



NJ Telemedicine and Telehealth Law Passed

The [NJ Telemedicine Law](#) was passed by both houses of the legislature and signed into law by Governor Christie on July 21, 2017. Even though NJ Board of Medical Examiners rules or regulations have not yet been adopted as required by law, the **law became effective immediately**. This means that any practitioner who provides **telemedicine or telehealth services** must abide by the law as of July 21, 2017.

Who Does the Telemedicine Law Apply to?

The law specifically states that it applies to a “health care provider,” including but not limited to: a licensed physician, nurse, nurse practitioner, psychologist, psychiatrist, psychoanalyst, clinical social worker, physician assistant, professional counselor, respiratory therapist, speech pathologist, audiologist, optometrist, or any other health care professional acting within the scope of a valid license or certification issued in the state of NJ.

Healthcare Provider Qualifications

Any healthcare provider who uses telemedicine or telehealth:

1. Must be validly licensed, certified or registered in NJ
2. Remains subject to regulation by the appropriate NJ licensing board or regulatory body
3. Acts in compliance with existing requirements to maintain liability insurance
4. Remains subject to NJ jurisdiction if either the patient or the provider is located in NJ at the time the services are provided

Although the NJ law doesn’t address license requirements in other states, it is important for a provider to understand that licensure is also necessary in the state where the patient is located at the time of the telemedicine/telehealth encounter.

Based on these requirements, Conventus emphasizes the following:

- **A provider should contact his/her malpractice insurance carrier to ascertain the extent of telemedicine/telehealth coverage.**
 - **For Conventus insured members, contact us about your specific telemedicine/telehealth needs.**
- If the provider or patient is located in NJ at the time of the “visit,” the provider:
 - Must have a valid NJ license
 - Is subject to NJ laws and regulations
- **A NJ provider who renders telemedicine or telehealth services to a patient outside NJ must have a valid license in the state where the patient is located at the time of the “visit,” in addition to his/her NJ license.**

Definitions

Key definitions are essential in understanding the NJ Telemedicine law, because many sections of the new law apply to both telemedicine and telehealth.



Telehealth – (i.e. telephone, remote monitoring, etc.) “the use of information and communications technologies, including telephones, remote patient monitoring, or other electronic means, to support clinical health care, provider consultation, patient and professional health related education, public health and health administration...” Therefore, this means that telephone communication to provide clinical health care and remote patient monitoring (RPM) would be considered telehealth. RPM uses digital technologies to collect medical and other forms of health data from individuals in one location and electronically transmit that information securely to the healthcare provider in a different location. RPM includes, but is not limited to, devices used to monitor the patient’s glucose, blood pressure, oxygen saturation, heart rhythm/rate, temperature, sleep patterns, and more.



Telemedicine – (i.e. two-way video, etc.) “the delivery of health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a health care provider 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 health care provider...*Telemedicine does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.*” Basically, telemedicine providers use a combination of audio, asynchronous store and forward, and real-time/live/interactive video, unless otherwise specified in the law.



Originating Site – “the 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.” Therefore, the patient could reside in a specific town/ city/state, but be physically located somewhere else when being “seen” via telehealth or telemedicine. The originating site would not be the patient’s home address, but wherever he/she was located at the time of the telemedicine/telehealth visit.



Distant Site – “Site at which a health care provider, acting within the scope of a valid license or certification issued (in NJ), is located while providing health care services by means of telemedicine or telehealth.”



Asynchronous Store and Forward – “Acquisition and transmission of images, diagnostics, data, and medical information either to, or from, an originating site or to, or from, the health care provider at a distant site, which allows for the patient to be evaluated without being physically present.”

Telemedicine and Telehealth Requirements

Interactive, Real-Time, Two-Way Communication Technologies

- *Telemedicine* providers must use interactive, real-time, two-way communication technologies.
- A healthcare provider engaging in *telemedicine or telehealth* may use asynchronous store and forward technology to allow for electronic transmission of images, diagnoses, data and medical information.
- The healthcare provider may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology *without video capabilities*, if after reviewing the patient's medical records, the provider determines that the same standard of care can be met as if there was an in-person visit.

Standard of Care

- The healthcare provider must assess the patient prior to each telehealth or telemedicine visit to ascertain whether the same standard of care can be met as would be provided in an in-person visit.
- “Any healthcare provider...using telemedicine or telehealth shall be subject to the same standard of care or practice standards as are applicable to in-person settings. If telemedicine or telehealth services would not be consistent with this standard of care, the health care provider shall direct the patient to seek in-person care.” For example, if the provider would normally take vital signs during this type of visit, then vital signs must be taken and recorded during the telemedicine or telehealth visit. If the provider is uncertain about a diagnosis treatment, or medication prescription because of lack of image quality, appropriate history, or any other reason, then the provider should not render care via telemedicine or telehealth and instead recommend an in-person visit.
- Diagnosis, treatment, medication prescriptions, and consultation recommendations, including risks/ benefits of treatment options, shall meet the same standard of care or practice standards as are applicable to in-person settings. This means that a provider is held to the same standard for diagnosis, treatment, and informed consent as if the patient were being seen in the office.

Establishment of a Provider-Patient Relationship

A “proper provider-patient relationship” must be established before the use of telemedicine and telehealth, which specifically includes but is not limited to:

1. Properly identifying the patient using, at a minimum, the patient's name, date of birth, phone number, and address... The provider may additionally use the patient's assigned identification number, social security number, photo, health insurance policy number, or other appropriate patient identifier associated directly with the patient.
2. Disclosing and validating the provider's identity and credentials, such as the provider's license, title, and, if applicable, specialty and board certifications.

Prior to initiating contact with a patient in an initial encounter, a provider must:

1. *Conduct a review of the patient's medical history and any available medical records;*
2. *Make a determination if he/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 provider needs to make this determination prior to each unique patient encounter.*

Telemedicine or telehealth may be provided without a proper physician-patient relationship:

1. During informal consultation, outside of a contractual relationship without the expectation or exchange of direct or indirect compensation.
2. During episodic consultations by a medical specialist located in another jurisdiction, upon request, to a properly licensed or certified health care provider in NJ.
3. When a health care provider furnishes medical assistance in an emergency or disaster without charge.
4. When a substitute health care provider who is acting on behalf of an absent health care provider in the same specialty, provides healthcare services on an on-call or cross coverage basis, provided that the health care provider has designated this substitute provider to perform on-call or cross coverage services.

Prior To, During, and After the Visit

Review of Medical History – The health care provider for telemedicine or telehealth shall review the medical history and any medical records provided by the patient prior to the initial visit. If a provider-patient relationship has already been established, then the healthcare provider may review the information prior to initiating contact or contemporaneously with the telemedicine or telehealth encounter.

Patient Assessment – The health care provider must ascertain before each patient visit whether the same standard of care can be met with telemedicine or telehealth as if it were an in-person visit.

Provider Identity – The identity, professional credentials and contact information of the telemedicine or telehealth health care provider (or a substitute provider) shall be made available to the patient during and after the provision of services for at least 72 hours following the provision of services.

Patient Consent – Following the telemedicine or telehealth visit, the patient’s medical information shall be made available to the patient, upon the patient’s request. The information shall also be forwarded directly to the primary care provider or other healthcare providers, upon the patient’s request and affirmative consent. Consent may be oral, written or digital in nature, provided that the chosen method is appropriate under the standard of care.

Follow Up – A health care provider engaging in telemedicine or telehealth shall also refer the patient to the appropriate follow up, when necessary, including referrals for emergency or complimentary care.

Based on these requirements, Conventus recommends:

- All consents should be documented in the patient’s medical record, including consent for treatment, procedures and release of records, etc.

Medical Records

A health care provider engaging in telemedicine or telehealth must maintain a complete record of the patient’s care, as required by state and federal laws and regulations. [NJAC 13:35-9.16](#) outlines the NJ Board of Medical Examiners medical record requirements.

Based on these requirements, Conventus recommends:

If a healthcare provider engages in telemedicine or telehealth, including through a telemedicine/telehealth organization, the provider should ascertain the:

1. Contents of the medical record meet NJ requirements, including informed consent;
2. Patient's intake history and records are sufficient to determine whether telemedicine or telehealth can provide the same standard of care as an in-person visit, including diagnosis, treatment, and follow up;
3. Ownership of the medical record, how it is "stored," and compliance with NJ requirements for medical retention; and
4. Ability for the provider to gain access to the patient's records any time after the "visit" is made. This is especially important in the event of a malpractice claim.

Prescribing Medications

- Unless a proper provider-patient relationship has been established, as defined by the law, a provider shall not issue a prescription to a patient based solely on the responses to an online questionnaire.
- Schedule II CDS using telemedicine or telehealth can only be authorized after an initial in-person examination of the patient. Subsequent in-person visits must occur at least every three (3) months for the duration of time that the patient is being prescribed the medication.
- The in-person visit requirements do not apply when a healthcare provider is prescribing a Schedule II CDS stimulant to a minor under the age of 18, provided that: (1) interactive, real-time, two-way audio and video communication is used; and (2) the health care provider first obtains written consent from the parent or legal guardian waiving an in-person examination.

Based on these requirements, Conventus recommends:

A provider should review the patient's history, and write a medication prescription using the same standard of care and practice guidelines as if the patient came for an in-person visit.

Insurance Coverage and Reimbursement

- For commercial insurance plans, the law states that "a carrier that offers health benefits plan in NJ shall provide coverage and payment for health care services delivered...through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when services are delivered through in-person contact or consultation in NJ."
- For Medicaid and Medicaid Managed Care, the law states that "coverage and payment for health care services delivered to a benefits recipient through telemedicine or telehealth, (shall be) provided on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when services are delivered through in-person contact and consultation in NJ."
- The law establishes a similar requirement for contracts purchased through the NJ State Health Benefits Commission and the NJ School Employees' Health Benefits Commission.
- Nothing prohibits a program or carrier from providing coverage for only those services that are "medically necessary."
- Programs or carriers may limit coverage for telemedicine or telehealth, but not charge any deductible, copayment or coinsurance, in an amount that exceeds what is applicable to an in-patient visit.

Telehealth and Telemedicine Organizations

- A telemedicine or telehealth organization is defined as, “a corporation, sole proprietorship, partnership, or limited liability company that is organized for the primary purpose of administering... telemedicine or telehealth services.”
- A telemedicine or telehealth organization operating in NJ must register annually with the NJ Department of Health (NJDOH) and submit an annual report. The NJDOH shall compile submitted reports to generate statewide data concerning telemedicine and telehealth services.

Based on these requirements, Conventus recommends:

A NJ health care provider should ensure the following before entering into a relationship or agreement with a telemedicine or telehealth organization:

1. Patient selection criteria for telemedicine or telehealth services are appropriate to ensure the same standard of care as if the patient were provided in-person services;
2. Clinical algorithms and practice guidelines exist that are appropriate to the conditions being treated;
3. Image quality is reliable and acceptable, if store and forward technology is utilized; and
4. Make sure the organization is registered with the NJ Department of Health.
5. Determine whether the organization or the provider will be responsible for obtaining medical professional liability insurance coverage for the provision of telemedicine/telehealth services, as required by NJ law;
6. An agreement/contract does not contain an “indemnity” and/or “hold harmless” clause in which liability is shifted from the organization to the provider in a lawsuit, and may require the provider to defend and/or pay for damages/injuries sustained by the patient due to the organization’s liability.
7. **Contact your malpractice insurance carrier to ascertain the extent of your policy’s telemedicine/telehealth coverage. For Conventus insured members, contact us about your specific telemedicine/telehealth needs.**

Telemedicine is here to stay for the foreseeable future because of its potential to provide patient access to cost-effective, quality care. However, each health care provider must take steps to better assure that the same quality of care is being provided to his/her patients.

As always, Conventus members can call the Practice Resources Department at (877) 444-0484, ext. 7466, to speak with a member of our team for guidance with implementation of telemedicine or telehealth in your practice.

The information contained herein is intended for educational purposes only. NIP Management Co., LLC/Conventus takes reasonable efforts to provide accurate information but cannot guarantee its accuracy or that it meets local, state, or federal statutes, laws, or regulations. NIP Management Co., LLC/Conventus disclaims any and all liability for reliance upon the information contained therein. It is suggested that you consult your legal counsel or other professional consultant(s) if you have any questions about how it pertains to your specific situation.

CONTACT US TODAY

Conventus Inter-Insurance Exchange
900 Route 9 North, Suite 503
Woodbridge, NJ 07095
Phone: (877) 444-0484 x 7466
Email: conventus@conventusnj.com

