

2019 CARE Conference Hosted by the BOC  
July 12, 2019 2:00 PM  
Telehealth Regulations

Presenter: J. Timothy Sensor, ATC

Co-chair Athletic Training Advisory Committee to the New Jersey Board of Medical Examiners

[jtimothys@comcast.net](mailto:jtimothys@comcast.net)

History: There are many articles written about the history of Telemedicine.

Recent article in the Cleveland Clinic Journal of Medicine December 2018.

<https://www.mdedge.com/ccjm/article/189759/practice-management/telemedicine-past-present-and-future>

#### KEY POINTS

An estimated 7 million patients in the United States will use telemedicine services this year alone; demand will continue to rise. Low reimbursement rates and current lack of interstate licensure laws limit the ability of many health care providers to offer telemedicine services.

The rules and regulations addressing ancillary team members' participation in telemedicine vary from state to state.

Areas of future growth include chronic disease management and "hospital at home" care.

AMA Spring 2109

[https://app.svwps.com/americanmedicalassociation/ama/amamag/mag\\_nonMem.html](https://app.svwps.com/americanmedicalassociation/ama/amamag/mag_nonMem.html)

Article: In the Rural Midwest a telehealth community thrives

Congress: S.773 - Telehealth Innovation and Improvement Act of 2019

Was Introduced last session. Still in Committee.

New Jersey: P.L. 2017 Chapter 117, approved July 21, 2017 – Why the need?

"Telehealth" is defined to mean 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 as described in regulation.

"Telemedicine" is defined to mean 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 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" would not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

Specifically, a health care provider will be permitted to remotely provide health care services to a patient through the use of telemedicine, and will be permitted to engage in telehealth as may be necessary to support and facilitate the provision of health care services to patients.

New Jersey Athletic Training Regulations: Published in New Jersey Register for the first time June 17, 2019 for public comments. See Handout, PRN 2019-077 (51 N.J.R. 916(a)).

- Will be held to the same Standard of Care.
- A licensed athletic trainer who provides services through telemedicine or telehealth shall maintain a record of the care provide to an athlete.
- Identification validation; both athlete and Athletic Trainer.
- Establish written protocols.

## Discussion

- Athletic Trainers have always done Telehealth but have we done it correctly?
  - As more states add regulations for telehealth and telemedicine how does the Athletic Trainer maintain compliance?
- Record keeping; biggest obstacle.
- Where does texting fit in: When is Texting in Violation of HIPAA?
- Reimbursement issues?

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 medical evaluation reasonably able to meet the patient's needs.

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS  
Athletic Trainers — Telemedicine  
Proposed New Rules: N.J.A.C. 13:35-10.26 through  
10.33**

Authorized By: Board of Medical Examiners, William Roeder,  
Executive Director.

Authority: N.J.S.A. 45:9-37.38 and P.L. 2017, c. 117.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2019-077.

Submit comments by August 16, 2019, to:

William Roeder, Executive Director  
State Board of Medical Examiners  
PO Box 183  
Trenton, New Jersey 08625  
or electronically at: [http://www.njconsumeraffairs.gov/  
Proposals/Pages/default.aspx](http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx).

The agency proposal follows:

**Summary**

P.L. 2017, c. 117, which was effective July 21, 2017, authorizes healthcare providers to engage in telemedicine and telehealth. The Board of Medical Examiners (Board) proposes new rules to effectuate the provisions of P.L. 2017, c. 117, for licensed athletic trainers.

N.J.A.C. 13:35-10.26 sets forth that the proposed new rules implement P.L. 2017, c. 117, and establishes that the rules apply to licensed athletic trainers. The rule requires athletic trainers to hold a Board issued license if they are physically located in New Jersey or if they are physically located outside of New Jersey and are providing athletic training services by means of telemedicine or telehealth to athletes located in New Jersey. The rule clarifies that a healthcare provider in another state who uses communications technology to consult with a New Jersey licensed athletic trainer but who does not direct 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. N.J.A.C. 13:35-10.27 provides definitions for the terms used in proposed new N.J.A.C. 13:35-10.26 through 10.33.

N.J.A.C. 13:35-10.28 requires a licensed athletic trainer to determine whether he or she can provide athletic training services through telemedicine or telehealth consistent with the standard of care for such services when provided in-person. If such provision of athletic training services would not meet that standard, a licensed athletic trainer cannot provide services through telemedicine or telehealth and he or she would be required to advise the athlete to receive athletic training services in-person. A licensed athletic trainer who provides services through telemedicine or telehealth will be held to the same standard of care and practice standards as are applicable when athletic training services are provided in-person.

N.J.A.C. 13:35-10.29 establishes how a licensed athletic trainer will create a licensed athletic trainer-athlete relationship prior to providing athletic training services through telemedicine or telehealth. A licensed athletic trainer must identify the athlete and disclose his or her identity. Before a licensee can provide services through telemedicine or telehealth, he or she is required to review a patient's medical history and medical records. The rule requires licensed athletic trainers to determine if athletic training services can be provided through telemedicine or telehealth with the same standard of care as if the services were provided in-person. This determination has to be made prior to each unique athlete encounter. Before providing services through telemedicine or telehealth, a licensee

has to provide a patient with the opportunity to sign a consent form authorizing the release of medical records to the patient's primary care provider. A licensed athletic trainer will not have to establish a licensed athletic trainer-athlete relationship if: athletic training services are provided as informal consultations, or on an infrequent basis, and there is no compensation for the services; athletic training services are part of episodic consultations by specialists in another jurisdiction; athletic training services are provided during an emergency or disaster without compensation; or a licensed athletic trainer is providing on-call or cross-coverage services.

N.J.A.C. 13:35-10.30 permits a licensed athletic trainer to provide athletic training services through telemedicine and to support and facilitate the provision of athletic training services to an athlete through telehealth if he or she has established a licensed athletic trainer-athlete relationship with the athlete or qualifies for an exemption to the licensed athletic trainer-patient relationship requirement. Prior to providing athletic training services, the licensed athletic trainer must determine the site at which the athlete is located and record this in the athlete's record. When a licensed athletic trainer provides athletic training services through telemedicine, he or she must use interactive, real-time, two-way communication technologies, which include a video component. A licensed athletic trainer will not have to use technology that includes a video component if he or she determines, after reviewing an athlete's records, that he or she can meet the standard of care for such athletic training services provided in-person without video. In such a situation, the licensed athletic trainer may use interactive, real-time, two-way audio in combination with technology that permits the transmission of images, diagnostics, data, and medical information.

A licensed athletic trainer will be required to review an athlete's medical history and records prior to an initial encounter with the athlete and, for subsequent interactions, review the history and records either prior to or during interactions. A licensed athletic trainer who provides services through telemedicine or telehealth will be required to provide contact information to an athlete by which the athlete can contact the licensed athletic trainer, or an alternative licensed athletic trainer, for at least 72 hours after the provision of athletic training services. A licensed athletic trainer must provide athletes with medical records upon request. A licensed athletic trainer also must provide an athlete's information to an athlete's primary care provider or other health care provider upon written request. A licensed athletic trainer will be required to provide a referral for follow-up care when it is necessary.

N.J.A.C. 13:35-10.31 requires licensed athletic trainers to maintain records of care provided to athletes through telemedicine or telehealth. Such records must comply with the requirements in N.J.A.C. 13:35-10.8 and 10.33, and all other statutes and rules governing recordkeeping, confidentiality, and disclosure. N.J.A.C. 13:35-10.32 requires licensed athletic trainers to establish written protocols to prevent fraud and abuse. Such protocols must address: identification of users, athletes, and the origin of information; the prevention of unauthorized access to a system or information; system security; maintenance of documentation; information storage, maintenance and transmission; and verification of patient data.

N.J.A.C. 13:35-10.33 requires licensed athletic trainers to establish privacy practices for electronic communications that comply with the standards of 45 CFR Parts 160 and 164, which are incorporated by reference. These Federal regulations implement the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 and protect the privacy of individually identifiable health information. These privacy practices must include measures to protect confidentiality and athlete-identifiable information and transmissions must be protected by passwords, encryption, or other authentication techniques. If a licensed athletic trainer becomes aware of a breach of confidentiality, he or she must report this as required by 45 CFR 164. Licensed athletic trainers must provide athletes with copies of privacy practices and obtain written acknowledgement of receipt from athletes. The rule also requires licensed athletic trainers to provide athletes with notice regarding telemedicine and telehealth that includes the risks of using technology to provide athletic training services and information on how to receive follow-up care. Licensed athletic trainers must obtain a signed and dated statement from the athlete recognizing receipt of this notice. If the provision of services

through telemedicine or telehealth cannot provide all clinical information necessary to provide care, a licensed athletic trainer will have to inform the athlete of this and advise the patient that he or she should receive an in-person evaluation to meet his or her needs.

The Board has provided a 60-day comment period for this notice of proposal. Therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is exempted from the rulemaking calendar requirement.

#### **Social Impact**

The Board believes the proposed new rules will have a positive social impact in that it will facilitate the use of communication technologies to provide athletic training services while protecting athletes who receive such services through telemedicine or telehealth.

#### **Economic Impact**

The Board anticipates that the proposed new rules may have an economic impact on licensed athletic trainers who choose to provide athletic training services through telemedicine or telehealth. The proposed new rules requires licensed athletic trainers to use communication technologies that provide for interactive, real-time, two-way communication that include a video component. Licensed athletic trainers may incur costs in obtaining such communication technologies. The Board does not anticipate that the proposed new rules will have any other economic impact.

#### **Federal Standards Statement**

Requirements in N.J.A.C. 13:35-10.33 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.

#### **Jobs Impact**

The Board does not believe that the proposed new rules will result in the creation or loss of jobs in the State.

#### **Agriculture Industry Impact**

The proposed new rules will have no impact on the agriculture industry in the State.

#### **Regulatory Flexibility Analysis**

Since licensed athletic trainers are individually licensed by the Board under the Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., they may be considered "small businesses" for the purposes of the Act.

The economic impact on small businesses will be the same as that imposed on all businesses as detailed in the Economic Impact statement. The Board does not believe that licensed athletic trainers will need to employ any additional professional services to comply with the requirements of the proposal. The proposed new rules impose no reporting requirements, but impose compliance and recordkeeping requirements upon licensed athletic trainers as detailed in the Summary above.

The proposed new rules will protect the health, safety, and welfare of athletes who receive athletic training services through telemedicine or telehealth; therefore, no differing compliance requirements are provided to licensed athletic trainers based upon the size of a business.

#### **Housing Affordability Impact Analysis**

The proposed new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing because the proposed new rules concern the provision of athletic training services through telemedicine or telehealth.

#### **Smart Growth Development Impact Analysis**

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules concern the provision of athletic training services through telemedicine or telehealth.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Board has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

#### **Full text of the proposed new rules follows:**

##### **13:35-10.26 Telemedicine or telehealth: purpose and scope**

(a) The purpose of N.J.A.C. 13:35-10.27 through 10.33 and this section 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) N.J.A.C. 13:35-10.27 through 10.33 and this section shall apply to all persons who are licensed by the Board as athletic trainers.

(c) Pursuant to N.J.S.A. 45:1-62, an athletic trainer 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 athlete 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 athlete 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 athletic trainer 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 an athlete in New Jersey and will not be required to obtain licensure in New Jersey in order to provide such consultation.

##### **13:35-10.27 Telemedicine or telehealth: definitions**

The following words and terms, when used in N.J.A.C. 13:35-10.26 and 10.28 through 10.33 and this section, 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 licensed athletic trainer at a distant site, which allows for the athlete to be evaluated without being physically present.

"Cross-coverage service" means a licensed athletic trainer who engages in a remote medical evaluation of an athlete, without in-person contact, at the request of another licensed athletic trainer who has established a proper licensed athletic trainer-athlete relationship with the athlete.

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

"On-call" means a licensed athletic trainer is available, where necessary, to physically attend to the urgent and follow-up needs of an athlete for whom the licensed athletic trainer has temporarily assumed responsibility, as designated by the athlete's primary licensed athletic trainer or other health care provider of record.

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

"Telehealth" means the use of information and communications technologies, including telephones, remote athlete monitoring devices, or other electronic means, to support clinical health care, provider consultation, athlete 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 athletic trainer who is located at a distant site and an athlete who is located at an originating site, either with or without the assistance of an intervening licensed athletic trainer, 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.

## 13:35-10.28 Telemedicine or telehealth: standard of care

(a) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer 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 athletic trainer 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 athletic trainer shall not provide services through telemedicine or telehealth.

(c) A licensed athletic trainer who determines that services cannot be provided through telemedicine or telehealth pursuant to (b) above shall advise the athlete to obtain services in-person.

(d) A licensed athletic trainer who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risk and benefits of an athlete'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.

## 13:35-10.29 Telemedicine or telehealth: licensed athletic trainer-athlete relationship

(a) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer shall establish a licensed athletic trainer-athlete relationship by:

1. Identifying the athlete with, at a minimum, the athlete's name, date of birth, phone number, and address. A licensed athletic trainer may also use an athlete's assigned identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the athlete; and

2. Disclosing and validating the licensed athletic trainer's identity, license, title, and, if applicable, specialty and board certifications.

(b) Prior to initiating contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, a licensee shall:

1. Review the athlete's history and any available records;

2. Determine as to each unique athlete encounter 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; and

3. Provide the athlete, or the athlete's legal guardian, the opportunity to sign a consent form that authorizes the licensed athletic trainer to release records of the encounter to the athlete's primary licensed athletic trainer or other licensed health care provider identified by the athlete.

(c) Notwithstanding (a) and (b) above, service may be provided through telemedicine or telehealth without a proper provider-athlete relationship if:

1. The provision of services is for informal consultations with another healthcare provider performed by a licensed athletic trainer 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 medical specialist located in another jurisdiction who provides consultation services, upon request, to a licensed athletic trainer in this State;

3. A licensed athletic trainer furnishes medical assistance in response to an emergency or disaster, provided that there is no charge for the medical assistance; or

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

## 13:35-10.30 Telemedicine or telehealth: provision of services through telemedicine or telehealth

(a) As long as a licensed athletic trainer has satisfied the requirements of N.J.A.C. 13:35-10.29, a licensed athletic trainer may provide health care services to an athlete through the use of telemedicine and may engage in telehealth to support and facilitate the provision of health care services to athletes.

(b) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer shall determine the athlete's originating site and record this information in the athlete's record.

(c) A licensed athletic trainer 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 athletic trainer to see an athlete and the athlete to see the licensed athletic trainer during the provision of services.

(d) A licensed athletic trainer 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 athlete's records, a licensed athletic trainer 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 athletic trainer 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 athletic trainer, or another designated licensed athletic trainer, shall provide his or her name, professional credentials, and contact information to the athlete. Such contact information shall enable the athlete to contact the licensed athletic trainer for at least 72 hours following the provision of services, or for a longer period if warranted by the athlete's circumstances and accepted standards of care.

(g) Prior to providing services through telemedicine or telehealth, a licensed athletic trainer shall review any history or records provided by an athlete as follows:

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

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

(h) After the provision of services through telemedicine or telehealth, a licensed athletic trainer shall provide the athlete, upon request, with his or her records created due to the services provided.

(i) A licensed athletic trainer shall provide, upon an athlete's written request, the athlete's information to the athlete's primary care provider or to other health care providers.

(j) A licensed athletic trainer engaging in telemedicine or telehealth shall refer an athlete for follow-up care when necessary.

## 13:35-10.31 Telemedicine or telehealth: records

A licensed athletic trainer who provides services through telemedicine or telehealth shall maintain a record of the care provide to an athlete. Such records shall comply with the requirements of N.J.A.C. 13:35-10.8 and 10.33, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of an athlete's record.

## 13:35-10.32 Telemedicine or telehealth: prevention of fraud and abuse

(a) In order to establish that a licensed athletic trainer has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, a licensed athletic trainer must establish written protocols that address:

1. Authentication and authorization of users;
2. Authentication of the athlete during the initial intake pursuant to N.J.A.C. 13:35-10.29(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 athlete profile data.

13:35-10.33 Telemedicine or telehealth: privacy and notice to athletes

(a) Licensed athletic trainers who communicate with athletes 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 athlete-identifiable information. Transmissions, including athlete email, prescriptions, and laboratory results must be password protected, encrypted electronic prescriptions, or protected through substantially equivalent authentication techniques.

(c) A licensed athletic trainer who becomes aware of a breach in confidentiality of athlete information, as defined in 45 CFR 164.402, shall comply with the reporting requirements of 45 CFR Part 164.

(d) Licensed athletic trainers, or their authorized representatives, shall provide an athlete, prior to evaluation or treatment, with copies of written privacy practices and shall obtain the athlete's written acknowledgement of receipt of the notice.

(e) Licensed athletic trainers who provide athletic training services through telemedicine or telehealth, or their authorized representatives, shall, prior to providing services, give athletes 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 athletic trainer shall obtain a signed and dated statement indicating that the athlete received this notice.

(f) When telemedicine or telehealth is unable to provide all pertinent clinical information that a licensed athletic trainer exercising ordinary skill and care would deem reasonably necessary to provide care to an athlete, the licensed athletic trainer shall inform the athlete of this prior to the conclusion of the provision of care through telemedicine or telehealth and shall advise the athlete regarding the need for the athlete to obtain an additional in-person evaluation reasonably able to meet the athlete's needs.

rules to effectuate the provisions of P.L. 2017, c. 117, for licensed genetic counselors.

N.J.A.C. 13:35-14.19 sets forth that the proposed new rules implement P.L. 2017, c. 117, and establishes that the rules apply to licensed genetic counselors and person permitted to provide genetic counseling pursuant to N.J.A.C. 13:35-14.4. The rule requires genetic counselors to hold a Committee issued license if they are physically located in New Jersey or if they are physically located outside of New Jersey and are providing genetic counseling services by means of telemedicine or telehealth to patients located in New Jersey, except as provided by N.J.A.C. 13:35-14.5. The rule clarifies that a healthcare provider in another state who uses communications technology to consult with a New Jersey licensed genetic counselor, but who does not direct 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. N.J.A.C. 13:35-14.20 provides definitions for the terms used in proposed new N.J.A.C. 13:35-14.19 through 14.26.

N.J.A.C. 13:35-14.21 requires a licensed genetic counselor to determine whether he or she can provide genetic counseling services through telemedicine or telehealth consistent with the standard of care for such services when provided in-person. If such provision of services would not meet that standard, a licensed genetic counselor cannot provide services through telemedicine or telehealth and he or she would be required to advise the patient to receive services in-person. A licensed genetic counselor who provides 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.

N.J.A.C. 13:35-14.22 establishes how a licensed genetic counselor will create a licensed genetic counselor-patient relationship prior to providing services through telemedicine or telehealth. A licensed genetic counselor must identify the patient and disclose his or her identity. Before a licensed genetic counselor can provide services through telemedicine or telehealth, he or she is required to review a patient's medical history and medical records. The rule requires licensed genetic counselors to determine if services can be provided through telemedicine or telehealth with the same standard of care as if the services were provided in-person. This determination has to be made prior to each unique patient encounter. A licensed genetic counselor will not have to establish a licensed genetic counselor-patient relationship if: services are provided as informal consultations, or on an infrequent basis, and there is no compensation for the services; services are part of episodic consultations by specialists in another jurisdiction; services are provided during an emergency or disaster without compensation; or a licensed genetic counselor is providing on-call or cross-coverage services.

N.J.A.C. 13:35-14.23 permits a licensed genetic counselor to provide services through telemedicine and to support and facilitate the provision of services to a patient through telehealth if he or she has established a licensed genetic counselor-patient relationship with the patient or qualifies for an exemption to the licensed genetic counselor-patient relationship requirement. Prior to providing services, the licensed genetic counselor must determine the site at which the patient is located and record this in the patient's record. When a licensed genetic counselor provides services through telemedicine, he or she must use interactive, real-time, two-way communication technologies, which include a video component. A licensed genetic counselor 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 licensed genetic counselor may use interactive, real-time, two-way audio in combination with technology that permits the transmission of images, diagnostics, data, and medical information.

A licensed genetic counselor will be required to review a patient's history and records prior to an initial encounter with the patient and, for subsequent interactions, review the history and records either prior to or during interactions. A licensed genetic counselor who provides services through telemedicine or telehealth will be required to provide contact information to a patient by which the patient can contact the licensed genetic counselor, or an alternative licensed genetic counselor, for at least 72 hours after the provision of services. A licensed genetic counselor must provide patients with medical records upon request. A licensed genetic counselor also must provide a patient's information to a patient's primary

(a)

**DIVISION OF CONSUMER AFFAIRS  
NEW JERSEY BOARD OF MEDICAL EXAMINERS  
GENETIC COUNSELING ADVISORY COMMITTEE  
Genetic Counselors — Telemedicine  
Proposed New Rules: N.J.A.C. 13:35-14.19 through  
14.26**

Authorized By: Genetic Counseling Advisory Committee, William Roeder, Executive Director.

Authority: N.J.S.A. 45:9-37.115 and P.L. 2017, c. 117.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2019-078.

Submit comments by August 16, 2019, to:

William Roeder, Executive Director  
Genetic Counseling Advisory Committee  
PO Box 183  
Trenton, New Jersey 08625  
or electronically at: <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>.

The agency proposal follows:

**Summary**

P.L. 2017, c. 117, which was effective July 21, 2017, authorizes healthcare providers to engage in telemedicine and telehealth. The Genetic Counseling Advisory Committee (Committee) proposes new