



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, DC 20210



December 29, 2020

FIELD ASSISTANCE BULLETIN No. 2020-8

MEMORANDUM FOR: Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM: Cheryl M. Stanton
Administrator

SUBJECT: Telemedicine and Serious Health Conditions under the Family and
Medical Leave Act (FMLA)

This Field Assistance Bulletin (“FAB”) provides guidance to Wage and Hour Division (WHD) field staff regarding the use of telemedicine in establishing a serious health condition under the Family and Medical Leave Act (FMLA).

I. Background

The FMLA provides eligible employees of covered employers with unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of leave in a 12-month period for, among other things, a serious health condition that makes the employee unable to perform the essential functions of his or her job, or to care for the employee’s spouse, son, daughter, or parent with a serious health condition. *See* 29 U.S.C. § 2612(a)(1)(C)-(D), and 29 CFR § 825.112(a)(3)-(4).

Under the FMLA a “serious health condition” is an “illness, injury, impairment, or physical or mental condition that involves” either: (1) “inpatient care” such as an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care, or (2) “continuing treatment by a health care provider.” *See* 29 U.S.C. § 2611(11); 29 CFR § 825.114 - .115. The Department’s FMLA regulations define the term “treatment” to include “examinations to determine if a serious health condition exists and evaluations of the condition.” *See* 29 CFR § 825.113(c).

The Department’s regulations also provide that “[t]reatment by a health care provider means an in-person visit to a health care provider.” *See* 29 CFR § 825.115(a)(3). The Department added this provision in 2008 to clarify that treatment means an “examination, evaluation, or specific

treatment, and does not include, for example, a phone call, letter, email, or text message.” *See* 73 FR 67948 (Nov. 17, 2008).

As part of our response to the COVID-19 public emergency, WHD maintains frequently asked questions (FAQs) about the FMLA and pandemic conditions. On July 20, 2020, WHD issued FAQ #12, which states, in part, “Until December 31, 2020, the WHD will consider telemedicine visits to be in-person visits . . . , for purposes of establishing a serious health condition under the FMLA. To be considered an in-person visit, the telemedicine visit must include an examination, evaluation, or treatment by a health care provider; be performed by video conference; and be permitted and accepted by state licensing authorities.”¹

II. WHD will consider telemedicine an “in-person” visit

Telemedicine typically involves face-to-face examinations or treatment of patients by remote video conference via computers or mobile devices. Telemedicine allows patients to maintain access to the care they need, with added advantages such as decreased travel time and expense for patients in rural areas, reduced exposure to potential infections for vulnerable patients, and reduced need for healthcare staff to exhaust personal protective equipment and patient care supplies.

As the U.S. Centers for Disease Control and Prevention (CDC) has documented, treatment by telemedicine has grown increasingly widespread over the last twenty years. The CDC reports that, among rural Medicare recipients, the number of telemedicine visits increased from just over 7,000 in 2004 to nearly 108,000 in 2013.² More recently, in response to COVID-19, the use of telemedicine has accelerated even more rapidly. Providers are using telemedicine to facilitate the availability of healthcare while increasing social distancing, and reducing potential infectious disease exposures and community spread.

WHD’s experience is that health care providers are now often using telemedicine to deliver examinations, evaluations, and other healthcare services that would previously have been provided only in an office setting. Given this experience, and continuing the policy adopted in response to the COVID-19 pandemic, WHD will consider a telemedicine visit with a health care provider as an in-person visit under 29 C.F.R. §825.115, provided specified criteria are met.

To be considered an “in-person” visit, the telemedicine visit must include:

- an examination, evaluation, or treatment by a health care provider;
- be permitted and accepted by state licensing authorities; and,
- generally, should be performed by video conference.

¹ *See* <https://www.dol.gov/agencies/whd/fmla/pandemic#q12>.

² *See* <https://www.cdc.gov/php/publications/topic/telehealth.html>

Communication methods that do not meet these criteria (e.g., a simple telephone call, letter, email, or text message) are insufficient, by themselves, to satisfy the regulatory requirement of an “in-person” visit.

Please address any questions regarding this FAB to the National Office Division of FMLA and Section 14(c) through the appropriate channels.