

OPTOMETRY TELEHEALTH TASK FORCE MEETING MINUTES

DATE: February 26, 2019

TIME: 12:00PM CST

LOCATION: Health Related Boards
665 Mainstream Drive, Iris Room
Nashville, TN 37243

BOARD/TASK FORCE MEMBERS PRESENT: Torrey J. Carlson, O.D., Board Secretary/Task Force Member
Christopher Cooper, O.D., Board Member/Task Force Member
Jim Venable, O.D., Task Force Member

STAFF PRESENT: Kimberly Wallace, Unit 3 Director
Yvette Vagle, Board Administrator
Kaitlin Parham, Assistant General Counsel

Dr. Carlson called the meeting to order at 12:00 P.M.

Discussion was held regarding the drafting of definitions for the practice of telehealth in the Optometry profession in the state of Tennessee.

The definitions drafted for presentation to the Tennessee Board of Optometry - in the form a Rules Draft - at the upcoming meeting to be held on 04/03/2019 are as follows:

Optometry Telehealth Rules Draft

Rule 1045-02-.18 – Telehealth in the Practice of Optometry

(1) Definitions

(a) Distant site provider – A provider of optometric services through telehealth from a site other than the patient’s current site. A distant site provider shall hold an active Tennessee optometry license.

(b) Emergency – A situation or condition where failure to provide immediate treatment poses a threat of loss of sight to a person. For the purposes hereof, routine visual care shall not be an emergency.

(c) Face-to-face visit – A patient encounter or appointment for treatment at which both the provider and patient are at the same physical location, or where telehealth technology facilitates real-time interaction between the provider and patient.

(d) In-person patient encounter – A patient encounter conducted by a provider who is at the same physical location as the location of the patient.

(e) Origination site – A site in which a patient is located at the time optometric services are provided to him/her by means of telehealth.

(f) Patient encounter – The rendering of a documented optometrist opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the optometrist is physically present in the same room, in a remote location within the state, or across state lines.

(g) Provider – An optometrist acting within the scope of a valid optometry license issued pursuant to T.C.A. § 63-8-101, et seq.

(i) Telehealth – The definition of telehealth is cited in T.C.A. § 56-7-1002(a)(6).

(2) Establishment of an Optometrist-Patient Relationship

(a) Provider-patient relationship

Pursuant to T.C.A. § 63-1-155(b), a healthcare provider-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the provider. The consent by the patient may be expressed or implied consent; however, the provider-patient relationship is not created simply by the receipt of patient health information by a provider unless a prior provider-patient relationship exists. The duties and obligations created by the relationship do not arise until the healthcare provider:

- (1) Affirmatively undertakes to diagnose and treat the patient; or
- (2) Affirmatively participates in the diagnosis and treatment.

(b) The health and well-being of patients depends upon a collaborative effort between the optometrist and patient.

(c) The optometrist-patient relationship established via telehealth, shall at a minimum, meet the requirements of T.C.A. § 63-1-155(b).

(d) The optometrist-patient relationship is fundamental to the provision of acceptable eye health and vision care services leading to desired outcomes.

(e) It is the expectation of the Board that optometrists recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining an optometrist-patient relationship.

(f) An optometrist shall not render telehealth services, ophthalmic prescribing and eye health services, advice and/or care using telehealth technologies without:

- (1) fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient;
- (2) disclosing and validating the provider's identity and applicable credential(s); and

- (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telehealth technologies.
- (g) An appropriate optometrist-patient relationship has not been established when the identity of the optometrist is unknown to the patient.

(3) The Appropriate Use of Telehealth Technologies in Optometric Practice

- (a) Policy Statement - The Tennessee Board of Optometry has developed these rules to educate licensees as to the appropriate use of telehealth technologies in the practice of optometry. The Tennessee Board of Optometry is committed to ensuring patient access to the convenience and benefits afforded by telehealth technologies, while promoting the responsible practice of optometry by licensees. These rules shall not be construed to alter the scope of practice of any optometric provider or authorize the delivery of optometric services in a setting, or in a manner, not otherwise authorized by Tennessee law.
- (b) Licensure
 - (1) An optometrist is a “healthcare services provider” under Tennessee law and shall be licensed and under the jurisdiction of the Tennessee Board of Optometry when utilizing telehealth technology to provide services to a patient located in the State of Tennessee.
 - (2) Optometrists who treat or prescribe through online services sites are practicing optometry and shall possess appropriate licensure and under the jurisdiction of the Tennessee Board of Optometry shall abide by the established requirements for spectacle and contact lens prescription release pursuant to T.C.A. § 63-8-101, et seq.
 - (3) Exemptions.
 - (a) A licensed optometrist, who is not licensed in Tennessee pursuant to T.C.A. § 63-8-101 et seq., who utilizes telehealth across state lines in a natural disaster or other declared emergency, is not subject to the requirements of this subsection.
 - (b) A Tennessee licensed optometrist utilizing telehealth technology across state lines in an emergency situation for an established patient is not subject to the requirements of this subsection.
- (c) Patient Encounter and Treatment of the Patient
 - (1) A documented optometric patient encounter and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contraindications to the treatment recommended/provided shall be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise.

- (2) An optometrist who delivers services through the use of telehealth shall be held to the same standard of professional practice as a similar licensee of the same practice area or specialty that is providing the same healthcare services through in-person encounters, and nothing in this rule is intended to create any new standards of care.
- (d) Informed Consent
- (1) Evidence documenting appropriate patient informed consent for the use of telehealth technologies shall be obtained and maintained. A signed and dated notice, including an electronic acknowledgement by the patient, establishes a presumption of notice. Appropriate informed consent should include the following terms:
 - (i) Identification of the patient, the optometrist and the optometrist's credentials;
 - (ii) Types of transmissions permitted using telehealth technologies;
 - (iii) Necessity of in-person patient encounter. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person patient encounter reasonably able to meet the patient's needs;
 - (iv) Limitations of telemedicine. A provider who uses telemedicine technology, before providing services, shall give each patient notice regarding telemedicine services, including the risks and benefits of being treated via telemedicine, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure;
 - (v) Details on security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
 - (vi) Hold harmless clause for information lost due to technical failures; and
 - (vii) Requirement for express patient consent to forward patient-identifiable information to a third party.
- (e) Continuity of Care. Patients should be able to seek, with relative ease, follow-up care or information from the optometrist who conducts an encounter using telemedicine technologies. Optometrists solely providing services using

telehealth technologies with no existing optometrist-patient relationship prior to the encounter shall make documentation of the encounter using telehealth technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient within a reasonable time frame after the encounter.

- (f) **Medical Records.** The medical record should include, if applicable, copies of all patient-related electronic communications, including optometrist-patient communication(s), prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the patient's examination record. The patient record established during the use of telehealth technologies shall be accessible and documented for both the optometrist and the patient, consistent with T.C.A. § 63-8-101, et seq.
- (g) **Privacy and Security of Patient Records and Exchange of Information**
 - (1) Optometrists shall meet or exceed applicable federal and state legal requirements of optometric patient encounters/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and State of Tennessee privacy, confidentiality, security, and medical retention rules.
 - (2) Sufficient privacy and security measures shall be in place and documented to assure confidentiality and integrity of patient-identifiable information.
- (h) **Prescribing**
 - (1) Telehealth technologies, where prescribing medications and ophthalmic materials may be contemplated, shall require an optometrist to implement measures to uphold patient safety in the absence of traditional in-person patient encounter. Such measures should guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical patient encounter and resulting prescription is both enforced and independently kept. Measures to assure informed, accurate, and error prevention prescribing practices (e.g. integration with e-Prescription systems) are encouraged.
 - (2) Prescribing medications, in-person or via telehealth, is at the professional discretion of the optometrist based on licensure. The indication, appropriateness, and safety considerations for each telehealth visit prescription shall be evaluated by the optometrist in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an in-person patient encounter. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, optometrist may exercise their judgment and prescribe medications as part of telehealth encounters.

- (i) Pursuant to Tenn. Comps. Rules & Regulations 1045-02-.09(3), all therapeutic prescriptions written by a Tennessee optometrist certified to practice therapeutics shall include:
 - (1) Tennessee license number; and
 - (2) "T" designation preceding license number, i.e. OD-T000.
- (ii) For telehealth ophthalmic prescriptions, the same requirements exist as for fixed fee in-person services as outlined in Tenn. Comps. Rules & Regulations 1045-02-.08(3).

If an optometrist provides telehealth services for routine vision examination, findings shall include all pertinent tests and observations necessary to satisfy the standard of care. The following shall constitute the professionally recognized components to be included in the telehealth examination provided and before the prescription requested is issued:

1. Spectacles

- 1. Visual acuity testing of each eye far and near point; and
- 2. External examination including extra ocular motility and confrontation fields, and
- 3. Refraction (objective and subjective); and
- 4. Coordination testing; and
- 5. Ophthalmoscopy; and
- 6. Biomicroscopy; and
- 7. Tonometry.

2. Contact Lenses:

- 1. All of the components required for spectacles prescriptions; and
- 2. Keratometer reading of cornea curves; and
- 3. Biomicroscopic evaluation of lid health, tear film integrity and corneal integrity; and
- 4. Application of known diagnostic lenses to each eye to include evaluation of acuity, over refraction and biomicroscopic evaluation of lens fit with use of chemical dyes as indicated; and

5. Adequate patient training in lens care, solutions, application and removal along with proper wearing schedule, warning signs, and recall intervals.

Adjourn

With no other Task Force business to conduct, Dr. Carlson adjourned the meeting at 3:35PM CST.