

## 52 N.J.R. 1918(a)

VOLUME 52, ISSUE 20, OCTOBER 19, 2020

### RULE ADOPTIONS

#### Reporter

52 N.J.R. 1918(a)

*NJ - New Jersey Register > 2020 > OCTOBER > OCTOBER 19, 2020 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

#### Agency

---

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF PHYSICAL THERAPY EXAMINERS

#### Administrative Code Citation

---

**Adopted New Rules: N.J.A.C. 13:39A-10**

#### Text

---

##### **Telemedicine**

Proposed: June 17, 2019, at 51 N.J.R. 926(a).

Adopted: September 24, 2019, by the State Board of Physical Therapy Examiners, Beth Sarfaty, P.T., Chairperson.

Filed: September 9, 2020, as R.2020 d.096, **without change.**

Authority: N.J.S.A. 45:9-37.18 and P.L. 2017, c. 117.

Effective Date: October 19, 2020.

Expiration Date: November 15, 2020.

##### **Summary** of Public Comments and Agency Response:

The official comment period ended August 16, 2019. The Board received comments from Michele L. Beltram, PT, DPT, OCS, Director of Physical

Therapy, ABPTS Board-Certified Orthopaedic Clinical Specialist, Director-Kessler Education and Residency.

1. COMMENT: The commenter believes that the new rule fails to state that a session of physical therapy provided through telemedicine is equivalent to an in-person session. The commenter contends that specific language on this issue would assist in reimbursement from third-party payers.

RESPONSE: When physical therapy services provided through telemedicine or telehealth are provided in circumstances that are consistent with the standard of care for in-person physical therapy services, those sessions are treated equivalently by the Board, whether they are in-person or not. The Board does not have authority over reimbursement from third-party payers, but points out that N.J.S.A. 26:2S-29 addresses payment for services provided through telemedicine or telehealth. Additionally, the Board points out that N.J.A.C. 13:39A-10.3 states that a licensed physical therapist or licensed physical therapist assistant shall not provide services through telemedicine or telehealth if such services cannot be provided in a manner consistent with in-person standards of care.

2. COMMENT: The commenter agrees that the provision of services through telemedicine should be done only when appropriate and patients should be referred for in-person services when necessary.

RESPONSE: The Board thanks the commenter for her support.

#### **Federal Standards Statement**

Requirements at N.J.A.C. 13:39A-10.8 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 applicable Federal laws or standards.

**Full text** of the adopted new rule follows:

#### SUBCHAPTER 10. TELEMEDICINE

##### 13:39A-10.1 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 licensed physical therapists and licensed physical therapist assistants.

(c) Pursuant to N.J.S.A. 45:1-62, a physical therapist or physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant 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.

13:39A-10.2 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 [page=1919] to or from an originating site or to or from the licensed physical therapist or licensed physical therapist assistant at a distant site, which allows for the patient to be evaluated without being physically present.

"Board" means the Board of Physical Therapy Examiners.

"Cross-coverage" means a licensed physical therapist who engages in a remote physical therapy evaluation of a patient, without in-person contact, at the request of another licensed physical therapist who has established a proper licensed physical therapist or licensed physical therapist assistant-patient relationship with the patient.

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

"On-call" means a licensed physical therapist or licensed physical therapist assistant is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the licensed physical therapist or licensed physical therapist assistant has

temporarily assumed responsibility, as designated by the patient's primary care licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant, 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.

13:39A-10.3 Standard of care

(a) Prior to providing services through telemedicine or telehealth, a licensed physical therapist or licensed physical therapist assistant 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 physical therapist or licensed physical therapist assistant 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 physical therapist or licensed physical therapist assistant shall not provide services through telemedicine or telehealth.

(c) A licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist 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.

(e) A licensed physical therapist assistant who provides a 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.

13:39A-10.4 Licensed physical therapist or licensed physical therapist assistant-patient relationship

(a) Prior to providing services through telemedicine or telehealth, a licensed physical therapist or licensed physical therapist assistant shall establish a licensed physical therapist or licensed physical therapist assistant-patient relationship by:

1. Identifying the patient with, at a minimum, the patient's name, date of birth, phone number, and address. A licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant'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 licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant shall make this determination prior to each unique patient encounter.

(d) Prior to initiating contact with a patient, a licensed physical therapist or licensed physical therapist assistant shall provide the patient the opportunity to sign a consent form that authorizes the

licensed physical therapist or licensed physical therapist assistant to release records of the encounter to the patient's primary care licensed physical therapist or other health care provider identified by the patient.

(e) 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 licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant in this State;

3. A licensed physical therapist or licensed physical therapist assistant furnishes assistance in response to an emergency or disaster, provided that there is no charge for the assistance; or

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

13:39A-10.5 Provision of services through telemedicine or telehealth

(a) As long as a licensed physical therapist or licensed physical therapist assistant has satisfied the requirements of N.J.A.C. 13:39A-10.4, a licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant shall determine the patient's originating site and record this information in the patient's record.

(c) A licensed physical therapist or licensed physical therapist assistant 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 physical therapist or licensed physical therapist assistant to see a patient and the patient to see the licensed physical therapist or licensed physical therapist assistant during the provision of services.

[page=1920] (d) A licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant 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 physical therapist or licensed physical therapist assistant 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 physical therapist or licensed physical therapist assistant, or another designated licensed physical therapist or licensed physical therapist assistant, shall provide his or her name, professional credentials, and contact information to the patient. Such contact information shall enable the patient to contact the licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant shall provide the patient, upon request, with his or her records created due to the services provided.

(i) A licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

13:39A-10.6 Records

A licensed physical therapist or licensed physical therapist assistant 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. 13:39A-3.1 and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's record.

13:39A-10.7 Prevention of fraud and abuse

(a) In order to establish that a licensed physical therapist or licensed physical therapist assistant has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, a licensed physical therapist or licensed physical therapist assistant 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. 13:39A-10.4(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.

13:39A-10.8 Privacy and notice to patients

(a) Licensed physical therapists or licensed physical therapist assistants 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 the 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 licensed physical therapist or licensed physical therapist assistant who becomes aware of a breach in confidentiality of patient information, as defined in 45 CFR 164.402, shall comply with reporting requirements of 45 CFR Part 164.

(d) Licensed physical therapists or licensed physical therapist assistants, 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) Licensed physical therapists or licensed physical therapist assistants 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 licensed physical therapist or licensed physical therapist assistant 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 licensed physical therapist or licensed physical therapist assistant exercising ordinary skill and care would deem reasonably necessary to provide care to a patient, the

licensed physical therapist or licensed physical therapist assistant 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.

NEW JERSEY REGISTER

Copyright © 2020 by the New Jersey Office of Administrative Law

---

End of Document