

New Jersey's Telemedicine Law: What Providers Need to Know

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New Jersey has a new telemedicine law, recently signed by Governor Chris Christie. The law cements the validity of telehealth services in the Garden State, establishes telemedicine practice standards, and imposes telehealth coverage requirements for New Jersey Medicaid, Medicaid managed care, commercial health plans, and other State-funded health insurance. After a year of debate in the New Jersey Legislature, the bill ([SB 291 now P.L.2017, c.117](#)) unanimously passed both the House and Senate before going to the Governor's Office. The law is effective July 21, 2017.

The new law is quite lengthy, but we have summarized and explained the essential provisions below:

Key Definitions

- **Telemedicine** is broadly defined as 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. The term does not include "the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission."
- **Telehealth** is defined as 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.
- **Asynchronous Store-and-Forward** is defined as the acquisition and transmission of images, diagnostics, data, and medical information either to, or from, an originating site or to, or from, the health care provider at a distant site, which allows for the patient to be evaluated without being physically present.
- **Health Care Provider** is broadly defined as an individual who provides a health care service to a patient, which includes, but is not limited to, a licensed physician, nurse, nurse practitioner, psychologist, psychiatrist, psychoanalyst, clinical social worker, physician assistant, professional counselor, respiratory therapist, speech pathologist, audiologist, optometrist, or any other health care professional acting within the scope of a valid license or certification issued pursuant to Title 45 of the New Jersey Statutes.

Telemedicine Communication Modalities

- The law also states that telemedicine services must be provided “using interactive, real-time, two-way communication technologies” (a requirement that interestingly does not appear to extend to “telehealth services” under the statute itself). Synchronous audio-video is not mandated except for Schedule II prescribing.
- **Interactive Audio with Store-and-Forward.** A 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 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.
- **Audio-Only or Text-Based Communications.** The law excludes from the definition of telemedicine consultations provided by “the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.”

Telemedicine Practice Standards

- **Provider-Patient Relationship.** A valid provider-patient relationship may be established via telemedicine or telehealth without an in-person exam. Moreover, New Jersey licensing boards are prohibited from passing regulations that would require an in-person exam as a prerequisite to delivering telemedicine or telehealth services. A valid provider-patient relationship must include, at a minimum, the following:
 - Properly identifying the patient using, at a minimum, the patient’s name, date of birth, phone number, and address. The provider may additionally use the patient’s assigned identification number, social security number, photo, health insurance policy number, or other appropriate patient identifier associated directly with the patient.
 - Disclosing and validating the provider’s identity and credentials, such as the provider’s license, title, and, if applicable, specialty and board certifications.
 - For an initial consult with a new patient, the provider must review the patient’s medical history and any available medical records before initiating the telemedicine consult. (For telehealth consults conducted in connection with a pre-existing provider-patient relationship, the provider may review the information with the patient contemporaneously during the consult.)
 - The provider must determine whether or not he/she will be able to meet the standard of care. This determination must be done prior to each unique patient consult.
- A health care provider delivering services via telemedicine or telehealth must adhere to the following practice standards.
 - The provider’s identity, professional credentials, and contact must be made available to the patient during and after the provision of services. The contact information must enable the patient to contact the provider (or a substitute provider authorized to act on behalf of the provider who provided services) for at least 72 hours following the provision of services.
 - The provider must review the patient’s medical history and any available medical records.
 - After the consult, the patient’s medical information must be made available to the

patient upon his/her request. If the patient consents/requests, the information must be forwarded directly to the patient's primary care provider or health care provider(s) of record.

- If a patient has no health care provider of record, the telemedicine or telehealth provider is allowed to advise the patient to contact a primary care provider, and, upon request by the patient, may 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 telemedicine or telehealth provider must refer the patient to appropriate follow up care where necessary, including making appropriate referrals for emergency or complimentary care, if needed.
- **Standard of Care.** Diagnosis, treatment, and consultation recommendations, including discussions regarding the risk and benefits of the patient's treatment options, made via telemedicine or telehealth, including the issuance of a prescription based on a telemedicine or telehealth consult, are held to the same standard of care or practice standards as are applicable to in-person settings. If telemedicine or telehealth services are not consistent with this standard of care, the provider must direct the patient to seek in-person care.
- **Telemedicine Prescribing.** A provider may prescribe medications via telemedicine only after establishing a valid provider-patient relationship.
 - Unless the provider has established a valid provider-patient relationship, a provider shall not issue a prescription to a patient based solely on the responses provided in an online questionnaire.
 - With regard to prescribing controlled substances via telemedicine, the law does not prohibit the activity except for Schedule II drugs. A provider may prescribe Schedule II controlled substances via telemedicine only after conducting an initial in-person examination of the patient. Moreover, subsequent in-person exams are required every three months for the duration of time that the patient is being prescribed the Schedule II controlled dangerous substance. Note: despite the New Jersey law, providers must still comply with the prescribing requirements under the [federal Ryan Haight Act](#).
 - The New Jersey in-person exam requirement does not apply to prescriptions for Schedule II controlled stimulant drugs for use by a patient under the age of 18 if: 1) the provider uses interactive, real-time, two-way audio and video technologies; and 2) has obtained written consent from the minor patient's parent or guardian to waive the in-person exam.
- **Patient Consent.** The law does not require patient informed consent to telehealth services (although New Jersey Medicaid requires it for [certain specialties](#)). However, to the extent the provider must obtain patient consent for certain activities (e.g., recommending a primary care referral, clinical procedures), 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.
- **Originating site.** There are no geographic or facility restrictions on originating sites, which are simply defined as "a site at which a patient is located at the time that health care services are provided to the patient by means of telemedicine or telehealth."
- **Patient-Site Telepresenter.** There is no requirement to use a patient-site telepresenter, unless otherwise needed by medical standard of care expectations.
- **Medical Records; HIPAA.** Providers must 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.

Other unique and notable highlights of the New Jersey law include:

- **Business Registration for Telemedicine or Telehealth Organizations.** The law requires each telemedicine or telehealth organization operating in New Jersey to annually register with the Department of Health and submit annual reports on activity and encounter data. The content of the reports will be specified further in forthcoming regulations, but we know the reports will include, at least, for each consult: the patient's race and ethnicity; the diagnostic codes; the evaluation management codes; and the source of payment for the consult. The Department of Health will compile the information into a statewide database. A "Telemedicine or telehealth organization" is a corporation, sole proprietorship, partnership, or limited liability company that is organized for the primary purpose of administering services in the furtherance of telemedicine or telehealth.
- **Telemedicine and Telehealth Review Commission.** The law creates a seven-member New Jersey Telemedicine and Telehealth Review Commission. The Commission will review the information reported by telemedicine and telehealth organizations and make recommendations for policy and law changes to promote and improve the quality, efficiency, and effectiveness of telemedicine and telehealth services in New Jersey.
- **Exceptions to Provider-Patient Relationship.** Telemedicine or telehealth may be practiced without a proper provider-patient relationship in the following circumstances:
 - During informal consultations performed by a provider outside the context of a contractual relationship, or on an irregular or infrequent basis, without the expectation or exchange of direct or indirect compensation.
 - During episodic consultations by a medical specialist located in another jurisdiction who provides consultation services, upon request, to a properly licensed or certified health care provider in New Jersey.
 - When a provider furnishes medical assistance in response to an emergency or disaster, provided that there is no charge for the medical assistance.
 - When a substitute provider, who is acting on behalf of an absent provider in the same specialty, provides health care services on an on-call or cross-coverage basis, provided that the absent provider has designated the substitute provider as an on-call provider or cross-coverage service provider.
- Mental health screeners, screening services, and screening psychiatrists subject to the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.) are not required to obtain a separate authorization in order to engage in telemedicine or telehealth for mental health screening purposes, and are not required to request and obtain a waiver from existing regulations prior to engaging in telemedicine or telehealth.

New Jersey Telemedicine and Telehealth Insurance Coverage

The law establishes fairly broad [coverage](#) of telemedicine and telehealth services, both under New Jersey Medicaid and commercial health insurance plans. However, the law does not explicitly impose a [payment parity requirement](#) (i.e., mandating that reimbursement for telemedicine and telehealth services be equal to reimbursement rates for identical in-person services). Instead the law sets the in-person reimbursement rate as the maximum ceiling for telemedicine and telehealth reimbursement rates.

- With regard to Medicaid and Medicaid managed care, the law states that the [State Medicaid Program](#) and [NJ FamilyCare Program](#) "shall provide coverage and payment for health care services delivered to a benefits recipient through telemedicine or 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 through in-person contact and consultation in New Jersey.”

- Reimbursement payments may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.
 - The programs may limit coverage to services that are delivered by participating health care providers, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation.
- With regard to commercial health insurance plans, the law states that “a carrier that offers a health benefits plan in [New Jersey] shall provide coverage and payment for health care services delivered to a covered person through telemedicine or 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 through in-person contact and consultation in New Jersey.”
 - Reimbursement payments may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.
 - A carrier may limit coverage to services that are delivered by health care providers in the health benefits plan’s network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation.
 - The law establishes similar telemedicine and telehealth coverage requirements for contracts purchased through the New Jersey [State Health Benefits Commission](#) and the New Jersey School Employees’ Health Benefits Commission.

Passage of this new legislation is welcome news for telemedicine companies and health care providers looking to offer telemedicine services in New Jersey. We will continue to monitor New Jersey for any rule changes that affect or improve telemedicine opportunities in the state.

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