TO: Wisconsin Medical Examining Board  
Kenneth B. Simons, MD, Chair

FROM: Mark Grapentine, JD  
Senior Vice President - Government and Legal Affairs

DATE: January 20, 2016

RE: Comments on Clearinghouse Rule 15-087 - Telemedicine

On behalf of more than 12,500 members statewide, the Wisconsin Medical Society appreciates this opportunity to share our comments related to Clearinghouse Rule 15-087 relating to telemedicine.

Two of the Society’s strategic policy councils, the Council on Health Care Delivery, Access and Financing and the Council on Legislation, reviewed the rule proposal. Different sections of the rule engendered varied reactions – some sections appear generally appropriate, others may warrant further Medical Examining Board (MEB) review to fully appreciate possible effects on physician regulation.

The Society’s membership appreciates the MEB’s foresight in recognizing that telehealth is a growing element of providing health care and that rules in telemedicine can be helpful in protecting the public while providing clarity for appropriate telemedicine practice. The Society believes that regulation in this area could benefit by initially focusing more on regulation of telemedicine as a tool rather than on how an individual physician uses those tools.

The following is feedback discussed by our councils on the proposed rule; sections are grouped together when comments are similar:

**MED 24.02(4) Definitions**
Should the definition of “Licensee” mean a physician licensed by the Board? Or does the MEB intend the rules to apply to the other professions currently under the MEB’s purview?

**MED 24.02(5) Definitions**
We heard several comments about the last sentence of this section defining “Telemedicine,” with some uncertain of the MEB’s intent for laying out specific exclusions in the definition.

**MED 24.03 Practice guidelines**
The requirement that a physician “shall” use available practice guidelines could be stricter than the MEB intends – it appears to be stricter than any requirements currently in place for non-telemedicine health care. Guidelines are also not “standards of practice”, which the rule draft seems to equate. This is a section where perhaps a narrower use of “technology practice guidelines” may be appropriate?
MED 24.04 Wisconsin medical license required
MED 24.05 Standards of care and professional ethics
MED 24.06 Scope of practice
Society council members generally support these sections, as they are rooted in patient protection and MEB oversight.

MED 24.07 Identification of patient and physician
The Society believes that a physician properly identifying a patient is critical, but is concerned with language requiring that “the patient has the ability to verify” various aspects of “all health care” professionals providing care via telemedicine. One real world example we heard is apropos to the potential confusion over this language: what of the incapacitated nursing home patient who receives geriatric psychiatric care via telehealth? That patient may literally lack the ability to “verify” information about a remote physician.

MED 24.08 Physician-patient relationship
The first sentence in this section raises some questions, not the least of which is if the scope statement for this rule proposal allows the MEB to establish a new definition of the physician-patient relationship that applies beyond telemedicine. It may be more appropriate to include only the second sentence and the first two subsections for this area, knowing that sections MED 24.04, 24.05 and 24.06 exist to protect the patient.

MED 24.09 Medical history and physical examination
This section provides much specificity in certain areas which may already be covered under the general expectations required under MED 24.03 and/or MED 24.05. The Internet questionnaire issue overall probably deserves more discussion after determining what is already in use in Wisconsin and whether the care provided from those services is problematic.

MED 24.10 Nonphysician health care providers
MED 24.11 Informed consent
MED 24.13 Follow-up care
MED 24.14 Emergency services
MED 24.20 Financial Interests
These sections are possibly already covered under MED 24.05.

MED 24.12 Coordination of care
MED 24.19 Patient access and feedback
The Society believes these sections are properly patient-centered.

MED 24.15 Medical records
There are questions whether this section establishes stricter standards for telemedicine than in non-telemedicine care, and if so whether that is appropriate. Does the broader coordination of care requirement in proposed MED 24.12 satisfy the intent of this proposed section, which is quite detailed?

MED 24.16 Privacy and security
MED 24.17 Technology and equipment
Does the MEB intend that physicians ensure that privacy is maintained only per HIPAA? Or does the MEB intend that a physician comply with all federal and state medical privacy laws?
MED 24.18 Disclosure and functionality of telemedicine services
There are concerns that this section could be too onerous for compliance with every telemedicine encounter; perhaps the information “shall be available to the patient upon request” rather than a blanket requirement that a physician “shall disclose”. It should also be noted that some of the required disclosures could cause confusion; for example, MED 24.18 (4) requires disclosure of drug or services limitations, but no such limitations currently appear elsewhere in proposed MED 24.

MED 24.21 Circumstances where the standard of care may not require a licensee . . .
Similar to the scope question in MED 24.08 above, does this section go beyond telemedicine?

MED 24.22 Prescribing based solely on an Internet request, Internet questionnaire . . .
Similar to the concern raised above for proposed sec. MED 24.09, the Internet questionnaire issue overall probably warrants further MEB discussion to determine if problems exist under current experience in this area.

Thank you again for this opportunity to share the Society’s thoughts on CR 15-087. We look forward to working the MEB on this and other important efforts.