

## 52 N.J.R. 1927(a)

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### RULE ADOPTIONS

#### Reporter

52 N.J.R. 1927(a)

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

#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF SOCIAL WORK EXAMINERS

#### Administrative Code Citation

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Adopted New Rules: N.J.A.C. 13:44G-15

#### Text

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##### Telemedicine

Proposed: July 1, 2019, at 51 N.J.R. 1097(a).

[page=1928] Adopted: November 13, 2019, by the State Board of Social Work Examiners, Maureen Braun Scalera, MSW, LCSW, Chair.

Filed: September 9, 2020, as R.2020 d.097, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:15BB-11 and P.L. 2017, c. 117.

Effective Date: October 19, 2020.

Expiration Date: July 16, 2022.

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

The official comment period ended August 30, 2019. The Board received comments from the following individuals:

1. Dawn Apgar, PhD, LSW, ACSW, Licensed Social Worker--State of New Jersey;
2. Claudia Duck Tucker, Vice President Government Affairs, Teladoc;
3. Jennifer Thompson, MSW, Executive Director, NASW-NJ; and
4. Debra L. Wentz, Ph.D., President and Chief Executive Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc.

1. COMMENT: A commenter points out that Subchapter 15 is titled "Telemedicine" and that the rules in Subchapter 15 deal with telemedicine and telehealth. The commenter recommends that the heading of Subchapter 15 be amended to refer to telehealth.

RESPONSE: The Board has changed the heading of Subchapter 15 Telemedicine and Telehealth.

2. COMMENT: A commenter recommends that continuing education requirements be amended, so that licensees who choose to provide services through telemedicine or telehealth will have to complete one credit of continuing education every biennial renewal period on ethical and legal considerations regarding telemedicine and telehealth. The commenter contends that such a requirement would protect consumers and ensure that licensees are adequately prepared to provide such services.

RESPONSE: The Board does not believe it is appropriate to require licensees who provide services through telemedicine or telehealth to take specific continuing education courses to qualify to provide such services. Licensees should take the continuing education courses that they believe are most relevant to their practices.

3. COMMENT: A commenter recommends that N.J.A.C. 13:44G-15.1 be amended, so that a social worker will not be required to hold New Jersey licensure or certification if he or she is licensed or 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 social workers who are temporarily inside New Jersey could possibly not be aware that they are required to obtain New Jersey licensure or certification when providing services to their clients while travelling through New Jersey.

RESPONSE: N.J.S.A. 45:1-62 establishes that a social worker must be licensed or certified in New Jersey if he or she is physically located in New Jersey while providing services through telemedicine or

telehealth. The Board, therefore, does not have the authority to, and will not, change N.J.A.C. 13:44G-15.1, as the commenter recommends.

4. COMMENT: A commenter asks where the standards of care applicable for services when provided in-person are set forth. The commenter recommends that these standards be defined by the Board or that the rules set forth where such standards can be found.

RESPONSE: Standards of care are established by commonly recognized professional practices, research studies, professional organizations, educational standards, and Board statutes and rules, among others. Professional practice standards may change over time, as practice areas evolve. The Board believes that social workers are able to identify professional standards without the Board establishing such standards in the rules as the commenter recommends.

5. COMMENT: A commenter contends that N.J.A.C. 13:44G-15.3(b) requires a licensee to cease providing services through telemedicine or telehealth if the social worker determines that services cannot be provided consistent with in-person standards of care. A commenter asks if a licensee who ceases such services would be responsible for continuity of care for a client and if a licensee would have to go through the same termination process as is required for face-to-face services.

RESPONSE: N.J.A.C. 13:44G-15.3 states that a licensee cannot provide services through telemedicine or telehealth if he or she determines that services cannot be provided in a manner that is consistent with in-person standards of care. The section requires a licensee who makes such a determination to advise a client to obtain services in-person. If a licensee does terminate or interrupt services, he or she would be required to comply with the dictates of N.J.A.C. 13:44G-10.6.

6. COMMENT: N.J.A.C. 13:44G-15.4(b) requires a licensee to review the client's history provided by the client and any records provided by the client prior to initial provision of services through telemedicine or telehealth. A commenter is not clear as to the difference between client history and records provided by the client. The commenter points out that rules proposed by the Board of Psychological Examiners require psychologists to review a client's history, not just the history that is provided by the client, and any available records, not just records provided by the client, and asks why the rule for social workers differs from the one proposed by the Board of Psychological Examiners.

RESPONSE: N.J.S.A. 45:1-62 requires a health care provider to review an individual's medical history and available medical records provided by the individual prior to providing services to that individual through telemedicine or telehealth. The Board drafted N.J.A.C. 13:44G-

15.4(c) to effectuate those requirements for social workers and their clients. The Board cannot comment on why the Board of Psychological Examiners chose different wording in its rules, but believes that the differences identified by the commenter are slight variations in language and not substantive differences.

7. COMMENT: A commenter points out that N.J.A.C. 13:44G-15.4(d) refers to a "provider-client relationship" while the rest of N.J.A.C. 13:44G-15.4 refers to "licensee-client relationships."

RESPONSE: The use of the term "provider-client relationship" was a typographical error, which the Board has corrected upon adoption.

8. COMMENT: N.J.A.C. 13:44G-15.4(d) recognizes situations where a licensee may provide services through telemedicine or telehealth without establishing a licensee-client relationship as required at N.J.A.C. 13:44G-15.4(a), (b), and (c). A commenter contends that there are provisions at N.J.A.C. 13:44G-15.4(a) and (c) that a licensee should comply with even if they meet the exemptions at N.J.A.C. 13:44G-15.4(d).

RESPONSE: N.J.S.A. 45:1-63 sets forth exemptions to the requirement that a licensee establish a licensee-client relationship prior to providing services through telemedicine or telehealth. The rules must be consistent with statutory requirements, and, therefore, the Board cannot change those exemptions to require licensees to comply with provisions at N.J.A.C. 13:44G-15.4(a) and (c), as the commenter recommends.

9. COMMENT: N.J.A.C. 13:44G-15.4(c) requires licensees to determine whether services can be provided through telemedicine or telehealth consistent with the same standard of care when such services are provided in-person for each unique client encounter. A commenter asks whether this requirement means that licensees are required to determine whether providing services through telemedicine or telehealth is appropriate prior to every session with a client.

RESPONSE: The last sentence at N.J.A.C. 13:44G-15.4(c) states: "The licensee shall make this determination prior to each unique client encounter." This provision requires a licensee to determine whether providing services through telemedicine or telehealth is appropriate prior to every session with a client.

10. COMMENT: N.J.A.C. 13:44G-15.4(d)3 exempts a licensee from having to establish a proper licensee-client relationship when the licensee is providing assistance in response to an emergency or disaster and the social worker does not charge for the assistance. A commenter asks if

this refers to publicly declared emergencies or disasters or if it applies to any emergency or disaster.

RESPONSE: N.J.S.A. 45:1-63 provides an exemption to the required licensee-client relationship for services provided in response to an emergency or disaster. The statute does not require that the emergency or disaster be publicly declared.

11. COMMENT: N.J.A.C. 13:44G-15.5(b) requires a licensee to verify a client's originating site prior to providing services through telemedicine or telehealth. A commenter asks how a licensee could verify this information.

RESPONSE: The Board did not dictate how a licensee could verify a client's originating site in order to provide licensees greater flexibility to [page=1929] satisfy this statutory requirement. As long as the licensee uses some method to verify the client's originating site, such as simply asking the client where he or she is located, and ensures that the information is included in the client record, the licensee will satisfy the regulatory requirement.

12. COMMENT: A commenter asks why the term "healthcare services" is used at N.J.A.C. 13:44G-15.5(c), as the term does not appear in the rest of the rules.

RESPONSE: The term "healthcare services" should be "services" and the Board has changed N.J.A.C. 13:44G-15.5 upon adoption to use the correct term.

13. COMMENT: N.J.A.C. 13:44G-15.5(d)4 permits licensees to use asynchronous store-and-forward technology to transmit medical information. A commenter contends that the term "medical" is too limiting and points out that rules proposed by the Board of Psychological Examiners use the term "medical and psychological information."

RESPONSE: N.J.S.A. 45:1-62 permits a licensee engaging in telemedicine or telehealth to use asynchronous store-and-forward to transmit medical information. The Board will not change N.J.A.C. 13:44G-15.5 to change the language used in the statute. The Board cannot comment on why the Board of Psychological Examiners chose differing wording in its rules, but does not believe that the differences identified by the commenter are substantive. Any "medical" information transmitted by a licensee would be social work information, as information transmitted by a licensed psychologist is psychological information.

14. COMMENT: A commenter asks if N.J.A.C. 13:44G-15.5 permits licensees to provide services through telemedicine without a video component when clinically appropriate.

RESPONSE: N.J.A.C. 13:44G-15.5(e) permits a licensee to provide services using interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without a video component, if the licensee determines that he or she can meet the standard of care for such services as if they were provided in-person.

15. COMMENT: A commenter contends that N.J.A.C. 13:44G-15.5(e), which permits licensees to use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without a video component, violates P.L. 2017, c. 117, which prohibits the use of audio-only communication. The commenter questions if this provision would permit therapy sessions to be conducted over the telephone. The commenter also asks if there are security requirements for audio communication.

RESPONSE: P.L. 2017, c. 117, does not prohibit audio-only communication, as N.J.S.A. 45:1-62 states that a licensee may provide services through telemedicine or telehealth using interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without a video component if the licensee determines that he or she can meet the standard of care for such services as if they were provided in-person. The statute and rules permit services to be provided over the telephone, as long as such provision of services otherwise complies with statutory and regulatory requirements. The security requirements for any services provided through telemedicine or telehealth apply when services are provided through audio communication.

16. COMMENT: A commenter believes that provisions at N.J.A.C. 13:44G-15.5(f), which require a licensee or another designated licensee to provide his or her name, professional credentials, and contact information to a client is confusing. The commenter recommends that the rule be amended to read: "a licensee shall provide his or her name, professional credentials, and contact information to the client, or the name, professional credentials, and contact information of another designated licensee."

RESPONSE: The Board does not believe that N.J.A.C. 13:44G-15.5(f) is confusing or that the commenter's suggested change provides any clarification for the requirement or greater protection of the public. The Board will not change N.J.A.C. 13:44G-15.5, as the commenter requests.

17. COMMENT: A commenter contends that it is difficult to obtain a written request for records or an acknowledgement when a licensee provides services through telemedicine or telehealth. The commenter recommends that N.J.A.C. 13:44G-15.5 and 15.8 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. 13:44G-15.5 and 15.8 do not require a licensee to obtain a written request for records or acknowledgement in-person. Any of the methods identified by the commenter would satisfy the requirements at N.J.A.C. 13:44G-15.5 and 15.8, as long as they result in the licensee obtaining a written request or acknowledgement. It is not necessary to change N.J.A.C. 13:44G-15.5 and 15.8, 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 licensees may obtain a written request or acknowledgement.

18. COMMENT: A commenter asks what the term "authentication and authorization of users" means at N.J.A.C. 13:44G-15.7(a)1. The commenter contends that the Board of Psychological Examiners' proposed rules use the term "identification" and questions why the Board of Psychological Examiners used a different term. The commenter also asks to whom the term "users" refers. The commenter posits that the term refers to licensees who provide services through telemedicine or telehealth and asks how licensees could authenticate and authorize themselves and if this requires password authentication.

RESPONSE: N.J.A.C. 13:44G-15.7 requires licensees to develop written protocols addressing the topics listed in the subchapter, but it does not dictate how licensees should address those topics. As long as licensees identify the individuals who may provide social work services using telemedicine and telehealth, the licensees will satisfy the requirements at N.J.A.C. 13:44G-15.7(a)1. The commenter's suggestions as to the meaning of the term "user" could be accurate, if that is how the written protocols define the individuals who may provide services through telemedicine or telehealth. Password authentication is not mandated by N.J.A.C. 13:44G-15.7(a)1, so any method by which a licensee determines that authentication is valid may meet the requirements of the rule. The Board cannot comment on why the Board of Psychological Examiners chose differing wording in its rules, but believes the differences identified by the commenter are differences in language and are not substantive differences.

19. COMMENT: A commenter believes that N.J.A.C. 13:44G-15.7, which requires licensees to develop written protocols, is unclear and that guidance is needed as to how licensees should develop the required protocol. The commenter is particularly confused by paragraph (a)3 and believes that the term "the origin of" should be deleted from the rule.

RESPONSE: The Board drafted N.J.A.C. 13:44G-15.7 to provide licensees with the greatest flexibility to draft written protocols that are appropriate for the licensee's specific professional practice. The Board recognizes that different licensee practices may have different needs, and, therefore, crafted the rule, so that each licensee may consider the topics enumerated in the rules and use professional judgment to create policies that address each of those identified topics. The Board does not believe that N.J.A.C. 13:44G-15.7(a)3 is confusing, as the provision requires licensees to consider how to determine the source of information they receive concerning their clients to ensure the accuracy of such information, and it will not change the rule, as the commenter recommends.

20. COMMENT: A commenter asks if the term "system" at N.J.A.C. 13:44G-15.7(a)4 refers to devices used to provide services through telemedicine and telehealth. The commenter also asks if the term "information" in the same rule refers to client personal data, medical data, and case files.

RESPONSE: The term "system" could mean the devices used to provide services through telemedicine or telehealth, depending on how a licensee drafts his or her protocols addressing the provision of services through telemedicine or telehealth. However, the term is not necessarily limited to devices but can include other means of limiting unauthorized access. The commenter's suggested examples could be included in the definition of "information" in the protocols developed by a licensee.

21. COMMENT: A commenter asks what the term "documentation about system and information usage" means at N.J.A.C. 13:44G-15.7(a)6 and asks what kinds of documentation are required by the rule.

[page=1930] RESPONSE: N.J.A.C. 13:44G-15.7(a)6 does not dictate the type of documentation a licensee maintain. The regulation requires licensees to consider how they will choose to document telemedicine and telehealth as part of their written protocols.

22. COMMENT: A commenter asks what the term "synchronization" at N.J.A.C. 13:44G-15.7(a)8 means. The commenter points out that Board of Psychological Examiners' proposed rules use the term "verification of client profile data."

RESPONSE: N.J.A.C. 13:44G-15.7(a)8 requires licensees to consider how client profile data is appropriately handled. "Synchronization" means that licensees will have to consider ways to address the conformity of such data, so that there are no filing errors when including this data in patient records. The Board cannot comment on why the Board of Psychological Examiners chose differing wording in its rules, but believes that there is no substantive difference between the language used by the Board of Psychological Examiners and the language used by the Board.

23. COMMENT: A commenter points out that the Board of Psychological Examiners' proposed rules do not include a provision similar to N.J.A.C. 13:44G-15.8(b) regarding privacy and security measures. The commenter asks if this provision requires licensees to use dedicated, encrypted email platforms, text communications, and VOIP (voice over internet protocol) systems.

RESPONSE: The Board cannot comment on why the Board of Psychological Examiners chose differing wording in its rules, but believes that the provisions at N.J.A.C. 13:44G-15.8(b) provide for necessary protection of client-identifiable information. N.J.A.C. 13:44G-15.8(b) does not require specific security measures. The rule requires that any privacy practices include measures that ensure confidentiality of client-identifiable information.

#### **Federal Standards Statement**

Requirements at N.J.A.C. 13:44G-15.8 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 (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### SUBCHAPTER 15. TELEMEDICINE \* **AND TELEHEALTH**\*

##### 13:44G-15.1 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 or certified by the Board as social workers.

(c) Pursuant to N.J.S.A. 45:1-62, a social worker must hold a license or certificate issued by the Board if he or she:

1. Is located in New Jersey and provides health care services to any client 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 client 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 client care, will not be considered as providing health care services to a client in New Jersey consistent with N.J.S.A. 45:15BB-1 et seq., and will not be required to obtain licensure in New Jersey in order to provide such consultation.

(e) The provisions of (d) above shall not apply when a healthcare provider located in another state provides clinical supervision pursuant to N.J.A.C. 13:44G-8.1.

#### 13:44G-15.2 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 client to be evaluated without being physically present.

"Board" means the Board of Social Work Examiners.

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

"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 or certified by the Board as a social worker.

"On-call" means a licensee is available, where necessary, to physically attend to the urgent and follow-up needs of a client for whom the licensee has temporarily assumed responsibility, as designated

by the client's primary care licensee or other health care provider of record.

"Originating site" means a site at which a client is located at the time that health care services are provided to the client by means of telemedicine or telehealth.

"Telehealth" means the use of information and communications technologies, including telephones, remote client monitoring devices, or other electronic means, to support clinical health care, provider consultation, client 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 client 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.

13:44G-15.3 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 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 client 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 client'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.

13:44G-15.4 Licensee-client relationship

(a) Prior to providing services through telemedicine or telehealth, a licensee shall establish a licensee-client relationship by:

1. Identifying the client with, at a minimum, the client's name, date of birth, phone number, and address. A licensee may also use a client's assigned identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the client; 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 client for the purpose of providing services to the client using telemedicine or telehealth, a licensee shall review the client's history provided by the client and any records provided by the client.

(c) Prior to initiating contact with a client 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 [page=1931] provided in-person. The licensee shall make this determination prior to each unique client encounter.

(d) Notwithstanding (a), (b), and (c) above, service may be provided through telemedicine or telehealth without a proper \*[provider-client]\* **\*licensee-client\*** 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 specialist located in another jurisdiction who provides consultation services, upon request, to a licensee in this State;

3. A licensee furnishes assistance in response to an emergency or disaster, provided that there is no charge for the 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.

13:44G-15.5                    Provision of services through telemedicine or telehealth

(a) As long as a licensee has satisfied the requirements *\*[of]\** **\*at\*** N.J.A.C. 13:44G-15.4, a licensee may provide health care services to a client through the use of telemedicine and may engage in telehealth to support and facilitate the provision of *\*[health care]\** services to clients.

(b) Prior to providing services through telemedicine or telehealth, a licensee shall determine the client's originating site and record this information in the client'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]\** **\*at\*** (e) below, a video component that allows a licensee to see a client and the client 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 client'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 client. Such contact information shall enable the client to contact the licensee for at least 72 hours following the provision of services, or for a longer period if warranted by the client'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 client as follows:

1. For an initial encounter with a client, history and records shall be reviewed prior to the provision of services through telemedicine or telehealth; and

2. For any subsequent interactions with a client, history and records shall be reviewed either prior to the provision of services through telemedicine or telehealth or contemporaneously with the encounter with the client.

(h) After the provision of services through telemedicine or telehealth, a licensee shall provide the client, 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 client's history and treatment, unless otherwise required by law.

(i) A licensee shall provide, upon a client's written request, the client's information to the client's primary care provider or to other health care providers.

(j) A licensee engaging in telemedicine or telehealth shall refer a client for follow-up care when necessary.

#### 13:44G-15.6 Records

A licensee who provides services through telemedicine or telehealth shall maintain a record of the care provided to a client. Such records shall comply with the requirements of N.J.A.C. 13:44G-12, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a client's record.

#### 13:44G-15.7 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 client during the initial intake pursuant to N.J.A.C. 13:44G-15.4(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 client profile data.

13:44G-15.8 Privacy and notice to clients

(a) Licensees who communicate with clients 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 client-identifiable information. Transmissions, including client email, and laboratory results must be password protected, or protected through substantially equivalent authentication techniques.

(c) A licensee who becomes aware of a breach in confidentiality of client 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 client, prior to evaluation or treatment, with copies of written privacy practices and shall obtain the client'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 clients 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 client 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 client, the licensee shall inform the client of this prior to the conclusion of the provision of care through telemedicine or telehealth and shall advise the client regarding the need for the client to obtain an additional in-person evaluation reasonably able to meet the client's needs.

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