

## 52 N.J.R. 1916(a)

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### RULE ADOPTIONS

#### Reporter

52 N.J.R. 1916(a)

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#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF NURSING

#### Administrative Code Citation

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Adopted New Rules: N.J.A.C. 13:37-8A

#### Text

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##### Telemedicine

Proposed: July 1, 2019, at 51 N.J.R. 1094(a).

Adopted: December 6, 2019, by the State Board of Nursing, Barbara B. Blozen, Ed.D, MA, RN, President.

Filed: September 9, 2020, as R.2020 d.092, **without change**.

Authority: N.J.S.A. 45:11-24 and P.L. 2017, c. 117.

Effective Date: October 19, 2020.

Expiration Date: January 24, 2025.

##### Summary of Public Comment and Agency Response:

The official comment period ended August 30, 2019. The Board received a comment from Debra L. Wentz, Ph.D., President and Chief Executive

Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc.

COMMENT: The commenter asks if N.J.A.C. 13:37-8A.5 permits nurses to provide services through telemedicine without a video component when clinically appropriate.

RESPONSE: N.J.A.C. 13:37-8A.5(e) permits a nurse to provide services using interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without a video component if the nurse determines that he or she can meet the standard of care for such services as if they were provided in-person.

### **Federal Standards Statement**

Requirements at N.J.A.C. 13:37-8A.9 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 8A. TELEMEDICINE

##### 13:37-8A.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 nurses.

(c) Pursuant to N.J.S.A. 45:1-62, a nurse 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.

13:37-8A.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 Board of Nursing.

"Cross-coverage" 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.

"Licensee" means an individual licensed by the Board as a registered professional nurse or a licensed practical nurse or certified as an advanced practice nurse.

"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. 13:37-8A.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 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 [page=1917] bridge the gap between a 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.

#### 13:37-8A.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.

#### 13:37-8A.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 which authorizes the licensee to release medical records of the encounter to the patient's primary care provider or other health care 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 and at the designation of an absent licensee in the same specialty on an on-call or cross-coverage basis.

13:37-8A.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. 13:37-8A.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 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 records reflecting the services provided.

(i) A licensee shall provide, upon a patient's written 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.

#### 13:37-8A.6 Prescriptions

(a) An advanced practice nurse 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) An advanced practice nurse shall not issue a prescription based solely on responses provided in an online questionnaire, unless the advanced practice nurse has established a proper licensee-patient relationship pursuant to N.J.A.C. 13:37-8A.4.

(c) Notwithstanding (a) above, and except as provided in (d) below, an advanced practice nurse shall not issue a prescription for a Schedule II controlled dangerous substance unless the advanced practice nurse 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 an advanced practice nurse prescribes a stimulant for a patient under the age of 18 years, as long as the advanced practice nurse is using interactive, real-time, two-way audio and video technologies and the advanced practice nurse has obtained written consent for a waiver of in-person examination requirements from the patient's parent or guardian.

#### [page=1918] 13:37-8A.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 applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's medical record.

#### 13:37-8A.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. 13:37-8A.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.

13:37-8A.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, 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 evaluation reasonably able to meet the patient's needs.

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