

MEDICAL DEFENSE AND HEALTH LAW

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IN THIS ISSUE

Robert G. Smith outlines Texas' new telemedicine statute, allowing physicians to establish a physician-patient relationship without an initial in-person visit.

Physicians in Texas can Establish New Patients using Telemedicine Services under New Statute

ABOUT THE AUTHOR



Robert G. Smith, Jr. is a member/owner of the firm Lorance & Thompson, PC in Houston, Texas. Rob is a member of the Product Liability, Business Litigation, and Medical Defense & Health Law Committees of the International Association of Defense Counsel. He is on the steering committee for the ALFA International Product Liability & Complex Tort Practice Group. Rob's clients include physicians, hospitals, nursing homes, and manufacturers, among others. He has tried a wide variety of cases during his 20 years of practice. He can be reached at rgs@lorancethompson.com.

ABOUT THE COMMITTEE

The Medical Defense and Health Law Committee serves all members who represent physicians, hospitals and other healthcare providers and entities in medical malpractice actions. The Committee recently added a subcommittee for nursing home defense. Committee members publish monthly newsletters and *Journal* articles and present educational seminars for the IADC membership at large. Members also regularly present committee meeting seminars on matters of current interest, which includes open discussion and input from members at the meeting. Committee members share and exchange information regarding experts, new plaintiff theories, discovery issues and strategy at meetings and via newsletters and e-mail. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Under a new telemedicine statute that became effective on January 1, 2018, physicians in Texas can now establish a physician-patient relationship through telemedicine services without a prior in-person visit. The statute, found at Texas Occupations Code Chapter 111, eliminates the prior requirement that a physician see a patient in-person before such telemedicine services can be used. Texas is the last state in the U.S. to eliminate this requirement. Of course, the standard of care for physicians providing telemedicine services is the same as when treating a patient in-person.

If a physician provides the patient with guidance on appropriate follow-up care and, if the patient consents and has a primary care physician, provides to the patient's primary care physician within 72 hours a medical record or other report regarding the evaluation or diagnosis of the patient's condition, a physician-patient relationship may be established through the following telemedicine services:

- (A) synchronous audiovisual interaction between the practitioner and the patient in another location;
- (B) asynchronous store and forward technology, including asynchronous store and forward technology in conjunction with synchronous audio interaction between the practitioner and the patient in another location, as long as the

practitioner uses clinical information from:

- (i) clinically relevant photographic or video images, including diagnostic images; or
 - (ii) the patient's relevant medical records, such as the relevant medical history, laboratory and pathology results, and prescriptive histories; or
- (C) another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care described in Section 111.007.

The statute specifically states that a physician-patient relationship is not present if a practitioner prescribes an abortifacient or other drug or device that terminates a pregnancy. The statute does not apply to mental health services.

The Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy are required to jointly adopt rules that establish the determination of a valid prescription based on telemedicine services, including where the physician-patient relationship is established through such services.

Health benefit plans may not exclude from coverage a covered service or procedure delivered to a covered patient using telemedicine services, although a deductible, co-payment, or coinsurance may

be required. Health benefit plans are not required to provide coverage for telemedicine services provided only by audio interaction, such as audio-only telephone consultation, email message, or facsimile transmission.

This change in Texas law should increase access to physicians for Texans, where dozens of counties do not have a family physician.

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