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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF PSYCHOLOGICAL EXAMINERS

Administrative Code Citation

Adopted New Rules: N.J.A.C. 13:42-13

Text

Telemedicine

Proposed: June 17, 2019, at 51 N.J.R. 931(a).

Adopted: October 7, 2019, by the State Board of Psychological Examiners, Alan Groveman, Ph.D., Chair.

Filed: September 9, 2020, as R.2020 d.094, **without change.**

Authority: N.J.S.A. 45:14B-13 and P.L. 2017, c. 117.

Effective Date: October 19, 2020.

Expiration Date: May 18, 2023.

Summary of Public Comments and Agency Responses:

The official comment period ended August 16, 2019. The Board received comments from the following individuals:

1. Jared L. Skillings, PhD, ABPP, Chief of Professional Practice, American Psychological Association;
2. Morgan Murray, Ph.D., NJPA President;
3. Keira Boerzel-Smith, NJPA Executive Director;
4. Claudia Duck Tucker, Vice President Government Affairs, Teladoc;
and
5. Debra L. Wentz, Ph.D., President and Chief Executive Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc.

[page=1921] 1. COMMENT: One commenter generally supports the new rules implementing P.L. 2017, c. 117. The commenter specifically supports requiring licensed psychologists to verify a patient's identity and location prior to providing services through telemedicine and telehealth, allowing licensed psychologists to use audio only communication along with asynchronous technology to provide services through telemedicine and telehealth, and exempting out-of-State psychologists from licensure requirements when providing consultation to New Jersey licensed psychologists.

RESPONSE: The Board thanks the commenter for his support. The Board points out that N.J.A.C. 13:42-13.1(d) does not exempt all out-of-State psychologists from licensure requirements when providing consultation. A psychologist located in another state who consults with a licensed practicing psychologist in New Jersey through the use of information and communications technologies will not be required to obtain licensure in New Jersey, as long as he or she does not direct client care.

2. COMMENT: A commenter recommends that N.J.A.C. 13:42-13.1(c) be amended to permit psychologists licensed in other states to provide services on a limited basis in New Jersey without a New Jersey license.

RESPONSE: Pursuant to N.J.S.A. 45:1-62(b), a psychologist must be licensed in New Jersey if he or she uses telemedicine or engages in telehealth to provide services to a client in New Jersey. The Board does not have the authority to change N.J.A.C. 13:42-13.1(c) as the commenter recommends. The Board points out that N.J.S.A. 45:14B-6 permits a psychologist from another state to practice in New Jersey for up to 10 consecutive business days or 15 business days in any 90-day period, if he or she resides outside, and his or her major practice is outside, of New Jersey, as long as such a psychologist provides the Board with a summary of his or her qualifications and a written notice of his or her intention to practice in New Jersey at least 10 days prior to commencing such practice. This exemption applies to

psychologists who are providing services in New Jersey through telemedicine or telehealth.

3. COMMENT: Three commenters point out that N.J.S.A. 45:14B-6 permits a psychologist licensed in another state to practice in New Jersey for up to 10 consecutive business days or 15 business days in any 90-day period without a New Jersey license. The commenters ask whether this exemption will apply to psychologists licensed in other states who provide services to New Jersey residents through telemedicine or telehealth.

RESPONSE: As stated in the Response to Comment 2, the exemption to the licensure requirements at N.J.S.A. 45:14B-6 will apply to psychologists in other states who provide services in New Jersey through telemedicine or telehealth.

4. COMMENT: A commenter recommends that N.J.A.C. 13:42-13.1 be amended, so that a psychologist will not be required to hold New Jersey licensure if he or she is licensed in another jurisdiction and is providing services through telemedicine or telehealth to clients located in that jurisdiction while he or she is travelling through New Jersey. The commenter contends that psychologists who are temporarily inside New Jersey could possibly not be aware that they are required to obtain New Jersey licensure when providing services to clients while travelling through New Jersey.

RESPONSE: N.J.S.A. 45:1-62 establishes that a psychologist must be licensed in New Jersey if he or she is physically located in New Jersey while providing services through telemedicine or telehealth. Therefore, the Board cannot change N.J.A.C. 13:42-13.1 as the commenter recommends. As discussed in the Response to Comments 2 and 3, an out-of-State psychologist may practice in New Jersey for a limited time without a New Jersey license, if he or she satisfies the requirements at N.J.S.A. 45:14B-6.

5. COMMENT: Two commenters recommend that the Board provide a definition for the term "medical records" and that it clarify what communication licensed psychologists must have with primary care physicians or other health care providers regarding client information.

RESPONSE: The term "medical records" is not used at N.J.A.C. 13:42-13. The term was mistakenly used in the summary of N.J.A.C. 13:42-13.4 in the notice of proposal for the new rules, but that was a typographical error and the term used in the Summary should have been "any available records," which is the term that is used at N.J.A.C. 13:42-13.4. There is no requirement that a licensed psychologist communicate with a physician or other health care provider.

6. COMMENT: Three commenters ask if N.J.A.C. 13:42-13.4 requires licensed psychologists to review a patient's history and available records, to verify a patient's identity, to disclose the licensed psychologist's identity, and to determine whether services can be provided through telemedicine or telehealth with the same standard of care as in-person services well in advance of providing services, or at the outset of providing services. The commenters ask for clarification as to the timeframe for meeting these requirements.

RESPONSE: N.J.A.C. 13:42-13.4 does not establish a timeframe for when a licensed psychologist should review history and available records, disclose his or her identity, and determine when services can be provided through telemedicine or telehealth. The Board does not believe it is appropriate to dictate when a licensee engages in these actions, as long as they are done prior to the initial provision of services to clients. As long as the psychologist is sufficiently familiar with this information before initiating contact with the client, he or she will satisfy the requirements at N.J.A.C. 13:42-13.4.

7. COMMENT: N.J.A.C. 13:42-13.5 requires a licensed psychologist to determine a client's originating site prior to providing psychological services through telemedicine or telehealth. Three commenters recommend that the section be amended to require a licensed psychologist to confirm the client's originating site at the outset of each provision of services. One of the commenters contends that a client could change his or her location after the initial determination of an originating site.

RESPONSE: N.J.A.C. 13:42-13.5 does not address solely the initial provision of services by a licensed psychologist to a client, the section addresses every time a licensed psychologist provides services. As written, the section requires what the commenters recommend and it is not necessary to change the rules.

8. COMMENT: Two commenters support permitting licensed psychologists to use telephonic services with store-and-forward technology.

RESPONSE: The Board thanks the commenters for their support.

9. COMMENT: A commenter asks if N.J.A.C. 13:42-13.5 permits licensed psychologists to provide services through telemedicine without a video component when clinically appropriate.

RESPONSE: N.J.A.C. 13:42-13.5(e) permits a licensed psychologist to provide services using interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without a video component if the licensed psychologist determines that he or she

can meet the standard of care for such services as if they were provided in-person.

10. COMMENT: N.J.A.C. 13:42-13.5(f) requires a licensed psychologist to provide clients with contact information that will enable the client to contact the licensed psychologist for at least 72 hours after the provision of psychological services through telemedicine or telehealth. Three commenters ask if this requires that a licensed psychologist be readily available for the 72 hours following the provision of services. The commenters contend that this requirement is the same as that at N.J.A.C. 13:42-13.4(a)2 and that it places an undue burden on licensed psychologists to respond to client communications that are not imposed when services are provided in-person. One of the commenters recommends that the Board delete N.J.A.C. 13:42-13.5(f).

RESPONSE: N.J.S.A. 45:1-62.c requires licensed psychologists to provide his or her contact information to a patient after the provision of services that would enable the client to contact the licensed psychologist, or a substitute licensed psychologist, for at least 72 hours following the provision of services. This requirement is not the same as at N.J.A.C. 13:42-13.4(a)2 and the Board will not delete N.J.A.C. 13:42-13.5(f), as the commenter recommends. The Board cannot change this statutory requirement.

11. COMMENT: Three commenters do not believe it is appropriate to require licensed psychologists to review all of a patient's history and records prior to every interaction with the patient. The commenters contend that it is more appropriate for licensed psychologists to review recent treatment information prior to encounters subsequent to the initial encounter based upon standard of care considerations.

[page=1922] RESPONSE: N.J.S.A. 45:1-62.c requires a licensed psychologist to review client history and any records provided by the client prior to the initial encounter with the client and for any subsequent provision of services. For the subsequent provision of services, a licensed psychologist may review the information prior to initiating contact with the client or contemporaneously with the telemedicine or telehealth encounter.

12. COMMENT: A commenter contends that it is difficult to obtain a written request or acknowledgement when a licensee provides services through telemedicine or telehealth. The commenter recommends that N.J.A.C. 13:42-13.5 and 13.8 be amended so that a written request or acknowledgement could be hand delivered, mailed, or transmitted electronically. The commenter also requests that the rules recognize that electronically transmitted requests or acknowledgements could include electronic mail, telephonic prompts, facsimile, text message,

or other modalities that indicate the client's affirmative written request or acknowledgement.

RESPONSE: N.J.A.C. 13:42-13.5 and 13.8 do not require a licensed psychologist to obtain a written request or acknowledgement in-person. Any of the methods identified by the commenter, as well as any that are not recognized by the commenter, will meet the requirements at N.J.A.C. 13:42-13.5 and 13.8, as long as they result in the licensed psychologist obtaining a written request for release of patient records or acknowledgement of receipt of the licensed psychologist's written privacy practices. It is not necessary to change N.J.A.C. 13:42-13.5 and 13.8 as the commenter recommends as those methods are already countenanced by the rules and the commenter's suggestions could possibly limit the methods by which licensed psychologists may obtain a written request or acknowledgement.

Federal Standards Statement

Requirements at N.J.A.C. 13:42-13.8 impose the same standards for privacy of communications as are imposed by 45 CFR Parts 160 and 164, which are referred to in 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 13. TELEMEDICINE

13:42-13.1 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 as practicing psychologists.

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

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

2. Is located outside of New Jersey and provides psychological services to any client 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 licensed practicing psychologist in New Jersey through the use of information

and communications technologies, but does not direct client care, will not be considered as providing psychological services to a client in New Jersey consistent with N.J.S.A. 45:14B-1 et seq., and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:42-13.2 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 and/or mental health information either to or from an originating site or to or from the licensee at a distant site, which allows for the client to be evaluated without being physically present.

"Board" means the Board of Psychological Examiners.

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

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

"Licensee" means an individual licensed by the Board as a practicing psychologist.

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

"Originating site" means a site at which a client is located at the time that psychological services are provided to the client by means of telemedicine or telehealth.

"Telehealth" means the use of information and communications technologies, including telephones, remote client monitoring devices, or other electronic means, to support clinical health care, provider consultation, client and professional health-related education, public health, health administration, and other psychological 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 psychological service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a licensee who is located at a distant site and a client 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.

13:42-13.3 Standard of care

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

(b) If a licensee determines, either before or during the provision of psychological services, that psychological 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 psychological services through telemedicine or telehealth.

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

(d) A licensee who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risk and benefits of a client'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.

13:42-13.4 Licensee-client relationship

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

1. Identifying the client with, at a minimum, the client's name, date of birth, phone number, and address. A licensee may also use a client's assigned identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the client; and

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

(b) Prior to an initial contact with a client for the purpose of providing psychological services to the client using telemedicine or telehealth, a licensee shall review the client's history and any available records.

(c) Prior to initiating contact with a client for the purpose of providing psychological services through telemedicine or telehealth, a licensee shall determine whether he or she will be able to provide the same standard of care using telemedicine or telehealth as would be provided if the psychological services were provided in person. The licensee shall make this determination prior to each unique client encounter.

[page=1923] (d) Notwithstanding (a), (b), and (c) above, psychological service may be provided through telemedicine or telehealth without a proper provider-client relationship if:

1. The provision of psychological services is 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. The provision of psychological services is during episodic consultations by a medical and/or psychological specialist located in another jurisdiction who provides consultation psychological services, upon request, to a licensee in this State;

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

4. A substitute licensee, who is acting on behalf of an absent licensee in the same specialty, provides psychological services on an on-call or cross-coverage basis, provided that the absent licensee has designated the substitute licensee as an on-call licensee or cross-coverage psychological service provider.

13:42-13.5 Provision of psychological services through telemedicine or telehealth

(a) As long as a licensee has satisfied the requirements of N.J.A.C. 13:42-13.4, a licensee may provide psychological services to a client through the use of telemedicine and may engage in telehealth to support and facilitate the provision of psychological services to clients.

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

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

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

1. Images;
2. Diagnostics, including test results and interpretation;
3. Data; and
4. Medical and psychological information.

(e) If, after accessing and reviewing the client's records, a licensee determines that he or she is able to meet the standard of care for such psychological services if they were being provided in-person without using the video component described in (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) During the provision of psychological services through telemedicine or telehealth, and after the provision of psychological services, a licensee, or another designated licensee, shall provide his or her name, professional credentials, and contact information to the client. Such contact information shall enable the client to contact the licensee for at least 72 hours following the provision of psychological services, or for a longer period if warranted by the client's circumstances and accepted standards of care.

(g) Prior to providing psychological services through telemedicine or telehealth, a licensee shall review any history or records provided by a client as follows:

1. For an initial encounter with a client, history and records provided by the client shall be reviewed prior to the provision of psychological services through telemedicine or telehealth; and
2. For any subsequent interactions with a client, history and records provided by the client shall be reviewed either prior to the provision of psychological services through telemedicine or telehealth or contemporaneously with the encounter with the client.

(h) After the provision of psychological services through telemedicine or telehealth, a licensee shall provide the client, upon

request, with his or her records created due to the psychological services provided, unless, pursuant to N.J.A.C. 13:42-8.3(e), the licensee determines that releasing the records would adversely affect the client's health or welfare.

(i) A licensee shall provide, upon a client's written request, the client's information to the client's primary care provider or to other health care and/or mental health care providers.

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

13:42-13.6 Records

A licensee who provides psychological services through telemedicine or telehealth shall maintain a record of the care provide to a client. Such records shall comply with the requirements of N.J.A.C. 13:42-8, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a client's record.

13:42-13.7 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 psychological services through telemedicine or telehealth, a licensee must establish written protocols that address:

1. Identification of users;
2. Identification of the client during the initial intake pursuant to N.J.A.C. 13:42-13.4(a)1;
3. Identification 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. Verification of client profile data.

13:42-13.8 Privacy and notice to clients

(a) Licensees that communicate with clients by electronic communications other than telephone or facsimile shall establish

written privacy practices that are consistent with Federal standards under 45 CFR Parts 160 and 164, as amended and supplemented, which are incorporated herein by reference, relating to privacy of individually identifiable health information.

(b) A licensee who becomes aware of a breach in confidentiality of patient information, as defined in 45 CFR 164.402, shall comply with the reporting requirements of 45 CFR Part 164.

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

(d) Licensees who provide psychological services through telemedicine or telehealth, or their authorized representatives, shall, prior to providing psychological services, give clients notice regarding telemedicine and telehealth, including the risks and benefits of using technology to provide psychological services and how to receive follow-up care or assistance 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 client received this notice.

(e) 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 client, the licensee shall inform the client of this prior to the conclusion of the provision of care through telemedicine or telehealth and shall advise the client regarding the need for the client to obtain an additional in-person medical or psychological evaluation reasonably able to meet the client's needs.