Telemedicine UPDATE: AMA Guidelines and Florida State Law

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On June 11, 2014, the American Medical Association released a set of guiding principles for telemedicine, by adopting Report 7 of its Council on Medical Service. Some highlights of the guidelines are as follows:

• A valid patient relationship must be established before providing telemedicine services;
• The patient’s medical history must be collected as part of the provision of any telemedicine service;
• The provision of telemedicine services must be properly documented and should include providing a visit summary to the patient;
• The delivery of telemedicine services must follow evidence-based practice guidelines, to the degree they are available, to ensure patient safety, quality of care and positive health outcomes;
• Doctors must verify a patient’s insurance covers telemedicine;
• Doctors need to verify that their medical liability insurance policy covers telemedicine services;
• Physicians and other practitioners delivering telemedicine services must abide by state licensure law, state medical practice laws and requirements in the state in which the patient receives services;
• Doctors must be licensed in the state where the patient receives services; and
• Patients seeking care via telemedicine must have a choice of provider.

While Florida statutes currently do not define or address telemedicine, the Florida Boards of Medicine and Osteopathy recently enacted regulations governing telemedicine, effective March 14, 2014. The regulations, which are identical, are found at 64B8-9.0141 (allopaths) and 64B15-14.0081 (osteopaths).

The regulations define telemedicine as the practice of medicine by a licensed Florida physician or physician assistant “where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications.” Telemedicine does not include the “provision of health care services only through an audio only telephone, email messages, text messages, facsimile transmission, U.S. Mail or other parcel service, or any combination thereof.” Additionally, the regulations set forth the following:

• The standard of care defined in Section 456.50(1)(e), Florida Statutes, applies to health care services provided by telemedicine;
• Florida licensed physicians and physician assistants providing health care services by telemedicine are responsible for the quality of the equipment and technology employed and are responsible for their safe use;
• Controlled substances generally shall not be prescribed through telemedicine. However, physicians are not precluded from using telemedicine to order controlled substances for hospitalized patients;
• Physicians and physician assistants are under the same obligations regarding patient confidentiality and recordkeeping;
• A valid physician-patient relationship may be established through telemedicine (it appears the Boards have changed their long standing position that a face to face encounter is required versus this new standard);
• Consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians or other qualified providers related to the care of Florida patients are not prohibited; and
• The regulations do not apply to emergency medical services or patients with emergency medical conditions.

The Federation of State Medical Boards (FSMB) also recently published the “Model Policy on the Appropriate Use of Telemedicine Technology in the Practice of Medicine.” The Model Policy contains similarities to Florida’s new regulations, including:

• Recognizing that the physician patient relationship may be established using telemedicine technology; and
• Requiring that a physician be licensed by the medical board of the state where the patient is located.

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