

Texas Public Policy Foundation

Health Care

Legislator's Guide to the Issues 2017-18



Telemedicine



The Issue

The state of Texas defines telemedicine as a remote health care service in which a physician may assess, diagnose, consult, treat, or transfer medical data using technology. It is a convenient, affordable way to access health care services, and recent advances in audio-visual communications technology are enlarging the potential of telemedicine to reach more people and address a growing number of health care needs. More importantly, this service could increase access to health care in more than 90% of Texas counties that are designated health professional shortage areas or medically underserved areas.

In rural communities in Texas, people travel an average of 31 miles to see a healthcare provider. If you live in a smaller community, you're likely to travel much farther. Once you get to the doctor, if you're uninsured you can expect to pay about \$50 to \$200 per clinic visit and \$2,000 at an emergency room. These prices can be devastating for a family. Telemedicine can provide access at a lower cost.

Telemedicine uses technology, like smartphones or Skype, to provide health care to people in their homes. Especially for people traveling over 30 miles for health care, being able to access care for basic ailments like urinary tract infections, pink eye, or strep throat, from home would vastly increase access and potentially prevent more serious conditions from developing. In addition to travel expenses avoided, there are significant cost saving opportunities as typical telemedicine costs closer to \$40 per encounter.

Telemedicine is affordable and convenient, but its accessibility is limited in Texas. The Texas Medical Board (TMB) passed a rule in April 2015 that made it harder for people to access telemedicine in Texas than in any other state except Arkansas. A person using telemedicine services in Texas must first see a doctor in person or travel to a healthcare site where a medical provider can facilitate the call. This burdensome process creates several of the initial barriers that keep people from getting care in the first place. This process must be completed each year in order to continue telemedicine services.

The Texas Medical Board passed these rules stating health and safety concerns, but 48 other states have decided that these types of regulations are not necessary to protect patients. In fact, even in Texas, the State Board of Examiners of Professional Counselors rejected similar rules for mental health treatment specifically because there had been no complaints about or problems with telehealth services.

This anticompetitive ruling from the TMB might violate antitrust law according to a new precedent set in a case decided by the Supreme Court in 2015, *North Carolina State Board of Dental Examiners v. F.T.C.* State licensing boards comprised of a majority of market participants, such as the TMB, are vulnerable to federal antitrust lawsuits.

Telemedicine is safe and could help to deliver better healthcare in Texas if these rules were to be rescinded or overturned. Barriers to expanding telemedicine in Texas should be removed.

The Facts

- The American Telemedicine Association declared Texas tied for last place in their state telemedicine rankings.
- Texas and Arkansas are the only states that require an in-person or face-to-face video conference visit with a physician prior to using telemedicine.

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- Texas is one of the only states that requires an in-office follow-up visit after using telemedicine.
- The University of Texas-Medical Branch has been providing telemedicine to state prisons improving health outcomes and saving taxpayers about \$780 million.
- The new telemedicine regulations hurt Texas' health care market by limiting competition.
- The unchecked authority of licensing boards to make rules and regulations, like the new telemedicine rules, leave Texas vulnerable to federal antitrust lawsuits that undermine state sovereignty.

Recommendations

- State lawmakers should remove unnecessary regulations that stymie the use of telemedicine in Texas.
- The Texas Legislature should take active steps to guard against the anticompetitive conduct of its licensing boards that also leave the state vulnerable to federal lawsuits.

Resources

[*Antitrust Law and Telemedicine Regulation in Texas*](#) by Kate Murphy, Texas Public Policy Foundation (Jan. 2016).

[*State Telemedicine Gaps Analysis: Physician Practice Standards & Licensure*](#) by Thomas Latoya and Gary Capistrant, American Telemedicine Association (2015).

“[HPSA Find](#),” U.S. Department of Health & Human Services, accessed May 31, 2016.

“[MUA Find](#),” U.S. Department of Health & Human Services, accessed May 31, 2016.

“[Texas Lags Behind the Country in Telemedicine](#)” by Kate Murphy, *Austin American-Statesman* (Feb. 29, 2016).

“[Telemedicine Breaks Down Care Barriers](#)” by Kate Murphy, *McAllen Monitor* (March 28, 2016).

