

SENATE, No. 606

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator HOLLY T. SCHEPISI

District 39 (Bergen and Passaic)

Senator MICHAEL L. TESTA, JR.

District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

Senators Thompson, Pou, Pennacchio and Holzapfel

SYNOPSIS

Revises emergency care services referral standards for providers of telemedicine and telehealth.

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee with technical review.



1 **AN ACT** concerning telemedicine, telehealth, and emergency care
2 services and amending P.L.2017, c.117.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read
8 as follows:

9 2. a. Unless specifically prohibited or limited by federal or
10 State law, a health care provider who establishes a proper provider-
11 patient relationship with a patient may remotely provide health care
12 services to a patient through the use of telemedicine. A health care
13 provider may also engage in telehealth as may be necessary to
14 support and facilitate the provision of health care services to
15 patients. Nothing in P.L.2017, c.117 (C.45:1-61 et al.) shall be
16 construed to allow a provider to require a patient to use
17 telemedicine or telehealth in lieu of receiving services from an in-
18 network provider.

19 b. Any health care provider who uses telemedicine or engages
20 in telehealth while providing health care services to a patient, shall:
21 (1) be validly licensed, certified, or registered, pursuant to Title 45
22 of the Revised Statutes, to provide such services in the State of New
23 Jersey; (2) remain subject to regulation by the appropriate New
24 Jersey State licensing board or other New Jersey State professional
25 regulatory entity; (3) act in compliance with existing requirements
26 regarding the maintenance of liability insurance; and (4) remain
27 subject to New Jersey jurisdiction.

28 c. (1) Telemedicine services may be provided using interactive,
29 real-time, two-way communication technologies or, subject to the
30 requirements of paragraph (2) of this paragraph, asynchronous
31 store-and-forward technology.

32 (2) A health care provider engaging in telemedicine or
33 telehealth may use asynchronous store-and-forward technology to
34 provide services with or without the use of interactive, real-time,
35 two-way audio if, after accessing and reviewing the patient's
36 medical records, the provider determines that the provider is able to
37 meet the same standard of care as if the health care services were
38 being provided in person and informs the patient of this
39 determination at the outset of the telemedicine or telehealth
40 encounter.

41 (3) (a) At the time the patient requests health care services to be
42 provided using telemedicine or telehealth, the patient shall be
43 clearly advised that the telemedicine or telehealth encounter may be
44 with a health care provider who is not a physician, and that the
45 patient may specifically request that the telemedicine or telehealth

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 encounter be scheduled with a physician. If the patient requests that
2 the telemedicine or telehealth encounter be with a physician, the
3 encounter shall be scheduled with a physician.

4 (b) The identity, professional credentials, and contact
5 information of a health care provider providing telemedicine or
6 telehealth services shall be made available to the patient at the time
7 the patient schedules services to be provided using telemedicine or
8 telehealth, if available, or upon confirmation of the scheduled
9 telemedicine or telehealth encounter, and shall be made available to
10 the patient during and after the provision of services. The contact
11 information shall enable the patient to contact the health care
12 provider, or a substitute health care provider authorized to act on
13 behalf of the provider who provided services, for at least 72 hours
14 following the provision of services. If the health care provider is
15 not a physician, and the patient requests that the services be
16 provided by a physician, the health care provider shall assist the
17 patient with scheduling a telemedicine or telehealth encounter with
18 a physician.

19 (4) A health care provider engaging in telemedicine or
20 telehealth shall review the medical history and any medical records
21 provided by the patient. For an initial encounter with the patient,
22 the provider shall review the patient's medical history and medical
23 records prior to initiating contact with the patient, as required
24 pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,
25 c.117 (C.45:1-63). In the case of a subsequent telemedicine or
26 telehealth encounter conducted pursuant to an ongoing provider-
27 patient relationship, the provider may review the information prior
28 to initiating contact with the patient or contemporaneously with the
29 telemedicine or telehealth encounter.

30 (5) Following the provision of services using telemedicine or
31 telehealth, the patient's medical information shall be entered into
32 the patient's medical record, whether the medical record is a
33 physical record, an electronic health record, or both, and, if so
34 requested to by the patient, forwarded directly to the patient's
35 primary care provider, health care provider of record or any other
36 health care providers as may be specified by the patient. For
37 patients without a primary care provider or other health care
38 provider of record, the health care provider engaging in
39 telemedicine or telehealth may advise the patient to contact a
40 primary care provider, and, upon request by the patient, shall assist
41 the patient with locating a primary care provider or other in-person
42 medical assistance that, to the extent possible, is located within
43 reasonable proximity to the patient. The health care provider
44 engaging in telemedicine or telehealth shall also refer the patient to
45 appropriate follow up care or complementary care where necessary
46 **【**, including making appropriate referrals for in-person care or
47 emergency or complementary care, if needed**】** and shall make a
48 good faith effort to directly contact and coordinate with emergency

1 services in accordance with the standard of care and the written
2 emergency care plan that is appropriate to the situation and to the
3 services rendered through the telemedicine or telehealth visit. The
4 emergency care plan shall pertain to areas where patients are
5 located during a telemedicine or telehealth visit. A health care
6 provider engaging in telemedicine or telehealth shall make a good
7 faith effort to: provide the name and location of the patient to
8 emergency services in oral and written form; determine the location
9 of a patient if the patient is unaware of the patient's location; and
10 provide the provider's and the patient's contact information to
11 emergency services. A health care provider engaging in
12 telemedicine or telehealth shall report suicide attempts made by a
13 patient during a telemedicine or telehealth encounter to the
14 Department of Health in a manner that is consistent with federal and
15 State privacy laws, and shall document emergencies which occur
16 during a telemedicine or telehealth encounter. Consent may be
17 implied, oral, written, or digital in nature, provided that the chosen
18 method of consent is deemed appropriate under the standard of care.

19 d. (1) Any health care provider providing health care services
20 using telemedicine or telehealth shall be subject to the same
21 standard of care or practice standards as are applicable to in-person
22 settings. If telemedicine or telehealth services would not be
23 consistent with this standard of care, the health care provider shall
24 direct the patient to seek in-person care.

25 (2) Diagnosis, treatment, and consultation recommendations,
26 including discussions regarding the risk and benefits of the patient's
27 treatment options, which are made through the use of telemedicine
28 or telehealth, including the issuance of a prescription based on a
29 telemedicine or telehealth encounter, shall be held to the same
30 standard of care or practice standards as are applicable to in-person
31 settings. Unless the provider has established a proper provider-
32 patient relationship with the patient, a provider shall not issue a
33 prescription to a patient based solely on the responses provided in
34 an online static questionnaire.

35 (3) In the event that a mental health screener, screening service,
36 or screening psychiatrist subject to the provisions of P.L.1987,
37 c.116 (C.30:4-27.1 et seq.) determines that an in-person psychiatric
38 evaluation is necessary to meet standard of care requirements, or in
39 the event that a patient requests an in-person psychiatric evaluation
40 in lieu of a psychiatric evaluation performed using telemedicine or
41 telehealth, the mental health screener, screening service, or
42 screening psychiatrist may nevertheless perform a psychiatric
43 evaluation using telemedicine and telehealth if it is determined that
44 the patient cannot be scheduled for an in-person psychiatric
45 evaluation within the next 24 hours. Nothing in this paragraph shall
46 be construed to prevent a patient who receives a psychiatric
47 evaluation using telemedicine and telehealth as provided in this
48 paragraph from receiving a subsequent, in-person psychiatric

1 evaluation in connection with the same treatment event, provided
2 that the subsequent in-person psychiatric evaluation is necessary to
3 meet standard of care requirements for that patient.

4 e. The prescription of Schedule II controlled dangerous
5 substances through the use of telemedicine or telehealth shall be
6 authorized only after an initial in-person examination of the patient,
7 as provided by regulation, and a subsequent in-person visit with the
8 patient shall be required every three months for the duration of time
9 that the patient is being prescribed the Schedule II controlled
10 dangerous substance. However, the provisions of this subsection
11 shall not apply, and the in-person examination or review of a patient
12 shall not be required, when a health care provider is prescribing a
13 stimulant which is a Schedule II controlled dangerous substance for
14 use by a minor patient under the age of 18, provided that the health
15 care provider is using interactive, real-time, two-way audio and
16 video technologies when treating the patient and the health care
17 provider has first obtained written consent for the waiver of these
18 in-person examination requirements from the minor patient's parent
19 or guardian.

20 f. A mental health screener, screening service, or screening
21 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
22 27.1 et seq.):

23 (1) shall not be required to obtain a separate authorization in
24 order to engage in telemedicine or telehealth for mental health
25 screening purposes; and

26 (2) shall not be required to request and obtain a waiver from
27 existing regulations, prior to engaging in telemedicine or telehealth.

28 g. A health care provider who engages in telemedicine or
29 telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall
30 maintain a complete record of the patient's care, and shall comply
31 with all applicable State and federal statutes and regulations for
32 recordkeeping, confidentiality, and disclosure of the patient's
33 medical record.

34 h. A health care provider shall not be subject to any
35 professional disciplinary action under Title 45 of the Revised
36 Statutes solely on the basis that the provider engaged in
37 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-61 et
38 al.).

39 i. (1) In accordance with the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
41 entities that, pursuant to Title 45 of the Revised Statutes, are
42 responsible for the licensure, certification, or registration of health
43 care providers in the State, shall each adopt rules and regulations
44 that are applicable to the health care providers under their
45 respective jurisdictions, as may be necessary to implement the
46 provisions of this section and facilitate the provision of
47 telemedicine and telehealth services. Such rules and regulations
48 shall, at a minimum:

- 1 (a) include best practices for the professional engagement in
2 telemedicine and telehealth;
- 3 (b) ensure that the services patients receive using telemedicine or
4 telehealth are appropriate, medically necessary, and meet current
5 quality of care standards;
- 6 (c) include measures to prevent fraud and abuse in connection
7 with the use of telemedicine and telehealth, including requirements
8 concerning the filing of claims and maintaining appropriate records
9 of services provided; **[and]**
- 10 (d) provide substantially similar metrics for evaluating quality of
11 care and patient outcomes in connection with services provided
12 using telemedicine and telehealth as currently apply to services
13 provided in person; and
- 14 (e) establish requirements for emergency care plans to be used
15 by providers who determine that a patient who is receiving services
16 using telemedicine or telehealth is in need of emergency care
17 services, which emergency care plans shall include standards and
18 protocols for activating and coordinating with emergency care
19 services providers serving the area in which the patient is located at
20 the time of the telemedicine or telehealth encounter.
- 21 (2) In no case shall the rules and regulations adopted pursuant to
22 paragraph (1) of this subsection require a provider to conduct an
23 initial in-person visit with the patient as a condition of providing
24 services using telemedicine or telehealth.
- 25 (3) The failure of any licensing board to adopt rules and
26 regulations pursuant to this subsection shall not have the effect of
27 delaying the implementation of this act, and shall not prevent health
28 care providers from engaging in telemedicine or telehealth in
29 accordance with the provisions of this act and the practice act
30 applicable to the provider's professional licensure, certification, or
31 registration.
- 32 (cf: P.L.2021, c.310, s.4)
- 33
- 34 2. This act shall take effect immediately.