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South Carolina
Department of Labor, Licensing and Regulation

Board of Medical Examiners



Henry D. McMaster
Governor

Emily H. Farr
Director

PUBLIC HEALTH STATE OF EMERGENCY ORDER 2020-BME-PH-05

**ORDER REGARDING USE OF TELEMEDICINE FOR
PROVIDING MEDICATION-ASSISTED TREATMENT**

WHEREAS, on March 13, 2020, Governor Henry McMaster issued Executive Order No. 2020-08 declaring a public health state of emergency due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual and anticipated impacts associated with the same;

WHEREAS, Governor McMaster has issued subsequent Executive Orders in which he has taken additional action to protect the citizens of South Carolina;

WHEREAS, under federal law, a prescription for a controlled substance issued by means of the Internet (including telemedicine) must generally be predicated on an in-person medical evaluation (21 U.S.C. 829(e)); however, the Controlled Substances Act contains certain exceptions to this requirement, including when the Secretary of Health and Human Services has declared a public health emergency under 42 U.S.C. 247d (section 319 of the Public Health Service Act), as set forth in 21 U.S.C. 802(54)(D);

WHEREAS, the Secretary of Health and Human Services has declared a public health emergency;

WHEREAS, as of March 16, 2020, and continuing for as long as the Secretary's designation of a public health emergency remains in effect, HHS and the DEA have indicated that DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.

Provided the practitioner satisfies the above requirements, the practitioner may issue the prescription using any of the methods of prescribing currently available and in the manner set forth in the DEA regulations. Thus, the practitioner may issue a prescription either electronically (for schedules II-V) or by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

The term "practitioner" in this context includes a physician [. . .] or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which s/he practices to prescribe controlled substances in the course of his/her professional practice (21 U.S.C. 802(21)).

WHEREAS, on March 21, 2020, the Board issued Order 2020-BME-PH-03 suspending enforcement of the prohibition on prescribing Schedule II and III medications via telemedicine without Board approval, subject to certain conditions, for the duration of the declared public health state of emergency in South Carolina, or the DEA's withdrawal of its guidance, whichever is sooner, unless otherwise modified, amended, or rescinded by subsequent order;

WHEREAS, S.C. Code Ann. § 40-47-37(A) provides that "[a] licensee shall not establish a physician-patient relationship by telemedicine pursuant to Section 40-47-113(B) for the purpose of prescribing medication when an in-person physical examination is necessary for diagnosis."

WHEREAS, the Board of Medical Examiners has previously opined that the standard of care for the initiation of office-based Medication-Assisted Treatment ("MAT") for patients with an opioid use disorder requires the practitioner to conduct an in-person examination of the patient, unless the practice model and practitioner have been approved by the Board;

WHEREAS, the Board has previously approved certain practitioners to initiate MAT via telemedicine without first requiring an in-person visit;

WHEREAS, due to concerns regarding the ability of patients to attend in-office visits during the declared public health state of emergency, the Board has received inquiries from certain stakeholders seeking guidance on the Board's current stance on the use of telemedicine for treating new and existing patients with MAT;

NOW, THEREFORE, the Board issues the following guidance regarding the use of telemedicine for treating new and existing patients with MAT:

1. Practitioners previously approved by the Board may, in accordance with state and federal law, initiate MAT treatment for patients diagnosed with an opioid use disorder via telemedicine, without the need for an in-person visit, provided that the initiation of MAT is documented in the patient’s chart and the practitioner sees the patient in-person within sixty (60) days after the end of the public health state of emergency;

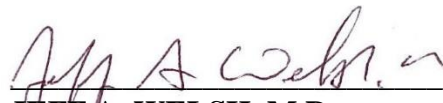
2. Practitioners with an already established practitioner-patient relationship may, in accordance with state and federal law, provide treatment to existing patients by means of telemedicine; and

3. Should circumstances arise in which the public health requires approval of additional practitioners to initiate MAT via telemedicine, the South Carolina Department of Alcohol and Other Drug Abuse Services (“DAODAS”), in conjunction with a quailed practitioner or practitioners who have obtained a Drug Addiction Treatment Act of 2000 (“DATA 2000”) waiver, may petition the Board for such approval. Consideration of any such petition may be determined by the Board’s executive committee without the need for a hearing. Any approval granted in this manner shall be valid for the duration of the public health state of emergency or until further order of the Board.

The guidance set forth above shall remain in effect for the duration of the declared public health state of emergency in South Carolina, or the DEA’s withdrawal of its guidance, whichever is sooner, unless otherwise modified, amended, or rescinded by subsequent order.

IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS



JEFF A. WELSH, M.D.
President of the Board

March 22, 2020