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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 New Rules: N.J.A.C. 13:35-2A.18 through 2A.26

Text

Midwifery--Telemedicine

Proposed: June 17, 2019, at 51 N.J.R. 912(a).

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

Filed: March 17, 2020, as R.2020 d.046, **without change**.

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 August 16, 2019. The Board received a comment from Dora Kissi, CNM, NP.

COMMENT: A commenter agrees that non-nurse midwives should not have prescriptive authority. The commenter contends that certified nurse midwives have more knowledge as to the general healthcare of patients.

RESPONSE: The Board points out that N.J.S.A. 45:10-18 establishes that certified nurse midwives are the only midwives that may obtain prescriptive authority. Prescriptive authority for certified nurse midwives is not the subject of this rulemaking.

Federal Standards Statement

Requirements at N.J.A.C. 13:35-2A.26 impose the same standards for privacy of communications as are imposed by 45 CFR Parts 160 and 164, which are referred to in the rules. There are no other Federal laws or standards applicable to the adopted new rules.

Regulations

Full text of the adopted new rules follows:

13:35-2A.18 Telemedicine: purpose and scope

- (a) The purpose of N.J.A.C. 13:35-2A.18 through 2A.26 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. 13:35-2A.19 through 2A.26 and this section shall apply to all persons who are licensed by the Board as midwives.
- (c) Pursuant to N.J.S.A. 45:1-62, a midwife 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 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 and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:35-2A.19 Telemedicine: definitions

The following words and terms, when used in N.J.A.C. 13:35-2A.18 through 2A.26, 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.

"Cross-coverage service" means a licensee who 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.

[page=895]"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 provider 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 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.

13:35-2A.20 Telemedicine: 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 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.

13:35-2A.21 Telemedicine: 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 an initial contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, a licensee 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, 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 services were provided in person. The licensee 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 licensee-patient relationship if:

1. The provision of 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 services is during episodic consultations by a medical specialist located in another jurisdiction who provides consultation services, upon request, to a licensee in this State;
3. A licensee furnishes medical assistance in response to an emergency or disaster, provided that there is no charge for the medical assistance; or
4. A substitute licensee, who is acting on behalf of an absent licensee in the same specialty, provides health care 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 service provider.

13:35-2A.22 Telemedicine: provision of services through telemedicine or telehealth

(a) As long as a licensee has satisfied the requirements of N.J.A.C. 13:35-2A.21, 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 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 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 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 services through telemedicine or telehealth, and after the provision of services, 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.
- (g) Prior to providing services through telemedicine or telehealth, a licensee 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.
- (h) After the provision of services through telemedicine or telehealth, a licensee shall provide the patient, upon request, with his or her records created due to the services provided.
- (i) A licensee 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.
- (j) A licensee engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

13:35-2A.23 Telemedicine: prescriptions

- (a) Notwithstanding requirements for in-person interaction in N.J.A.C. 13:35-7, a certified nurse midwife (CNM) with prescriptive authority pursuant to N.J.A.C. 13:35-2A.14 providing services through telemedicine or telehealth may issue

a prescription to a patient, as long as the issuance of such a prescription is consistent with the standard of care or practice standards applicable to the in-person setting.

- (b)** A CNM with prescriptive authority pursuant to N.J.A.C. 13:35-2A.14 shall not issue a prescription based solely on responses provided in [page=896] an online questionnaire, unless the CNM has established a proper licensee-patient relationship pursuant to N.J.A.C. 13:35-2A.21.
- (c)** Notwithstanding (a) above, and except as provided in (d) below, a CNM with prescriptive authority pursuant to N.J.A.C. 13:35-2A.14 shall not issue a prescription for a Schedule II controlled dangerous substance unless the CNM 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.
- (d)** The prohibition of (c) above shall not apply when a CNM with prescriptive authority pursuant to N.J.A.C. 13:35-2A.14 prescribes a stimulant for a patient under the age of 18 years, as long as the CNM is using interactive, real-time, two-way audio and video technologies and the CNM has obtained written consent for a waiver of in-person examination requirements from the patient's parent or guardian.

13:35-2A.24 Telemedicine: records

A licensee who provides services through telemedicine or telehealth shall maintain a record of the care provide to a patient. Such records shall comply with all applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's record.

13:35-2A.25 Telemedicine: 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. 13:35-2A.21(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.

13:35-2A.26 Telemedicine: 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 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, prescriptions, and laboratory results must be password protected, encrypted electronic prescriptions, or protected through substantially equivalent 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 Part 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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