ASSEMBLY, No. 5534

STATE OF NEW JERSEY

222nd LEGISLATURE

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Sponsored by:
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District 15 (Hunterdon and Mercer)

SYNOPSIS

Revises telehealth and telemedicine requirements concerning adult prescription of certain Schedule II drugs for treatment of attention-deficit/hyperactivity disorder.

CURRENT VERSION OF TEXT

As introduced.

AN ACT AN ACT concerning telehealth and telemedicine and amending P.L.2017, c.117.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read as follows:

2. a. Unless specifically prohibited or limited by federal or State law, a health care provider who establishes a proper provider-patient relationship with a patient may remotely provide health care services to a patient through the use of telemedicine. A health care provider may also engage in telehealth as may be necessary to support and facilitate the provision of health care services to patients. Nothing in P.L.2017, c.117 (C.45:1-61 et al.) shall be construed to allow a provider to require a patient to use telemedicine or telehealth in lieu of receiving services from an in-network provider.

b. Any health care provider who uses telemedicine or engages in telehealth while providing health care services to a patient, shall: (1) be validly licensed, certified, or registered, pursuant to Title 45 of the Revised Statutes, to provide such services in the State of New Jersey; (2) remain subject to regulation by the appropriate New Jersey State licensing board or other New Jersey State professional regulatory entity; (3) act in compliance with existing requirements regarding the maintenance of liability insurance; and (4) remain subject to New Jersey jurisdiction.

c. (1) Telemedicine services may be provided using interactive, real-time, two-way communication technologies or, subject to the requirements of paragraph (2) of this paragraph, asynchronous store-and-forward technology.

(2) A health care provider engaging in telemedicine or telehealth may use asynchronous store-and-forward technology to provide services with or without the use of interactive, real-time, two-way audio if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person and informs the patient of this determination at the outset of the telemedicine or telehealth encounter.

(3) (a) At the time the patient requests health care services to be provided using telemedicine or telehealth, the patient shall be clearly advised that the telemedicine or telehealth encounter may be with a health care provider who is not a physician, and that the patient may specifically request that the telemedicine or telehealth

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

encounter be scheduled with a physician. If the patient requests that the telemedicine or telehealth encounter be with a physician, the encounter shall be scheduled with a physician.

(b) The identity, professional credentials, and contact information of a health care provider providing telemedicine or telehealth services shall be made available to the patient at the time the patient schedules services to be provided using telemedicine or telehealth, if available, or upon confirmation of the scheduled telemedicine or telehealth encounter, and shall be made available to the patient during and after the provision of services. The contact information shall enable the patient to contact the health care provider, or a substitute health care provider authorized to act on behalf of the provider who provided services, for at least 72 hours following the provision of services. If the health care provider is not a physician, and the patient requests that the services be provided by a physician, the health care provider shall assist the patient with scheduling a telemedicine or telehealth encounter with a physician.

(4) A health care provider engaging in telemedicine or telehealth shall review the medical history and any medical records provided by the patient. For an initial encounter with the patient, the provider shall review the patient's medical history and medical records prior to initiating contact with the patient, as required pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017, c.117 (C.45:1-63). In the case of a subsequent telemedicine or telehealth encounter conducted pursuant to an ongoing provider-patient relationship, the provider may review the information prior to initiating contact with the patient or contemporaneously with the telemedicine or telehealth encounter.

(5) Following the provision of services using telemedicine or telehealth, the patient's medical information shall be entered into the patient's medical record, whether the medical record is a physical record, an electronic health record, or both, and, if so requested to by the patient, forwarded directly to the patient's primary care provider, health care provider of record or any other health care providers as may be specified by the patient. For patients without a primary care provider or other health care provider of record, the health care provider engaging in telemedicine or telehealth may advise the patient to contact a primary care provider, and, upon request by the patient, shall assist the patient with locating a primary care provider or other in-person medical assistance that, to the extent possible, is located within reasonable proximity to the patient. The health care provider engaging in telemedicine or telehealth shall also refer the patient to appropriate follow up care where necessary, including making appropriate referrals for in-person care or emergency or complementary care, if needed. Consent may be oral, written, or

digital in nature, provided that the chosen method of consent is deemed appropriate under the standard of care.

d. (1) Any health care provider providing health care services 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.

(2) Diagnosis, treatment, and consultation recommendations, including discussions regarding the risk and benefits of the patient's treatment options, which are made through the use of telemedicine or telehealth, including the issuance of a prescription based on a telemedicine or telehealth encounter, shall be held to the same standard of care or practice standards as are applicable to in-person settings. Unless the provider has established a proper provider-patient relationship with the patient, a provider shall not issue a prescription to a patient based solely on the responses provided in an online static questionnaire.

(3) In the event that a mental health screener, screening service, or screening psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.) determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in this paragraph shall be construed to prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth as provided in this paragraph from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

e. **[**The**]** (1) Except as provided in paragraph (2) of this subsection, the prescription of Schedule II controlled dangerous substances through the use of telemedicine or telehealth shall be authorized only after an initial in-person examination of the patient, as provided by regulation, and a subsequent in-person visit with the patient shall be required every three months for the duration of time that the patient is being prescribed the Schedule II controlled dangerous substance. However, the provisions of this subsection shall not apply, and the in-person examination or review of a patient shall not be required, when a health care provider is prescribing a stimulant which is a Schedule II controlled dangerous substance for use by a minor patient under the age of 18, provided that the health care provider is using interactive, real-time, two-way audio and

video technologies when treating the patient and the health care provider has first obtained written consent for the waiver of these in-person examination requirements from the minor patient's parent or guardian.

(2) The prescription of a stimulant which is a Schedule II controlled dangerous substance through the use of telemedicine or telehealth to an adult patient for the treatment of attention-deficit/hyperactivity disorder shall be authorized only after an initial in-person examination of the patient, as provided by regulation. A subsequent in-person visit or telehealth or telemedicine contact with the patient shall be required every six months for the duration of time that the patient is being prescribed the Schedule II controlled dangerous substance under this paragraph.

f. A mental health screener, screening service, or screening psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.):

(1) shall not be required to obtain a separate authorization in order to engage in telemedicine or telehealth for mental health screening purposes; and

(2) shall not be required to request and obtain a waiver from existing regulations, prior to engaging in telemedicine or telehealth.

g. A health care provider who engages in telemedicine or telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall maintain a complete record of the patient's care, and shall comply with all applicable State and federal statutes and regulations for recordkeeping, confidentiality, and disclosure of the patient's medical record.

h. A health care provider shall not be subject to any professional disciplinary action under Title 45 of the Revised Statutes solely on the basis that the provider engaged in telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-61 et al.).

i. (1) In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other entities that, pursuant to Title 45 of the Revised Statutes, are responsible for the licensure, certification, or registration of health care providers in the State, shall each adopt rules and regulations that are applicable to the health care providers under their respective jurisdictions, as may be necessary to implement the provisions of this section and facilitate the provision of telemedicine and telehealth services. Such rules and regulations shall, at a minimum:

(a) include best practices for the professional engagement in telemedicine and telehealth;

(b) ensure that the services patients receive using telemedicine or telehealth are appropriate, medically necessary, and meet current quality of care standards;

(c) include measures to prevent fraud and abuse in connection with the use of telemedicine and telehealth, including requirements concerning the filing of claims and maintaining appropriate records of services provided; and

(d) provide substantially similar metrics for evaluating quality of care and patient outcomes in connection with services provided using telemedicine and telehealth as currently apply to services provided in person.

(2) In no case shall the rules and regulations adopted pursuant to paragraph (1) of this subsection require a provider to conduct an initial in-person visit with the patient as a condition of providing services using telemedicine or telehealth.

(3) The failure of any licensing board to adopt rules and regulations pursuant to this subsection shall not have the effect of delaying the implementation of this act, and shall not prevent health care providers from engaging in telemedicine or telehealth in accordance with the provisions of this act and the practice act applicable to the provider's professional licensure, certification, or registration.

(cf: P.L.2021, c.310, s.4)

2. This act shall take effect immediately.

STATEMENT

This bill revises current law concerning the prescription of certain Schedule II controlled dangerous substances through the use of telemedicine or telehealth by carving out a less stringent follow up requirement for adult patients being prescribed a stimulant for the treatment for attention-deficit/hyperactivity disorder. Current law provides that the prescription of Schedule II controlled dangerous substances to an adult patient through the use of telemedicine or telehealth is authorized only after an initial in-person examination of the patient by a health care provider, with subsequent in-person visits with the patient required every three months for the duration of time that the patient is being prescribed the Schedule II controlled dangerous substance. Under the bill, an adult patient being prescribed a stimulant which is a Schedule II controlled dangerous substance for the treatment of attention-deficit/hyperactivity disorder must conform with the current law and have an initial in-person examination before being prescribed the drug through the use of telemedicine or telehealth. However, follow-up contacts are permitted to be via in-person visits or via telemedicine or telehealth contacts, and are only required every six months for the duration of time that the patient is being prescribed the drug.

The sponsor notes that this bill does not change current law regarding minor patients and the prescription of a stimulant which is a Schedule II controlled dangerous substances through the use of telemedicine or telehealth.