

# Rule Workshop Notice



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

\*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, June 4, beginning at 1:30 pm via GoToWebinar.

Please register for Telemedicine Rules Workshop at:

<https://attendee.gotowebinar.com/register/8228065938737575947>

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

**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 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 physician to a patient or a practitioner at a different physical location than the physician.

**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 continuous or follow-up care is infrequent or episodic; and

(de) 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 provide the patient with a copy of their ~~ensure that the patient has the ability to verify the identity, licensure license status,~~ and credentials of all health care providers who provide telemedicine services on request. ~~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 diagnosing and treating a patient, a physician using telemedicine will obtain an appropriate history and, when medically necessary, perform an appropriate examination.

~~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 246-919-668 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.