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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF DENTISTRY

Administrative Code Citation

Adopted New Rules: N.J.A.C. 13:30-9

Text

Telemedicine and Telehealth

Proposed: March 15, 2021, at 53 N.J.R. 406(a).

Adopted: July 7, 2021, by State Board of Dentistry, John Edward Feeney, DDS, President.

Filed: December 13, 2021, as R.2022 d.014, **without change**.

Authority: N.J.S.A. 45:1-61 et seq., and 45:6-19.4.

Effective Date: January 18, 2022.

Expiration Date: October 11, 2024.

Summary of Public Comments and Agency Responses:

The official comment period ended on May 14, 2021. The State Board of Dentistry (Board) received comments from:

1. Rebecca Welch Pugh, Executive Director, New Jersey Coalition on Oral Health for the Aging (NJCOHA);

2. Arthur Meisel, Executive Director, New Jersey Dental Association (NJDA), on behalf of NJDA and its President, Mitchell L. Weiner, D.M.D.;

3. Kim Attanasi, Ph.D., MS, RDH, President, American Dental Hygiene Association-New Jersey (ADHA-NJ); and

4. Evan Sampson, Esquire, on behalf of The ChildSmiles Group, LLC.

1. COMMENT: One commenter expressed support for the Board's proposal. The commenter noted that New Jersey's seniors, as well as other special populations, need increased access to oral health care and education. The commenter stated that this is critical not only to oral health, but also to overall health. The commenter also stated that seniors without oral health problems have less pain, better nutrition, and a higher quality of life. The commenter further noted that the rising incidence of oral health problems can be correlated to heart disease, lung disease, and other significant health problems.

RESPONSE: The Board thanks the commenter for its support.

2. COMMENT: One commenter noted that pursuant to the State's telehealth/telemedicine statute, N.J.S.A. 45:1-61 et seq., as a matter of law, "services provided through telemedicine or telehealth are subject to the same standard of care or practice standards as are applicable to in-person settings." The commenter suggested that, to provide clarity and avoid ambiguity, the Board define the phrases "standard of care" and "practice standards" or comment on their intended meanings.

RESPONSE: Standards of care and practice standards are established by commonly recognized professional practices, research studies, professional organizations, educational standards, and Board statutes, rules, and regulations, among other items. Professional practice standards may change over time as practice areas evolve. The Board believes that dentists and dental hygienists are able to identify professional standards without the Board establishing such standards in the rules, as the commenter recommends.

3. COMMENT: One commenter suggested that proposed Subchapter 9 should be amended to clarify that an "originating site" for the purposes of the subchapter may include a service location of an otherwise absent provider. The commenter stated that the proposed subchapter does not provide any clarification as to whether a branch-certified location for a provider can serve as an "originating site" for the purposes at N.J.A.C. 13:30-9.2, in the provider's physical absence from the site.

RESPONSE: As defined and used at N.J.S.A. 45:1-61 et seq., "originating site" refers to the location of the patient, not the provider, at the time that health care services are provided. Additionally, the Board notes that "distant site," a site at which a licensee is located while providing health care services by means of telemedicine or telehealth, as defined at N.J.A.C. 13:30-9.2, provides the clarification sought by the commenter.

4. COMMENT: One commenter recommended that the proposed subchapter should be amended to provide for formal consultations with specialists where no previous individual doctor-patient relationship existed. The commenter believes that this is necessary to address patient access issues that multi-specialty practices would be able to provide pursuant to the amendments.

Specifically, the commenter suggested amending proposed N.J.A.C. 13:30-9.4(c) to provide that a formal consultation with a specialist after a referral or exam by another licensed dentist may be provided

through teledentistry in the absence of an existing doctor-patient relationship with the specialist. The commenter stated that, although proposed N.J.A.C. 13:30-9.4(c) provides for informal consultations outside the context of contractual relationships and "cross-coverage" between licensees in the same specialty, it does not provide for a formal referral-and-consultation with a specialist to be completed through telehealth.

The commenter believes that amending this provision would result in a positive social impact by increasing patient access to specialists, especially within multi-specialty practices. For example, with the proposed amendments, a pedodontist may immediately refer a patient for an examination to an associated orthodontist through teledentistry, if the orthodontist was not physically present. The commenter also believes that the suggested amendment will provide greater access to specialists, especially for patients in underserved communities. The commenter noted that a Research Brief released by the Health Policy Institute of the American Dental Association concluded that 20.9 percent of Medicaid-[page=150] enrolled adults that do not plan to visit a dentist in the next twelve months will do so because the patient "cannot get to a dentist easily," while 6.3 percent of patients "cannot find the time to visit a dentist." The commenter further noted that the Research Brief also concludes that "enabling conditions that help bring Medicaid-enrolled patients and dental providers together" is necessary for ensuring access and "interventions such as reducing administrative burdens and increasing patient outreach have also shown" to increase dental care utilization by Medicaid enrollees.

The commenter averred that by amending proposed Subchapter 9 to ensure that patients can be immediately referred for a formal consultation by a specialist through teledentistry will constitute an enabling condition to ensure access to Medicaid patients in accordance with the Health Policy Institute's guidance. The commenter contended that the amendments will definitively address concerns of patients who cannot otherwise "get to a dentist easily" or "find the time to visit a dentist."

RESPONSE: The Board shares the commenter's concerns of access to care, especially in underserved populations and is working with the Division of Consumer Affairs to develop ways to address health equity issues.

N.J.S.A. 45:1-63 requires any health care provider who engages in telemedicine or telehealth to ensure that a proper provider-patient relationship is established and sets forth limited exemptions from this requirement. A health care provider does not have to establish such a relationship if: services are provided as informal consultations, or on an infrequent basis, and there is no compensation for the services; services are part of episodic consultations by a medical or dental specialist in another jurisdiction; services are related to dental assistance provided during an emergency or disaster without compensation; or a licensee is providing on behalf of, and at the designation of, an absent licensee in the same specialty on-call or cross-coverage services. The rules must be consistent with statutory requirements, and, therefore, the Board cannot change those exemptions or N.J.A.C. 13:30-9.4(c) as the commenter suggested.

Federal Standards Statement

Requirements at N.J.A.C. 13:30-9 impose the same standards for privacy of communications as are imposed at 45 CFR 160 and 164, which are incorporated into the rule. There are no other Federal laws or standards applicable to the adopted new rules.

Full text of the adopted new rules follows:

SUBCHAPTER 9. TELEMEDICINE AND TELEHEALTH

13:30-9.1 Purpose and scope

(a) The purpose of this subchapter is to implement the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.), which authorizes healthcare providers to engage in telemedicine and telehealth.

(b) This subchapter shall apply to all persons who are licensed by the Board.

(c) Pursuant to N.J.S.A. 45:1-62, a dentist or dental hygienist must hold a license, as applicable, issued by the Board, if he or she:

1. Is located in New Jersey and provides health care services to any patient located in or out of New Jersey by means of telemedicine or telehealth; or

2. Is located outside of New Jersey and provides health care services to any patient located in New Jersey by means of telemedicine or telehealth.

(d) Notwithstanding N.J.S.A. 45:1-62 and (c) above, a healthcare provider located in another state who consults with a licensee in New Jersey through the use of information and communications technologies, but does not direct patient care, will not be considered as providing health care services to a patient in New Jersey consistent with N.J.S.A. 45:6-1 et seq., and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:30-9.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Asynchronous store-and-forward" means the acquisition and transmission of images, diagnostics, data, and medical information either to or from an originating site or to or from the licensee at a distant site, which allows for the patient to be evaluated without being physically present.

"Board" means the New Jersey State Board of Dentistry.

"Cross-coverage" means a licensee engages in a remote dental evaluation of a patient, without in-person contact, at the request of another licensee who has established a proper licensee-patient relationship with the patient.

"Distant site" means a site at which a licensee is located while providing health care services by means of telemedicine or telehealth.

"Licensee" means an individual licensed by the Board.

"On-call" means a licensed dentist is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the licensed dentist has temporarily assumed responsibility, as designated by the patient's primary care licensed dentist or other health care provider of record.

"Originating site" means 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.

"Proper licensee-patient relationship" means an association between a licensee and patient, wherein the licensee owes a duty to the patient to be available to render professional services consistent with his or her training and experience, which is established pursuant to the requirements at N.J.A.C. 13:30-9.4.

"Telehealth" means 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 in accordance with the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.).

"Telemedicine" means the delivery of a health care service, including supportive mental health services, using electronic communications, information technology, or other electronic or technological means to bridge the gap between a health care licensee who is located at a distant site and a patient who is located at an originating site, either with or without the assistance of an intervening licensee, and in accordance with the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.). "Telemedicine" does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

13:30-9.3 Standard of care

(a) Prior to providing services through telemedicine or telehealth, a licensee shall determine whether providing those services through telemedicine or telehealth would be consistent with the standard of care applicable for those services when provided in-person.

(b) If a licensee determines, either before or during the provision of health care services, that services cannot be provided through telemedicine or telehealth in a manner that is consistent with in-person standards of care, the licensee shall not provide services through telemedicine or telehealth.

1. A licensed dental hygienist working under supervision shall be responsible for determining whether health care services can be provided through telemedicine or telehealth in a manner that is consistent with in-person standards of care.

(c) A licensee who determines that services cannot be provided through telemedicine or telehealth pursuant to (b) above shall advise the patient to obtain services in-person.

(d) A licensed dentist who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risk and benefits of a patient's treatment options, through telemedicine or telehealth shall be held to the same standard of care or practice standards as are applicable to in-person settings.

(e) A licensed dental hygienist who provides an assessment, treatment, or consultation recommendation, including discussions regarding the risk and benefits of a patient's treatment options, through telemedicine or telehealth, shall be held to the same standard of care or practice standards as are applicable to in-person settings.

13:30-9.4 Licensee-patient relationship

(a) Prior to providing services through telemedicine or telehealth, a licensee shall establish a licensee-patient relationship by:

[page=151] 1. Identifying the patient with, at a minimum, the patient's name, date of birth, phone number, and address. A licensed dentist may also use a patient's assigned identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the patient; and

2. Disclosing and validating the licensee's identity, license, title, and, if applicable, professional certifications.

(b) Prior to initiating contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, a licensed dentist shall:

1. Review the patient's medical and dental history and any available dental records;

2. Determine as to each unique patient encounter whether the licensee will be able to provide the same standard of care using telemedicine or telehealth as would be provided if the services were provided in-person; and

3. Provide the patient the opportunity to sign a consent form that authorizes the licensed dentist to release dental records of the encounter to the patient's primary care licensed dentist or other healthcare provider identified by the patient.

(c) Notwithstanding (a) and (b) above, health care services may be provided through telemedicine or telehealth without a proper licensed dentist-patient relationship if the provision of health care services is:

1. For informal consultations with another healthcare provider performed by a licensee outside the context of a contractual relationship, or on an irregular or infrequent basis, without the expectation or exchange of direct or indirect compensation;

2. During episodic consultations by a medical or dental specialist located in another jurisdiction who provides consultation services, upon request, to a licensee in this State;

3. Related to dental assistance provided in response to an emergency or disaster, provided that there is no charge for the dental assistance; or

4. Provided by a substitute licensee acting on behalf, and at the designation of, an absent licensee in the same specialty on an on-call or cross-coverage basis.

13:30-9.5 Provision of dental care services through telemedicine or telehealth

(a) As long as a licensee has satisfied the requirements at N.J.A.C. 13:30-9.4, a licensee may provide health care services to a patient through the use of telemedicine and may engage in telehealth to support and facilitate the provision of health care services to patients.

(b) Prior to providing services through telemedicine or telehealth, a licensee shall determine the patient's originating site and record this information in the patient's record.

(c) A licensee providing healthcare services through telemedicine shall use interactive, real-time, two-way communication technologies, which shall include, except as provided at (e) below, a video component that allows a licensee to see a patient and the patient to see the licensee during the provision of health care services.

(d) A licensee providing services through telemedicine or telehealth may use asynchronous store-and-forward technology to allow for the electronic transmission of:

1. Images;
2. Diagnostics;
3. Data; and
4. Medical or dental information.

(e) If, after accessing and reviewing the patient's medical and/or dental records, a licensee determines that he or she is able to meet the standard of care for such services if they were being provided in-person without using the video component described at (c) above, the licensee may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology, without a video component.

(f) Prior to providing services through telemedicine or telehealth, a licensed dentist shall review any medical history or medical or dental records provided by a patient as follows:

1. For an initial encounter with a patient, medical and dental history and dental records shall be reviewed prior to the provision of health care services through telemedicine or telehealth; and
2. For any subsequent interactions with a patient, medical and dental history and dental records shall be reviewed either prior to the provision of health care services through telemedicine or telehealth or contemporaneously with the encounter with the patient.

(g) During and after the provision of health care services through telemedicine or telehealth, a licensed dentist, or another designated licensee, shall provide his or her name, professional credentials, and contact information to the patient. Such contact information shall enable the patient to contact the licensee for at least 72 hours following the provision of services, or for a longer period if warranted by the patient's circumstances and accepted standards of care.

(h) After the provision of health care services through telemedicine or telehealth, a licensed dentist shall, consistent with N.J.A.C. 13:30-8.7(e), provide the patient, upon request, with his or her dental records reflecting the services provided.

(i) A licensed dentist shall provide, upon a patient's written request, the patient's dental information to the patient's primary dental care provider or to other health care providers.

(j) A licensed dentist engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

(k) A licensed dental hygienist who engages in telemedicine or telehealth and who practices dental hygiene under general supervision shall comply with the provisions at N.J.A.C. 13:30-1A.4.

13:30-9.6 Prescriptions

(a) A licensed dentist shall not issue a prescription based solely on responses provided in an online questionnaire, unless the licensee has established a proper licensed dentist-patient relationship pursuant to N.J.A.C. 13:30-9.4.

(b) A licensed dentist shall not issue a prescription for a Schedule II controlled dangerous substance, unless the licensed dentist has had an initial in-person examination of the patient and a subsequent in-person visit with the patient at least every three months for the duration of the time the patient is prescribed the Schedule II controlled dangerous substance.

13:30-9.7 Records

A licensee who provides services through telemedicine or telehealth shall maintain a record of the care provided to a patient. Such records shall comply with the requirements at N.J.A.C. 13:30-8.7, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's dental record.

13:30-9.8 Prevention of fraud and abuse

(a) In order to establish that a licensee has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, a licensee must establish written protocols that address:

1. Authentication and authorization of users;
2. Authentication of the patient during the initial intake pursuant to N.J.A.C. 13:30-9.4(a)1;
3. Authentication of the origin of information;
4. The prevention of unauthorized access to the system or information;
5. System security, including the integrity of information that is collected, program integrity, and system integrity;
6. Maintenance of documentation about system and information usage;
7. Information storage, maintenance, and transmission; and
8. Synchronization and verification of patient profile data.

13:30-9.9 Privacy and notice to patients

(a) Licensed dentists who communicate or who have staff communicate with patients by electronic communications other than telephone or facsimile shall establish written privacy practices that are consistent with Federal standards pursuant to 45 CFR 160 and 164, which are incorporated herein by reference, relating to privacy of individually identifiable health information.

(b) Written privacy practices required pursuant to (a) above shall include privacy and security measures that assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient email, prescriptions, and laboratory results must be password protected, encrypted electronic prescriptions, or protected through substantially equivalent authentication techniques.

[page=152] (c) A licensee, registrant, or other employee of the dentist who becomes aware of a breach in confidentiality of patient information, as defined at 45 CFR 164.402, shall comply with the reporting requirements at 45 CFR 164.

(d) Licensees, or their authorized representatives, shall provide a patient, prior to evaluation or treatment, with copies of written privacy practices and shall obtain the patient's written acknowledgement of receipt of the notice.

(e) Licensees who provide services through telemedicine or telehealth, or their authorized representatives, shall, prior to providing services, give patients notice regarding telemedicine and telehealth, including the risks and benefits of being treated through telemedicine or telehealth and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment, or in the event of an inability to communicate as a result of a technological or equipment failure. A licensee shall obtain a signed and dated statement indicating that the patient received this notice.

(f) When telemedicine or telehealth is unable to provide all pertinent clinical information that a licensee exercising ordinary skill and care would deem reasonably necessary to provide care to a patient, the licensee shall inform the patient of this prior to the conclusion of the provision of care through telemedicine or telehealth and shall advise the patient regarding the need for the patient to obtain an additional in-person medical evaluation reasonably able to meet the patient's needs.

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