

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

**ADMINISTRATIVE ORDER AND NOTICE OF RULE ADOPTION AND WAIVER
PURSUANT TO P.L. 2020, c. 18**

AUTHORIZATION OF TELEMEDICINE ENCOUNTERS

DCA Administrative Order No. 2020-15 and DCA Waiver No. W-2020-14

Administrative Order and Temporary Rule Adoption and Waiver adopted by Paul R. Rodríguez,
Acting Director, Division of Consumer Affairs

Date: August 11, 2020

Authority: P.L. 2020, c. 18

Effective Date: August 11, 2020

Expiration Date: See below.

WHEREAS, on March 9, 2020, through Executive Order No. 103 (EO 103), the facts and circumstances of which are adopted by reference herein, the Governor declared both a public health emergency and a state of emergency throughout the State due to the public health hazard posed by Coronavirus disease 2019 (COVID-19); and

WHEREAS, the public health emergency declared in EO 103 has been extended through Executive Order Nos. 119, 138, 151, 162, and 171 (2020), issued on April 7, May 6, June 4, July 2, and August 1, 2020, respectively, and continues to exist today; and

WHEREAS, on March 19, 2020, Governor Murphy signed into law, P.L. 2020, c. 3, which authorized the Director of the Division of Consumer Affairs in the Department of Law and Public Safety and the Commissioner of Health to waive any requirement of state law or regulation as may be necessary to facilitate the provision of health care services using telemedicine and telehealth during the state of public health emergency declared in response to COVID-19, the purpose of which is to eliminate restrictions that prevent practitioners from establishing a provider/patient relationship, using telemedicine or telehealth, and provide flexibility in the types of technologies that may be used in telehealth and telemedicine encounters;

WHEREAS, on March 16, 2020, the federal Drug Enforcement Administration (DEA) announced that while a prescription for a controlled dangerous substance (CDS) must generally be predicated on an in-person medical evaluation pursuant to 21 U.S.C. 829(e), because the Secretary of Health and Human Services had issued a public health Emergency Declaration on January 31, 2020, the DEA determined that telemedicine may be used to satisfy patient encounter requirements

for prescribing of CDS in Schedules II through V, and accordingly all DEA registrants are, for the duration of the public health emergency, authorized to issue prescriptions for Schedule II through V to patients for whom they have not conducted an in-person medical evaluation, provided the following conditions are met: 1) the prescription is issued for a legitimate medical purpose by the health care professional 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 health care professional is acting in accordance with applicable federal and State law; and

WHEREAS, on March 20, 2020, in the exercise of the authority conferred in EO 103 and P.L. 2020, c. 3, the Division through a Temporary Statute and Rule Waiver (DCA-W-2020-6), waived N.J.S.A. 45:1-63(a)(3) and any other law or regulation, to the extent that they require a health care provider to, prior to initiating contact with a patient in an initial encounter to the purpose of providing services to the patient using telemedicine or telehealth, review the patient's medical history and any available medical records in order to establish a proper provider/patient relationship for the purpose of providing telehealth or telemedicine, and N.J.S.A. 45:1-62(c) and any other laws and regulations, to the extent that they prescribe specific technological parameters for the type of communication device used for the delivery of telehealth and telemedicine services, to allow providers the flexibility to use all available and appropriate technological devices to offer care via telemedicine and telehealth; and

WHEREAS, on March 21, 2020, through Executive Order No. 107 (EO 107), the facts and circumstances of which are adopted by reference herein, to further protect the health, safety and welfare of New Jersey residents, the Governor ordered all businesses and non-profits in the State to accommodate telework or work-from-home arrangements, wherever practicable; and

WHEREAS, on April 14, 2020, Governor Murphy signed into law P.L. 2020, c. 18, which permits the Director to issue administrative orders to suspend temporarily any provision of Title 45 of the Revised Statutes or suspend or modify temporarily any rule adopted pursuant to such authority, or to adopt or prescribe temporarily any rule relating to the practice of any profession licensed or certified by a board in the Division, upon concurrence by the Attorney General, after determining that such order is necessary to promote the public welfare and further such other purposes of the state of emergency or public health emergency declared in EO 103; and

WHEREAS, the Boards of Medical Examiners, Dentistry, Nursing and Optometry have adopted rules, pursuant to their rulemaking authority under Title 45, and consistent with N.J.S.A. 24:21-15.2, requiring practitioners to conduct physical examinations at the outset of prescribing, dispensing or administering CDS, and to undertake quarterly assessments when continuously prescribing CDS for chronic pain, and the Board of Medical Examiners has adopted a rule requiring in-person examinations when practitioners initially prescribe a Schedule II CDS and periodic subsequent in-person examinations, and these rules may present barriers to health care practitioners' rendering of services and unnecessarily result in a risk of exposure to the COVID-19 virus for practitioners, patients and staff; and

WHEREAS, through the issuance of Administrative Order No. 2020-07, the Division required office-based practices to adopt policies to avoid person-to-person contact, including a

directive to utilize telemedicine to the greatest extent possible to treat, order tests and triage patients, and to screen patients to determine if in-person visits are necessary; and

WHEREAS, the Board of Medical Examiners has adopted certain regulations, pursuant to its rulemaking authority under Title 45, with respect to physician obligations concerning the authorization of medical marijuana for those patients with qualifying medical conditions pursuant to N.J.S.A. 24:21-1 et seq., specifically the requirement that a physical examination be performed in order to meet the standard of care, which entails the risk of exposure to the COVID-19 virus for physicians, patients and staff, or will be precluded by a patient's COVID-19 status;

NOW THEREFORE, I, Paul R. Rodríguez, Acting Director of the Division of Consumer Affairs, by virtue of the authority vested in me by P.L. 2020, c. 18, and upon the concurrence by the Attorney General, determine that this ORDER is necessary to promote the public welfare and further such other purposes for which the state of emergency and the public health emergency were declared, and hereby ORDER as follows:

The following words and terms when used in this rule shall have the following meaning, unless the context indicates otherwise:

“Health care professional” means a physician, podiatrist, physician assistant or certified nurse midwife licensed by the State Board of Medical Examiners, advanced practice nurse certified by the New Jersey Board of Nursing, dentist licensed by the State Board of Dentistry or optometrist licensed by the State Board of Optometrists.

“Telemedicine” means the provision of health care services by means of a telecommunications device as authorized under the statutes of this State and/or DCA-AO-2020-6 or any other executive action adopted during the public health emergency or state of emergency.

1. Notwithstanding N.J.A.C. 13:35-7.6(b)2, N.J.A.C. 13:37-7.9A(b)(2), N.J.A.C. 13:30-8.18(d)2, and N.J.A.C. 13:38-2.5(b)2, which require a health care professional to conduct an examination appropriate to the health care professional's specialty when prescribing, dispensing, or administering controlled dangerous substances, health care professionals may utilize a telemedicine encounter to conduct such encounter, if consistent with the standard of care and paragraph 4 of this Order. Nothing in this Order relieves the health care professional of the obligation to discuss the risks and benefits of such prescribing as required respectively by N.J.A.C. 13:35-7.6(d), N.J.A.C. 13:37-7.9A(d), N.J.A.C. 13:30-8.18(f), and N.J.A.C. 13:38-2.5(d), and to document the results of that telemedicine encounter in the patient record.
2. Notwithstanding N.J.A.C. 13:35-7.6(f)1, N.J.A.C. 13:37-7.9A(f)1, N.J.A.C. 13:30-8.18(h)1, and N.J.A.C. 13:38-2.5(f)1, which require a health care professional, when continuously prescribing for the management of chronic pain, to review at a minimum of every three months the course of treatment, any new information about the etiology of the pain and the patient's progress toward treatment objectives, health care professionals may utilize a telemedicine encounter to conduct such review, if consistent with the standard of

care and paragraph 4 of this Order. Nothing in this Order relieves the practitioner of the obligation to document the results of that review in the patient record.

3. Notwithstanding N.J.A.C. 13:35-7.6(f)2, N.J.A.C. 13:37-7.9A(f)2, N.J.A.C. 13:30-8.18(h)2, and N.J.A.C. 13:38-2.5(f)2, which require a health care professional to assess the patient prior to issuing each prescription to determine whether the patient is experiencing problems associated with physical and psychological dependence, health care professionals may utilize a telemedicine encounter to conduct such assessment, if consistent with the standard of care and paragraph 4 of this Order. Nothing in this Order relieves the practitioner of the obligation to document the results of that assessment in the patient record.
4. Notwithstanding N.J.S.A. 45:1-62(e) and N.J.A.C. 13:35-6B.6(c), and consistent with federal law, a telemedicine encounter between a health care professional and a patient can be utilized, preceding the issuance of a prescription for a Schedule II CDS, without an initial in-person examination, but only if:
 - a. Conducting the encounter via telemedicine is otherwise consistent with the standard of care;
 - b. The prescription is issued for a legitimate medical purpose by the health care professional acting in the usual course of his/her professional practice;
 - c. The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
 - d. The health care professional is acting in accordance with applicable federal and State law.
5. Notwithstanding N.J.A.C. 13:35-7A.4, which sets forth the requirements for physician issuance of a certification for the medical use of cannabis, including a requirement for a comprehensive medical history and physical examination of the patient to determine whether the patient suffers from a qualifying medical condition as set forth at N.J.S.A. 24:6I-3, a physician issuing a certification for the use of medical cannabis may utilize a telemedicine encounter to satisfy these requirements, if consistent with the standard of care, subject to the following conditions:
 - a. The authorization is for a recognized qualifying condition;
 - b. The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
 - c. The use of telemedicine, rather than an in-person visit, is consistent with the standard of care required for assessment and treatment of the patient's condition.

6. Notwithstanding N.J.A.C. 13:35-7A.5(c), which sets forth the requirement for physician reassessment during the course of treatment with medical cannabis, the physician may provide a subsequent authorization via telemedicine if the physician determines that an in-person visit is not required, consistent with the standard of care.
7. To the degree that they are inconsistent with this Order, the provisions of N.J.S.A. 45:1-62(e), N.J.A.C. 13:30-8.18(d)2, N.J.A.C. 13:30-8.18(h)1, N.J.A.C. 13:30-8.18(h)2, N.J.A.C. 13:35-6B.6(c), N.J.A.C. 13:35-7.6(b)2, N.J.A.C.,13:35-7.6(f)1, N.J.A.C.13:35-7.6(f)2, N.J.A.C. 13:35-7A.4; N.J.A.C. 13:35-7A.5(c), N.J.A.C. 13:37-7.9A(b)(2), N.J.A.C. 13:37-7.9A(f)1, N.J.A.C. 13:37-7.9A(f)2, N.J.A.C. 13:38-2.5(b)2, N.J.A.C. 13:38-2.5(f)1, and N.J.A.C. 13:38-2.5(f)2 are waived and suspended. Any provisions of these statutes and rules that are not inconsistent with this Order remain in full force and effect.

This Order shall take effect immediately and shall remain in effect, unless expressly revoked or superseded by a subsequent Administrative Order issued by the Director of the Division of Consumer Affairs, until whichever of the following occurs first: (1) the end of the state of emergency or public health emergency declared by the Governor in Executive Order 103, whichever is later; or (2) the end of the telemedicine allowance designated by the United States Secretary of Health and Human Services on March 16, 2020, based upon the public health emergency declared by the Secretary on January 31, 2020.

Date: August 11, 2020



Paul R Rodríguez, Acting Director