as a videoconference could easily lose video while preserving audio. Also, with both patients and providers wearing masks, some quality of communication is lost, even with in-person encounters.

### Standard of Care

Standard of care includes use of the present medium to determine the best setting. For example, a text message combined with a photograph might indicate a need for a visit to an urgent care clinic or emergency room.

Location relies upon the patient's self-report. We live in the real world. The patient could be on a boat in international waters, in an airplane with uncertain location, straddling a state line. Must the provider refuse to provide care unless the patient travels to an acceptable location? How will the patient prove where they are? The patient could also change locations, for example, they might drive across a state line after sending an email/text or during an audio-only encounter or video conference. Family psychotherapy adds another complication. If family members in multiple states can only participate via teleconference, whose location applies?

Please do not waste precious provider time establishing the patient's location.

Berry Edwards, MD  
[BehaveNet, LLC](#)

## Boyd, Amelia (WMC)

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**From:** Eric D. Fader <Eric.Fader@rivkin.com>  
**Sent:** Friday, October 16, 2020 10:28 AM  
**To:** Farrell, Michael (WMC) <michael.farrell@wmc.wa.gov>  
**Subject:** Telemedicine question

Hello Mr. Farrell – I’m an attorney in New York. I’d appreciate your assistance in clarifying something from the Commission’s “Appropriate Use of Telemedicine” Guideline. A client of my firm has asked for advice on how to determine when a practitioner-patient relationship has been properly established in Washington. I assume that some of this determination will be dependent on the comfort level of the physician, but my client asked me to describe minimum standards.

First, the Guideline states: “The relationship is clearly established when the practitioner agrees to undertake diagnosis and/or treatment of the patient and the patient agrees that the practitioner will diagnose and/or treat, whether or not there has been or is an in-person encounter between the parties.” At the outset, there will certainly be an express Informed Consent document, privacy policy, and other appropriate documentation delivered to the prospective patient for acknowledgment.

Patient intake would begin with a questionnaire on the provider’s secure internet portal. The Guideline states: “Patient completion of a questionnaire does not, by itself, establish a practitioner-patient relationship, and therefore treatment, including prescriptions, based solely on a questionnaire does not constitute an acceptable standard of care.” I don’t see anything in the Guideline, or any other Commission commentary, that specifies the form that the required follow-up communication needs to take. Could the minimum threshold for establishing the practitioner-patient relationship be met (subject to the provider’s discretion) by a further exchange of secure messages between the patient and the practitioner on the portal, or even an exchange of emails outside the portal? Or would there need to be one or more audio-only telephone conversations? It doesn’t appear to me that video capability would be necessary, but I’d appreciate your confirming this as well.

Thank you very much. -Eric Fader

**Please note to reduce the quantity of paper coming into our offices during the Coronavirus crisis when our staff is working remotely, we request that all communications with this office should be through electronic means. Your cooperation is appreciated.**



**Eric D. Fader**

Partner

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**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 a mode of ~~the~~ delivering-of 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 provider~~practitionerphysician to a  
patient or a practitioner~~in one~~at a different physical location  
than the ~~healthcare practitioner~~ physician~~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. Once a physician has obtained a relevant medical history and performed a physical examination, it is within the physician's judgement to determine whether it is medically necessary to obtain a history or perform a physical examination at subsequent encounters. 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, or a person authorized to consent on behalf of the patient, provides appropriate informed consent, whether oral or written, 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. A physician need not obtain informed consent in an emergency situation or in other situations recognized in Washington law.

**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.

**Commented [AB1]:** Note from MM: Consider deleting.

**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.