



ATTORNEY GENERAL OPINION
2020-7

Dr. Kayse Shrum
Secretary of Science and Innovation
Oklahoma State University, Center for Health Sciences
1111 West 17th Street
Tulsa, Oklahoma 74107

March 24, 2020

Dear Dr. Shrum:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

What restrictions are imposed by Oklahoma law on the use of telemedicine by health professionals responding to the COVID-19 pandemic?

**I.
BACKGROUND**

You have asked us to examine current Oklahoma law on telemedicine as the health system responds to the COVID-19 pandemic. In our view, Oklahoma statutes provide few barriers to healthcare workers addressing the needs of Oklahomans related to this pandemic via telemedicine. The existing restrictions on telemedicine do not appear to hinder effective COVID-19 response. While regulatory bodies have provided more detailed guidance on telemedicine than statute, any non-essential obstacles imposed by such regulations or administrative guidance documents can be amended, suspended, or repealed through emergency rulemaking or other appropriate action by the regulatory entities.

**II.
DISCUSSION**

Licensed physicians in Oklahoma are allowed to practice telemedicine. Specifically, Title 59, Section 478.1 states that “[u]nless otherwise prohibited by law, a valid physician-patient relationship may be established by an allopathic or osteopathic physician with a patient located in this state through telemedicine.” And Title 36, Section 6803(A) states that “[f]or services that a

health care practitioner determines to be appropriately provided by means of telemedicine” health insurers in this State “shall not require person-to-person contact between a health care practitioner and a patient.” Many Oklahoma regulations, such as in the field of mental health and substance abuse treatment, similarly encourage and facilitate the use of telemedicine. *See* O.A.C. 317:30-3-27, 450:23-3-22, 450:24-1-2, 450:27-1-2. Although the law once required in-person written consent for telemedicine for insurance purposes, *see* 36 O.S.2011, § 6804, that law was repealed in 2016, *see* 2016 Okla. Sess. Laws. ch. 162. Of course, some form of informed consent, as applicable with any medical practice, is still required.

There are several statutory restrictions on the use of telemedicine. Medication abortion can only be performed in person, *see* 63 O.S.Supp.2019, § 1-729.1, opioids cannot be distributed via telemedicine unless an in-person physician-patient relationship has previously been established, *see* 59 O.S.Supp.2019, § 478.1(C), 63 O.S.Supp.2019, § 2-309D, and mental health telemedicine cannot be practiced on minors in school unless there is an emergency or their parent or guardian has given prior written consent, *see* 25 O.S.Supp.2019, § 2005. However, none of these restrictions appear relevant to public health responses to the COVID-19 pandemic.

That is not to say that telemedicine practice in Oklahoma is completely unregulated, unlimited, or discretionary. Telemedicine, like all other medicine, remains subject to the oversight of Oklahoma regulatory authorities, and subject to the standards of medical practice that govern in-person medicine. *See, e.g.*, O.A.C. 435:10-7-13. Practitioners cannot fall below standard of care, for example, or treat telemedicine patients differently from in-person patients in regard to confidentiality, access to records, follow-up, ethics, *etc.* On the most basic level, physicians must still be licensed to practice in Oklahoma, and they must still inform patients of and receive from patients the most fundamental of identifying information, location, and credentials. *See, e.g.*, 59 O.S.Supp.2019, § 478.1; O.A.C. 435:10-7-13. Further, telemedicine is not just the practice of medicine through any and all technological means: Oklahoma statutes and regulations do not contemplate the practicing of medicine through the phone, email, text message, instant messaging, online questionnaire, or fax machine. *See, e.g.*, 36 O.S.Supp.2019, § 6802; 43A O.S.Supp.2019, § 1-103; 59 O.S.Supp.2019, §§ 478–478.1; O.A.C. 435:10-7-13, 317:30-3-27. Other rules and guidance on telemedicine are scattered throughout agency materials, but none pose a meaningful barrier to confronting the COVID-19 pandemic.¹

¹ *See, e.g.*, O.A.C. 86:15-9-4, 86:16-1-3 (marital and family therapist candidates allowed to have certain portion of training hours to be done technologically rather than in-person); 317:30-5-11 (OHCA telemedicine rules for SoonerCare patients); 450:17-5-176, 178, 185 (Certified Community Behavioral Health Clinics “will make services available via telemedicine,” but “an in-person assessment is preferred” at the initial encounter and, if not, the next encounter must be in-person); 575:10-1-7 (technicians must work under supervision of licensed psychologist either physically onsite *or* through telemedicine).

It is, therefore, the official Opinion of the Attorney General that:

Oklahoma law currently allows health professionals to engage in telemedicine to a sufficient degree to address the COVID-19 pandemic. To the extent specific regulations may need waiver, amendment, suspension, or repeal, the relevant agencies should be alerted and should have the requisite authority to meet the exigencies of such emergency.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA