

Prepared for the New Jersey Speech-Hearing Association-NJSHA

Summary of the S291/A1464 Legislation that Permits New Jersey Health Care Providers to Engage in Telemedicine

*Sponsored by Senator Joseph Vitale and Assemblywoman Pamela Lampitt
Signed into Law July 21, 2017, P.L. 2017, c. 117
Effective Immediately*

- 1) Health care providers (including, but not limited to, licensed physicians, nurses, nurse practitioners, psychologists, psychiatrists, psychoanalysts, clinical social workers, physician assistants, professional counselors, respiratory therapists, **speech pathologists, audiologists,** and optometrists) may remotely provide health care services to patients through the use of telemedicine and telehealth. The provider who has established a proper provider-patient relationship with a patient may remotely provide health care services to a patient through the use of telemedicine. A health care provider may also engage in telehealth as may be necessary to support and facilitate the provision of health care services to patients.
 - a. “Telehealth” is defined to mean the use of information and communications technologies, including telephones, remote patient monitoring devices, or other electronic means, to support clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services as described in regulation.
 - b. “Telemedicine” is defined to mean means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a health care provider who is located at a distant site and a patient who is located at an originating site, either with or without the assistance of an intervening health care provider. “Telemedicine” would not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.
 - c. A health care provider engaging in telemedicine or telehealth may use asynchronous store-and-forward technology to allow for the electronic transmission of images, diagnostics, data, and medical information; except that the health care provider may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology, without video capabilities, if, after accessing and reviewing the patient’s medical records, **the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person.**

- 2) Any health care provider who uses telemedicine or engages in telehealth while providing health care services to a patient, shall:
 - a. be validly licensed, certified, or registered, pursuant to Title 45 of the Revised Statutes, to provide such services in the State of New Jersey;
 - b. remain subject to regulation by the appropriate New Jersey State licensing board or other New Jersey State professional regulatory entity;
 - c. act in compliance with existing requirements regarding the maintenance of liability insurance; and
 - d. remain subject to New Jersey jurisdiction if either the patient or the provider is located in New Jersey at the time services are provided.
- 3) Health care provider providing telemedicine or telehealth services shall make available their identity, professional credentials and contact information to the patient during and after provision of services. The information shall enable the patient to contact the provider or a substitute authorized to act on behalf of the provider for at least 72 hours following the provision of services.
- 4) A health care provider engaging in telemedicine or telehealth will be required to review the medical history and any medical records provided by the patient. 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 pursuant to an ongoing provider-patient relationship, the provider may conduct the review prior to initiating contact or contemporaneously with the telemedicine or telehealth encounter.
- 5) Health care providers who engage in telemedicine or telehealth will be required to maintain a complete record of the patient's care and comply with all applicable State and federal statutes and regulations for recordkeeping, confidentiality, and disclosure of the patient's medical record. Health care providers will not be subject to any professional disciplinary action under Title 45 of the Revised Statutes solely on the basis that the provider engaged in telemedicine or telehealth.
 - a. The patient's medical information shall be made available to the patient upon the patient's request, and, with the patient's affirmative consent, forwarded directly to the patient's primary care provider or health care provider of record, or, upon request by the patient, to other health care providers.
 - b. For patients without a primary care provider or other health care provider of record, the health care provider engaging in telemedicine or telehealth may advise the patient to contact a primary care provider, and, upon request by the patient, assist the patient with locating a primary care provider or other in-person medical assistance that, to the extent possible, is located within reasonable proximity to the patient. The health care provider engaging in telemedicine or telehealth shall also refer the patient to appropriate follow up care where necessary, including making appropriate referrals for emergency or complimentary care, if needed. The patient's consent may be oral, written, or digital in nature, provided that the chosen method of consent is deemed appropriate under the standard of care.

- 6) Health care providers providing health care services using telemedicine or telehealth shall be subject to the same standard of care or practice standards as are applicable to in-person settings. If telemedicine or telehealth services would not be consistent with this standard of care, the health care provider is to direct the patient to seek in-person care. Similarly, diagnosis, treatment, and consultation recommendations made through the use of telemedicine or telehealth, including the issuance of a prescription based on a telemedicine or telehealth encounter, are to be held to the same standard of care or practice standards as are applicable to in-person settings.
- 7) Professional licensing and certification boards will be required to adopt rules and regulations which will be applicable to the health care providers under their respective jurisdictions, in order to implement the provisions of this section and facilitate the provision of telemedicine and telehealth services. The 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.
 - e. The rules and regulations may not include any provision requiring an initial in-person visit with the patient before providing services using telemedicine or telehealth.
 - f. The failure of any licensing board to adopt rules and regulations pursuant to this subsection shall not have the effect of delaying the implementation of this act, and shall not prevent health care providers from engaging in telemedicine or telehealth in accordance with the provisions of this act and the practice act applicable to the provider's professional licensure, certification, or registration.
- 8) In order to engage in telemedicine or telehealth, a health care provider will be required to establish a proper provider-patient relationship. Establishing this relationship includes, but is not limited to:
 - a. properly identifying the patient using, at a minimum, the patient's name, date of birth, phone number, and address and social security number, whenever possible;
 - b. disclosing and validating the provider's identity and credentials;
 - c. prior to initiating contact with a patient in an initial encounter, reviewing the patient's medical history and any available medical records; and
 - d. prior to initiating contact with a patient, determining whether the provider will be able to provide the same standard of care using telemedicine or telehealth as would be provided if the services were provided in person.

- 9) Telemedicine or telehealth may be practiced without a proper provider-patient relationship, during informal consultations without compensation; during episodic consultations by a medical specialist located in another jurisdiction; when a health care 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 health care provider, acting on behalf of an absent health care provider in the same specialty provides health care services on an on-call or cross-coverage basis, provided that the absent health care provider has designated the substitute provider as an on-call provider or cross-coverage service provider.
- 10) This law requires each telemedicine or telehealth organization operating in the State to annually register with the Department of Health and submit an annual report to the Department of Health in a manner as determined by the commissioner. A telemedicine or telehealth organization that fails to register or that fails to submit the annual report will be subject to disciplinary action. More detail on the reporting requirements can be provided as needed.
- 11) Six months after the effective date there shall be established in the Department of Health the Telemedicine and Telehealth Review Commission, whose purpose is review the information reported by telemedicine and telehealth organizations and make recommendations for such executive, legislative, regulatory, administrative, and other actions as may be necessary and appropriate to promote and improve the quality, efficiency, and effectiveness of telemedicine and telehealth services provided in this State.

The commission will consist of seven members: the Commissioner of Health and six public members who are health care professionals with a background in the provision of health care services using telemedicine and telehealth.

- 12) The law specifies that Medicaid, NJ FamilyCare, and certain health insurance providers, including the carriers of health benefits plans, the State Health Benefits Commission, and the School Employees' Health Benefits Commission, are each to provide coverage and payment for services provided through telemedicine and telehealth on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered in-person in New Jersey. Reimbursement payments may be made to the individual practitioner who delivered the reimbursable services, or to the telemedicine or telehealth organization that employs the practitioner. More detailed information on insurance requirements can be provided upon request.

