

## New Jersey Board of Medical Examiners Proposes Telemedicine and Telehealth Regulations

On May 6, 2019, the New Jersey Board of Medical Examiners (BME) released [proposed regulations](#) to implement New Jersey's telemedicine and telehealth statute, which became law on July 21, 2017. The proposed regulations are applicable to New Jersey-licensed physicians and podiatrists. Implementing regulations for other licensed professionals, such as nurses, nurse practitioners, psychologists, psychoanalysts, clinical social workers, and optometrists, have yet to be proposed. Comments on the proposed regulations must be submitted to the BME by July 5, 2019.

Key provisions of the proposed regulations include the following:

- Physicians and podiatrists (licensees) are required to hold a BME-issued license if they are physically located in New Jersey and are providing health care services by means of telemedicine[1] or telehealth[2], or if they are physically located outside of New Jersey and are providing health care services by means of telemedicine or telehealth to patients located in New Jersey. A healthcare provider in another state who uses communications technology to consult with a New Jersey licensee and who is not directing patient care will be deemed as not providing health care services in New Jersey and will not be required to obtain a license in New Jersey.
- Licensees are required to determine whether they can provide services through telemedicine or telehealth consistent with the standard of care for such services when provided in-person. If the provision of services would not meet that standard, a licensee cannot provide services through telemedicine or telehealth and the licensee must advise the patient to receive services in-person. Licensees who provide services through telemedicine or telehealth will be held to the same standard of care and practice standards as are applicable when services are provided in-person.
- Prior to providing services through telemedicine or telehealth, a licensee must establish a licensee-patient relationship. A licensee must identify the patient and disclose the licensee's identity to the patient. The licensee must also review the patient's medical history and any available medical records. Prior to each unique patient encounter, the licensee must determine if the services can be provided through telemedicine or telehealth with the same standard of care as if the services were provided in-person. Before providing services, the licensee must provide the patient with the opportunity to sign a consent form authorizing the release of medical records to the patient's primary care provider. A licensee will not have to establish a licensee-patient relationship if: (i) services are provided as informal consultations with another healthcare provider, or on an infrequent basis, and there is no compensation for the services; (ii) services are part of episodic consultations by specialists in another jurisdiction; (iii) services are provided during an emergency or disaster without compensation; or (iv) a licensee is providing on-call or cross-coverage services for another licensee.
- Prior to providing services, a licensee must determine the site at which the patient is located and record it in the patient's record. When a licensee provides services through telemedicine, the licensee must use interactive, real-time, two-way communication technologies, which include a video component. A licensee will not have to use technology that includes a video component if he or she determines, after reviewing a patient's records, that he or she can meet the standard of care for such services provided in-person without video. In such a situation, the licensee must use interactive, real-time, two-way audio in combination with technology that permits the transmission of images, diagnostics, data, and medical information.
- Licensees must provide contact information to a patient by which the patient can contact the licensee, or an alternative licensee, for at least 72 hours after the provision of telemedicine or telehealth services. A licensee must provide patients with medical records upon request and provide medical information to a patient's primary care provider upon written request. In addition, licensees must provide referrals for follow-up care whenever it is necessary.

- A licensee providing services through telemedicine or telehealth may issue a prescription to a patient if the issuance of such a prescription is consistent with the standard of care or practice standards applicable to the in-person setting. A prescription cannot be issued based solely on the responses to an online questionnaire, unless a licensee has established a licensee-patient relationship with the patient. A licensee is prohibited from issuing a prescription for a Schedule II controlled dangerous substance unless the licensee has an initial in-person examination of the patient and sees the patient in-person at least every three months during the time the patient is prescribed the Schedule II controlled dangerous substance. This prohibition does not apply when a licensee prescribes a stimulant for a patient who is under the age of 18, as long as the licensee uses interactive, real-time, two-way audio and video technology to provide services to the patient and the patient's parent or guardian has a signed written consent waiving the in-person examination.
- Licensees must maintain records of care provided to patients through telemedicine or telehealth. Such records must comply with the BME records requirements and all other statutes and rules governing recordkeeping, confidentiality, and disclosure.
- Licensees must establish written protocols to prevent fraud and abuse. Such protocols must address: (i) authentication of users, patients, and the origin of information; (ii) the prevention of unauthorized access to a system or information; (iii) system security; (iv) maintenance of documentation; (v) information storage, maintenance, and transmission; and (vi) verification of patient data.
- Licensees must establish privacy practices for electronic communications that comply with the Federal rules implementing the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and protect the privacy of individually identifiable health information. These privacy practices must include measures to protect confidentiality and patient-identifiable information and transmissions must be protected by passwords, encryption, or other authentication techniques. If a licensee becomes aware of a breach of confidentiality, the licensee must report the breach as required by HIPAA.
- Licensees must provide patients with copies of privacy practices and obtain written acknowledgement of receipt from patients. Licensees must also provide patients with a notice regarding telemedicine and telehealth, which includes the risks and information on how to receive follow-up care. Licensees must obtain a signed and dated statement from the patient recognizing receipt of this notice. If the provision of services through telemedicine or telehealth cannot provide all clinical information necessary to provide care, a licensee must inform the patient of this and advise the patient that he or she should receive an in-person evaluation.

*If you have any questions, or need additional information, please contact:*

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