

The Doctor Will See You Now?

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Digital technology and mobile applications have changed the face of nearly every service-oriented industry. Mobile health care (mHealth) applications offer access to basic care and routine monitoring anytime, anywhere.¹



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Telemedicine — the use of real-time electronic communications to provide remote clinical services for nonemergency (“nonemergent”) medical questions or for patients unable to visit a primary care facility — is well-established. And, there is extensive evidence that telemedicine offers quality care on par with routine in-person visits, is well-received by patients and providers, and delivers considerable cost-savings.²

Thus, it is unsurprising that, since 2014, 25 states have revised their professional standards and licensure requirements in response to providers offering health services via telemedicine.³ Or that, in 2014, the Centers for Medicare and Medicaid Services changed its fee schedule to encourage more telehealth practices.⁴

Yet, in order to protect established providers from competition, medical regulators in some states have tried to severely restrict the use of telemedicine. This is especially the case in Texas.

Grading State Telemedicine Regulations. The American Telemedicine Association awarded 22 states an “A” for regulations governing telemedicine providers-patient encounters. Three states — Texas, Alabama and Arkansas — got an F.⁵ As the table illustrates:

- Arkansas and Texas are the only states that require patients to have an established relationship (that is, an in-person visit) with a physician prior to a telemedicine encounter.
- Texas, Alabama and Georgia are alone among states in requiring an in-office follow-up visit after a telemedicine encounter.

This is striking considering Texas ranks 51 out of 51 (including Washington, D.C.) for access to medical care in the United States.⁶

Telemedicine Regulation in Texas. The Texas Medical Board has strongly resisted efforts to expand telemedicine in the state’s private health sector, with the possible exception of patients few doctors want to treat — prisoners. The state prison system’s decades-long use of telemedicine has been a great success. In 1994, the state contracted with the University of Texas Medical Branch (UTMB) to offer telemedicine visits to state prisoners. Over the past 20 years, UTMB has performed 250,000

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Telemedicine Regulation State Rankings (Physician-Patient Encounter)

Letter Grade			
A	B	C	F
Colorado	Alaska	Georgia	Alabama
Connecticut	Arizona		Arkansas
Delaware	California		Texas
Illinois	Florida		
Kansas	Hawaii		
Kentucky	Idaho		
Maine	Indiana		
Massachusetts	Iowa		
Michigan	Louisiana		
Minnesota	Maryland		
Montana	Mississippi		
New Hampshire	Missouri		
New Jersey	Nebraska		
New Mexico	Nevada		
Oregon	New York		
Pennsylvania	North Carolina		
South Carolina	North Dakota		
South Dakota	Ohio		
Tennessee	Oklahoma		
Utah	Rhode Island		
Virginia	Vermont		
Wisconsin	Washington		
	West Virginia		
	Wyoming		

Source: Latoya Thomas and Gary Capistrant, "State Telemedicine Gaps Analysis: Physician Practice Standards & Licensure," American Telemedicine Association, May 2015.

community health centers in rural communities. Extensive research by the UTMB Center for Telehealth Research and Policy shows that access to telemedicine reduces nonemergent emergency rooms visits by 50 percent. Additionally, telemedicine patients report satisfaction rates well above 90 percent.⁷ In addition, a study of telemedicine for pulmonary outpatient care found telemedicine cost \$335 per patient annually compared to \$1,166 for on-site care.⁸

Although many states have improved their telemedicine regulations, Texas is moving in the opposite direction.⁹ In January 2015 the Texas Medical Board issued a new rule prohibiting physicians from writing prescriptions for telemedicine patients with whom they do not have a previously established relationship, including an in-person visit. The regulations also require the patient to have an in-office follow-up. The Texas Medical Association claims these policies "ensure telemedicine complements the efforts of local health care providers."¹⁰ The restrictions are waived for patients located in a medical facility receiving a remote consultation with a telemedicine physician. Simply put: The doctor does not have to be in the office to see you but you have to be in the doctor's office to be seen.

telemedicine visits and improved health outcomes among inmates, while saving taxpayers \$780 million.

The UTMB telemedicine program also offers corporate health services to large companies as well as

Challenges to Telemedicine Regulations. Teladoc, the largest telehealth provider in the nation, sued the board. In May 2015, the United States District Court for the Western Division of Texas granted an injunction pending

the outcome of the antitrust suit against the board filed by Teladoc. In its decision, the court found the rule would result in fewer physicians providing health care in Texas, where there is already a shortage of doctors.¹¹

A 2015 United States Supreme Court decision, *North Carolina Board of Dental Examiners v. Federal Trade Commission*, affirmed that state licensing boards do not enjoy immunity from federal antitrust laws. The court's decision effectively ends the common practice of states shielding members of state-regulated professions from competition.¹² In his opinion for the court, Justice Kennedy wrote, "When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest."¹³

The Federal Trade Commission also believes telemedicine benefits patients. In a January 2015 blog post, FTC Commissioner Maureen Ohlhausen wrote, "As a policymaker, I believe we need to be far seeing and far reaching in our policies to allow the potential of telemedicine to become a reality for patients in the U.S."

However, in 2015, the 5th Circuit Court of Appeals upheld the Texas Board of Veterinary Medical Examiners' right to limit telemedicine for veterinarians, finding that medical advice is not protected speech under the First Amendment. The ruling affirmed the right of states to monitor medical advice to the extent that it protects the interests of the state.¹⁴ Ultimately, the apparent conflict between the two rulings will have to be addressed by the United States Supreme Court.

Boosting Access to Care. Texas struggled for years to attract and retain doctors due to draconian state medical malpractice statutes. But targeted legal reforms turned a pariah into a poster child. The number of physicians in Texas skyrocketed.

Today, rapid population growth is putting great strain on the state's health care system and that strain will only increase over the next few decades. In the face of this challenge, the Texas Medical Board, instead of embracing an innovative technology that increases patient access to medical care, has taken a strong stand against telemedicine. In doing so, the Texas Medical Board has turned its back on a decade of effective reform in Texas.

According to the Commonwealth Fund's scorecard of state health systems' performance, Texas still ranks at the bottom for patient access and restrictions on medical

providers.¹⁵ In 2012, 21 percent of adults in the state of Texas went without medical care because of costs, up from 19 percent in 2007.¹⁶

The lack of accessible health care services disproportionately affects poor and low-income families who cannot afford to travel for health care or, as recipients of Medicare or Medicaid, are already limited in their choice of physicians. Access to care is particularly difficult in rural areas: 95 of the state's 254 counties have fewer than 10 doctors; 54 of those counties have fewer than 5 licensed physicians.¹⁷

Nearly 13 percent of the state's population has been designated as medically underserved, meaning that an individual's circumstances make it difficult to either access or afford health care services.¹⁸

Mobile Health Is a Growing Trend. For most patients, accessing a primary care doctor for routine health concerns through mHealth applications is a natural extension of using mobile technology to improve efficiency, saving both time and money. The number of patients using telehealth services is expected to reach 7 million by 2018, up from 350,000 in 2013.¹⁹ Some states have embraced this trend. For example, approximately 350,000 California Public Employees' Retirement System (CalPERS) union members have access to telemedicine through their health insurance plan with Blue Shield of California.²⁰ Worldwide, use of health-related mobile medical smartphone apps is estimated at 500 million patients and health care providers.²¹

Conclusion. The protectionist policies of the Texas Medical Board (TMB) threaten to undermine the effort Texas has made to increase access to medical care through telemedicine. With the population of Texas projected to double by 2050, attempting to limit telemedicine patients and providers is a dangerous bet against the future of health care in Texas.²²

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Notes

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