

DrinkerBiddle

Overview of New Jersey's New Telemedicine Law

New Jersey Hospital Association
November 28, 2017

George H. Kendall
Drinker Biddle & Reath LLP
(973) 549-7070
george.kendall@dbr.com

DrinkerBiddle

Outline of Presentation

1. New Jersey's New Telemedicine Act
2. Establishing a Proper Provider-Patient Relationship
3. Permitted Technologies
4. Issuance of Prescriptions
5. Further Regulations and Oversight
6. Payment for Telemedicine Services

DrinkerBiddle

New Jersey Telemedicine Act

- Introduced on January 1, 2016
- Signed into law on July 21, 2017
- Effective immediately (6 month delay for certain reporting requirements)
- Nearly unanimous legislative support
- The Act expressly authorizes the provision of remote patient care through certain technologies, and addresses payment and oversight.

3

DrinkerBiddle

Establishing a Proper Provider-Patient Relationship

- A proper provider-patient relationship must be established.
 - Does **not** require an initial in-person visit.
 - Must involve the following **prior** to the initial encounter:
 - identification of the provider and patient,
 - review of the patient's medical history and available medical records, and
 - provider's determination that he/she will be able to meet the same standard of care as in-person⁴

DrinkerBiddle

Permitted Technologies

- Interactive, real-time, two-way communication technologies
- Asynchronous store-and-forward technology, with two-way audio but not two-way video
 - **only** if provider determines that he/she is able to meet the same standard of care as if the services were provided in person.
- Not permitted in isolation
 - Phone without video
 - E-mail, IM, text message, fax

5

DrinkerBiddle

Issuance of Prescriptions

- Prescriptions via telemedicine permitted for most medicines.
- Proper provider-patient relationship must be established.
- Same standard of care as applicable to in-person care.
- Schedule II controlled dangerous substances may be prescribed only after an in-person examination (with limited exceptions).

6

DrinkerBiddle

Further Regulations and Oversight

- Professional licensing boards to adopt implementing regulations, as necessary and appropriate.
- Telemedicine providers must register and file annual reports with the New Jersey Department of Health (DOH).
- DOH shall:
 - Compile Statewide data concerning telemedicine services and provide that data to state agencies, professional boards, the legislature, and the NJ Telemedicine and Telehealth Review Commission.
 - Report to the legislature and the NJ Telemedicine and Telehealth Review Commission regarding the effect of telemedicine services on health care delivery, population health and in-person care.

7

DrinkerBiddle

Payment for Telemedicine Services

- Government and private payers must provide coverage on the same basis as services delivered in-person.
- Not payment parity, but reimbursement rate may not exceed the in-person provider reimbursement rate.
- Payment parity was the subject of substantial debate.
- Payment rates are subject to negotiations between payers and providers.

8

Drinker Biddle

Questions?