

Consideration of New 22 Tex. Admin. Code §217.24, relating to *Telemedicine Medical Service Prescriptions*

Background: Senate Bill (SB) 1107, which became effective on May 27, 2017, required the Texas Medical Board, the Texas Board of Nursing (Board), the Texas Physician Assistant Board, and the Texas State Board of Pharmacy to jointly adopt rules that establish the determination of a valid prescription in accordance with the Occupations Code §111.005*. SB 1107 further required the adopted rules to allow for the establishment of a practitioner-patient relationship by a telemedicine medical service provided by a practitioner to a patient in a manner that complies with §111.005(a)(3). The proposed rules, attached as Attachment “A”, implement these statutory requirements and are consistent with the rules adopted by the Texas Medical Board (22 Tex. Admin. Code §174.5).

Board Action: Move to approve new 22 Tex. Admin. Code §217.24, relating to *Telemedicine Medical Service Prescriptions*, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the *Texas Register*. If no negative comments and no request for a public hearing are received, move to adopt new 22 Tex. Admin. Code §217.24, relating to *Telemedicine Medical Service Prescriptions*, as proposed.

*Section 111.005(a) defines the practitioner-patient relationship for purposes of telemedicine medical services.

Attachment "A"

§217.24. Telemedicine Medical Service Prescriptions.

(a) The validity of a prescription issued as a result of a telemedicine medical service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(b) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a telemedicine medical service.

(c) A valid prescription must be:

(1) issued for a legitimate medical purpose by a practitioner as part of patient-practitioner relationship as set out in §111.005, Texas Occupations Code; and

(2) meet all other applicable laws before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(d) Any prescription drug orders issued as the result of a telemedicine medical service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(e) Limitation on Treatment of Chronic Pain. Chronic pain is a legitimate medical condition that needs to be treated, but must be balanced with concerns over patient safety and the public health crisis involving overdose deaths. The Legislature has already put into place laws regarding the treatment of pain and requirements for registration and inspection of pain management clinics. Therefore, the Board has determined clear legislative intent exists for the limitation of chronic pain treatment through a telemedicine medical service.

(1) Treatment of chronic pain with scheduled drugs through use of telemedicine medical services is prohibited, unless otherwise allowed under federal and state law. For purposes of this section, “chronic pain” means a state in which pain persists beyond the usual course of an acute disease or healing of an injury. Chronic pain may be associated with a chronic pathological process that causes continuous or intermittent pain over months or years.

(2) Treatment of acute pain with scheduled drugs through use of telemedicine medical services is allowed, unless otherwise prohibited under federal and state law. For purposes of this section, “acute pain” means the normal, predicted, physiological response to a stimulus, such as trauma, disease, and operative procedures. Acute pain is time limited.