

## A Renewed Focus on Telehealth in New Jersey

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New Jersey governing boards for dentistry, counseling, respiratory care and occupational therapy have introduced regulations to address licensure requirements for telehealth encounters, consistent with previous regulations adopted by governing boards of other health professionals in New Jersey. The New Jersey legislature is also considering a bill to expand reimbursement for covered services provided via telehealth and allow for new flexibilities, including on type of encounter, location and distance requirements and reimbursement parity. Comments for the four regulations from the governing bodies are due by May 14, 2021.

### IN DEPTH

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In 2017, New Jersey enacted sweeping new telehealth legislation when it passed [P.L. 2017, c. 117](#), codified at N.J.S.A. § 45:1-61 *et seq.* The law established telemedicine and telehealth practice standards for several types of healthcare professionals and imposed insurance coverage requirements.

Since then, governing boards have proposed and adopted telehealth regulations to effectuate the law. Specifically, the boards, examiners or advisory councils of social workers, veterinarians, psychologists, art therapists, physicians, nurses, audiologists, orthotic and prosthetic professionals, physical therapists and psychoanalysts have adopted telehealth-specific regulations. On March 15, 2021, the [State Board of Dentistry](#); [State Board of Marriage and Family Therapy Examiners, Alcohol and Drug Counselor Committee](#); [State Board of Respiratory Care](#); and [Occupational Therapy Advisory Council](#) followed suit, proposing regulations establishing telemedicine and telehealth standards for their respective professionals. Comments for each of these four regulations are due by May 14, 2021.

In their proposed form, the regulations are strikingly similar to each other and to nearly all of the other telehealth regulations adopted by New Jersey administrative bodies. In accordance with P.L. 2017, c.

117, the proposed regulations would prohibit out-of-state practitioners from providing care via telehealth to patients physically located in New Jersey without a New Jersey license. However, an out-of-state provider could use communications technology to consult with a New Jersey licensee, so long as the out-of-state provider was not directing patient care.

Also in line with P.L. 2017, c. 117, the regulations would require New Jersey licensees who provide services through telehealth to provide those services in accordance with the standard of care for such services when provided in-person. Providers typically must use interactive, real-time, two-way communication technologies with a video component. Audio-only telehealth is only permissible if the provider, after reviewing a patient's records, determines she can meet the standard of care without video. In this situation, the licensee must use interactive, real-time, two-way audio in combination with technology that supports the transmission of images, diagnostics, data and medical information.

## **Pending Legislation**

In addition to these regulatory proposals, the New Jersey legislature is currently considering an amendment ([S 2559](#)) to the 2017 law that would expand reimbursement for covered services provided via telehealth and allow for new flexibilities.

On March 22, 2021, the New Jersey Senate Budget and Appropriations Committee passed this legislation out of committee. In its current form, the bill, like the proposed regulations, requires telehealth providers to meet the same standard of care as if they were providing in-person services. Similarly, it allows for audio-only telehealth so long as a provider meets that standard of care.

The bill would also expand reimbursement for telehealth services by requiring insurance providers and Medicaid to ensure payment parity between services provided via telehealth and services provided in-person. Current law provides that telehealth rates are negotiable up to the in-person rate, meaning the reimbursement rates for telehealth services are often lower than the rates a provider would have received had he performed the services in-person.

Finally, the bill prohibits payors from imposing any restrictions on the location of the distant site the provider uses to provide telehealth services or on the location of the originating site where the patient is located when receiving telehealth services.

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