

# ASSEMBLY, No. 5451

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 15, 2021

**Sponsored by:**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Morris, Somerset and Union)**

**Assemblyman CLINTON CALABRESE**

**District 36 (Bergen and Passaic)**

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**District 39 (Bergen and Passaic)**

**Co-Sponsored by:**

**Assemblywoman Vainieri Huttie, Assemblymen DePhillips, Rooney, Dancer, Assemblywoman Stanfield, Assemblymen Catalano and McGuckin**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/1/2021)**

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.

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

26 c. (1) Telemedicine services shall be provided using  
27 interactive, real-time, two-way communication technologies.

28 (2) A health care provider engaging in telemedicine or  
29 telehealth may use asynchronous store-and-forward technology to  
30 allow for the electronic transmission of images, diagnostics, data,  
31 and medical information; except that the health care provider may  
32 use interactive, real-time, two-way audio in combination with  
33 asynchronous store-and-forward technology, without video  
34 capabilities, if, after accessing and reviewing the patient's medical  
35 records, the provider determines that the provider is able to meet the  
36 same standard of care as if the health care services were being  
37 provided in person.

38 (3) The identity, professional credentials, and contact  
39 information of a health care provider providing telemedicine or  
40 telehealth services shall be made available to the patient during and  
41 after the provision of services. The contact information shall enable  
42 the patient to contact the health care provider, or a substitute health  
43 care provider authorized to act on behalf of the provider who  
44 provided services, for at least 72 hours following the provision of  
45 services.

**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 (4) A health care provider engaging in telemedicine or  
2 telehealth shall review the medical history and any medical records  
3 provided by the patient. For an initial encounter with the patient,  
4 the provider shall review the patient's medical history and medical  
5 records prior to initiating contact with the patient, as required  
6 pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,  
7 c.117 (C.45:1-63). In the case of a subsequent telemedicine or  
8 telehealth encounter conducted pursuant to an ongoing provider-  
9 patient relationship, the provider may review the information prior  
10 to initiating contact with the patient or contemporaneously with the  
11 telemedicine or telehealth encounter.

12 (5) Following the provision of services using telemedicine or  
13 telehealth, the patient's medical information shall be made available  
14 to the patient upon the patient's request, and, with the patient's  
15 affirmative consent, forwarded directly to the patient's primary care  
16 provider or health care provider of record, or, upon request by the  
17 patient, to other health care providers. For patients without a  
18 primary care provider or other health care provider of record, the  
19 health care provider engaging in telemedicine or telehealth may  
20 advise the patient to contact a primary care provider, and, upon  
21 request by the patient, assist the patient with locating a primary care  
22 provider or other in-person medical assistance that, to the extent  
23 possible, is located within reasonable proximity to the patient. The  
24 health care provider engaging in telemedicine or telehealth shall  
25 also refer the patient to appropriate follow up or complimentary  
26 care where necessary, **[including making appropriate referrals for**  
27 **emergency or complimentary care, if needed]** and shall make a  
28 good faith effort to directly contact and coordinate with emergency  
29 services in accordance with the standard of care and the written  
30 emergency care plan that is appropriate to the situation and to the  
31 services rendered through the telemedicine or telehealth visit. The  
32 emergency care plan shall pertain to areas where patients are  
33 located during a telemedicine or telehealth visit. A healthcare  
34 provider engaging in telemedicine or telehealth shall make a good  
35 faith effort to: provide the name and location of the patient to  
36 emergency services in oral and written form; determine the location  
37 of a patient if a patient is unaware of his or her location; and  
38 provide his or her contact information to emergency services. A  
39 healthcare provider engaging in telemedicine or telehealth shall  
40 report suicide attempts of patient during a telehealth or telemedicine  
41 visit to the Department of Health in a manner that is consistent with  
42 federal and State privacy laws emergency and document  
43 emergencies which occur during a telehealth or telemedicine visit.  
44 Consent may be implied, oral, written, or digital in nature, provided  
45 that the chosen method of consent is deemed appropriate under the  
46 standard of care.

1 d. (1) Any health care provider providing health care services  
2 using telemedicine or telehealth shall be subject to the same  
3 standard of care or practice standards as are applicable to in-person  
4 settings. If telemedicine or telehealth services would not be  
5 consistent with this standard of care, the health care provider shall  
6 direct the patient to seek in-person care.

7 (2) Diagnosis, treatment, and consultation recommendations,  
8 including discussions regarding the risk and benefits of the patient's  
9 treatment options, which are made through the use of telemedicine  
10 or telehealth, including the issuance of a prescription based on a  
11 telemedicine or telehealth encounter, shall be held to the same  
12 standard of care or practice standards as are applicable to in-person  
13 settings. Unless the provider has established a proper provider-  
14 patient relationship with the patient, a provider shall not issue a  
15 prescription to a patient based solely on the responses provided in  
16 an online questionnaire.

17 e. The prescription of Schedule II controlled dangerous  
18 substances through the use of telemedicine or telehealth shall be  
19 authorized only after an initial in-person examination of the patient,  
20 as provided by regulation, and a subsequent in-person visit with the  
21 patient shall be required every three months for the duration of time  
22 that the patient is being prescribed the Schedule II controlled  
23 dangerous substance. However, the provisions of this subsection  
24 shall not apply, and the in-person examination or review of a patient  
25 shall not be required, when a health care provider is prescribing a  
26 stimulant which is a Schedule II controlled dangerous substance for  
27 use by a minor patient under the age of 18, provided that the health  
28 care provider is using interactive, real-time, two-way audio and  
29 video technologies when treating the patient and the health care  
30 provider has first obtained written consent for the waiver of these  
31 in-person examination requirements from the minor patient's parent  
32 or guardian.

33 f. A mental health screener, screening service, or screening  
34 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-  
35 27.1 et seq.):

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

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

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

1 h. A health care provider shall not be subject to any  
2 professional disciplinary action under Title 45 of the Revised  
3 Statutes solely on the basis that the provider engaged in  
4 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-  
5 61 et al.).

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

16 (a) include best practices for the professional engagement in  
17 telemedicine and telehealth;

18 (b) ensure that the services patients receive using telemedicine  
19 or telehealth are appropriate, medically necessary, and meet current  
20 quality of care standards;

21 (c) include measures to prevent fraud and abuse in connection  
22 with the use of telemedicine and telehealth, including requirements  
23 concerning the filing of claims and maintaining appropriate records  
24 of services provided; **[and]**

25 (d) provide substantially similar metrics for evaluating quality  
26 of care and patient outcomes in connection with services provided  
27 using telemedicine and telehealth as currently apply to services  
28 provided in person; and

29 (e) establish requirements for emergency care plans to be used  
30 by providers who determine that a patient who is receiving services  
31 using telemedicine or telehealth is in need of emergency care  
32 services, which emergency care plans shall include standards and  
33 protocols for activating and coordinating with emergency care  
34 services providers serving the area in which the patient is located at  
35 the time of the telemedicine or telehealth encounter.

36 (2) In no case shall the rules and regulations adopted pursuant to  
37 paragraph (1) of this subsection require a provider to conduct an  
38 initial in-person visit with the patient as a condition of providing  
39 services using telemedicine or telehealth.

40 (3) The failure of any licensing board to adopt rules and  
41 regulations pursuant to this subsection shall not have the effect of  
42 delaying the implementation of this act, and shall not prevent health  
43 care providers from engaging in telemedicine or telehealth in  
44 accordance with the provisions of this act and the practice act  
45 applicable to the provider's professional licensure, certification, or  
46 registration.

47 (cf: P.L.2017, c.117, s.2)

1       2. This act shall take effect immediately.

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STATEMENT

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6       This bill amends current law regarding telemedicine and  
7 telehealth to revise emergency care services referral standards.

8       Under current law, there is a provision under which a health care  
9 provider engaging in telemedicine or telehealth is to make  
10 appropriate referrals for emergency care, if needed. The bill revises  
11 this provision to require a health care provider engaged in  
12 telemedicine or telehealth to make a good faith effort to directly  
13 activate and coordinate with emergency care services in accordance  
14 with the standard of care upon determining the patient is in need of  
15 emergency services.

16       The bill provides that an emergency care plan is to pertain to  
17 areas where patients are located during a telemedicine or telehealth  
18 visit. A healthcare provider engaging in telemedicine or telehealth  
19 is to make a good faith effort to: provide the name and location of  
20 the patient to emergency services in oral and written form;  
21 determine the location of a patient if a patient is unaware of his or  
22 her location; and provide his or her contact information to  
23 emergency services. A healthcare provider engaging in  
24 telemedicine or telehealth is to report suicide attempts of patient  
25 during a telehealth or telemedicine visit to the Department of Health  
26 in a manner that is consistent with federal and State privacy laws  
27 emergency and document emergencies which occur during a  
28 telehealth or telemedicine visit.

29       The bill requires professional licensing boards to include in their  
30 rules and regulations implementing the telemedicine and telehealth  
31 law requirements for emergency care plans that include standards  
32 and protocols for activating and coordinating with emergency care  
33 service providers serving the area in which the patient is located at  
34 the time of the telemedicine or telehealth encounter.