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RULE ADOPTIONS

Reporter

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ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

Agency

LAW AND PUBLIC SAFETY >
DIVISION OF CONSUMER AFFAIRS >
PSYCHOANALYSTS ADVISORY COMMITTEE

CERTIFIED

Administrative Code Citation

N.J.A.C. 13:42A-8

Adopted New Rules:

Text

Telemedicine

Proposed: June 17, 2019, at 51 N.J.R. 934(a).

Adopted: December 16, 2019, by Paul R. Rodriguez,
Acting Director, Division of Consumer Affairs.

Filed: February 3, 2020, as R.2020 d.029,
without change.

Authority: N.J.S.A. 45:14BB-12 and P.L. 2017, c. 117.

Effective Date: March 2, 2020.

Expiration Date: May 28, 2026.

Summary of Public Comments and Agency Responses:

The official comment period ended August 16, 2019. The Director received comments from the following individuals:

1. Claudia Duck Tucker, Vice President Government Affairs, Teladoc.

2. Debra L. Wentz, Ph.D., President and Chief Executive Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc.

1. COMMENT: A commenter asks if N.J.A.C. 13:42A-8.5 permits psychoanalysts to provide services through telemedicine without a video component when clinically appropriate.

RESPONSE: N.J.A.C. 13:42A-8.5(e) permits a State-certified psychoanalyst to provide services using interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without a video component, if the State-certified psychoanalyst determines that he or she can meet the standard of care for such services as if they were provided in-person.

2. COMMENT: A commenter recommends that N.J.A.C. 13:42A-8 be amended so that a psychoanalyst will not be required to hold New Jersey certification if he or she is certified in another

jurisdiction and is providing services through telemedicine or telehealth to clients located in that jurisdiction while he or she is travelling through New Jersey. The commenter contends that psychoanalysts who are temporarily in New Jersey could possibly not be aware that they are required to obtain New Jersey certification when providing services to their clients while travelling through New Jersey.

RESPONSE: N.J.A.C. 13:42A-8 does not require an individual to obtain certification in order to provide psychoanalytic services. As long as such an individual is not using the term "State-certified psychoanalyst," in a manner that suggests the individual is certified as a psychoanalyst by New Jersey, he or she is not required to be certified while he or she is travelling through New Jersey.

3. COMMENT: A commenter contends that it is difficult to obtain a written request or acknowledgement when a State-certified psychoanalyst provides services through telemedicine or telehealth. The commenter recommends that N.J.A.C. 13:42A-8.5 and 8.8 be amended so that a written request or acknowledgement could be hand-delivered, mailed, or transmitted electronically. The commenter also requests that the rules recognize that electronically transmitted requests or acknowledgements could include electronic mail, telephonic prompts, facsimile, text message, or other modalities which indicate the client's affirmative written request or acknowledgement.

RESPONSE: N.J.A.C. 13:42A-8.5 and 8.8 do not require a State-certified psychoanalyst to obtain written request or acknowledgement in-person. Any of the methods identified by the commenter, as well as any that are not recognized by the commenter, will meet the requirements of N.J.A.C. 13:42A-8.5 and 8.8, as long as they result in the State-certified psychoanalyst obtaining a written request or acknowledgement. It is not necessary to amend N.J.A.C. 13:42A-8.5 and 8.8 as the commenter recommends as those methods are already countenanced by the rules and the commenter's suggestions could possibly limit the methods by which State-certified psychoanalysts may obtain a written request or acknowledgement.

Federal Standards Statement

Requirements at N.J.A.C. 13:42A-8.8 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 Federal laws or standards applicable to the adopted new rules.

Full text of the adopted new rules follows:

SUBCHAPTER 8. TELEMEDICINE

13:42A-8.1 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 certified by the Committee as psychoanalysts.

[page=478] 13:42A-8.2 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 information either to or from an originating site or to or from the State-certified psychoanalyst at a distant site, which allows for the patient to be evaluated without being physically present.

"Committee" means the Certified Psychoanalyst Advisory Committee.

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

"Distant site" means a site at which a State-certified psychoanalyst is located while providing health care services by means of telemedicine or telehealth.

"State-certified psychoanalyst" means an individual certified by the Director as a psychoanalyst.

"On-call" means a State-certified psychoanalyst is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the State-certified psychoanalyst 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 State-certified psychoanalyst 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 State-certified psychoanalyst, 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.

13:42A-8.3 Standard of care

(a) Prior to providing services through telemedicine or telehealth, a State-certified psychoanalyst 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 State-certified psychoanalyst 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 State-certified psychoanalyst shall not provide services through telemedicine or telehealth.

(c) A State-certified psychoanalyst 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 State-certified psychoanalyst 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.

13:42A-8.4 State-certified psychoanalyst-patient relationship

(a) Prior to providing services through telemedicine or telehealth, a State-certified psychoanalyst shall establish a State-certified psychoanalyst-patient relationship by:

1. Identifying the patient with, at a minimum, the patient's name, date of birth, phone number, and address. A State-certified psychoanalyst 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 State-certified psychoanalyst's identity, license, and title.

(b) Prior to an initial contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, a State-certified psychoanalyst 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 State-certified psychoanalyst 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 State-certified psychoanalyst 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 a State-certified psychoanalyst 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 a State-certified psychoanalyst in this State;

3. A State-certified psychoanalyst furnishes assistance in response to an emergency or disaster, provided that there is no charge for the assistance; or

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

13:42A-8.5 Provision of services through telemedicine or telehealth

(a) As long as a State-certified psychoanalyst has satisfied the requirements of N.J.A.C. 13:42A-8.4, a State-certified psychoanalyst 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 State-certified psychoanalyst shall determine the patient's originating site and record this information in the patient's record.

(c) A State-certified psychoanalyst 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 State-certified psychoanalyst to see a patient and the patient to see the State-certified psychoanalyst during the provision of services.

(d) A State-certified psychoanalyst 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 State-certified psychoanalyst 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 State-certified psychoanalyst 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 State-certified psychoanalyst, or another designated State-certified psychoanalyst, shall provide his or her name, professional credentials, and contact information to the patient. Such contact information shall enable the patient to contact the State-certified psychoanalyst for at least 72 hours following the provision of [page=479] 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 State-certified psychoanalyst 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 State-certified psychoanalyst shall provide the patient, upon request, with his or her records created due to the services provided, or a summary of the record, as long as the summary adequately reflects the patient's history and treatment, unless otherwise required by law.

(i) A State-certified psychoanalyst 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 State-certified psychoanalyst engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

13:42A-8.6 Records

A State-certified psychoanalyst who provides services through telemedicine or telehealth shall maintain a record of the care provide to a patient. Such records shall comply with the requirements of N.J.A.C. 13:42A-6, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's record.

13:42A-8.7 Prevention of fraud and abuse

(a) In order to establish that a State-certified psychoanalyst has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, a State-certified psychoanalyst 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. 13:42A-8.4(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.

13:42A-8.8 Privacy and notice to patients

(a) State-certified psychoanalysts 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) A State-certified psychoanalyst 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.

(c) State-certified psychoanalysts, 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.

(d) State-certified psychoanalysts 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 State-certified psychoanalyst shall obtain a signed and dated statement indicating that the patient received this notice.

(e) When telemedicine or telehealth is unable to provide all pertinent clinical information that a State-certified psychoanalyst exercising ordinary skill and care would deem reasonably necessary to provide care to a patient, the State-certified psychoanalyst 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.