

Understanding The New Jersey Telemedicine Law: 10 Key Elements

05/30/18

The New Jersey Telemedicine Law (Senate Bill Nos. 291, 652 and 1954) was enacted on July 21, 2017. The new law governs how telemedicine must be practiced in New Jersey and how providers will be compensated for the provision of telemedicine services.

“Telemedicine” is defined broadly under the new law as the delivery of a healthcare service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a healthcare provider who is located at a distant site and a patient who is located at an originating site. “Telemedicine” does not include audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission. “Telehealth” is defined as the use of information and communications technologies, including telephones, remote patient monitoring devices, or other electronic means, to support clinical healthcare, provider consultation, patient and professional health-related education, public health, health administration, and other services.

The following is a summary of 10 key elements of the New Jersey Telemedicine Law (“the Law”).

1. Who is subject to the Law?

The Law provides that any healthcare provider who uses telemedicine or engages in telehealth while providing healthcare services to a patient shall be subject to New Jersey jurisdiction if either the patient or the provider is located in New Jersey at the time services are provided.

2. Does the Law require coverage and reimbursement for telemedicine services in New Jersey?

Although the final version of the law contains parity provisions, it does not require “payment” parity. That is, the law does not require payors to compensate providers at the same rate whether an appointment is conducted remotely or face-to-face. The law does require that the payors subject to the Law provide coverage and payment for services provided through telemedicine and telehealth on the same basis that is applicable when the services are delivered in-person in New Jersey.

3. Does the Law apply to all health plans in New Jersey?

The Law applies to health plans offered by (i) carriers that offer a health benefits plan in New Jersey, (ii) State Medicaid and NJ FamilyCare programs, and (iii) the State Health Benefits and School Employees’ Health Benefits Commission.

4. What actions must be taken during a telemedicine encounter in New Jersey?

Under the Law, a valid provider-patient relationship may be established via a telemedicine or telehealth encounter without an in-person exam. The Law requires certain actions be taken during a patient telemedicine encounter. A valid provider-patient relationship must include: properly identifying the patient using, at a minimum, the patient’s name, date of birth, phone number, and address.

The identity, professional credentials, and contact information of a healthcare provider providing telemedicine or telehealth services shall be made available to the patient during and after the provision of services.

The contact information shall enable the patient to contact the healthcare provider, or a substitute healthcare provider authorized to act on behalf of the provider who provided services, for at least 72 hours following the provision of services.

5. Are there any exceptions to the telemedicine provider-patient encounter requirements?

The Law provides that under certain limited circumstances telemedicine may be practiced without establishing a proper provider-patient relationship. These include:

- informal consultations without compensation;
- during episodic consultations by a medical specialist located in another jurisdiction;
- when a provider furnishes medical assistance in response to an emergency or disaster, provided that there is no charge for the medical assistance; and
- when a substitute provider acting on behalf of an absent provider in the same specialty provides services on an on-call or cross-coverage basis, provided that the absent healthcare provider has designated the substitute provider as an on-call provider or cross-coverage service provider.

6. What are the medical records requirements for telemedicine visits?

For an initial encounter with the patient, the provider shall review the patient's medical history and medical records prior to initiating contact with the patient.

In the case of a subsequent encounter, the provider may review the information prior to or contemporaneously with the telemedicine or telehealth encounter.

Following the provision of services using telemedicine or telehealth, the patient's medical information shall be made available to the patient upon request, and, with the patient's affirmative consent, forwarded directly to the patient's primary care provider or healthcare provider of record, or, upon request by the patient, to other healthcare providers.

7. Does the Law allow providers to prescribe medication during a telemedicine visit?

The issuance of a prescription based on a telemedicine or telehealth encounter shall be held to the same standard of care or practice standards as are applicable to in-person settings. Unless the provider has established a proper provider-patient relationship with the patient, a provider shall not issue a prescription to a patient based solely on the responses provided in an online questionnaire.

In most cases, the prescription of Schedule II controlled dangerous substances through the use of telemedicine or telehealth shall be authorized only after an initial in-person examination of the patient, and a subsequent in-person visit with the patient shall be required every three months.

Providers must also comply with federal law affecting remote prescribing, including the Federal Ryan Haight Online Pharmacy Consumer Protection Act of 2008. Unless an exception applies, the Ryan Haight Act restricts prescribing controlled dangerous substances unless there is a prior in-person exam. New rules under the Ryan Haight Act to address advances in telemedicine are currently being considered by the DEA.

8. Does the Law limit the practice of telemedicine in New Jersey to doctors?

The Law does not limit the practice of telemedicine to medical doctors. Telemedicine may be provided in New Jersey by licensed:

- physicians, physician assistants;
- nurses, nurse practitioners;
- psychologists, psychiatrists, psychoanalysts, clinical social workers, professional counselors;
- respiratory therapists, speech pathologists, audiologists, optometrists;

- or any other healthcare professional acting within the scope of a valid license or certification issued pursuant to Title 45 of NJ law.

9. Are there any reporting requirements for the practice of telemedicine in New Jersey?

There is an annual registration requirement under the Law. Each telemedicine or telehealth organization operating in New Jersey must register with the Department of Health (DOH) and submit an annual report. The form of the report will be specified further in forthcoming regulations. Among other things, it will include the patient's race and ethnicity, diagnostic codes, evaluation and management codes, and the source of payment for the consult.

10. Will there be any additional rules concerning the Law in the future?

The Law also provides that the state licensing boards shall adopt rules and regulations that are applicable to the healthcare providers under their respective jurisdictions, as may be necessary to implement the provisions of the Law and facilitate the provision of telemedicine and telehealth services. Such rules and regulations shall, at a minimum:

- (a) include best practices for the professional engagement in telemedicine and telehealth;
- (b) ensure that the services patients receive using telemedicine or telehealth are appropriate, medically necessary, and meet current quality of care standards;
- (c) include measures to prevent fraud and abuse in connection with the use of telemedicine and telehealth, including requirements concerning the filing of claims and maintaining appropriate records of services provided; and
- (d) provide substantially similar metrics for evaluating quality of care and patient outcomes in connection with services provided using telemedicine and telehealth as currently apply to services provided in-person.

The Law also provides that six months after the effective date, the DOH shall establish "The Telemedicine and Telehealth Review Commission," which shall review the information reported by telemedicine organizations.

Conclusion

The passage of the long-awaited New Jersey Telemedicine Law has provided much needed guidance on the use of telemedicine in the state. However, the laws involving telemedicine are constantly evolving to address new technologies and delivery models. As a result, it is important to keep current on the progress of guidance in this area, including the New Jersey DOH reporting requirements, the applicable professional board rules and regulations, the New Jersey Telemedicine and Telehealth Review Commission activity and federal law.

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