

CHAPTER 50-02-15 TELEMEDICINE

50-02-15-01. Definitions. As used in this chapter, “*Telemedicine*” means the practice of medicine using electronic communication, information technologies or other means between a licensee in one location and a patient in another location, with or without an intervening healthcare provider. It includes direct interactive patient encounters as well as asynchronous store-and-forward technologies and remote monitoring.

“Licensee” means a physician or physician assistant licensed to practice in North Dakota. A physician assistant practicing telemedicine from another state is subject to the rules regarding physician supervision, except that supervision may be by a North Dakota licensed physician who is practicing telemedicine in North Dakota from the same state as the physician assistant, and need not be by a North Dakota licensed physician who is physically located in North Dakota.

50-02-05-02. Licensure. The practice of medicine is deemed to occur in the state the patient is located. Practitioners providing medical care to patients located in North Dakota are subject to the licensing and disciplinary laws of North Dakota and must possess an active North Dakota license for their profession.

50-02-05-03. Standard of care and professional ethics. Licensees are held to the same standard of care and same ethical standards whether practicing traditional, in-person, medicine or telemedicine. Therefore, the following apply in the context of telemedicine:

a) Scope of practice. Professional ethical standards require all practitioners to practice only in areas in which they have demonstrated competence, based on their training, ability and experience. In assessing a licensee’s compliance with this ethical requirement, consideration will be given to board certifications and specialty groups’ telemedicine standards.

b) Patient-Licensee relationship. A licensee practicing telemedicine must establish a valid relationship with the patient prior to the diagnosis and/or treatment of a patient. A licensee practicing telemedicine shall verify the identity of the patient seeking care; and disclose, and ensure the patient has the ability to verify, the identity and licensure status of any licensee providing medical services to the patient.

c) Evaluations and examinations. Prior to diagnosing or treating a patient for a specific illness or condition, an examination or evaluation must be performed. An examination or evaluation may be performed entirely through telemedicine, if the examination or evaluation is equivalent to an in-person examination. A video examination that utilizes appropriate diagnostic testing and use of peripherals that would be deemed necessary in a like in-person examination or evaluation would meet this standard, as would an examination conducted with an appropriately licensed intervening health care provider, practicing within the scope of their profession, providing necessary physical findings to the licensee. An examination or evaluation that consists only of a static online questionnaire or an audio conversation will not be considered to meet the standard of care.

It is recognized that in certain types of telemedicine utilizing asynchronous store-and-forward technology or electronic monitoring, such as tele-radiology or ICU monitoring, it is not medically necessary for an independent examination of the patient to be performed.

d) Medical records. Licensees practicing telemedicine are subject to all North Dakota laws governing the adequacy of medical records and the provision of medical records to the patient and other medical providers treating the patient.

e) Licensees must have the ability to make appropriate referrals of patients not amenable to diagnosis or complete treatment through a telemedicine encounter, including those patients in need of emergent care, or complementary in-person care.

50-02-15-04. Prescribing. A licensee who has performed a telemedicine examination or evaluation meeting the requirements of this chapter may prescribe medications according to the licensee's professional discretion and judgment, with one exception: Licensees may not prescribe opioids for pain control through a telemedicine encounter.

Licensees who prescribe controlled substances, as defined by North Dakota law, in circumstances allowed under this rule, must comply with all state and federal laws regarding the prescribing of controlled substances, and must participate in the North Dakota Prescription Drug Monitoring Program.