

GUIDANCE: EXPEDITED LICENSURE AND TELEMEDICINE OPTIONS IN OREGON DURING COVID-19

Information and guidance related to COVID-19 is changing rapidly. Please refer to the Physicians Insurance website for the most up-to-date information.

Updated Guidance Effective: June 7, 2022

1. Expedited Licensure:

The declared COVID-19 emergency in Oregon ended effective April 1, 2022. Out of state physicians and physician assistants who were providing care to Oregon patients pursuant to an emergency authorization are able to continue providing care to Oregon patients through June 30, 2022, due to a temporary rule adopted by the Oregon Medical Board (OMB). The OMB issued an FAQ regarding temporary authorization questions and physician assistants, which is linked here: <https://www.oregon.gov/omb/Topics-of-Interest/Documents/OMB%20FAQ%20Feb2022.pdf>

2. Telemedicine Guidance.

Per the Oregon Medical Board, telemedicine is not a separate form of medicine, but rather a delivery tool. Accordingly, the practice of medicine occurs at the patient's location. An Oregon medical license is required when providing care via telemedicine for a patient located in Oregon. There are limited exceptions to this rule: (1) consultation between two providers;¹ (2) team physicians traveling with their out-of-state athletic team;² (3) emergency care;³ (4) service through the U.S. Armed Forces, U.S. Public Health Service, or U.S. Department of Veterans Affairs;⁴ (5) temporary or intermittent follow-up visits for continuity of care if the patient regularly receives in-person care with that provider.⁵

Draft Date: March 25, 2020

1. Expedited Licensure:

Guidance: Due to the governor's declaration of a state of emergency, the Oregon Medical Board (OMB) will permit out of state physicians and physician assistants to provide care in Oregon under special provisions, during the period of the declared emergency.⁶ In order to do so, the out of state practitioner must submit the following information to OMB, in addition to the authorization application,

<https://www.oregon.gov/omb/OMBForms1/Emergency%20Practice%20Application.pdf>

¹ See ORS 677.060(2) and 677.137(3)

² See ORS 677.060(4)

³ See ORS 677.060(5) and 677.137(2)

⁴ See ORS 677.060(1)

⁵ See OMB's Statement of Philosophy on Telemedicine, <https://www.oregon.gov/omb/board/Philosophy/Pages/Telemedicine.aspx>

⁶ See OAR 847-010-0068.

- (a) verification of a permanent, current, and unrestricted license to practice in another state which is not the subject of a pending investigation by a hospital, a state medical board, or other state or federal agency; and;
- (b) current federal or state photo identification, such as a driver's license or passport.

The requirement for completing and submitting this information to OMB is waived if the physician is a member of the National Disaster Medical System under the Office of Emergency Preparedness, US Department of Health and Human services, and submits to OMB a copy of his/her NDMS photo identification.

Summary and Additional Information: The physician and/or physician assistant shall also provide to OMB documentation demonstrating a request to provide medical care from a hospital, clinic, or private medical practice, public health organization, EMS agency, or federal medical facility, or has otherwise made arrangements to provide medical care in Oregon as a result of the declaration of an emergency.

Additionally, the physician or physician assistant cannot practice in Oregon under the special disaster emergency provisions beyond the termination date of the emergency.

This information is also summarized on the OMB website at <https://www.oregon.gov/omb/Topics-of-Interest/Pages/COVID-19.aspx>.

OMB has advised us that they are in the process of updating/changing their expedited licensure process and forms. We will provide updated guidance once this has been put into effect.

2. Telemedicine Guidance:

Any physician or physician assistant who is licensed to practice in the state of Oregon may provide care via telemedicine to Oregon patients. Out of state physicians with a telemedicine license may provide remote care to their Oregon patients.⁷

Additionally, per new guidance from the DEA, health care professionals can now prescribe a controlled substance to a patient using telehealth technology without first conducting an in-person evaluation under certain conditions.

Analysis and Summary: Telemedicine in Oregon is governed by ORS 677.135 – 677.141, as well as OAR 847-025-0000 – 847-025-0060. The licensure requirement for physicians who are practicing across state lines is codified at ORS 677.139.

2.1 Medicare/Medical Assistance Reimbursement.

The Coronavirus Preparedness and Response Supplemental Appropriations Act includes provisions allowing the Secretary of the Department of Health and Human Services to waive certain Medicare telehealth payment

⁷ Per the OMB website, out-of-state licensees who hold an active license at telemedicine status have the same duties and responsibilities and are subject to the same penalties and sanctions as any other licensed physician in Oregon. Physicians with telemedicine status in Oregon may not act as a dispensing physician, treat a patient for intractable pain, act as a supervising physician of a licensed physician assistant or an Oregon-certified First Responder or Emergency Medical Technician.

requirements during this public health emergency. Per these provisions, limitations on where Medicare patients are eligible for telehealth services will be removed during this public health emergency.

Oregon has temporarily amended two administrative rules to address Medical Assistance reimbursement for telemedicine: OAR 410-130-0610 (linked at <https://www.oregon.gov/oha/HSD/OHP/Policies/130-0610-031620.pdf>) and OAR 410-141-3830 (linked at <https://www.oregon.gov/oha/HSD/OHP/Policies/141-3830-031520.pdf>).

A fact sheet regarding telemedicine coverage is linked here: https://www.cchpca.org/sites/default/files/2020-03/CORONAVIRUS%20TELEHEALTH%20POLICY%20FACT%20SHEET%20MAR%2016%202020%203%20PM%20FINAL.pdf?utm_source=Telehealth+Enthusiasts&utm_campaign=a1c516ec33-EMAIL_CAMPAIGN_2020_03_16_10_31&utm_medium=email&utm_term=0_ae00b0e89a-a1c516ec33-322561525.

Additionally, a factsheet regarding Medicare telehealth, effective date 3/17/20, is linked here: <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>. A CMS factsheet regarding telemedicine is also linked here: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>.

2.2 Opioid prescribing.

Per the DEA, health care professionals can now prescribe a controlled substance to a patient via telemedicine technology without first conducting an in-person evaluation if the following conditions are met:

- Prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of their professional practice;
- Telemedicine communication is conducted using audio/visual, real-time, two way interactive communication system; and
- Practitioner is acting in accordance with federal and state law.

Additional information regarding opioid prescribing using telemedicine is linked here: <https://mhealthintelligence.com/news/dea-okays-telehealth-to-prescribe-opioids-amid-covid-19-emergency> and <https://www.deadiversion.usdoj.gov/coronavirus.html>

2.3 HIPAA Compliance.

The US Department of Health and Human Services Office for Civil Rights (OCR) has announced that it will not impose penalties for non-compliance with HIPAA regulatory requirements if health care providers provided telehealth in good faith during the COVID-19 public health emergency.

OCR has also advised that, during this public health emergency, covered health providers may use applications that allow for video chats, such as FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth related to the good faith provision of telehealth during the COVID-19 public emergency, without risk that OCR might seek to impose a penalty for noncompliance with HIPAA rules. That being said, providers are

encouraged to notify patients that these third-party applications potentially introduce privacy risks. Providers should also enable all available encryption and privacy modes when using such applications.

However, applications such as Facebook Live, Twitch, TikTok and similar video communication applications are public facing, and should not be used in the provision of telehealth by healthcare providers.

OCR guidance regarding these issues is linked here: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

This information should be modified based on individual circumstances, professional judgment, and local resources. This document is provided for educational purposes and is not intended to establish guidelines or standards of care. Any recommendations contained within the document is not intended to be followed in all cases and does not provide any medical or legal advice.

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