Title 45.
Subtitle 1.
Chapter 1.
Article 6. (New)
Telemedicine and Telehealth

§§1-6 - C.45:1-61 to 45:1-66
§7 - C.30:4D-6k
§8 - C.26:2S-29
§9 - C.52:14-17.29w
§10 - C.52:14-17.46.6h
§11 - Note

(CORRECTED COPY)
P.L.2017, CHAPTER 117, approved July 21, 2017
Senate Substitute for Senate Committee Substitute for Senate, Nos. 291 SCS, 652, and 1954

1 AN ACT authorizing the provision of health care services through telemedicine and telehealth, and supplementing various parts of the statutory law.

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

3 1. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

4 “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 health care provider at a distant site, which allows for the patient to be evaluated without being physically present.

5 “Cross-coverage service provider” means a health care provider, acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes, who engages in a remote medical evaluation of a patient, without in-person contact, at the request of another health care provider who has established a proper provider-patient relationship with the patient.

6 “Distant site” means a site at which a health care provider, acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes, is located while providing health care services by means of telemedicine or telehealth.

7 “Health care provider” means an individual who provides a health care service to a patient, and includes, but is not limited to, a licensed physician, nurse, nurse practitioner, psychologist, psychiatrist, psychoanalyst, clinical social worker, physician assistant, professional counselor, respiratory therapist, speech pathologist, audiologist, optometrist, or any other health care
professional acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes.

“On-call provider” means a licensed or certified health care provider who is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the provider has temporarily assumed responsibility, as designated by the patient’s primary care provider or other health care provider of record.

“Originating site” means a site at which a patient is located at the time that health care services are provided to the patient by means of telemedicine or telehealth.

“Telehealth” means 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 in accordance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

“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 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, and in accordance with the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill). “Telemedicine” does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

“Telemedicine or telehealth organization” means a corporation, sole proprietorship, partnership, or limited liability company that is organized for the primary purpose of administering services in the furtherance of telemedicine or telehealth.

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.

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 if either the patient or the
provider is located in New Jersey at the time services are provided.

c. (1) Telemedicine services shall be provided using
interactive, real-time, two-way communication technologies.

(2) A health care provider engaging in telemedicine or
telehealth may use asynchronous store-and-forward technology to
allow for the electronic transmission of images, diagnostics, data,
and medical information; except that the health care provider may
use interactive, real-time, two-way audio in combination with
asynchronous store-and-forward technology, without video
capabilities, 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.

(3) The identity, professional credentials, and contact
information of a health care provider providing telemedicine or
telehealth services 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.

(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. , c.
(C. ) (pending before the Legislature as this bill). 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 made available
to the patient upon the patient’s request, and, with the patient’s
affirmative consent, forwarded directly to the patient’s primary care
provider or health care provider of record, or, upon request by the
patient, to other health care providers. 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, 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 emergency or complimentary 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 questionnaire.

e. 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.

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. , c. (C. ) (pending before the Legislature as this bill), 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. , c. ( ) (pending before the Legislature as this bill).

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.

3. a. Any health care provider who engages in telemedicine or telehealth shall ensure that a proper provider-patient relationship is established. The establishment of a proper provider-patient relationship shall include, but shall not be limited to:

(1) properly identifying the patient using, at a minimum, the patient’s name, date of birth, phone number, and address. When
properly identifying the patient, the provider may additionally use the patient’s assigned identification number, social security number, photo, health insurance policy number, or other appropriate patient identifier associated directly with the patient;

(2) disclosing and validating the provider’s identity and credentials, such as the provider’s license, title, and, if applicable, specialty and board certifications;

(3) prior to initiating contact with a patient in an initial encounter for the purpose of providing services to the patient using telemedicine or telehealth, reviewing the patient’s medical history and any available medical records; and

(4) prior to initiating contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, determining whether the provider 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. The provider shall make this determination prior to each unique patient encounter.

b. Telemedicine or telehealth may be practiced without a proper provider-patient relationship, as defined in subsection a. of this section, in the following circumstances:

(1) during informal consultations performed by a health care provider 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) during episodic consultations by a medical specialist located in another jurisdiction who provides consultation services, upon request, to a properly licensed or certified health care provider in this State;

(3) when a health care provider furnishes medical assistance in response to an emergency or disaster, provided that there is no charge for the medical assistance; or

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

4. a. Each telemedicine or telehealth organization operating in the State shall annually register with the Department of Health.

b. Each telemedicine or telehealth organization operating in the State shall submit an annual report to the Department of Health in a manner as determined by the commissioner. The annual report shall include de-identified encounter data including, but not limited to: the total number of telemedicine and telehealth encounters conducted; the type of technology utilized to provide services using telemedicine or telehealth; the category of medical condition for
which services were sought; the geographic region of the patient
and the provider; the patient’s age and sex; and any prescriptions
issued. The commissioner may require the reporting of any
additional information as the commissioner deems necessary and
appropriate, subject to all applicable State and federal laws, rules,
and regulations for recordkeeping and privacy. Commencing six
months after the effective date of P.L. , c. (C.) (pending
before the Legislature as this bill), telemedicine and telehealth
organizations shall include in the annual report, for each
telemedicine or telehealth encounter: the patient’s race and
ethnicity; the diagnostic codes; the evaluation management codes;
and the source of payment for the encounter.

c. The Department of Health shall compile the information
provided in the reports submitted by telemedicine and telehealth
organizations pursuant to subsection b. of this section to generate
Statewide data concerning telemedicine and telehealth services
provided in the State. The department shall annually share the
Statewide data with the Department of Human Services, the
Department of Banking and Insurance, the Telemicine and
Telehealth Review Commission established pursuant to section 5 of
P.L. , c. (C.) (pending before the Legislature as this bill),
State boards and other entities that, under Title 45 of the Revised
Statutes, are responsible for the professional licensure, certification,
or registration of health care providers in the State who provide
health care services using telemedicine or telehealth pursuant to
P.L. , c. (C.) (pending before the Legislature as this bill),
and the Legislature pursuant section 2 of P.L.1991, c.164 (C.52:14-
19.1). The department shall also transmit a report to the Legislature
and the Telemicine and Telehealth Review Commission that
includes: an analysis of each rule and regulation adopted pursuant
to subsection i. of section 2 of P.L. , c. (C.) (pending
before the Legislature as this bill) by a State board or other entity
responsible for the professional licensure, certification, or
registration of health care providers in the State who provide health
care services using telemedicine or telehealth; and an assessment of
the effect that telemedicine and telehealth is having on health care
delivery, health care outcomes, population health, and in-person
health care services provided in facility-based and office-based
settings.
d. A telemedicine or telehealth organization that fails to
register with the Department of Health pursuant to subsection a. of
this section or that fails to submit the annual report required
pursuant to subsection b. of this section shall be liable to such
disciplinary actions as the Commissioner of Health may prescribe
by regulation.

5. a. Six months after the effective date of P.L. , c. (C.)
(pending before the Legislature as this bill), there shall be
established in the Department of Health the Telemedicine and Telehealth Review Commission, which shall review the information reported by telemedicine and telehealth organizations pursuant to subsection b. of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill) and make recommendations for such executive, legislative, regulatory, administrative, and other actions as may be necessary and appropriate to promote and improve the quality, efficiency, and effectiveness of telemedicine and telehealth services provided in this State.

b. The commission shall consist of seven members, as follows: the Commissioner of Health, or a designee, who shall serve ex officio, and six public members, with two members each to be appointed by the Governor, the Senate President, and the Speaker of the General Assembly. The public members shall be health care professionals with a background in the provision of health care services using telemedicine and telehealth. The public members shall serve at the pleasure of the appointing authority, and vacancies in the membership shall be filled in the same manner as the original appointments.

c. Members of the commission shall serve without compensation but may be reimbursed for necessary travel expenses incurred in the performance of their duties within the limits of funds made available for that purpose.

d. The members shall select a chairperson and a vice chairperson from among the members. The chairperson may appoint a secretary, who need not be a member of the commission. The Department of Health shall provide staff and administrative support to the commission.

e. The commission shall meet at least twice a year and at such other times as the chairperson may require. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission, or agency as it may require and as may be available for its purposes.

f. The commission shall report its findings and recommendations to the Governor, the Commissioner of Health, 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 who provide health care services using telemedicine or telehealth pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature no later than two years after the date the commission first meets. The commission shall expire upon submission of its report.

6. If any provision of P.L. , c. (C. ) (pending before the Legislature as this bill) or its application to any person or circumstance is held to be invalid, the invalidity shall not affect any
other provision or application of P.L. , c. (C. ) (pending before the Legislature as this bill) which can be given effect without the invalid provision or application, and, to this end, the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) are severable.

7. a. The State Medicaid and NJ FamilyCare programs shall provide coverage and payment for health care services delivered to a benefits recipient through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. The State Medicaid and NJ FamilyCare programs may limit coverage to services that are delivered by participating health care providers, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation.

c. Nothing in this section shall be construed to:

(1) prohibit the State Medicaid or NJ FamilyCare programs from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the recipient’s benefits plan; or

(2) allow the State Medicaid or NJ FamilyCare programs to require a benefits recipient to use telemedicine or telehealth in lieu of obtaining an in-person service from a participating health care provider.

d. The Commissioner of Human Services, in consultation with the Commissioner of Children and Families, shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this section and to secure federal financial participation for State expenditures under the federal Medicaid program and Children’s Health Insurance Program.

e. As used in this section:

“Benefits recipient” or “recipient” means a person who is eligible for, and who is receiving, hospital or medical benefits under the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or under the NJ FamilyCare program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as appropriate.

“Participating health care provider” means a licensed or certified health care provider who is registered to provide health care
services to benefits recipients under the State Medicaid or NJ FamilyCare programs, as appropriate.

“Telehealth” means the same as that term is defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Telemedicine” means the same as that term is defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

8. a. A carrier that offers a health benefits plan in this State shall provide coverage and payment for health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. A carrier may limit coverage to services that are delivered by health care providers in the health benefits plan’s network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation.

c. Nothing in this section shall be construed to:
   (1) prohibit a carrier from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person’s health benefits plan; or
   (2) allow a carrier to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

d. The Commissioner of Banking and Insurance shall adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

e. As used in this section:
   “Carrier” means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).
   “Covered person” means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).
   “Health benefits plan” means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).
   “Telehealth” means the same as that term is defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).
“Telemedicine” means the same as that term is defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

9. a. The State Health Benefits Commission shall ensure that every contract purchased thereby, which provides hospital and medical expense benefits, additionally provides coverage and payment for health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. A health benefits contract purchased by the State Health Benefits Commission may limit coverage to services that are delivered by health care providers in the health benefits plan’s network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation.

c. Nothing in this section shall be construed to:

(1) prohibit a health benefits contract from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person’s health benefits plan; or

(2) allow the State Health Benefits Commission, or a contract purchased thereby, to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

d. The State Health Benefits Commission shall adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

e. As used in this section:

“Telehealth” means the same as that term is defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Telemedicine” means the same as that term is defined by section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

10. a. The School Employees’ Health Benefits Commission shall ensure that every contract purchased thereby, which provides
hospital and medical expense benefits, additionally provides
coverage and payment for health care services delivered to a
covered person through telemedicine or telehealth, on the same
basis as, and at a provider reimbursement rate that does not exceed
the provider reimbursement rate that is applicable, when the
services are delivered through in-person contact and consultation in
New Jersey. Reimbursement payments under this section may be
provided either to the individual practitioner who delivered the
reimbursable services, or to the agency, facility, or organization that
employs the individual practitioner who delivered the reimbursable
services, as appropriate.

b. A health benefits contract purchased by the State Health
Benefits Commission may limit coverage to services that are
delivered by health care providers in the health benefits plan’s
network, but may not charge any deductible, copayment, or
coinsurance for a health care service, delivered through
telemedicine or telehealth, in an amount that exceeds the deductible,
copayment, or coinsurance amount that is applicable to an in-person
consultation.

c. Nothing in this section shall be construed to:

(1) prohibit a health benefits contract from providing coverage
for only those services that are medically necessary, subject to the
terms and conditions of the covered person’s health benefits plan;
or

(2) allow the School Employees’ Health Benefits Commission,
or a contract purchased thereby, to require a covered person to use
telemedicine or telehealth in lieu of receiving an in-person service
from an in-network provider.

d. The School Employees’ Health Benefits Commission shall
adopt rules and regulations, pursuant to the “Administrative
Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement
the provisions of this section.

e. As used in this section:

“Telehealth” means the same as that term is defined by section 1
of P.L. , c. (C. ) (pending before the Legislature as this
bill).

“Telemedicine” means the same as that term is defined by
section 1 of P.L. , c. (C. ) (pending before the Legislature
as this bill).

11. This act shall take effect immediately, and section 5 of this
act shall expire upon submission of the commission’s report.

STATEMENT

This Senate floor substitute authorizes health care providers,
including, but not limited to, licensed physicians, nurses, nurse
practitioners, psychologists, psychiatrists, psychoanalysts, clinical
social workers, physician assistants, professional counselors,
respiratory therapists, speech pathologists, audiologists, and
optometrists, to remotely provide health care services to patients
through the use of telemedicine and telehealth.

“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.

The substitute bill requires any health care provider who uses
telemedicine or engages in telehealth while providing health care
services to a patient to: (1) be validly licensed, certified, or
registered to provide such services in the State of New Jersey; (2)
remain subject to regulation by the appropriate New Jersey State
licensing board or professional regulatory entity; (3) act in
compliance with existing requirements regarding the maintenance
of liability insurance; and (4) remain subject to New Jersey
jurisdiction if either the patient or the provider is located in New
Jersey at the time services are provided.

The bill requires telemedicine services to be provided using
interactive, real-time, two-way communication technologies. A
health care provider engaging in telemedicine or telehealth may use
asynchronous store-and-forward technology to allow for the
electronic transmission of images, diagnostics, data, and medical
information; except that the health care provider may use
interactive, real-time, two-way audio in combination with
asynchronous store-and-forward technology, without video
capabilities, 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. The provider’s identity, professional
credentials, and contact information are to be made available to the
patient during and after the provision of services. The substitute
bill requires the contact information to enable the patient to contact
the health care provider, or a substitute health care provider
authorized to act on the provider’s behalf, for at least 72 hours
following the provision of services.

A health care provider engaging in telemedicine or telehealth
will be required to review the medical history and any medical
records provided by the patient. In the case of an initial encounter
with the patient, the provider is to conduct the review before
initiating contact with the patient; in the case of a subsequent
encounter pursuant to an ongoing provider-patient relationship, the
provider may conduct the review prior to initiating contact or
contemporaneously with the telemedicine or telehealth encounter.

Health care providers who engage in telemedicine or telehealth
will be required to maintain a complete record of the patient’s care
and comply with all applicable State and federal statutes and
regulations for recordkeeping, confidentiality, and disclosure of the
patient’s medical record. Health care providers will 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 the substitute bill.

Following the provision of services using telemedicine or
telehealth, the patient’s medical information is to be made available
to the patient upon the patient’s request, and, with the patient’s
affirmative consent, forwarded directly to the patient’s primary care
provider or health care provider of record, or, upon request by the
patient, to other health care providers. 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, may 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 will also be required to refer the patient to appropriate
follow up care where necessary, including making appropriate
referrals for emergency or complimentary care, if needed. The
patient’s consent may be oral, written, or digital in nature, provided
it is appropriate under the standard of care.

Health care providers providing health care services using
telemedicine or telehealth will be subject to the same standard of
care or practice standards as are applicable to in-person settings. If
telemedicine services would not be consistent with this standard of
care, the health care provider is to direct the patient to seek in-
person care. Similarly, diagnosis, treatment, and consultation
recommendations made through the use of telemedicine or
telehealth, including the issuance of a prescription based on a
telemedicine encounter, are to be held to the same standard of care.
or practice standards as are applicable to in-person settings. A
provider may not issue a prescription to a patient based solely on
the responses provided in an online questionnaire, unless the
provider has established a proper provider-patient relationship with
the patient.

Schedule II controlled dangerous substances may be prescribed
through the use of telemedicine only after the provider conducts an
initial in-person examination of the patient. Subsequent in-person
visits with the patient will be required every three months for the
duration of time that the patient is being prescribed the Schedule II
controlled dangerous substance. However, these restrictions do not
apply 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 provider has first obtained written
consent for the waiver of these in-person examination requirements
from the minor patient’s parent or guardian.

The substitute bill provides that mental health screeners,
screening services, and screening psychiatrists subject to the
provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.) will not be
required to obtain a separate authorization in order to engage in
telemedicine or telehealth for mental health screening purposes, and
will not be required to request and obtain a waiver from existing
regulations prior to engaging in telemedicine or telehealth.

Professional licensing and certification boards will be required to
adopt rules and regulations, which will be applicable to the health
care providers under their respective jurisdictions, in order to
implement the provisions of the bill and facilitate the provision of
telemedicine and telehealth services. The rules and regulations are
to, at a minimum: include best practices for the professional
engagement in telemedicine and telehealth; ensure that the services
patients receive using telemedicine or telehealth are appropriate,
medically necessary, and meet current quality of care standards;
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 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. The rules and regulations may
not include any provision requiring an initial in-person visit with a
patient before providing services using telemedicine or telehealth.

In order to engage in telemedicine or telehealth, a health care
provider will be required to establish a proper patient-provider
relationship with the patient. Establishing this relationship
includes, but is not be limited to: (1) properly identifying the patient
using certain patient identifiers, including, at a minimum, the
patient’s name, date of birth, phone number, address, and social
security number, whenever possible; (2) disclosing and validating
the provider’s identity and credentials; (3) prior to initiating contact
with a patient during an initial encounter, reviewing the patient’s
medical history and any available medical records; and (4) prior to
initiating contact with the patient, determining whether the provider
will be able to provide the appropriate standard of care using
telemedicine and telehealth as would be provided in an inpatient
setting.

Telemedicine may be practiced without establishing a proper
provider-patient relationship during informal consultations without
compensation; during episodic consultations by a medical specialist
located in another jurisdiction; when a health care provider
furnishes medical assistance in response to an emergency or
disaster, provided that there is no charge for the medical assistance;
and when a substitute health care provider acting on behalf of an
absent health care provider in the same specialty provides health
care services on an on-call or cross-coverage basis, provided that
the absent health care provider has designated the substitute
provider as an on-call provider or cross-coverage service provider.
The substitute bill requires each telemedicine or telehealth
organization operating in the State to annually register with the
Department of Health (DOH) and to submit an annual report to
DOH in a manner as determined by the commissioner. A
telemedicine or telehealth organization that fails to register or that
fails to submit the annual report will be subject to disciplinary
action.

The annual report submitted by each telemedicine and telehealth
organization is to include de-identified encounter data setting forth
the total number of telemedicine encounters conducted; the type of
technology utilized to provide services using telemedicine or
telehealth; the category of medical condition for which services
were sought; the geographic region of the patient and the provider;
the patient’s age and sex; and any prescriptions issued. The
commissioner may require the reporting of any additional
information as the commissioner deems necessary and appropriate,
subject to all applicable State and federal laws, rules, and
regulations for recordkeeping and privacy. Commencing six
months after the effective date of the bill, the annual report
submitted by telemedicine and telehealth organizations is to
additionally, include, for each telemedicine or telehealth encounter:
the patient’s race and ethnicity; the diagnostic code; the encounter
management code; and the source of payment for the encounter.
DOH will be required to share the reported information with the
Legislature, the Department of Human Services, the Department of
Banking and Insurance, the Telemedicine and Telehealth Review
Commission established under the bill, and the appropriate boards
and entities that license or certify professionals who provide health care services in the State using telemedicine or telehealth.

Additionally, DOH will be required to compile the reported information to generate Statewide data concerning telemedicine and telehealth services provided in New Jersey, and report the Statewide data to the Legislature and the Telemedicine and Telehealth Review Commission on an annual basis. The report is to include an analysis of each rule and regulation adopted by State boards and entities responsible for the licensure or certification of health care providers using telemedicine and telehealth, and an assessment of the effect that the provision of health care services using telemedicine and telehealth is having in New Jersey on health care delivery, health care outcomes, population health, and in-person health care services provided in facility-based and office-based settings.

Six months after the effective date of the substitute bill, the Telemedicine and Telehealth Review Commission will be established in DOH. The commission will be required to review the information reported by telemedicine and telehealth organizations and make recommendations for such executive, legislative, regulatory, administrative, and other actions as may be necessary and appropriate to promote and improve the quality, efficiency, and effectiveness of telemedicine and telehealth services provided in New Jersey. The commission will consist of seven members: the Commissioner of Health, or a designee, who will serve ex officio, and six public members, with two members each to be appointed by the Governor, the Senate President, and the Speaker of the General Assembly. The public members are to be health care professionals with a background in the provision of health care services using telemedicine and telehealth. The public members will serve at the pleasure of the appointing authority, and vacancies in the membership shall be filled in the same manner as the original appointments. Members of the commission will serve without compensation but may be reimbursed for necessary travel expenses incurred in the performance of their duties within the limits of funds made available for that purpose. The commission will meet at least twice a year and at such other times as the chairperson may require. The commission will be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission, or agency as it may require and as may be available for its purposes. The commission will be required to report its findings and recommendations to the Governor, the Commissioner of Health, the State boards or other entities which are responsible for the licensure, certification, or registration of health care providers in the State who provide health care services using telemedicine or telehealth, and the Legislature no later than two years after the date.
the commission first meets, and will expire upon submission of the
report.

The substitute bill specifies that Medicaid, NJ FamilyCare, and
certain health insurance providers, including the carriers of health
benefits plans, the State Health Benefits Commission, and the
School Employees’ Health Benefits Commission, are each to
provide coverage and payment for services provided through
telemedicine and telehealth on the same basis as, and at a provider
reimbursement rate that does not exceed the provider
reimbursement rate that is applicable, when the services are
delivered in-person in New Jersey. Reimbursement payments may
be made to the individual practitioner who delivered the
reimbursable services, or to the telemedicine or telehealth
organization that employs the practitioner.

Each such carrier or insurance provider will be authorized to
charge a deductible, copayment, or coinsurance for a health care
service delivered through telemedicine or telehealth, provided that
the amount charged does not exceed the charge for an in-person
consultation. Where applicable, each carrier or insurance provider
will be limited in its ability to impose annual or lifetime dollar
maximum amounts on the coverage of services provided through
telemedicine. Nothing in the substitute bill will prohibit a carrier or
other insurance provider from providing coverage only for services
deemed to be medically necessary, and nothing will allow a carrier
or other insurance provider to coerce a covered person to use
telehealth or telemedicine in lieu of receiving an in-person service.

Authorizes health care providers to engage in telemedicine and
telehealth.