NEW JERSEY DIVISION OF CONSUMER AFFAIRS

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Telehealth Services during the COVID-19 Pandemic

Frequently Asked Questions (FAQs)

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Providers are encouraged to check their licensing board website for additional information.

The State of New Jersey COVID-19 Information Hub is here.
The NJ Department of Health COVID-19 Information Hub for Health Care Providers is here.

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Background

COVID-19 ("coronavirus disease 2019") is the disease caused by a novel (new) coronavirus first detected in humans in December 2019. The State of New Jersey has adopted extraordinary measures to combat the spread of the disease, including through Executive Orders issued by Governor Philip D. Murphy to promote social distancing and to restrict elective medical procedures.

The availability of telehealth services is critical to allowing as many New Jerseyans as possible to get the medical services they need during the COVID-19 pandemic. The use of telehealth during the pandemic will maintain and increase access to health care services and reduce unnecessary in-person encounters that may spread COVID-19.

For these reasons, the New Jersey Division of Consumer Affairs (DCA)—which oversees 51 professional and licensing boards, including the Boards of Medical Examiners, Nursing, and Respiratory Care Therapists, and the boards that license mental health professionals—strongly encourages providers to use telehealth to the greatest extent possible for the duration of the current state of emergency and public health emergency declared by Governor Murphy in response to the COVID-19 pandemic.

As part of their response to the pandemic, the New Jersey Legislature and the Murphy Administration have taken steps to ensure New Jerseyans have access to telehealth, including tele-mental health services, to the greatest extent possible. These steps include temporarily relaxing requirements regarding which technologies may be used to provide telehealth services; who may provide telehealth services; how telehealth services are paid for; and where providers and patients/clients may be located when telehealth services are provided.

Answers to some frequently asked questions about telehealth during the COVID-19 pandemic are below. The purpose of this guidance is to clarify and explain existing rules in order to facilitate use of telehealth, as well as to compile in one location information from multiple New Jersey agencies that have adopted new telehealth policies in response to the COVID-19 pandemic.

General Questions

1. What is "telehealth"?

This document uses the term "telehealth" to refer generally to both "telehealth" and "telemedicine." New Jersey's 2017 law (P.L. 2017, c.117) defines "telehealth" as 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 allowed by New Jersey law. The law defines "telemedicine" as 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, as allowed by New Jersey law, except that "telemedicine" does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

2. What technologies or devices can providers use to deliver telehealth and telemedicine?

During the state of emergency and public health emergency related to COVID-19, New Jersey has relaxed the usual technological requirements for providing telehealth and telemedicine. Providers may now use a broader range of communication tools, including audio-only telephone or video technology commonly available on smart phones and other devices. While providers now have the flexibility to use all available and appropriate technologies, they must ensure that their choice of communication tools allows them to meet the applicable standard of care.

3. How does HIPAA apply?

Application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) is determined by the federal government, specifically the Office of Civil Rights (OCR) within the U.S. Department of Health and Human Services. HIPAA ordinarily requires that the technologies used to deliver telehealth meet rigorous privacy protection standards. However, on March 17, 2020, OCR announced that it will exercise its enforcement discretion and will not impose penalties for HIPAA violations against health care providers that in good faith provide telehealth using non-public facing audio or video communication product, such as FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, during the nationwide public health emergency related to COVID-19.

While providers now may choose to deliver telehealth through platforms that were previously off limits, note that public-facing platforms, such as TikTok, Twitch, Facebook Live, and Periscope, should not be used to provide telehealth even during the COVID-19 public health emergency.

Protecting health information is still important. Providers must take reasonable steps to avoid unauthorized disclosure of patient/client health information.

For more information, please see OCR's Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency.

4. How can a provider establish a provider-patient/client relationship utilizing telehealth?

New Jersey law requires a provider to establish a proper provider-patient/client relationship to engage in telehealth, which includes exchanging certain identifying information. Providers should use clinical judgment to obtain relevant medical/health history and review patient/client records available to meet applicable standards of care.

During the COVID-19 emergency, New Jersey is temporarily waiving the requirement that providers review a patient/client's medical records prior to an initial telehealth encounter. Therefore, the unavailability of records at this time is not a barrier to the establishment of a proper provider-patient/client relationship.

5. What types of care can be provided by a phone-only encounter?

During the COVID-19 emergency, providers have the flexibility to use all available and appropriate technologies to deliver telehealth as long as these technologies allow them to meet the standard of care. Providers may use phone-only encounters to establish a provider-patient/client relationship and to do follow-up care.

6. Are there rules regarding Provider-Patient/Client Location?

During the COVID-19 emergency, neither the patient/client nor the provider must go to a specific location to engage in telehealth. The State has waived site-of-service requirements for the Medicaid program to allow licensees to provide telehealth from any location and individuals to receive services via telehealth at any location.

7. Does the standard of care still apply during the Public Health Emergency?

Yes, the standard of care applies whether a patient/client is seen via telehealth or in person. The standard is no different whether the encounter is via telehealth or in person. To that end, providers should avoid telehealth if an in-person visit or physical exam is required.

8. What are the requirements for documenting a telehealth visit?

The recordkeeping standards do not change based on the setting by which the patient/client is seen. Providers should ensure that items such as relevant findings, tests ordered, treatment recommendations, and consent are documented. Verification of a patient/client identity is extremely important in a telephone-only encounter. For example, collection of a patient or client driver's license number and comparison of the number to practice records is a possible method of identification.

Appropriate and detailed patient/client records are needed to support billing for services. Board regulations regarding improper billing remain in effect. "Improper" means the billing is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards. Complete medical record documentation guards against such accusations.

Finally, providers should review the elements of the CPT or other applicable code they expect to use and reflect those in the medical/client record.

9. How does a provider obtain patient/client consent via telehealth?

A patient/client may give written or oral consent, and may do so in a digitized format, to the provider via telehealth. This consent must be documented in the patient/client record.

10. Can a provider prescribe medications via telehealth?

During the nationwide COVID-19 public health emergency, the U.S. Drug Enforcement Agency (DEA) is waiving some of its rules regarding the prescribing of controlled dangerous substances (CDS), Schedules II through V. At this time, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

1) The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;

2) The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and

3) The practitioner is acting in accordance with applicable federal and state laws.

If the prescribing practitioner has previously conducted an in-person medical evaluation of the patient, the practitioner may issue a prescription for a CDS after having communicated with the patient via telemedicine, or any other means, so long as the prescription is issued for a legitimate medical purpose, the practitioner is acting in the usual course of his/her professional practice, and the practitioner complies with applicable federal and state laws.

Out-of-state practitioners licensed in New Jersey via the accelerated temporary licensure process established in response to COVID-19 need not hold a New Jersey CDS registration in order to prescribe CDS in New Jersey, so long as they hold an active DEA registration in good standing in their home state; have the authority to prescribe medications, including CDS, in their home state; and prescribe CDS consistent with the scope of practice for the applicable health care profession under New Jersey law and regulations.

Such licensees are required to register with New Jersey's Prescription Monitoring Program and comply with all applicable laws and rules when prescribing CDS or human growth hormone under the authority of their New Jersey temporary license.

For more information about New Jersey's Prescription Monitoring Program (PMP) and the mandatory look-up requirements, please see the PMP website.

Out-of-State Providers

11. Can out-of-State providers use telehealth to treat patients/clients in New Jersey?

Out-of-State providers can obtain an accelerated temporary license in New Jersey to provide care in person or using telehealth. DCA and several professional and occupational licensing boards have taken measures to expedite licensure of out-of-state professionals, by waiving certain licensure requirements, including fees, during the COVID-19 emergency. An individual applying for a specific license, certificate of registration or certification in New Jersey must have a corresponding current license, certificate of registration or certification (in good standing) in another State to be eligible.

To apply for an accelerated temporary license, eligible providers may submit by email a one-page form with basic identification, contact and out-of-state licensure information. They will receive a reply email within 24 hours stating whether their application was granted. If granted, the provider will be deemed licensed in New Jersey for 180 days, with the possibility of an additional 180-day extension.

Providers who obtain an accelerated temporary license can use telehealth to treat patients/clients in New Jersey within their scope of practice and the scope of the license issued. This may include treatment related to COVID-19 as well as treatment unrelated to COVID-19.

Out-of-State providers who do not hold a New Jersey license may be permitted to use telehealth to treat patients/clients in New Jersey during the COVID-19 emergency, subject to limitations that do not apply to New Jersey licensees (including those holding accelerated temporary licenses). Specifically, if an out-of-State provider without a New Jersey license has a pre-existing relationship with a patient/client in New Jersey, the provider may continue to provide care using telehealth to that patient/client during the COVID-19 emergency.

In addition, an out-of-State provider without a New Jersey license may provide care using telehealth to a patient/client in New Jersey with whom the provider did not have a pre-existing relationship, subject to several limitations. The limits include that the provider:

1) Is licensed or certified (in good standing) in another State;

2) Practices within their scope; and

3) Only provides screening, testing and treatment for COVID-19.

Billing and Insurance

12. What is the N.J. Department of Banking and Insurance's emergency telemedicine guidance?

Under emergency guidance from the Department of Banking and Insurance (DOBI), state-regulated health insurers and commercial health maintenance organizations must:

- Pay in-network health professionals at least the same rate for telemedicine services as for in-person services, including but not limited to covered mental health and behavioral services, physical therapy, occupational therapy, and speech therapy.
- Grant any requested in-plan exception for individuals to access out-of-network telemedicine services when an in-network telehealth provider is not available.
- Cover telemedicine services using any platform permitted by state law. Carriers are not permitted to impose any specific requirements on the technologies used to deliver telemedicine and/or telehealth services (including any limitations on audio-only or live video technologies) during the COVID-19 emergency.
- Not require more documentation for telemedicine services than they require for in-person services.
- Cover these services without costs sharing (i.e. copayments, deductibles, or coinsurance).
- Not impose any restriction on the reimbursement for telehealth or telemedicine that requires that the provider who is delivering the services be licensed in a particular state, so long as the provider is in compliance with P.L. 2020, c.3 and c.4 and DOBI's emergency guidance.
- Not impose prior authorization requirements on medically-necessary treatment that is delivered via telemedicine or telehealth.

The emergency guidance does not affect how the claim for the service should be coded or submitted. Claims must use the codes reflecting the services actually provided and the method of care delivery actually used. For more details, see DOBI's COVID-19 web page here.

For information on Medicaid Managed Care Organizations, see the FamilyCare / Medicaid information in the Answer to Question #13.

13. How does a provider bill for telehealth?

(Note: Much of the discussion that follows uses CPT-based billing terminology. Providers should use billing systems and related guidance applicable to their profession. This information is provided for informational purposes only. The appropriate codes and other information are changing quickly. Please refer to the information each health insurer makes available to ensure accurate billing and check often with the CMS website for Medicare.)

Claim and billing questions for state-regulated insurance plans should be directed to the insurance carrier. The standard of care and medical/client record documentation requirements for providers are the same whether the provider provides care for the patient/client in person or via telemedicine.

Your patient/client's plan ID card will indicate whether the plan is insured, which means it is state regulated and subject to the emergency rule, or self-funded, in which case it is subject to federal law. A provider should contact the plan administrator listed on the patient/client ID card for information about whether telemedicine is covered by the self-funded plan.

Physicians and providers must submit claims in accordance with CPT and other coding requirements for the services and through the modes of delivery actually provided. There are several different CPT codes required for in-person visits, telemedicine services, and telephone consultations, and those should accurately reflect the mode of delivery.

All claims related to testing or treatment for a COVID-19 must include the correct COVID modifiers based on federal guidance when available. Check here for updates.

Specific codes should be used for telephone-only consultations (different from those for audio/visual telemedicine services). Providers should review CPT coding requirements as well as the billing guidelines for each health insurer and ensure that they are using the right code for the right service, plus any required modifiers or place of service codes.

Examples of CPT codes that can be billed as a telemedicine office visit include:

- New patient visit codes: 99201 99202 99203 99204 99205
- Established patient visit codes: 99211 99212 99213 99214 99215

Insurance plans may also ask for the claim to include a modifier (either -GQ, GT, or -95) and a place of service code (2 if the service is provided by telemedicine).

Telephone specific evaluation and management CPT codes are (similar to office visit E&M codes) partially time based. They include:

- 99441 (5-10-minute encounter);
- 99442 (11-20-minute encounter); and
- 99443 (21-30-minute encounter).

CMS adopted two CPT codes (U0001 and U0002) for COVID-19 testing. Some commercial plans, but not all, will accept CPT code 87635.

Medicaid / NJ FamilyCare. Health care providers may bill for any Medicaid billable service using the same billing codes and rates used for face-to-face services. There is no need to use any additional procedure codes or additional modifiers. For additional information regarding temporary telehealth guidelines for Medicaid / NJ FamilyCare, see the Department of Human Services newsletter from March 21, 2020.

14. How does a provider bill for telehealth to establish the provider/patient relationship?

If the telehealth visit was to establish a new patient, then the provider must follow the standard of care and documentation requirements for such a visit and should bill for that type of visit by telephone or telemedicine, as applicable. Items such as relevant findings, tests ordered, treatment recommendations, consents, etc. are the types of information needed in a patient/client record. Again, providers should review the elements of the CPT (or other applicable) code they expect to use and reflect those in the patient/client record. The billing provider is accountable for the correct submission of claims for payment and the documentation to support the claim.

15. How does a provider bill for a telehealth consultation for follow-up care?

If the telehealth consultation was for follow-up care, then the provider must follow the standard of care and documentation for such a visit and should bill for that type of visit. Items such as relevant findings, tests ordered, treatment recommendations, consents, etc. are the types of information needed in a patient/client record.

Once again, providers should review the elements of the CPT/ billing code they expect to use and reflect those in the patient/client record. The billing provider is accountable for the correct submission of claims for payment and the documentation to support the claim.

16. What phone calls are not billable?

To be eligible for payment, services provided through a telemedicine visit, including audio-only telephone calls, must be medical/health care services that would be billable if provided in person. Telephone calls with office staff and other calls for administrative purposes, including requests for refills, scheduling, payment or billing issues are not billable services. It is also important that providers not double bill for services.

For example, many follow-up visits are considered part of a global package or are considered to be already covered by the fact an in-person visit takes place shortly before or after the telemedical encounter. Please review the CPT (or other applicable) code in question for those encounters which may not be billed separately from a recent (or subsequent) office visit.

Providers are encouraged to check their licensing board website for additional information.

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