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RULE ADOPTIONS

Reporter

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF MEDICAL EXAMINERS > STATE ACUPUNCTURE EXAMINING BOARD

Administrative Code Citation

Adopted New Rules: N.J.A.C. 13:35-9.21 through 9.28

Text

Acupuncture -- Telemedicine

Proposed: July 1, 2019, at 51 N.J.R. 1088(a).

Adopted: November 20, 2019, by the State Acupuncture Examining Board, Henry McCann, President, and the State Board of Medical Examiners, Scott E. Metzger, M.D., President.

Filed: September 9, 2020, as R.2020 d.091, **without change.**

Authority: N.J.S.A. 45:2C-3 and P.L. 2017, c. 117.

Effective Date: October 19, 2020.

Expiration Date: April 3, 2025.

Summary of Public Comment and Agency Response:

The official comment period ended August 30, 2019. **No comments were received.**

Federal Standards Statement

Requirements at N.J.A.C. 13:35-9.28 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 applicable Federal laws or standards.

Full text of the adopted new rules follows:

SUBCHAPTER 9. ACUPUNCTURE

13:35-9.21 Telemedicine: purpose and scope

(a) The purpose of N.J.A.C. 13:35-9.22 through 9.28 and this section 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) These rules shall apply to all persons who are licensed by the Board as acupuncturists.

(c) Pursuant to N.J.S.A. 45:1-62, an acupuncturist must hold a license 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, a healthcare provider located in another state who consults with an acupuncturist 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 and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:35-9.22 Telemedicine: definitions

The following words and terms, when used in N.J.A.C. 13:35-9.21 and 9:23 through 9.28 and this section, shall have the following meanings, unless the context clearly indicates otherwise.

"Acupuncturist" means an individual licensed by the Board as an acupuncturist.

"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 acupuncturist at a distant site, which allows for the patient to be evaluated without being physically present.

"Board" means the Acupuncture Examining Board.

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

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

"On-call" means an acupuncturist is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the acupuncturist has temporarily assumed responsibility, as designated by the patient's primary acupuncturist 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.

"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 using electronic communications, information technology, or other electronic or technological means to bridge the gap between an acupuncturist who is located at a distant site and a patient who is located at an originating site, [page=1912] either with or without the assistance of an intervening acupuncturist, 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.

13:35-9.23 Telemedicine: standard of care

(a) Prior to providing services through telemedicine or telehealth, an acupuncturist 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 an acupuncturist determines, either before or during the provision of services, that services cannot be provided through telemedicine or telehealth in a manner that is consistent with in-person standards of care, the acupuncturist shall not provide services through telemedicine or telehealth.

(c) An acupuncturist 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) An acupuncturist 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.

13:35-9.24 Telemedicine: acupuncturist-patient relationship

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

1. Identifying the patient with, at a minimum, the patient's name, date of birth, phone number, and address. An acupuncturist 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 acupuncturist's identity, license, title, and, if applicable, specialty and board certifications.

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

(c) Prior to initiating contact with a patient for the purpose of providing services through telemedicine or telehealth, an acupuncturist 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 services were provided in-person. The acupuncturist shall make this determination prior to each unique patient encounter.

(d) Notwithstanding (a), (b), and (c) above, service may be provided through telemedicine or telehealth without a proper provider-patient relationship if:

1. The provision of services is for informal consultations with another healthcare provider performed by an acupuncturist 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 services is during episodic consultations by a specialist located in another jurisdiction who provides consultation services, upon request, to an acupuncturist in this State;

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

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

13:35-9.25 Telemedicine: provision of services through telemedicine or telehealth

(a) As long as an acupuncturist has satisfied the requirements of N.J.A.C. 13:35-9.24, an acupuncturist 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) Notwithstanding (a) above, an acupuncturist shall not provide health care services through the use of telemedicine that involve a patient or other unlicensed person inserting needles into the body of the patient.

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

(d) An acupuncturist providing healthcare services through telemedicine shall use interactive, real-time, two-way communication technologies, which shall include, except as provided in (f) below, a video component that allows an acupuncturist to see a patient and the patient to see the acupuncturist during the provision of services.

(e) An acupuncturist 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 information.

(f) If, after accessing and reviewing the patient's records, an acupuncturist 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 in (d) above, the acupuncturist may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology, without a video component.

(g) During the provision of services through telemedicine or telehealth, and after the provision of services, an acupuncturist, or another designated acupuncturist, shall provide his or her name, professional credentials, and contact information to the patient. Such contact information shall enable the patient to contact the acupuncturist 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) Prior to providing services through telemedicine or telehealth, an acupuncturist shall review any history or records provided by a patient as follows:

1. For an initial encounter with a patient, history and records shall be reviewed prior to the provision of services through telemedicine or telehealth; and

2. For any subsequent interactions with a patient, history and records shall be reviewed either prior to the provision of services through telemedicine or telehealth or contemporaneously with the encounter with the patient.

(i) After the provision of services through telemedicine or telehealth, an acupuncturist shall provide the patient, upon request, with his or her records created due to the services provided.

(j) An acupuncturist shall provide, upon a patient's written request, the patient's information to the patient's primary care provider or to other health care providers.

(k) An acupuncturist engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

13:35-9.26 Telemedicine: records

An acupuncturist 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 of N.J.A.C. 13:35-9.16, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's record.

13:35-9.27 Telemedicine: prevention of fraud and abuse

(a) In order to establish that an acupuncturist has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, an acupuncturist 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. 13:35-9.24(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.

[page=1913] 13:35-9.28 Telemedicine: privacy and notice to patients

(a) Acupuncturists who communicate with patients 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) Written privacy practices required by (a) above shall include privacy and security measures that assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient email and laboratory results must be password protected or protected through substantially equivalent authentication techniques.

(c) An acupuncturist 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.

(d) Acupuncturists, 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) Acupuncturists 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. An acupuncturist 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 an acupuncturist exercising ordinary skill and care would deem reasonably necessary to provide care to a patient, the acupuncturist 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 evaluation reasonably able to meet the patient's needs.

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