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October 2021 Newsletter

In This Issue:

1. "Are You Ready for An Audit? Diagnosing, Documenting, Billing, and Coding in Private Practice" – an update on the video recording
2. The New Jersey Telemedicine and Telehealth Organization Registry
3. Ethics Matters- will return in November

Happy fall! While I am sad to see summer gone, I do appreciate the crisp fall mornings and evenings and the lack of humidity in the air.

Thank you to all who participated in the September 25th "Are You Ready for An Audit? Diagnosing, Documenting, Billing, and Coding in Private Practice" workshop. We had many lively discussions, attendees raised thoughtful questions and we commiserated over the common documentation challenges faced by clinicians. The November Newsletter will highlight one of those issues. My tech support is still working on preparing the video recording. I'm hopeful that the full webinar, with the original presentation slides and the FREE Guidelines for Writing a Financial Policy document will be available for rent (\$100) by the beginning of November. Unfortunately, the recorded version is not eligible for CEU credit.

For My Subscribers Licensed in New Jersey

Lots of news here in New Jersey. If you are licensed in New Jersey and are providing telehealth services only, than hopefully you are aware that **the deadline to register with the Telemedicine and Telehealth Organization Registry has been extended until January 3, 2022**. So we all have a bit of a reprieve and hopefully further clarification will come

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from the Department of Health (DOH) and the Division of Consumer Affairs (DCA) in the coming weeks.

I know there has been much confusion (and outrage) that this bill was enacted into law without a peep from our licensing boards or membership organizations. Since this law originated from the DOH and not the DCA, I am not surprised (but I am still upset) that our state licensing body did not give us a heads up. I will give the DCA the benefit of the doubt and say that this law was not on its radar back in April 2020 when it was first proposed. The good news is that now all of the licensing boards that regulate professional mental health licenses in the state are well aware of it. In fact, during the October 13, 2021 NJ-BSWE meeting, when asked about this particular issue, the Social Work Board announced that all of the NJ Boards will be working together to look into this so that they can provide appropriate feedback and guidance to their licensees.

History of the Telehealth and Telemedicine Registry

Although you may not want to hear it, this registry was a long-time coming. In 2017, then Governor Christie signed the New Jersey Telehealth and Telemedicine Law into effect (**P.L.2017, c.117 C.45:1-61**). I was fortunate enough to participate in some of the state's earliest discussions with various stakeholders back in 2018. This law, among other things, **validates the use of telehealth and telemedicine services in the state of New Jersey and outlined telemedicine practice standards, and declared telehealth coverage requirements for New Jersey Medicaid, Medicaid managed care, commercial health plans, and other State-funded health insurance plans.** It was **P.L.2017, c.117 C.45:1-61** that mandated the NJ licensing boards that regulate health care licensees in New Jersey to "adopt rules and regulations" around the use of telehealth and telemedicine resulting in the NJ-BSWE adding *Subchapter 15 (Telemedicine and Telehealth)* to its licensing regulations on October 19, 2020. Other boards that regulate health care licensees in the state adopted similar rules as well. Section C.45:1-64 (Annual

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registration, report) of **P.L.2017, c.117 C.45:1-61**, addresses the requirement for “Each telemedicine or telehealth organization operating in the State” to register annually with the DOH. It just took the DOH 3 years for the Registry bill to be proposed and then another year for it to be enacted into law.

Where Can I Find The Registration Standards For Telemedicine And Telehealth Organizations Law?

<https://casetext.com/regulation/new-jersey-administrative-code/title-8-health/chapter-53-registration-standards-for-telemedicine-and-telehealth-organizations>

What does the law say?

I will summarize the law as I understand it below, but my colleague David Barry, LSW, JD and his wife and business partner, Laura Barry, JD did an excellent job earlier this month addressing practitioners concerns during a webinar. Please note that this webinar was recorded BEFORE the October 15th deadline was extended. Click here to view on YouTube

<https://www.youtube.com/watch?v=a2Aiuq5bzh8>

All Telehealth and/or Telemedicine companies “providing or intending to provide telehealth or telemedicine services in New Jersey must register with the New Jersey Department of Health.”

“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.”

Since my first inquiry into this issue on September 20th, I’m pleased to see that the DOH has updated its guidance on the website

<https://dohlicensing.nj.gov/telehealthtelemedicine/>. It now states:

“Facilities licensed by the New Jersey Department of Health or private practices with a physical location used for the treatment

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of patients are not required to register”. This does take some of the mystery away from the originally poorly worded and contradictory statement that had existed before, but as I noted above, we will need to wait for further clarification.

Based on all of my communications with the DOH, clinicians and practices that have a physical location in which they are physically able to provide face-to-face services to clients do not need to register.

If you have any questions regarding your particular situation, it is advised that you to contact the DOH individually. When e-mailing, be as specific as possible regarding:

1. The details of your practice before the pandemic
2. The current details of your practice
3. Your anticipated plans for the future of your practice Contact the DOH regarding Telehealth-Telemedicine Requests @ TTRRequests@doh.nj.gov

Requirements

1. **Register @ <https://dohlicensing.nj.gov/telehealthtelemedicine/>**
2. **Pay an annual \$1,500 registration fee** (if paying by credit card, add 2% of the amount being paid plus an additional .50c
3. **Submit an Annual report.** Although the DOH hasn't posted any specific information yet, P.L.2017, c.117 C.45:1-61 dictates that registrants will be required to submit an annual report to the NJ DOH. This 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." This annual report shall also include, "for each telemedicine or telehealth

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encounter: the patient's race and ethnicity; the diagnostic codes; the evaluation management codes; and the source of payment for the encounter." Additionally, P.L.2017, c.117 C.45:1-61 allows the commissioner discretion to require further information in the annual reports.

Penalties for Non-Compliance

A telehealth or telemedicine organization that has been providing telehealth or telemedicine services only as of August 16, 2021 and does not possess a physical office space in which they are able to provide face-to-face services to clients that continues to operate without registering may be subject to the following:

- Be ordered to "cease and desist" providing telehealth or telemedicine services and if the organization continues to provide telehealth or telemedicine services they could face legal action by the New Jersey Superior Court, be required to **pay a fine of "\$1,000 per calendar day beginning from the date of the first unauthorized service."**

How do I register?

<https://dohlicensing.nj.gov/telehealthtelemedicine/>

Where Can I View P.L.2017, C.117 C.45:1-61?

https://www.njleg.state.nj.us/2016/Bills/PL17/117_.HTM

What Happens To The Information Collected In These Annual Reports?

The DOH is to compile the information and "generate Statewide data concerning telemedicine and telehealth services provided in the State." This information is to be shared with the following: the Department of Human Services, the Department of Banking and Insurance, the Telemedicine and Telehealth Review Commission, **State boards that are responsible for the professional licensure, certification, or registration of health care providers in the State who provide**

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health care services using telemedicine or telehealth and the state Legislature. The DOH is also required to submit a report to the Legislature and the Telemedicine and Telehealth Review Commission **“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.”**

This document is for general informational purposes only and is not intended to be used as advice (legal, ethical or technical) or as a substitute for the guidance of an attorney or an individualized consultation. It does not address all possible clinical, legal and ethical issues that may arise, nor does it take into consideration the particular circumstances, nuances or concerns of the situation or person(s) involved. Leslie S. Tsukroff, Inc. does not assume any responsibility or liability for any errors or omissions in its content.