

SENATE, No. 3610

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:

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District 39 (Bergen and Passaic)

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District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:

Senators T.Kean, Thompson, Pou, Pennacchio and Holzapfel

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.

47 d. (1) Any health care provider providing health care services
48 using telemedicine or telehealth shall be subject to the same

1 standard of care or practice standards as are applicable to in-person
2 settings. If telemedicine or telehealth services would not be
3 consistent with this standard of care, the health care provider shall
4 direct the patient to seek in-person care.

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

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

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

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

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

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

45 h. A health care provider shall not be subject to any
46 professional disciplinary action under Title 45 of the Revised
47 Statutes solely on the basis that the provider engaged in

1 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-
2 61 et al.).

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

13 (a) include best practices for the professional engagement in
14 telemedicine and telehealth;

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

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

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

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

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

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

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

45

46 2. This act shall take effect immediately.

STATEMENT

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

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

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

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