

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.16, pertaining to teledentistry. The proposed rule specifies the informed consent documentation that is required when licensees perform teledentistry dental services. The Board proposes this rule in accordance with House Bill 1700 of the 89th Texas Legislature, Regular Session (2025), and Chapter 111, Texas Occupations Code.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule expands an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements Chapter 111, Texas Occupations Code.

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

<rule>

§108.16. Teledentistry.

(a) Purpose. Pursuant to Texas Occupations Code Chapter 111, and Texas Occupations Code §254.001(a), the Board is authorized to adopt rules relating to the practice of dentistry, including teledentistry dental services. This section establishes the standards of practice for teledentistry.

(b) Definition. "Teledentistry dental service" is defined in Texas Occupations Code §111.001(2-a).

(c) Prevention of Fraud and Abuse. Dentists who utilize teledentistry dental services must adopt protocols to prevent fraud and abuse through the use of teledentistry dental services.

(d) Complaints to the Board. Dentists who utilize teledentistry dental services must provide notice of how patients may file a complaint with the Board. Content and method of the notice must contain the same information as set out in §108.3(a)(2)-(3) of this title (relating to Consumer Information).

(e) Practice of Teledentistry.

(1) A dentist, dental hygienist, or dental assistant who delivers teledentistry services to a patient located in Texas must hold an active Texas license or registration issued by the Board.

(2) A dental health professional providing a dental health care service or procedure as a teledentistry dental service:

(A) is subject to the same standard of care that would apply to the provision of the same dental health care service or procedure in an in-person setting as established in §108.7 of this title (relating to Minimum Standard of Care, General);

(B) must establish a practitioner-patient relationship; and

(C) must maintain complete and accurate dental records as set out in §108.8 of this title (relating to Records of the Dentist).

(3) A dentist may simultaneously delegate to and supervise through a teledentistry dental service not more than five health professionals who are not dentists.

(4) Adequate measures must be implemented to ensure that patient communications, recordings and records are protected consistent with federal and state privacy laws.

(5) Any individual may provide any photography or digital imaging to a Texas licensed dentist or Texas licensed dental hygienist for the sole and limited purpose of screening, assessment, or examination.

(f) Informed Consent. In addition to the informed consent requirements in §108.7 of this title, and §108.8 of this title, informed consent must include the following:

(1) the delegating dentist's name, Texas license number, credentials, qualifications, contact information, and practice location involved in the patient's care. Additionally, the name, Texas license number, credentials, and qualifications of all dental hygienists and dental assistants involved in the patient's care. This information must be publicly displayed and provided in writing to the patient; ~~and~~]

(2) a dentist who delegates a teledentistry dental service must ensure that the informed consent of the patient includes disclosure to the patient that the dentist delegated the service; and[.]

(3) a licensee must, to the extent possible:

(A) confirm the identity of the patient;

(B) verify and authenticate the patient's health history;

(C) obtain an informed consent from the 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 dental services. At a minimum, the informed consent must inform the patient and document acknowledgment of the risk and limitations of:

- i. the use of electronic and digital communications in the provision of care;
- ii. the potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;
- iii. the potential disruption of electronic and digital communication in the use of teledentistry; and
- iv. the types of activities permitted using teledentistry dental services;

(D) inform the patient that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter; and

(E) state the requirement for explicit patient consent to forward patient identifiable information to a third party.

(g) Issuance of Prescriptions.

(1) The validity of a prescription issued as a result of a teledentistry dental service is determined by the same standards that would apply to the issuance of the prescription in an in-person setting.

(2) This rule does not limit the professional judgment, discretion or decision-making authority of a licensed practitioner. A licensed practitioner is expected to meet the standard of care and demonstrate professional practice standards and judgment, consistent with all applicable statutes and rules when issuing, dispensing, delivering, or administering a prescription medication as a result of a teledentistry dental service.

(3) A valid prescription must be:

(A) issued for a legitimate dental purpose by a practitioner as part of patient-practitioner relationship as set out in Texas Occupations Code §111.005; and

(B) meet all other applicable laws and rules before prescribing, dispensing, delivering or administering a dangerous drug or controlled substance.

(4) Any prescription drug orders issued as the result of a teledentistry dental service, are subject to all regulations, limitations, and prohibitions set out in the federal and Texas Controlled Substances Act, Texas Dangerous Drug Act and any other applicable federal and state law.

(h) Limitation on Certain Prescriptions.

(1) In this subsection, the following definitions apply:

(A) "Controlled substance", "opiate", and "prescribe" have the meanings assigned by Texas Health and Safety Code §481.002.

(B) "National holiday" means a day described by Texas Government Code §662.003(a).

(2) When prescribing a controlled substance to a patient as a teledentistry dental service, a dentist must not prescribe more than is necessary to supply a patient for:

(A) if the prescription is for an opiate, a two-day period; or

(B) if the prescription is for a controlled substance other than an opiate, a five-day period.

(3) For each day in a period described by paragraph (2) of this subsection that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday.