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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

Administrative Code Citation

N.J.A.C. 13:35-10.26 through 10.33

Adopted New Rules:

Text

Athletic Trainers--Telemedicine

Proposed: June 17, 2019, at 51 N.J.R. 916(a).

Adopted: November 13, 2019, by the Board of
Medical Examiners, Scott E. Metzger, M.D., President.

Filed: February 3, 2020, as R.2020 d.026,
without change.

Authority: N.J.S.A. 45:9-37.38 and P.L. 2017, c. 117.

Effective Date: March 2, 2020.

Expiration Date: April 3, 2025.

Summary of Public Comment and Agency Response:

The official comment period ended August 16, 2019. **No comments were received.**

Federal Standards Statement

Requirements in N.J.A.C. 13:35-10.33 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:

13:35-10.26 Telemedicine or telehealth: purpose and scope

(a) The purpose of N.J.A.C. 13:35-10.27 through 10.33 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) N.J.A.C. 13:35-10.27 through 10.33 and this section shall apply to all persons who are licensed by the Board as athletic trainers.

(c) Pursuant to N.J.S.A. 45:1-62, an athletic trainer 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 athlete 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 athlete 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 a licensed athletic trainer 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 an athlete in New Jersey and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:35-10.27 Telemedicine or telehealth: definitions

The following words and terms, when used in N.J.A.C. 13:35-10.26 and 10.28 through 10.33 and this section, 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 licensed athletic trainer at a distant site, which allows for the athlete to be evaluated without being physically present.

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

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

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

"Originating site" means a site at which an athlete is located at the time that health care services are provided to the athlete by means of telemedicine or telehealth.

"Telehealth" means the use of information and communications technologies, including telephones, remote athlete monitoring devices, or other electronic means, to support clinical health care, provider consultation, athlete 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 a licensed athletic trainer [page=475] who is located at a distant site and an athlete who is located at an originating site, either with or without the assistance of an intervening licensed athletic trainer, 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.

13:35-10.28 Telemedicine or telehealth: standard of care

(a) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer 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 licensed athletic trainer 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 licensed athletic trainer shall not provide services through telemedicine or telehealth.

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

(d) A licensed athletic trainer who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risk and benefits of an athlete'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.

13:35-10.29 Telemedicine or telehealth: licensed athletic trainer-athlete relationship

(a) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer shall establish a licensed athletic trainer-athlete relationship by:

1. Identifying the athlete with, at a minimum, the athlete's name, date of birth, phone number, and address. A licensed athletic trainer may also use an athlete's assigned

identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the athlete; and

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

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

1. Review the athlete's history and any available records;

2. Determine as to each unique athlete encounter 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; and

3. Provide the athlete, or the athlete's legal guardian, the opportunity to sign a consent form that authorizes the licensed athletic trainer to release records of the encounter to the athlete's primary licensed athletic trainer or other licensed health care provider identified by the athlete.

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

1. The provision of services is for informal consultations with another healthcare provider performed by a licensed athletic trainer 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 medical specialist located in another jurisdiction who provides consultation services, upon request, to a licensed athletic trainer in this State;

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

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

13:35-10.30 Telemedicine or telehealth: provision of services through telemedicine or telehealth

(a) As long as a licensed athletic trainer has satisfied the requirements of N.J.A.C. 13:35-10.29, a licensed athletic trainer may provide health care services to an athlete through the use of telemedicine and may engage in telehealth to support and facilitate the provision of health care services to athletes.

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

(c) A licensed athletic trainer providing healthcare 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 licensed athletic trainer to see an athlete and the athlete to see the licensed athletic trainer during the provision of services.

(d) A licensed athletic trainer 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.

(e) If, after accessing and reviewing the athlete's records, a licensed athletic trainer 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 (c) above, the licensed athletic trainer 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 services through telemedicine or telehealth, and after the provision of services, a licensed athletic trainer, or another designated licensed athletic trainer, shall provide his or her name, professional credentials, and contact information to the athlete. Such contact information shall enable the athlete to contact the licensed athletic trainer for at least 72 hours following the provision of services, or for a longer period if warranted by the athlete's circumstances and accepted standards of care.

(g) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer shall review any history or records provided by an athlete as follows:

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

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

(h) After the provision of services through telemedicine or telehealth, a licensed athletic trainer shall provide the athlete, upon request, with his or her records created due to the services provided.

(i) A licensed athletic trainer shall provide, upon an athlete's written request, the athlete's information to the athlete's primary care provider or to other health care providers.

(j) A licensed athletic trainer engaging in telemedicine or telehealth shall refer an athlete for follow-up care when necessary.

13:35-10.31 Telemedicine or telehealth: records

A licensed athletic trainer who provides services through telemedicine or telehealth shall maintain a record of the care provide to an athlete. Such records shall comply with the requirements of N.J.A.C. 13:35-10.8 and 10.33, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of an athlete's record.

13:35-10.32 Telemedicine or telehealth: prevention of fraud and abuse

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

1. Authentication and authorization of users;
2. Authentication of the athlete during the initial intake pursuant to N.J.A.C. 13:35-10.29(a)1;
- [page=476] 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 athlete profile data.

13:35-10.33 Telemedicine or telehealth: privacy and notice to athletes

(a) Licensed athletic trainers who communicate with athletes 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 athlete-identifiable information. Transmissions, including athlete email, prescriptions, and laboratory results must be password protected, encrypted electronic prescriptions, or protected through substantially equivalent authentication techniques.

(c) A licensed athletic trainer who becomes aware of a breach in confidentiality of athlete information, as defined in 45 CFR 164.402, shall comply with the reporting requirements of 45 CFR Part 164.

(d) Licensed athletic trainers, or their authorized representatives, shall provide an athlete, prior to evaluation or treatment, with copies of written privacy practices and shall obtain the athlete's written acknowledgement of receipt of the notice.

(e) Licensed athletic trainers who provide athletic training services through telemedicine or telehealth, or their authorized representatives, shall, prior to providing services, give athletes 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 licensed athletic trainer shall obtain a signed and dated statement indicating that the athlete received this notice.

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

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