



Tennessee Board of Medical Examiners

Telemedicine Workgroup Session
Wednesday, January 14, 2015

MINUTES

The meeting of the Board of Medical Examiners' Telemedicine Workgroup was called to order at 8:38 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243. Board of Medical Examiners President, Michael Zanolli, MD, presided over the meeting.

Board members present: Michael Zanolli, MD, Chair
 Dennis Higdon, MD
 Reeves Johnson, MD
 Keith Lovelady, MD
 C. Allen Musil, MD
 Barbara Outhier, Consumer Member
 Pat Eller, Consumer Member

Board member(s) absent: Subhi Ali, MD
 Michael Baron, MD
 Neal Beckford, MD
 Jeff Lawrence, MD
 Nina Yeiser, Consumer Member

Staff present: Maegan Carr Martin, BME Executive Director
 Andrea Huddleston, Deputy General Counsel
 Rene Saunders, MD, Medical Consultant, BME
 Stacy Tarr, Administrative Director
 Angela Lawrence, BME Administrator
 Jennifer Shell, MD XRay Administrator

Dr. Higdon determined that a quorum was present. Dr. Zanolli provided participants with an overview of the rulemaking process to date. He also stated that all comments submitted to date and all meeting materials prepared are available through the Board's Administrative Office.

Adoption of November 17, 2014 Workgroup Session Minutes:

The Board considered the minutes from the November 17, 2014 Telemedicine Workgroup Session, which were made available to the Board in advance of this meeting. Dr. Higdon made a motion to

accept the minutes. The motion was seconded by Dr. Johnson. The Board unanimously approved the minutes.

Legal Memo about compliance with applicable laws and rules

Dr. Zanolli had previously requested that counsel prepare a legal memorandum answering the following questions: Have the Board's telemedicine deliberations complied with the rulemaking process as required by applicable law and regulation? Additionally, Dr. Zanolli asked whether it is permissible to conduct multiple meetings over a period of months and whether there is a time limit for completion of rulemaking? Ms. Huddleston prepared a memorandum to address these and other issues and stated that there is no time limit for the rulemaking process, nor is there a limit on the number of meetings that may be held. There was a question as to whether a second comment period is required, and Ms. Huddleston stated that if the changes are substantial from the original notice, a second comment period and notice is required. Ms. Huddleston stated that as far as she is aware, the Board has complied with the applicable laws and rules.

Discussion of Proposed Telemedicine Rule:

The Board began its discussion at Option 2 from the Language Table. Dr. Zanolli read Option 2 as it is currently written into the record and asked if there were any additions or corrections. Dr. Higdon referenced (a)(i) and asked whether the identification of the provider should also be addressed. Dr. Zanolli believed that it was already covered, but if not, it would be an important change. Dr. Higdon then directed the Board to the section of the Language Table where the supervising physician and facilitator are identified but noted that the section doesn't identify the physician providing services. (Option 2, page 4). Ms. Martin directed the Board to 6(e) where the proposed rule states that the facilitator must identify themselves and the name of the supervising physician and licensed health care provider involved, but that only applies if a facilitator is present. Dr. Zanolli stated that the rule should require that the physician should be identified. Dr. Lovelady agreed.

Dr. Zanolli then referred the Board to page 4 of the language table and the next topic: the role of the facilitator. Dr. Musil pointed out that the rule does not currently state where the facilitator should be, i.e., with the patient, or with the prescriber or provider. Dr. Zanolli suggested that 6(e) be amended by adding: "who is present with the patient," and also adding the word "local". Dr. Lovelady proposed specifying that the facilitator must be present with the patient. With those changes, this provision would read:

"The facilitator, who must be present with the patient, must identify themselves, their role, and their title to the patient and the remote physician. A facilitator must also include the name of the supervising physician and licensed health care provider involved in the local care of the patient."

Ms. Martin suggested that the language regarding the facilitator's presence with the patient be placed in the definition of a facilitator instead of in section 6(e).

The Board next considered the role of a facilitator and who should be able to serve. It was noted that medical assistants are not currently regulated in Tennessee. They may be certified, but the only certification is issued by a national organization and it is not generally a condition of employment. The Board determined that it would return to this topic later in the meeting.

Dr. Musil asked the Board to consider what controlled substances, if any, should be prescribed using a telemedicine encounter. He reminded the Board that the "Chronic Pain Guidelines" prohibits the

treatment of chronic pain through telemedicine. Ms. Eller spoke in opposition to controlled substances being prescribed through telemedicine. After considering whether the presence of a facilitator eased members' concerns regarding controlled substance prescribing, the following language was proposed to amend section 9:

"A physician shall not prescribe via the electronically mediated practice of medicine a Schedule 3, 4, or 5, controlled substance to a patient without the presence of a facilitator, except in admission orders for a patient that is being admitted to a licensed hospital." (**this language was later deleted**).

The Board then returned to the role of a facilitator. The Board recalled public comments submitted in support of telemedicine in the case of pediatric ADHD consultations and treatment in other settings, such as rural areas and schools. Dr. Musil spoke in favor of permitting controlled substance prescribing for pediatric ADHD. He noted that prohibiting all controlled substances would eliminate many of the very valuable services being provided to children in underserved areas and also in schools. Ms. Eller then amended her proposal to specify that controlled substances would not be permitted, except in for pediatric ADHD. After additional discussion, Dr. Zanolli queried the Board to determine whether the will of the Board was to prohibit the prescribing of controlled substances in a telemedicine encounter with an exception for the pediatric ADHD carve-out. Ms. Eller, Dr. Higdon, Ms. Outhier, Dr. Johnson, and Dr. Lovelady voted in support of said prohibition and carve-out. When asked who would allow schedule 3 4, and 5 controlled substances to be prescribed with a facilitator present, Dr. Musil and Dr. Zanolli voted aye. In accordance with the will of the Board, Dr. Zanolli recommended leaving out paragraph 9 and substituting it with language consistent with the prohibition and carve-out favored by the Board.

Dr. Zanolli then asked the Board to reconsider its discussion on the definition and role of a telemedicine facilitator. He asked whether all Board members agreed that the facilitator pathway was a necessary part of the telemedicine rules which could not be eliminated. Dr. Musil, Dr. Lovelady, Dr. Johnson, Dr. Higdon, and Dr. Zanolli voted aye. No one spoke in favor of eliminating the use of facilitators altogether, rather, the Board agreed that there is a pathway when a facilitator is present and a pathway when a facilitator is not present but there is adequate technology. Ultimately, the following language was adopted as a heading paragraph under subsection 6(a):

"(a) Except as provided under paragraph seven (7) and nine (9) of this rule, the patient encounter to establish or maintain the physician/patient relationship via the electronically mediated practice of medicine between the physician in a remote location and the patient in Tennessee may occur with or without the use of a facilitator so long as such encounter is consistent with subparagraphs (i) and (ii) of this Rule:"

Dr. Musil suggested a definition of facilitators, which was amended by Ms. Huddleston. The proposed language is as follows:

"A facilitator is a MD, DO, APN, PA, RN, or LPN affiliated with a local system of care, who must be physically present for verifying the identity of the patient..."

After further discussion of the proposed language, Dr. Higdon asked whether the Board agrees that the provider should be required to identify him or herself, their location, and their credentials, and there was a general consensus that this was favorable.

Having fully discussed the definition and role of a facilitator, the Board moved on to section 6(c) and (d). The Board considered the meaning of the word “adequate”. Dr. Zanolli offered the following language, which the Board agreed was appropriate:

“For patient encounters conducted via the electronically-mediated practice of medicine, the physician must have adequate patient records accessible prior to any diagnosis, treatment or consultation.”

The Board turned its attention to 6(g) and whether physicians seeking to practice telemedicine must have ABMS certification or some other designation, such as an appropriate medical specialty. It was noted that ABMS certification is currently required for the issuance of a telemedicine license; however, it is not a requirement for physicians seeking a full and unrestricted medical license. Dr. Zanolli queried the Board to determine whether a physician must be ABMS certified in order to participate in a telemedicine encounter. No member spoke in favor of limiting the practice of telemedicine to only ABMS certified physicians. Accordingly, it was determined to be the will of the Board that the proposed requirement be eliminated. The current section 6(g) will be amended accordingly.

The Board next discussed section (7), which deals with the medical interpretation of imaging studies or tissue samples. Ms Huddleston proposed removing the reference to a facilitator. The Board agreed.

The Board returned to the topic of controlled substance prescribing contained in Section (9). Dr. Zanolli reiterated the Board’s decision not to allow the prescribing of controlled substances except for the treatment of pediatric ADHD. The Board discussed whether only certain physicians should engage in this practice, i.e., whether these services should only be provided by certain specialists. It was determined that board-certified child psychiatrists, board-certified developmental-behavioral pediatricians and board-certified child neurologists are uniquely qualified to engage in this specialized practice. The Board also determined that it was necessary to qualify “pediatric ADHD” to specify that pediatric meant less than 18 years of age. Ms. Huddleston offered some language amendments.

Dr. Johnson suggested that the proposed language be revised to include board-certified family physicians and internists. The Board was queried to determine who was in favor of expanding the list of specialists that can prescribe for pediatric ADHD by telemedicine. After a discussion of the subject, Dr. Johnson voted in favor of expanding the list, while Dr. Musil, Dr. Lovelady, Dr. Higdon, and Dr. Zanolli were opposed; Ms. Eller and Ms. Outhier abstained. The Board concluded that residents and fellows of the approved specialties (psychiatry, developmental-behavioral pediatrician and child neurologist) should not be permitted to treat pediatric ADHD through telemedicine. Dr. Zanolli proposed deleting (b), along with leaving out the section about emergency room admission.

The Board began to review the document from the beginning, noting all changes. After reviewing the document in its entirety, the Board returned to (6)(f). Dr. Zanolli and Dr. Johnson spoke strongly in favor of requiring telemedicine providers to assist in the patient’s determination of appropriate follow-up care. After discussion of the issue, Dr. Zanolli proposed using the language from the North Carolina Medical Board with some revisions, including input from Ms. Martin, which will read:

“Telemedicine providers should also recommend to the patient appropriate follow-up care and instructions.” (will be captured in 6(d)).

Other Business

Having finalized the revised proposed telemedicine rule, Dr. Zanolli stated that the Board is now ready to take the next step to finalize the rule. Ms. Huddleston reiterated her position that it is most appropriate, given the nature and substance of the changes made to the rule, to file a new notice of rulemaking and allow a second opportunity for public comment. Comment would be accepted in writing or orally at the next hearing. Ms. Martin agreed with Ms. Huddleston.

It was determined that the Board would meet for the next notice of rulemaking on Monday, March 16th. Ms. Huddleston also discussed the need to respond to comments offered during the initial rulemaking hearing.

The meeting adjourned at 2:44 p.m.