

AADB DIRECTIVE

TELEHEALTH

In accordance with our objective

To provide counsel and guidance to Agencies in amending, revising, and enforcing the dental practice acts of each State in the interest of the public welfare (American Association of Dental Boards Bylaws, Section 4, 2016)

we are introducing the following information relative to Teledentistry Statutes and Regulations. The following documents are examples of proposed legislation by some of our States that are cognizant of increasing access to care for patients but also help Boards in regulating Providers.

Generic Regulations for Teledentistry Example 1

RELATES TO: XXX

STATUTORY AUTHORITY: XXX

NECESSITY, FUNCTION, AND CONFORMITY: XXX authorizes the board to exercise all administrative functions of the Commonwealth in the regulation of the profession of dentistry, and to promulgate administrative regulations to carry out the provisions of the chapter. XXX and XXX require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of XXX. This administrative regulation establishes requirements and procedures for the practice of teledentistry.

Section 1. Definition. "Teledentistry" means the use of electronic and digital communications to provide and deliver dentistry and dental hygiene-related information and services.

Section 2. Practice of Teledentistry. (1) To deliver teledentistry services in XXX, one must hold a current, valid dental or dental hygiene license issued by the Board of Dentistry. The practice of dentistry occurs where the patient is located at the time teledentistry services are initiated.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. Licensees delivering teledentistry services shall comply with all rules of professional conduct and state and federal statutes relevant to dentistry and dental hygiene. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

(3) A patient may be treated via teledentistry by:

(a) A XXX licensed dentist; or

(b) A XXX licensed dental hygienist who is supervised by, and has delegated authority from, a XXX licensed dentist.

(c) Any individual may provide any photography and/or digital imaging to a XXX licensed dentist or XXX licensed dental hygienist for the sole and limited purpose of screening, assessment and/or examination. Anyone providing such photography and/or digital imaging to a XXX licensed dentist or XXX licensed dental hygienist must follow the same standards required for the recording of such photography and/or digital imaging and are limited by XXX.

(4) A licensee using teledentistry services in the provision of dental services to a patient shall take appropriate steps to establish the licensee-patient relationship and conduct all appropriate evaluations and history of the patient.

Section 3. Informed Consent. A licensee shall, to the extent possible:

(1) Confirm the identity of the requesting patient,

(2) Collect the patient's health history;

(3) Disclose the licensee's identity, applicable credentials, and contact information including a current phone number.

(4) Obtain an appropriate informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the 1 risk and limitations of:

(a) The use of electronic and communications in the provision of care;

(b) The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;

(c) The potential disruption of electronic and digital communication in the use of teledentistry;

(d) The types of activities permitted using teledentistry services;

(6) The patient or legal guardian's understanding that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry

encounter;

(7) A requirement for explicit patient or legal guardian consent to forward patient-identifiable information to a third party; and

Section 4. Confidentiality. The licensee shall ensure that any electronic and digital communication used in the practice of teledentistry is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all other applicable laws, administrative regulations, and guidance. Confidentiality shall be maintained through appropriate processes, practices and technology, including the disposal of electronic and digital equipment and data.

Section 5. Dental Records. (1) Any dental record made through teledentistry shall be held to the same record retention standards as a record made through a traditional in-person dental encounter.

(2) An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record.

(3) The patient record established during the use of teledentistry services shall be accessible to both the licensee and the patient or legal guardian, consistent with all established laws and administrative regulations governing patient healthcare records.

(4) The licensee shall document or record in the file:

(a) The patient's presenting problem;

(b) The licensee's chief concern;

(c) The patient's diagnosis;

(d) The patient's treatment plan; and

(e) A description of all services provided by teledentistry.

Section 6. Prescribing. (1) The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with applicable law and current standards of care, including those for appropriate documentation. A licensee's use of teledentistry carries the same professional accountability as a prescription issued in connection with an in-person encounter.

(2) A licensee who prescribes any kind of analgesic or pain medication as part of the provision of teledentistry services shall comply with all applicable KASPER requirements.

Section 7. Representation of Services. A licensee using teledentistry to deliver dental 1 services or who practices teledentistry shall not:

(a) Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services; or

(b) Allow fee-splitting for the use of teledentistry services.

Generic Regulations for Teledentistry Example 2

§XXXXXXX. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appliance" means a permanent or removable device used in a plan of dental care, including crowns, fillings, bridges, braces, dentures, orthodontic aligners, and sleep apnea devices.

"Board" means the Board of Dentistry.

"Dental hygiene" means duties related to patient assessment and the rendering of educational, preventive, and therapeutic dental services specified in regulations of the Board and not otherwise restricted to the practice of dentistry.

"Dental hygienist" means a person who is licensed by the Board to practice dental hygiene.

"Dentist" means a person who has been awarded a degree in and is licensed by the Board to practice dentistry.

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical, or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body.

"Digital scan" means digital technology that creates a computer-generated replica of the hard and soft tissues of the oral cavity using enhanced digital photography.

"Digital scan technician" means a person who has completed a training program approved by the Board to take digital scans of intraoral and extraoral hard and soft tissues for use in teledentistry.

"Digital work order" means the digital equivalent of a written dental laboratory work order used in the construction or repair of an appliance.

"License" means the document issued to an applicant upon completion of requirements for admission to practice dentistry or dental hygiene in XXXX or upon registration for renewal of license to continue the practice of dentistry or dental hygiene in XXXX.

"License to practice dentistry" means any license to practice dentistry issued by the Board.

"Maxillofacial" means pertaining to the jaws and face, particularly with reference to specialized surgery of this region.

"Oral and maxillofacial surgeon" means a person who has successfully completed an oral and maxillofacial residency program, approved by the Commission on Dental Accreditation of the American Dental Association, and who holds a valid license from the Board.

"Store-and-forward technologies" means the technologies that allow for the electronic transmission of dental and health information, including images, photographs, documents, and health histories, through a secure communication system.

"Teledentistry" means the delivery of dentistry between a patient and a dentist who holds a license to practice dentistry issued by the Board through the use of telehealth systems and electronic technologies or media, including interactive, two-way audio or video.

§XXXXX. Digital scans for use in the practice of dentistry; practice of digital scan technicians.

A. No person other than a dentist, dental hygienist, dental assistant I, dental assistant II, digital scan technician, or other person under the direction of a dentist shall obtain dental scans for use in the practice of dentistry.

B. A digital scan technician who obtains dental scans for use in the practice of teledentistry shall

work under the direction of a dentist who is (i) licensed by the Board to practice dentistry in XXX, (ii) accessible and available for communication and consultation with the digital scan

technician at all times during the patient interaction, and (iii) responsible for ensuring that the digital

scan technician has a program of training approved by the Board for such purpose. All protocols and procedures for the performance of digital scans by digital scan technicians and evidence that a digital

scan technician has complied with the training requirements of the Board shall be made available to the

Board upon request.

§XXX. Practice of dentistry.

A. Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises, or permits to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents, or contiguous structures; or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes or causes to be taken

digital scans or impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes. Taking impressions for mouth guards that may be self-fabricated or obtained over-the-counter does not constitute the practice of dentistry.

B. No person shall practice dentistry unless a bona fide dentist-patient relationship is established in person or through teledentistry. A bona fide dentist-patient relationship shall exist if the dentist has (i) obtained or caused to be obtained a health and dental history of the patient; (ii) performed or caused to be performed an appropriate examination of the patient, either physically, through use of instrumentation and diagnostic equipment through which digital scans, photographs, images, and dental records are able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies; (iii) provided information to the patient about the services to be performed; and (iv) initiated additional diagnostic tests or referrals as needed. In cases in which a dentist is providing teledentistry, the examination required by clause (ii) shall not be required if the patient has been examined in person by a dentist licensed by the Board within the six months prior to the initiation of teledentistry and the patient's dental records of such examination have been reviewed by the dentist providing teledentistry.

C. No person shall deliver dental services through teledentistry unless he holds a license to practice dentistry in XXXX, issued by the Board and has established written or electronic protocols for the practice of teledentistry that include (i) methods to ensure that patients are fully informed about services provided through the use of teledentistry, including obtaining informed consent; (ii) safeguards to ensure compliance with all state and federal laws and regulations related to the privacy of health information; (iii) documentation of all dental services provided to a patient through teledentistry, including the full name, address, telephone number, and State license number of the dentist providing such dental services; (iv) procedures for providing in-person services or for the referral of patients requiring dental services that cannot be provided by teledentistry to another dentist licensed to practice dentistry in XXXX who actually practices dentistry in an area of XXXX the patient can readily access; (v) provisions for the use of appropriate encryption when transmitting patient health information via teledentistry; and (vi) any other provisions required by the Board. A dentist who delivers dental services using teledentistry shall, upon request of the patient, provide health records to the patient or a dentist of record in a timely manner in accordance with § XXXXX and any other applicable federal or state laws or regulations. All patients receiving dental services through

teledentistry shall have the right to speak or communicate with the dentist providing such services upon request.

D. Dental services delivered through use of teledentistry shall (i) be consistent with the standard of care as set forth in §XXXXX, including when the standard of care requires the use of diagnostic testing or performance of a physical examination, and (ii) comply with the requirements of this chapter and the regulations of the Board.

E. In cases in which teledentistry is provided to a patient who has a dentist of record but has not had a dental wellness examination in the six months prior to the initiation of teledentistry, the dentist providing teledentistry shall recommend that the patient schedule a dental wellness examination. If a patient to whom teledentistry is provided does not have a dentist of record, the dentist shall provide or cause to be provided to the patient options for referrals for obtaining a dental wellness examination.

F. No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist. 111 § XXXXXX. Persons engaged in construction and repair of appliances.

A. Licensed dentists may employ or engage the services of any person, firm, or corporation to construct or repair an appliance, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth in accordance with a written or digital work order. Any appliance constructed or repaired by a person, firm, or corporation pursuant to this section shall be evaluated and reviewed by the licensed dentist who submitted the written or digital work order, or a licensed dentist in the same dental practice. A person, firm, or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm, or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written or digital work order.

B. Any licensed dentist who employs the services of any person, firm, or corporation not working in a dental office under the dentist's direct supervision to construct or repair, an appliance extraorally, prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or teeth, shall furnish such person, firm, or corporation with a written or digital work order on forms prescribed by the Board, which shall, at minimum, contain: (i) the name and address of the person, firm, or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v) specification of the type and quality of materials to be used; and (vi) the signature and address of the dentist.

The person, firm, or corporation shall retain the original written work order or an electronic copy of

a digital work order, and the dentist shall retain a duplicate of the written work order or an electronic copy of a digital work order, for three years.

C. If the person, firm, or corporation receiving receives a written or digital work order from a licensed dentist engages a subcontractor to perform services relative to the work order, a written disclosure and subwork order shall be furnished to the dentist on forms prescribed by the Board, which shall, at minimum, contain: (i) the name and address of the person, firm, or corporation and subcontractor; (ii) a number identifying the subwork order with the original work order; (iii) the date the any subwork order was written; (iv) a description of the work to be done and the work to be done by the subcontractor, including diagrams or digital files, if necessary; (v) a specification of the type and quality of materials to be used; and (vi) the signature of the person issuing the disclosure and subwork order.

The subcontractor shall retain the subwork order, and the issuer shall retain a duplicate of the subwork order, which shall be attached to the work order received from the licensed dentist, for three years.

D. No person, firm, or corporation engaged in the construction or repair of appliances shall refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

The provisions of this section shall not apply to a work order for the construction, reproduction, or repair, extraorally, of prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, done by a person, firm or corporation pursuant to a written work order received from a licensed dentist who is residing and practicing in another state.