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DATE	December 17, 2020
TO	Licensing and Examination Committee
FROM	Jay Herdt, Licensing Manager
SUBJECT	Discussion and possible recommendation to the Board on Regulatory Language for Licensed Acupuncturist practice of Telehealth

Background

In response to the COVID-19 pandemic, Governor Newsome's [Executive Order N-43-20](#) provided that clinics, hospitals, other health care facilities, and health care providers maximize the number of capable health care workers through the use of telehealth services to ensure that Californians impacted by COVID-19 are able to access medical treatment as necessary. Additionally, the Governor's Order N-43-20 aimed to reduce the spread of COVID-19, and protect health care workers, including the use of telehealth services, where possible, for any reason and not limited to the diagnosis and treatment of COVID-19 or related conditions. This order has allowed healthcare providers, including Licensed Acupuncturists, to provide medical care and advice remotely to patients employing the practice of telehealth.

Earlier this year, the Acupuncture Board (Board) received many questions from licensees and the public as to whether the acupuncture profession could provide its services via electronic means. Due to the sudden need and in the absence of regulatory authority the Board issued a Telehealth Statement for Licensed Acupuncturists providing general guidelines for the profession to follow when conducting telehealth.

[Business and Professions Code section 2290.5](#) provides statutory authority allowing licensed acupuncturists, as well as other Division 2 Healing Arts licensees, to deliver healthcare via telehealth. Based upon that authority, staff has identified that further guidelines and requirements specific to the delivery of acupuncture services provided via telehealth are necessary.

Staff has brought proposed telehealth language to start the discussion among Committee members and stakeholders in attendance. The proposed language is based in part on standards within some of the programs under the Department of Consumer Affairs.

Recommendation

Staff recommends the Committee review and discuss the proposed language and provide any amendments for the purposes of bringing the matter to the full

Board for consideration. Alternatively, the Committee may direct staff to conduct more research and bring the matter back to the Committee at a future meeting.

Business and Professions Code §2290.5

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means any of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of a health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to the patient's medical information shall apply to telehealth interactions.

(g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider's license shall apply to that health care provider while providing telehealth services.

(h) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(i) (1) Notwithstanding any other law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(Amended by Stats. 2019, Ch. 867, Sec. 1.5. (AB 744) Effective January 1, 2020.)

Title 16. Acupuncture Board

PROPOSED LANGUAGE

Proposed new language is underlined

Add Section 1399.452.1 of Article 5 of Division 13.7 of Title 16 of the California Code of Regulations to read:

§1399.452.1. Standards of Practice for Telehealth Services

- (a) A licensee is permitted to provide acupuncture services listed in Section 4937 of the Business and Professions Code via telehealth under the following circumstances:
 - (1) To a patient located in California and is subject to California laws and regulations.
 - (b) As used in this section, a licensee shall be a licensed acupuncturist permitted to provide acupuncture services under section 4927 subsection (c) of the Code.
 - (c) The provision of acupuncture services under subdivision (a) are subject to the following conditions:
 - (1) The licensee holds a valid and current license issued by the Board.
 - (2) The licensee obtains and documents informed consent for the provision of acupuncture services via telehealth from the patient. Such consent shall cover concerns unique to the receipt of acupuncture services via telehealth, including risks to confidentiality and security, data storage policies and procedures specific to telehealth, the possibility of disruption and/or interruption of service due to technological failure, insurance coverage considerations, and other issues that the licensee can reasonably anticipate regarding the incompatibility between acupuncture services delivered in person and those delivered via telehealth.
 - (3) The licensee determines that delivery of acupuncture services via telehealth is appropriate after considering at least the following factors:
 - (A) Must be able to obtain sufficient diagnostic information to be able to determine a diagnosis and prescribe treatment;
 - (B) The patient's diagnosis, symptoms, and medical history;
 - (C) The patient's preference for receiving acupuncture services via telehealth;
 - (D) The nature of the acupuncture services to be provided, including anticipated benefits, risks, and constraints resulting from their delivery via telehealth;
 - (E) The provision of telehealth services is within the scope of competency of a acupuncture trainee in approved acupuncture training program or board tutorial program.
 - (4) The licensee is competent to deliver such services based upon whether the licensee possesses the appropriate knowledge, skills, and abilities relating to delivery of

acupuncture services via telehealth, the information technology chosen for the delivery of telehealth services, and how such services might differ from those delivered in person.

(5) The licensee takes reasonable steps to ensure that electronic data is transmitted securely, and, informs the patient immediately of any known data breach or unauthorized dissemination of data.

(6) The licensee complies with all other provisions of the Acupuncture Licensure Act and acupuncture regulations, and all other applicable provisions of law and standards of care in this state.

(c) Failure to comply with these regulations or the laws and regulations relating to telehealth of the other state, if any, where either the licensee or the client is located constitutes unprofessional conduct.

Authority: 4933 Business and Professions Code

Reference: Business and Profession Code sections 2290.5, 4927, 4937