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## New Jersey Authorizes Telemedicine Services

By George H. Kendall and Krissa L. Webb

New Jersey Governor Chris Christie recently signed into law Senate Bill S291 (the “Act”), which authorizes New Jersey health care providers to offer telemedicine services. New Jersey had previously been one of the few states that had not expressly authorized telemedicine services. This alert discusses providers’ responsibilities under the Act, including establishing a proper provider-patient relationship, permitted technology and record-keeping policies, as well as registration and reporting obligations of telemedicine organizations and payment requirements for telemedicine services.

### Establishing a Provider-Patient Relationship

The Act permits health care services to be provided remotely through the use of telemedicine, as long as a proper provider-patient relationship has been established. A proper provider-patient relationship may be established without an initial in-person visit, but must include identification of the provider and patient, review of the patient’s medical history and available medical records by the provider **prior** to an initial encounter with the patient, and the provider’s determination that he/she will be able to meet the same standard of care for the patient with telemedicine services as would be provided if the services were rendered in person. If the same standard of care cannot be met, the provider must direct the patient to seek in-person care. All providers rendering health care services to patients in New Jersey must be validly licensed, certified or registered pursuant to New Jersey’s professional licensing statutes and regulations.

### Permitted Technology

The Act describes the technologies required to lawfully provide telemedicine services in New Jersey. Specifically, the Act defines “telemedicine” to mean “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 provider who is located at a distant site and a patient who is located at an originating site....” The Act states that telemedicine services shall be provided using interactive, real-time, two-way communication technologies. It limits the use of asynchronous store-and-forward technology, with two-way audio but not two-way video capabilities, to situations where the provider determines, after reviewing the patient’s medical records, that he/she is able to meet the same standard of care with that technology as if the services were being provided in

person. “Telemedicine” services specifically do not include the use, in isolation, of audio-only telephone conversations, electronic mail, instant messaging, phone text or facsimile transmission.

### Issuance of Prescriptions

The Act permits the issuance of prescriptions for most medications in connection with a telemedicine encounter as long as a proper provider-patient relationship has been established. The issuance of prescriptions and all other diagnoses, treatment and consultation recommendations made during a telemedicine encounter will be held to the same standards of care as are applicable to in-person care. Schedule II controlled dangerous substances may be prescribed only after an in-person examination of a patient, except for prescriptions of Schedule II stimulants to minor patients under the age of 18 as long as telemedicine technologies specified in the Act are utilized and the minor’s parent or guardian has consented to waiving the in-person examination requirement in writing.

### Record-Keeping Requirements

All health care providers rendering telemedicine services are required to maintain a complete record of the services rendered and comply with all applicable laws and regulations with respect to record-keeping, confidentiality and disclosure of such records. Following the provision of telemedicine services, the patient’s medical information must be made available to the patient and, with the patient’s consent, sent to the patient’s primary care provider or provider of record. The telemedicine provider is also required to refer the patient for appropriate follow-up care when necessary, including emergency care.

### Further Regulations

The Act states that applicable professional licensing boards, including the New Jersey Board of Medical Examiners, shall adopt regulations for providers under their jurisdiction as may be necessary to implement the provisions of the Act and facilitate the provision of telemedicine services. Importantly, however, providers do not have to wait for such regulations to provide telemedicine services as the Act is effective immediately. In no case shall any such further regulations require a provider to conduct an initial in-person visit with the patient as a condition of providing telemedicine services.

## Registration

The Act provides that all telemedicine organizations operating in New Jersey shall register with the New Jersey Department of Health (DOH) and file annual reports to the DOH that must include de-identified telemedicine encounter data describing the technology utilized, medical conditions treated, patients' ages and sex and whether prescriptions were issued. "Telemedicine or telehealth organization" is defined by the Act to mean a corporation or other type of legal entity "that is organized for the primary purpose of administering services in the furtherance of telemedicine or telehealth," as distinguished from a health care provider. The DOH shall compile all information provided by telemedicine organizations and generate a report that summarizes that data and distribute it to specified state agencies and professional boards. The DOH shall also prepare and transmit a report to the legislature and the newly created New Jersey Telemedicine and Telehealth Review Commission, which analyzes the effect of telemedicine regulations adopted by various state professional boards and makes an assessment of the effect telemedicine is having on health care delivery, population health and in-person health care.

## Payment for Telemedicine Services

The Act requires that various government payers and private insurance plans provide coverage for telemedicine services on the same basis as services delivered in-person, and at a reimbursement rate that **does not exceed** the in-person provider reimbursement rate. An earlier draft of the Act required that the payment amount for telemedicine services be equal to the amount paid for in-person services, but this was amended prior to passage of the Act. This provision makes the payment rate for telemedicine services subject to negotiations between payers and providers and may limit both the number of providers that engage in telemedicine services and patients' access to such services.

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The Act represents an important step forward in making telemedicine services available to patients in New Jersey. It attempts to address the concerns of providers and patient advocates with respect to quality of care and balance the interests of providers and payers with respect to payment for telemedicine services. It also requires the DOH and the newly created Telemedicine and Telehealth Review Commission to assess the effect that telemedicine services, as authorized by the Act and related regulations, are having on the health care delivery system and population health. Modifications to the Act and related regulations should be anticipated based on the assessments and recommendations made by the DOH and the Commission.

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