

# Policy Statement

Title:	Telemedicine and Continuity of Care	POL2018-01
References:	<a href="#">RCW 18.71.030</a> , <a href="#">RCW 18.71.230</a> , chapter <a href="#">18.71A RCW</a> , <a href="#">RCW 18.71.011</a> , <a href="#">Guideline MD2014-03</a>	
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Approved By:	Warren Howe, MD, Chair (signature on file)	

## Policy

The Medical Quality Assurance Commission (Commission) supports the use of telemedicine as a tool that has the potential to increase access, lower costs, and improve the quality of healthcare. Because of rapid changes in telemedicine technology, the practice of medicine is occurring more frequently across state lines, raising regulatory challenges for state medical boards. The Commission issues this policy statement on the role of telemedicine to promote and facilitate continuity of care.

The Commission interprets current law to permit, under certain circumstances, non-Washington-licensed practitioners to use telemedicine to provide follow-up care to established patients in Washington. The Commission also interprets current law to allow Washington-licensed practitioners to use telemedicine to consult with non-Washington-licensed practitioners in other states. This policy statement is consistent with current law, and strikes the appropriate balance between enhancing access to care and ensuring patient safety.

The Commission encourages regulators from all healthcare disciplines of the WWAMI<sup>1</sup> region and other states, to adopt a similar policy, to permit the use of telemedicine by practitioners not licensed by their respective states to facilitate continuity of care and improve the quality of care for patients in our region. This policy simply acknowledges historical norms of medical practice that are merely being facilitated by technological means.

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<sup>1</sup> WWAMI is a cooperative program with the University of Washington and the states of Washington, Wyoming, Alaska, Montana and Idaho allowing residents of those states to enroll in the University of Washington School of Medicine, but providing a portion of the education in their home states. The program's two main goals are to make public medical education accessible to residents of those states, and to encourage graduates to choose careers in primary care medicine and locate their practices in underserved areas of the Northwest.  
<http://www.uwmedicine.org/education/wwami>

To the extent that this policy statement could be interpreted to conflict with the Commission’s Guidelines for the Appropriate Use of Telemedicine ([MD2014-03](#)), this policy statement takes precedence.

## Definitions

The term “established patients” as used in this policy refers exclusively to patients with existing and ongoing treatment relationships with practitioners licensed by the Commission. The use of the term “established patients” assumes the history and documentation necessary for informed health management. In general, this policy addresses scenarios not considered newly established or which may be newly established through telemedicine modalities. Practitioners should refer to the Commission Guidelines on Telemedicine for best practices in establishing new treatment relationships through telemedicine.

The term “patient-practitioner relationship” in this policy means the relationship between a provider of medical services (practitioner) and a receiver of medical services (patient) based on mutual understanding of their shared responsibility for the patient’s health care. 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 was an in-person encounter between the parties. The parameters of the patient-practitioner relationship for telemedicine should mirror those that would be expected for similar in-person medical encounters.

In 2015, the legislature enacted legislation requiring health care plans to cover medical services delivered through telemedicine or store and forward technology under certain conditions. The legislation defined telemedicine and store and forward technology as follows:

"Telemedicine" means the 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. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email.<sup>2</sup>

"Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email.<sup>3</sup>

For the purposes of this Policy Statement, the term “telemedicine” includes both “telemedicine” and “store and forward technology.”

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<sup>2</sup> [RCW 48.43.735\(8\)\(g\)](#).

<sup>3</sup> [RCW 48.43.735\(8\)\(f\)](#).

The term “Washington-licensed practitioner” in this policy includes allopathic physicians licensed under [chapter 18.71 RCW](#) and allopathic physician assistants licensed under [chapter 18.71A RCW](#).

## Background

In 2014, the Commission issued Guidelines for the Appropriate Use of Telemedicine ([MD2014-03](#)), establishing general practice standards for practitioners and initiating a patient-practitioner relationship using telemedicine.

In 2017, at the Commission’s request, the Washington legislature adopted the Interstate Medical Licensure Compact (compact), joining 22 other states to facilitate licensure for physicians who practice in multiple states. The compact will increase access to care for patients in underserved areas and allow them to more easily connect with medical experts through telemedicine technologies.<sup>4</sup>

Since the issuance of the guidelines and joining the compact, the Commission has received an increasing number of inquiries requesting clarification on when a license is needed to treat Washington-based patients using telemedicine. This policy provides clarity in this area.

Under Washington law, a practitioner who undertakes to diagnose, cure, advise, or prescribe for a person located in Washington must be licensed to practice medicine in Washington, unless the practitioner falls within one of the statutory exemptions.<sup>5</sup> [RCW 18.71.030\(6\)](#) exempts from the licensing requirement:

The practice of medicine by any practitioner licensed by another state or territory in which he or she resides, provided that such practitioner shall not open an office or appoint a place of meeting patients or receiving calls within this state.

This exemption has created some confusion regarding its application to telemedicine.<sup>6</sup> In the interest of making telemedicine accessible, accountable and safe, the Commission interprets this exemption as allowing the use of telemedicine technology to facilitate continuity of care to established patients who cross state borders and to permit peer-to-peer consultations. The conditions under which each can occur are described below.

## Continuity of Care for Established Patients

The practitioner with whom the patient has an established treatment relationship is in the best position to provide care, particularly if enabling technology is available. The Commission views

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<sup>4</sup> [Chapter 195, Laws of 2017](#). For information on the compact, see <http://www.imlcc.org/>

<sup>5</sup> [RCW 18.71.011](#), [RCW 18.71.021](#).

<sup>6</sup> Some groups have asserted that this exempts practitioners using telemedicine. Since the legislature created this exemption in 1906, the legislature did not create the exemption with telemedicine in mind. Reading the language to permit non-Washington-licensed practitioners to treat Washington patients via telemedicine is far too broad an interpretation.

practitioners maintaining continuity of care with established patients in Washington as a standard medical practice, whether licensed in Washington or in another jurisdiction, in consideration of the specified conditions and scenarios.

Patients often have health care needs when traveling outside their home state, or when traveling back to their home state after receiving care outside of Washington. This is particularly important for patients who travel to see a specialist at a major medical center and then return to Washington. If the follow-up can occur via telemedicine, the patient will save time, effort, and expense of traveling back to the out-of-state practitioner's practice.

To promote continuity of care while ensuring patient safety, the Commission interprets [RCW 18.71.030\(6\)](#) as permitting a practitioner not licensed in Washington to provide medical care to a patient in Washington if the following conditions are met:

1. The non-Washington-licensed practitioner is licensed in another state or US territory where he or she resides;
2. The non-Washington-licensed practitioner has an established patient-practitioner relationship with the patient and provides follow-up care to treatment previously performed in the practitioner's state of licensure;
3. The continuous or follow-up care is infrequent or episodic; and
4. The non-Washington-licensed practitioner does not set up an office or place of meeting patients in Washington.

### Continuity of Care Discussion

The four conditions stated above lend themselves to several common practice scenarios. In all scenarios, primary consideration should be given to continuity of care and patient need.

#### *Scenario One: Infrequent Border Care*

In this situation, a practitioner licensed in a bordering state provides medical care for a patient who lives in Washington but travels to the neighboring jurisdiction for care. After returning to Washington, the patient contacts the out-of-state practitioner's office regarding a new symptom or management of an ongoing condition. The Commission views the continuity of care as paramount in this situation and would not consider this to be practicing without a Washington state license.

#### *Scenario Two: University Student*

In this situation, a practitioner licensed in a jurisdiction outside of Washington provides continuity of care for a patient who has relocated to Washington to attend university or other time-limited educational program. As the practitioner has an established relationship and all of the medical history to accompany the management of care, the Commission views the continuity of care as paramount in this situation and would not consider this to be practicing without a Washington state license.

The treating practitioner should give specific consideration to the complexity of treatment required by the patient. If the patient has minimal treatment needs, such as annual physical exams and management of one or two medications, there is likely little cause for concern. At the other end of the spectrum of complexity, a patient with multiple chronic conditions or extensive acute mental health management needs would likely be better served by establishing a local practitioner relationship in cooperation with the practitioner in the home jurisdiction.

### *Scenario Three: Interventional Care Settings*

Many Washington hospitals offer bundled care for certain interventions with the majority of recovery occurring in the patient's home. Unless there is close coordination with the primary care practitioner in the home jurisdiction, the practitioners involved in the care intervention are best positioned to provide continuity of care related to the medical event. In situations where a practitioner not licensed in Washington is providing follow-up care to the Washington patient specific to the intervention for which they were involved, the Commission views the continuity of care as paramount in this situation and would not consider this to be practicing without a Washington state license. Should complications from the intervention or other acute or emergent conditions be discovered, the practitioner should refer the patient to the local primary care practitioner or emergency services as appropriate.

### **Peer-to-Peer Consultations**

Telemedicine technologies are making peer-to-peer consultations a common part of medical practice. This is particularly important for patients in rural or underserved areas who would not normally have access to specialists at major academic medical centers.

One example of this is the University of Washington's Telehealth program, which provides telehealth services, particularly in rural and underserved areas. Across the WWAMI region, 2300 UW School of Medicine faculty and 4600 clinical faculty are available for consultations using telemedicine technology, including teleconferencing, in-home monitoring, and digital store-and-forward of data, images and videos. UW Medicine Telehealth offers the full range of healthcare diagnostics and treatment, from routine urgent care to care as complex as organ transplantation.<sup>7</sup>

The Commission fully supports innovative models of healthcare delivery and encourages Washington practitioners to use telemedicine technology to make high quality healthcare accessible to their patients. To strike the appropriate balance between enhancing access to high quality care and protecting the public, the Commission interprets [RCW 18.71.030\(6\)](#) to permit a Washington-licensed practitioner who is treating a patient in Washington to consult with a non-Washington licensed physician using telemedicine provided that the following conditions are met:

1. The out-of-state physician is licensed in another state or United States Territory where he or she resides;
2. The consultation is infrequent or episodic;

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<sup>7</sup> <http://www.uwmedicine.org/referrals/telehealth-services>

3. The Washington-licensed practitioner remains professionally responsible for the primary diagnosis and any testing or treatment provided to the Washington patient; and
4. The non-Washington-licensed physician does not set up an office or place of meeting patients, physical or virtual, in Washington.

The Commission does not interpret [RCW 18.71.030\(6\)](#) to permit a practitioner not licensed in Washington to analyze a specimen or read an image and then report findings back to the Washington practitioner. The Commission does not consider this a peer-to-peer consultation but instead a normal specialty consult or over-read situation.

## Mobile Medical Technology

Mobile medical technologies provide innovative ways to improve health delivery by allowing patients and health care practitioners access to useful information when and where they need it. 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.

The Commission has no jurisdiction over mobile medical apps, peripherals or other devices and will refer complaints to the FDA or other appropriate agency.<sup>8</sup> The Commission advises practitioners who use or rely upon such technology to ensure the technology has received FDA-approval and is in compliance with applicable federal law. Additionally, those apps used by a practitioner or patient that do not have the data to support their claims may be investigated by the consumer protection division of the Federal Trade Commission (FTC)<sup>9</sup>. If the Commission receives complaints about such apps or devices that are deemed outside its jurisdiction, the Commission will forward the complaint to the FDA or the FTC as appropriate.

## Discipline

The Commission may investigate and take disciplinary action against a practitioner, whether licensed in Washington or not, who treats a resident of Washington via telemedicine and fails to meet the required standard of care. The Commission may also investigate and take disciplinary action against a practitioner or who does not meet the conditions for consultations or continuity of care. [RCW 18.71.230](#) permits the Commission to discipline physicians practicing in Washington under certain exemptions in [RCW 18.71.030](#). An out-of-state practitioner is also subject to action by the Department of Health for the unlicensed practice of a profession under [RCW 18.130.190](#).

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<sup>8</sup> For more information on the FDA’s regulation of mobile medical apps, see <https://www.fda.gov/MedicalDevices/DigitalHealth/MobileMedicalApplications/ucm255978.htm> . The Federal Trade Commission protects consumers from anticompetitive, deceptive or unfair business practices, including false or misleading claims about the safety or performance of a mobile medical app. <https://www.ftc.gov/tips-advice/business-center/guidance/mobile-health-apps-interactive-tool>. The Office for Civil Rights within the US Department of Health and Human Services enforces the HIPAA rules, which protect the privacy and security of certain health information. <https://www.hhs.gov/hipaa/index.html>

<sup>9</sup> <https://www.ftccomplaintassistant.gov/#crnt&panel1-1>

The Commission reaffirms its position that establishing a telemedicine presence accessible to Washington patients through a website or other access portal is not exempt from Washington licensure, unless used in conjunction with the parameters in this policy.

## Conclusion

The Commission supports the use of telemedicine to facilitate continuity of care. The Commission interprets Washington law to permit, under certain circumstances, a non-Washington-licensed practitioner to provide follow-up care to an established patient in Washington. The Commission also interprets current law to allow a Washington-licensed practitioner to use telemedicine to consult with non-Washington-licensed practitioners in other states. This policy statement is consistent with current law, and strikes the appropriate balance between enhancing access to care and ensuring patient safety.

The Commission encourages regulators from all healthcare disciplines of the WWAMI region and other states, to adopt a similar policy, to facilitate and promoting continuity of care. This policy statement simply acknowledges historical norms of medical practice that are being facilitated by technological means.

To the extent that this policy statement could be interpreted to conflict with the Commission's Guidelines for the Appropriate Use of Telemedicine ([MD2014-03](#)), this Policy Statement takes precedence.



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