

52 N.J.R. 890 (b)

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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

Adopted Amendment: N.J.A.C. 13:35-2.6

Adopted New Rules: N.J.A.C. 13:35-6B

Text

Telemedicine

Proposed: May 6, 2019, at 51 N.J.R. 561(a).

Adopted: October 16, 2019, by the State Board of Medical Examiners, Scott E. Metzger, M.D., President.

Filed: March 19, 2020, as R.2020 d.049, **with non-substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:9-2 and P.L. 2017, c. 117.

Effective Date: April 20, 2020.

Expiration Date: April 3, 2025.

Summary of Public Comment and Agency Response:

The official comment period ended July 5, 2019. The Board received six comments from the following individuals:

1. Lawrence Downs, Chief Executive Officer, Medical Society of New Jersey
2. Geoffrey Boyce, CEO InSight Telepsychiatry
3. James Varrell, MD, CMO InSight Telepsychiatry
4. Rebecca Levy, Esq., General Counsel, Summit Medical Group
5. O. Scott Lauter, MD, MBA, FACP, FHM, Chief Medical Officer, Atlantic Medical Group, Atlantic Health System
6. Claudia Duck Tucker, Vice President Government Affairs, Teladoc

1. COMMENT: Most of the commenters generally support N.J.A.C. 13:35-6B. A commenter specifically supports N.J.A.C. 13:35-6B.1, which requires New Jersey licensure for physicians providing telemedicine and telehealth services to patients in New Jersey. The commenter also supports exemptions to the licensure requirement.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: N.J.A.C. 13:35-6B.1(c)1 requires a physician to hold a New Jersey license if he or she is physically located in New Jersey and is providing services to patients located in or out of New Jersey. Some of the commenters contend that physicians who are located in New Jersey and who provide services to patients located outside of New Jersey should not be required to hold a New Jersey license. The commenters contend that American Medical Association guidelines and a report from the Federation of State medical boards indicate that the practice of medicine occurs where a patient is located. The commenters also contend that no other state requires licensure if a physician is providing services to out-of-State patients. One of the commenters is concerned that there could be conflict between New Jersey standards and those in the state in which a patient is located and asks which standard would take precedence in such a situation.

RESPONSE: N.J.S.A. 45:1-62 requires any health care provider using telemedicine or engaging in telehealth to be licensed in New Jersey if either the patient or the provider is located in New Jersey at the time services are provided. To ensure that physicians are complying with this statutory requirement the Board will require New Jersey licensure

in these rules. The Board is not aware of any other state that imposes standards that would be contrary to those required by the Board.

3. COMMENT: A commenter recommends that N.J.A.C. 13:35-6B.1 be amended, so that a physician or podiatrist will not be required to hold [page=891] New Jersey licensure if he or she is licensed in another jurisdiction and is providing services through telemedicine or telehealth to patients located in that jurisdiction while he or she is travelling through New Jersey. The commenter contends that physicians or podiatrists who are temporarily inside New Jersey could possibly not be aware that they are required to obtain New Jersey licensure when providing services to their patients while travelling through New Jersey.

RESPONSE: N.J.S.A. 45:1-62 establishes that a physician or podiatrist must be licensed in New Jersey if they are physically located in New Jersey while providing services through telemedicine or telehealth. The Board will not change N.J.A.C. 13:35-6B.1 as the commenter recommends.

4. COMMENT: A commenter asks if the definition of "licensee" at N.J.A.C. 13:35-6B.2 will be amended to include physician assistants. The commenter points out that physician assistants are included at N.J.S.A. 45:1-61.

RESPONSE: The Physician Assistant Advisory Committee is working on rules to implement P.L. 2016, c. 117, for physician assistants. It is, therefore, not necessary to change N.J.A.C. 13:35-6B.2 as the commenter recommends.

5. COMMENT: A commenter points out that the term "standard of care" is not defined at N.J.A.C. 13:35-6.2. The commenter contends that there is a distinction between care provided in-person versus care provided through telemedicine. The commenter recommends that N.J.A.C. 13:35-6B.3(a) be amended so that a licensee would be required to determine, in his or her reasonable discretion, whether services provided through telemedicine or telehealth are expected to be consistent with the standard of care when services are provided in-person. The commenter also recommends that the following phrase be added to the end of the rule: "if the licensee, in his or her reasonable discretion, determines that the provision of care via telemedicine or telehealth will not reduce the quality of care provided then a licensee may presume that the standard of care will be akin to that provided in an in-person setting."

RESPONSE: Though the specific actions taken by a licensee during a telemedicine or telehealth encounter may differ somewhat from those during an in-person visit, N.J.S.A. 45:1-62(d)1 establishes that a health care provider using telemedicine or telehealth to provide health

care services must meet the same standard of care or practice standards as are applicable to the in-person setting; therefore, it would not be appropriate to amend N.J.A.C. 13:35-6B.3 as the commenter recommends.

6. COMMENT: A commenter recommends that N.J.A.C. 13:35-6B.3(b) be amended so that the phrase "the licensee shall not provide services through telemedicine or telehealth" be changed to "the licensee shall not, or shall not continue to, provide services through telemedicine or telehealth."

RESPONSE: The Board believes that N.J.A.C. 13:35-6B.3(b) clearly indicates that after a licensee determines that he or she cannot provide services through telemedicine or telehealth in a manner consistent with in-person standards of care, the licensee can no longer provide services through telemedicine or telehealth. It is, therefore, not necessary to change N.J.A.C. 13:35-6B.3 as the commenter recommends.

7. COMMENT: A commenter questions if N.J.A.C. 13:35-6B.4 requires a licensee to establish a new licensee-patient relationship for telemedicine services if the licensee has a pre-existing relationship with the patient.

RESPONSE: N.J.A.C. 13:35-6B.4 requires a licensee to establish a licensee-patient relationship prior to providing services through telemedicine or telehealth. The rule does not dictate when this relationship must be created. If a licensee has an existing relationship that meets the requirements of N.J.A.C. 13:35-6B.4(a), he or she will not have to create a new licensee-patient relationship in order to provide services through telemedicine or telehealth.

8. COMMENT: N.J.A.C. 13:35-6B.4(a)2 requires a licensee to validate his or her identity, license, title, and specialty and board certifications. A commenter recognizes that this requirement comes from N.J.S.A. 45:1-61 and asks for a definition of "validate" to clarify how licensees will comply with this requirement.

RESPONSE: The Board believes that the term "validate" is sufficiently understood in the medical community as appropriately confirming to the patient the information being provided by the licensee. The method of validation is expected to vary depending on the context of the medical treatment to be provided. It is, therefore, not necessary to define this term through the rule as the commenter recommends.

9. COMMENT: N.J.A.C. 13:35-6B.4(b)3 requires a licensee to provide a patient with the opportunity to sign a consent form that authorizes the licensee to release medical records to other health care providers prior to initiating contact with the patient. A commenter believes that

it would be difficult to obtain written consent prior to initiating an interaction. The commenter recommends that N.J.A.C. 13:35-6B.4(b)3 be deleted. The commenter points out that N.J.A.C. 13:35-6B.5 requires licensees to release medical information to other providers upon a patient's written request.

RESPONSE: N.J.A.C. 13:35-6B.4(b)3 does not require a licensee to obtain written consent prior to interacting with a patient. The rule requires a licensee to provide a patient with the opportunity to sign a consent form. If a patient chooses not to sign the form, the licensee is still permitted to provide services through telemedicine or telehealth and to release medical information to other providers upon a patient's request pursuant to N.J.A.C. 13:35-6B.5(h) and (i).

10. COMMENT: A commenter is concerned that the requirement at N.J.A.C. 13:35-6B.4(b)3 that a licensee obtain a patient's written signature prior to releasing medical documentation to primary care providers will be burdensome for licensees. The commenter recommends that the requirement be amended to require licensees to release medical information upon the request of a patient.

RESPONSE: As stated in the Response to Comment 9, N.J.A.C. 13:35-6B.4(b)3 does not require a licensee to obtain written consent prior to providing services through telemedicine or telehealth or prior to releasing a patient's records upon request from the patient. Rather, N.J.A.C. 13:35-6B.5(i) requires a licensee to release a patient's records upon such a request, regardless of whether the patient has signed an authorization to release medical records.

11. COMMENT: A commenter recommends that N.J.A.C. 13:35-6B.4(b)3 be amended, so that patients could electronically or telephonically provide affirmative consent to the release of medical records to other healthcare providers. The commenter contends that it is difficult for patients to provide signed consent when the patient and licensee are in different locations.

RESPONSE: The Board does not agree that it is particularly difficult for patients to provide signed consent when services are provided through telemedicine or telehealth. The provisions at N.J.A.C. 13:35-6B.4(b)3 help to ensure that licensees have accurate documentation indicating that a patient has provided affirmative consent. The Board will therefore not change the regulation as the commenter recommends.

12. COMMENT: N.J.A.C. 13:35-6B.4(c) sets forth exemptions to licensee-patient relationships. A commenter recommends that this rule be amended to include a new exemption for the provision of care in an urgent care setting.

RESPONSE: N.J.S.A. 45:1-63 establishes all permissible exemptions to the licensee-patient relationship. Therefore, the Board does not have the statutory authority to create new exemptions as the commenter recommends.

13. COMMENT: N.J.A.C. 13:35-6B.4(c)2 provides an exemption to licensee-patient relationship requirements when health care services are provided during episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services, upon request, to a licensee in New Jersey. A commenter points out that the term "episodic consultations" is not defined and asks what constitutes "episodic consultations."

RESPONSE: The Board believes that the term "episodic consultations" is understood to be intermittent instances of providing consulting and that it is not necessary to further define the term through a rule as the commenter recommends.

14. COMMENT: A commenter contends that Medicare allows remote evaluation of pre-recorded patient information and inter-professional internet consultation without the need for simultaneous synchronous video or phone connection. The commenter requests that the Board amend synchronous phone or video requirements at N.J.A.C. 13:35-6B.5(c), (d), and (e) in light of Medicare provisions.

[page=892] RESPONSE: N.J.S.A. 45:1-62(c) requires telemedicine services to be provided using interactive, real-time, two-way communication technologies and further permits a licensee to provide services through telemedicine or telehealth using interactive, real-time, two-way audio communication in combination with asynchronous store-and-forward technology without video capabilities if the licensee determines that he or she is able to meet the same standard of care as if the services were provided in-person. N.J.S.A. 45:1-62(c) does not allow for the exemption to synchronous video or phone connections suggested by the commenter.

15. COMMENT: A commenter recommends that N.J.A.C. 13:35-6B.5(f)1 be amended, so that licensees would be required to review medical history and medical records only to the extent they are available and reasonably accessible.

RESPONSE: N.J.S.A. 45:1-62(c)4 requires licensees providing services through telemedicine or telehealth to review the medical history and medical records provided by the patient. The Board, therefore, will not change N.J.A.C. 13:35-6B.5(f)1 because medical history and record review is a statutory requirement.

16. COMMENT: A commenter recommends that N.J.A.C. 13:35-6B.5(h) be amended to require licensees to provide patients with records electronically. RESPONSE: The Board believes it should not dictate how records are provided to patients and points out that N.J.A.C. 13:35-6B.5(h) does not prohibit the release of records electronically.

17. COMMENT: N.J.A.C. 13:35-6B.5(i) requires a licensee to provide a patient's medical information to other health care providers upon the patient's written request. A commenter recommends that this provision be amended, so that a request would not have to be written. The commenter contends that this would be consistent with HIPAA requirements.

18. COMMENT: A commenter recommends that N.J.A.C. 13:35-6B.5(i) be amended to require a licensee to provide medical information to other health care providers upon a patient's electronic or telephonic request.

RESPONSE TO COMMENTS 17 AND 18: N.J.S.A. 45:1-62(c)5 establishes that consent for release of records to other health care providers can be oral, written, or digital. The Board agrees with the commenter and has, therefore, changed N.J.A.C. 13:35-6B.5(i) upon adoption, so that the regulation mirrors the language at N.J.S.A. 45:1-62(c)5.

19. COMMENT: A commenter supports limitations on prescribing Schedule II controlled dangerous substances at N.J.A.C. 13:35-6B.6. The commenter urges the Board to limit the use of telemedicine for recommendations for the use of medical marijuana as such recommendations require an annual in-person visit.

RESPONSE: N.J.S.A. 45:1-62(e) sets forth that an in-person examination is required when a prescription is for a Schedule II controlled dangerous substance. The statute does not require an in-person examination for recommendations for the use of medical marijuana.

20. COMMENT: N.J.A.C. 13:35-6B.9(e) requires licensees to provide patients with notices 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 treatment or in the event of inability to communicate as a result of a technological or equipment failure. This notice must be signed and dated by the patient. Three commenters point out that N.J.S.A. 45:1-61 et seq., does not require patients to provide informed consent prior to receiving services through telemedicine or telehealth. The commenters recommend that N.J.A.C. 13:35-6B.9(e) be amended to remove the requirement that patients sign and date the required notice.

RESPONSE: The Board believes that it is necessary to require patients to sign and date notices as required by N.J.A.C. 13:35-6B.9(e) to ensure that the patient is provided this notification and so that licensees can record that the required notification was provided. The Board will not change N.J.A.C. 13:35-6B.9 as the commenters recommend.

Federal Standards Statement

Requirements at N.J.A.C. 13:35-6B.9 impose the same standards for privacy of communications as are imposed by 45 CFR 160 and 164, which are incorporated by reference, as amended and supplemented, into the rule. There are no other Federal laws or standards applicable to the adopted amendments or new rules.

Regulations

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks*thus*):

SUBCHAPTER 2. LIMITED LICENSES: PODIATRY, DIAGNOSTIC TESTING CENTERS, AND MISCELLANEOUS

13:35-2.6 Medical standards governing screening and diagnostic medical testing offices; determinations with respect to the validity of certain diagnostic tests

(a) - (s) (No change.)

SUBCHAPTER 6B. TELEMEDICINE

13:35-6B.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. 45:1-16 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 physicians or podiatrists.

(c) Pursuant to N.J.S.A. 45:1-62, a physician or podiatrist 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 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. 45:9-1 et seq., and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:35-6B.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 Board of Medical Examiners.

"Cross-coverage" means a licensee engages in a remote medical 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 as a physician or podiatrist.

"On-call" means a licensee is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the licensee has temporarily assumed responsibility, as designated by the patient's primary care licensee 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 of N.J.A.C. 13:35-6B.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 [page=893] 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.

13:35-6B.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.
- (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 licensee 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.

13:35-6B.4 Licensee-patient relationship

- (a) Prior to providing services through telemedicine or telehealth, a licensee shall establish a licensee-patient relationship by:
 1. Identifying the patient with, at a minimum, the patient's name, date of birth, phone number, and address. A licensee 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, 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 patient's medical history and any available medical records;
2. Determine as to each unique patient 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 patient the opportunity to sign a consent form that authorizes the licensee to release medical records of the encounter to the patient's primary care provider 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 licensee-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 specialist located in another jurisdiction who provides consultation services, upon request, to a licensee in this State;
3. Related to medical assistance provided in response to an emergency or disaster, provided that there is no charge for the medical assistance; or
4. Provided by a substitute licensee acting on behalf of, and at the designation of, an absent licensee in the same specialty on an on-call or cross-coverage basis.

13:35-6B.5 Provision of health care services through telemedicine or telehealth

(a) As long as a licensee has satisfied the requirements of N.J.A.C. 13:35-6B.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 in (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 information.
- (e)** If, after accessing and reviewing the patient's medical records, a licensee determines that he or she is able to meet the standard of care for such services as 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)** Prior to providing services through telemedicine or telehealth, a licensee shall review any medical history or medical records provided by a patient as follows:

 - 1. For an initial encounter with a patient, medical history and medical 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 history and medical 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 licensee, 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 licensee shall provide the patient, upon request, with his or her medical records reflecting the services provided.
- (i) A licensee shall provide, upon a patient's ***oral,* written*, or digital*** request, the patient's medical information to the patient's primary care provider or to other health care providers.
- (j) A licensee engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

13:35-6B.6 Prescriptions

- (a) Notwithstanding the requirements for in-person interaction in N.J.A.C. 13:35-7, a licensee providing services through telemedicine or telehealth may issue a prescription to a patient, if the issuance of such a prescription is consistent with the standard of care or practice standards applicable to the in-person setting.
 - (b) A licensee shall not issue a prescription based solely on responses provided in an online questionnaire, unless the licensee has established a proper licensee-patient relationship pursuant to N.J.A.C. 13:35-6B.4.
 - (c) Notwithstanding (a) above, and except as provided in (d) below, a licensee shall not issue a prescription for a Schedule II controlled dangerous substance unless the licensee 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.
- [page=894] (d) The prohibition of (c) above shall not apply when a licensee prescribes a stimulant for a patient under the age of 18 years, as long as the licensee is using interactive, real-time, two-way audio and video technologies and the licensee has obtained written consent for a waiver of in-person examination requirements from the patient's parent or guardian.

13:35-6B.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 of N.J.A.C. 13:35-6.5, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's medical record.

13:35-6B.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. 13:35-6B.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.

13:35-6B.9 Privacy and notice to patients

(a) Licensees 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 160 and 164, which are incorporated herein by reference, as amended and supplemented, 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, prescriptions, and laboratory results must be password protected, encrypted electronic prescriptions, or protected through substantially similar authentication techniques.

(c) 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 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.