

Part 2635 Chapter 5: Practice of Telemedicine

Rule 5.1 Preamble. These regulations are intended to authorize M.D. and D.O. licensees of the Mississippi State Board of Medical Licensure to practice telemedicine as defined herein under the criteria and standards set forth.

These regulations should not be construed to alter the scope of practice of any health care licensee or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law. In fact, these regulations support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method in enabling physician-to-patient communications. These regulations should likewise not be construed to alter or affect the long-standing practice of the use of telephone-based contact between practitioners and their established patients, which practice is not considered telemedicine and is not covered by these regulations.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended).*

Rule 5.2 Definitions. For the purpose of Chapter 5 only, the following terms have the meanings indicated:

- A. “Physician” means any person licensed to practice medicine or osteopathic medicine in the state of Mississippi.
- B. “Telemedicine” means the practice of medicine using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening healthcare provider; telemedicine does not include an audio-only, telephone conversation, e-mail/instant messaging conversation, or fax. It involves the application of secure videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the interaction of a traditional, encounter in person between a provider and a patient.¹
- C. “Store and Forward (S & F)” is a type of telehealth encounter or consult that uses still digital images of patient data for rendering a medical opinion or diagnosis based on the image. Common services are radiology, pathology, dermatology, ophthalmology and wound care. Store and forward includes the asynchronous transmission of clinical data from one site to another.
- D. “Teleemergency Medicine” is a unique combination of telemedicine and the collaborative/consultative role of a physician board certified in emergency medicine and a licensed health professional.

¹ Colorado Board of Medical Examiners, *Policy Statement Concerning the Physician-Patient Relationship.*

- E. “Telemedicine Technologies” means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location with or without an intervening healthcare provider.²
- F. “Established medical site” is a location where a patient would present to seek medical care, where there is a patient site presenter, and where there are sufficient technology and medical equipment to allow for an adequate physical evaluation which is appropriate for the patient’s presenting complaint.
- G. “Patient Site Presenter” is the individual at the patient site location who introduces the patient to the distant site physician for examination and whom the distant site physician may delegate tasks and activities. No tasks should be delegated to the Site Presenter that the Site Presenter is not licensed or trained to perform. The Site Presenter may or may not be a health care provider.
- H. “Distant Site Provider” is a health care provider providing telemedicine services who is not on site with the patient.
- I. “Kiosk” is an enclosed self-contained structure where teleconsults occur that includes videoconferencing with/without medication dispensing capabilities that is used to deliver telemedicine services.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.3 Licensure. The practice of medicine is deemed to occur in the location of the patient. Therefore only physicians who hold a valid unrestricted Mississippi license are allowed to practice telemedicine in Mississippi.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.4 Establishment of a Physician-Patient Relationship. Where an existing physician-patient relationship is not present, a physician must take appropriate steps to establish a physician-patient relationship consistent with standard of practice guidelines, such physician-patient relationships may be established using telemedicine technologies provided the standard of care is met.²

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.5 Informed Consent. Evidence documenting appropriate patient informed consent for the use of telemedicine technologies must be obtained and maintained. Appropriate informed consent must include the following terms:

- identification of the patient, the physician and the physician’s credentials;

² Federation of State Medical Boards, *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*

- notice that the physician will determine whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- details on security measures taken with the use of telemedicine technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- disclosure of the possibility of loss of information due to technology failures;
- express patient consent to forward patient-identifiable information to a third party;²
- assurance of the availability of appropriate follow-up care;
- notice that a complete medical record will be maintained and made available to patient and other treating health care providers, and
- notice regarding the limitations of telemedicine medical services, including the risks and benefits of being treated via telemedicine, how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated consent by the patient establishes a presumption of notice.³

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.6 Examination. Physicians using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the adequate information needed by the physician as if the exam had been performed face-to-face.

The management of chronic illnesses requires the evaluation of laboratory tests at times therefore the use of telehealth services does not alleviate the need for the use of these tests to properly evaluate and monitor disease status and control. This can be accomplished in partnership with a traditional health facility where in-person health care services with laboratory testing are provided to the patient and results are made available to the telehealth provider or by the patient providing the results from current and appropriate laboratory testing to the telehealth provider.

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings. Treatment, including issuing a prescription based solely on an online questionnaire,

³ Texas Medical Board Rules, *Texas Administrative Code, Title 22, Part 9, Chapter 174. Telemedicine*

does not constitute an acceptable standard of care.³ Such practice is a violation of this policy and may subject the physician to discipline by the Board.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.7 Telemedicine Medical Services Provided at an Established Medical Site. Telehealth medical services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a proper provider-patient relationship between a distant site provider and a patient.

For new conditions, a patient site presenter must be reasonably available on site at the established medical site to assist with the provision of care. The distant site provider has discretion to determine if a patient site presenter is necessary for follow-up evaluation or treatment of a previously diagnosed condition.

A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter. A distant site provider delegating tasks to a patient site presenter shall only delegate tasks that are within the scope of practice of the telepresenter, should one be present during the telehealth encounter.

If the only services provided are related to mental health, a patient site presenter is not required except in cases where the patient may be a danger to himself/herself or others.³

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.8 Telemedicine Services Provided at Sites other than an Established Medical Site. This includes consults that are provided directly to patients without the referral of a referring physician in the setting of the patients' choice.

These consults are not required to have a telepresenter, but must follow all other guidelines set for telemedicine. These programs are designed for use by consumers without the requirement of care being rendered at an established medical site.

In this case, these programs would provide, in writing, the details of the program, training of providers, what conditions are eligible for treatment in this setting, how follow-up would be handled, and how patients who need an in person visit would be referred.

Electronic documentation of the teleconsult must be available for the patient and the patient's primary care provider upon request.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.9 Continuity of Care. Patients should be able to seek, with relative ease, follow-up care or information from the physician [or physician's designee] who conducts an encounter using telemedicine technologies. Physicians solely providing services using telemedicine technologies with no existing physician-patient relationship prior to the encounter must make documentation of the encounter using telemedicine technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient immediately after the encounter.³ Patients must be provided contact information that will enable them to contact the physician or designee for questions regarding appointments, treatment plans, or prescriptions.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended).*

Rule 5.10 Provision for in-person care. Any physician providing telemedicine services in Mississippi must have a formal agreement with a Mississippi based healthcare entity who will fulfill any need for in person care should the telemedicine exam warrant further testing or examination. This agreement does not preclude the patient from choosing where they receive the additional care.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended).*

Rule 5.11 Referrals for Emergency Services. An emergency plan is required and must be provided by the physician to the patient when the care provided using telemedicine technologies indicates that a referral to an acute care facility or ER for treatment is necessary for the safety of the patient. The emergency plan should include a protocol appropriate to the services being rendered via telemedicine technologies.³

Source: *Miss. Code Ann. §73-25-34 (1972, as amended).*

Rule 5.12 Medical Records. The provider treating a patient through a telemedicine network must maintain a complete record of the patient's care. The provider must maintain the record's confidentiality and disclose the record to the patient consistent with state and federal laws. If the patient has a primary treating provider and a telemedicine provider for the same medical condition, then the primary provider's medical record and the telemedicine provider's record constitute one complete patient record. There must be a mechanism in place to facilitate sharing of medical records between providers when appropriate or at the patient's request. The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-physician communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telemedicine technologies. Informed consents obtained in connection with an encounter involving telemedicine technologies should also be filed in the medical record. The patient record established during the use of telemedicine technologies must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.13 Collaborative/Consultative Physician Limited. No physician practicing telemergency medicine shall be authorized to function in a collaborative/consultative role as outlined in Part 2630, Chapter 1 unless his or her practice location is a Level One Hospital Trauma Center or other hospital facility that is able to provide continuous twenty-four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer acute care/medical surgical occupied beds as defined by their Medicare Cost Report.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.14 Privacy practices and Security of Patient Records & Exchange of Information. Physicians should meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical retention rules. Physicians are referred to “Standards for Privacy of Individually Identifiable Health Information,” issued by the Department of Health and Human Services (HHS).⁴ Guidance documents are available on the HHS Office for Civil Rights Web site at: www.hhs.gov/ocr/hipaa.

Written policies and procedures should be maintained and updated at the same standard as traditional face-to-face encounters for documentation, maintenance, and transmission of the records of the encounter using telemedicine technologies. These policies should also include information addressing the availability of the services, hours of operation, process for communication with providers outside hours of operation, medical record storage and retrieval process, and quality oversight mechanisms. Sufficient privacy and security measures must be in place and documented to assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient e-mail, prescriptions, and laboratory results must be secure within existing technology (i.e. password protected, encrypted electronic prescriptions, or other reliable authentication techniques). All patient-physician e-mail, as well as other patient-related electronic communications, should be stored and filed in the patient’s medical record, consistent with traditional record-keeping policies and procedures.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.15 Disclosures and Functionality on Online Services Making Available Telemedicine Technologies. (Telemedicine Medical Services Provided at Sites other than an Established Medical Site)

Online services used by physicians providing medical services using telemedicine technologies should clearly disclose:

⁴ AMA. *Report of the Council on Medical Service*. Medical Care Online. 4-A-01 (June 2001).

- specific services provided;
- contact information for physician;
- licensure and qualifications of physician(s) and associated physicians;
- appropriate uses and limitations of the site, including emergency health situations; and
- rights of patients with respect to patient health information.

Online services used by physicians providing medical services using telemedicine technologies should provide patients a clear mechanism to:

- access, supplement and amend patient-provided personal health information;
- provide feedback regarding the site and the quality of information and services, and
- register complaints, including information regarding filing a complaint with the applicable state medical and osteopathic board(s).

Online services must have accurate and transparent information about the website owner/operator, location, and contact information, including a domain name that accurately reflects the identity.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.16 Prescribing. Prescribing medications, in-person or via telemedicine, is at the professional discretion of the physician. The indication, appropriateness, and safety considerations for each telemedicine visit prescription must be evaluated by the physician in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, physicians may exercise their judgment and prescribe medications as part of telemedicine encounters.³ A physician may not prescribe medications based on a phone call or a questionnaire for the purpose of telemedicine. Videoconferencing is required as part of the teleconsult if a medication is to be prescribed. Telehealth services is not intended and therefore shall not be used for the management of chronic pain with controlled substance prescription drugs.

If a Kiosk with pharmacy dispensing capabilities is used to deliver medications; there must be, at minimum, a 3-point verification to ensure safe prescribing and dispensing and must follow any related regulations by the Mississippi Board of Pharmacy.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.17 Advertising and Telehealth. Direct to consumer advertising of medications or the marketing of specific products where the telehealth provider has a financial interest for the services or purchase of the specific product is prohibited unless it is educational in nature and is to promote medication safety and allows for informed decisions. No advertising should be

directed to minors. Any direct to consumer medication advertising material available on the internet should comply with the Food and Drug Administration's policies for adverse event reporting system (AERS).

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- C. “Store and Forward (S & F)” is a type of telehealth encounter or consult that uses still digital images of patient data for rendering a medical opinion or diagnosis based on the image. Common services are radiology, pathology, dermatology, ophthalmology and wound care. Store and forward includes the asynchronous transmission of clinical data from one site to another.
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- E. “Telemedicine Technologies” means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location with or without an intervening healthcare provider.⁶
- F. “Established medical site” is a location where a patient would present to seek medical care, where there is a patient site presenter, and where there are sufficient technology and medical equipment to allow for an adequate physical evaluation which is appropriate for the patient’s presenting complaint.
- G. “Patient Site Presenter” is the individual at the patient site location who introduces the patient to the distant site physician for examination and whom the distant site physician may delegate tasks and activities. No tasks should be delegated to the Site Presenter that the Site Presenter is not licensed or trained to perform. The Site Presenter may or may not be a health care provider.
- H. “Distant Site Provider” is a health care provider providing telemedicine services who is not on site with the patient.
- I. “Kiosk” is an enclosed self-contained structure where teleconsults occur that includes videoconferencing with/without medication dispensing capabilities that is used to deliver telemedicine services.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.3 Licensure. The practice of medicine is deemed to occur in the location of the patient. Therefore only physicians who hold a valid unrestricted Mississippi license are allowed to practice telemedicine in Mississippi.

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Rule 5.4 Establishment of a Physician-Patient Relationship. Where an existing physician-patient relationship is not present, a physician must take appropriate steps to establish a physician-patient relationship consistent with standard of practice guidelines, such physician-patient relationships may be established using telemedicine technologies provided the standard of care is met.²

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Rule 5.5 Informed Consent. Evidence documenting appropriate patient informed consent for the use of telemedicine technologies must be obtained and maintained. Appropriate informed consent must include the following terms:

- identification of the patient, the physician and the physician’s credentials;

⁶ Federation of State Medical Boards, *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*

- notice that the physician will determine whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- details on security measures taken with the use of telemedicine technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- disclosure of the possibility of loss of information due to technology failures;
- express patient consent to forward patient-identifiable information to a third party;²
- assurance of the availability of appropriate follow-up care;
- notice that a complete medical record will be maintained and made available to patient and other treating health care providers, and
- notice regarding the limitations of telemedicine medical services, including the risks and benefits of being treated via telemedicine, how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated consent by the patient establishes a presumption of notice.⁷

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.6 Examination. Physicians using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the adequate information needed by the physician as if the exam had been performed face-to-face.

The management of chronic illnesses requires the evaluation of laboratory tests at times therefore the use of telehealth services does not alleviate the need for the use of these tests to properly evaluate and monitor disease status and control. This can be accomplished in partnership with a traditional health facility where in-person health care services with laboratory testing are provided to the patient and results are made available to the telehealth provider or by the patient providing the results from current and appropriate laboratory testing to the telehealth provider.

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings. Treatment, including issuing a prescription based solely on an online questionnaire,

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A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter. A distant site provider delegating tasks to a patient site presenter shall only delegate tasks that are within the scope of practice of the telepresenter, should one be present during the telehealth encounter.

If the only services provided are related to mental health, a patient site presenter is not required except in cases where the patient may be a danger to himself/herself or others.³

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Rule 5.8 Telemedicine Services Provided at Sites other than an Established Medical Site. This includes consults that are provided directly to patients without the referral of a referring physician in the setting of the patients' choice.

These consults are not required to have a telepresenter, but must follow all other guidelines set for telemedicine. These programs are designed for use by consumers without the requirement of care being rendered at an established medical site.

In this case, these programs would provide, in writing, the details of the program, training of providers, what conditions are eligible for treatment in this setting, how follow-up would be handled, and how patients who need an in person visit would be referred.

Electronic documentation of the teleconsult must be available for the patient and the patient's primary care provider upon request.

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Rule 5.9 Continuity of Care. Patients should be able to seek, with relative ease, follow-up care or information from the physician [or physician's designee] who conducts an encounter using telemedicine technologies. Physicians solely providing services using telemedicine technologies with no existing physician-patient relationship prior to the encounter must make documentation of the encounter using telemedicine technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient immediately after the encounter.³ Patients must be provided contact information that will enable them to contact the physician or designee for questions regarding appointments, treatment plans, or prescriptions.

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Rule 5.11 Referrals for Emergency Services. An emergency plan is required and must be provided by the physician to the patient when the care provided using telemedicine technologies indicates that a referral to an acute care facility or ER for treatment is necessary for the safety of the patient. The emergency plan should include a protocol appropriate to the services being rendered via telemedicine technologies.³

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- C. ~~“Teleemergency medicine” is a unique combination of telemedicine and the collaborative/consultative role of a physician board certified in emergency medicine, and an appropriate skilled health professional (nurse practitioner or physician assistant).~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.2 Licensure.*—The practice of medicine is deemed to occur in the location of the patient. Therefore only physicians holding a valid Mississippi license are allowed to practice telemedicine in Mississippi. However, a valid Mississippi license is not required where the evaluation, treatment and/or medicine given to be rendered by a physician outside of Mississippi is requested by a physician duly licensed to practice medicine in Mississippi, and the physician who has requested such evaluation, treatment and/or medical opinion has already established a doctor/patient relationship with the patient to be evaluated and/or treated.~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.3 Informed Consent.* The physician using telemedicine should obtain the patient’s informed consent before providing care via telemedicine technology. In addition to information relative to treatment, the patient should be informed of the risk and benefits of being treated via a telemedicine network including how to receive follow up care or assistance in the event of an adverse reaction to treatment or if there is a telemedicine equipment failure.~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.4 Physician Patient Relationship.* In order to practice telemedicine a valid “physician patient relationship” must be established. The elements of this valid relationship are:~~

- A. ~~verify that the person requesting the medical treatment is in fact who they claim to be;~~
- B. ~~conducting an appropriate examination of the patient that meets the applicable standard of care;~~

- ~~C. establishing a diagnosis through the use of accepted medical practices, i.e., a patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;~~
- ~~D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;~~
- ~~E. insuring the availability of appropriate follow-up care; and~~
- ~~F. maintaining a complete medical record available to patient and other treating health care providers.~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.5 Examination.*—Physicians using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the same information to the physician as if the exam had been performed face to face.~~

~~Other exams may be appropriate if a licensed health care provider is on site with the patient and is able to provide various physical findings that the physician needs to complete an adequate assessment. However a simple questionnaire without an appropriate exam is in violation of this policy and may subject the physician to discipline by the Board.~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.6 Medical Records.* The physician treating a patient through a telemedicine network must maintain a complete record of the patient's care. The physician must maintain the record's confidentiality and disclose the record to the patient consistent with state and federal laws. If the patient has a primary treating physician and a telemedicine physician for the same medical condition, then the primary physician's medical record and the telemedicine physician's record constitute one complete patient record.~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.7 Collaborative/Consultative Physician Limited.* No physician practicing telemergency medicine shall be authorized to function in a collaborative/consultative role as outlined in Part 2630, Chapter 1 unless his or her practice location is a Level One Hospital Trauma Center that is able to provide continuous twenty four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer acute care/medical surgical occupied beds as defined by their Medicare Cost Report.~~

~~Source: Miss. Code Ann. §73-25-34 (1972, as amended).~~

~~*Rule 5.8 Reporting Requirements.* Annual reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure by all institutions and/or hospitals operating telemergency programs.~~

~~**Amended October 15, 2003. Amended November 4, 2004. Amended January 30, 2006. Amended May 20, 2010.**~~

~~Source: *Miss. Code Ann. §73-25-34 (1972, as amended).*~~