

## AMENDMENTS TO SENATE BILL NO. 780

Sponsor: SENATOR VOGEL

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1 Amend Bill, page 1, line 1, by striking out all of said line  
2 and inserting

3 Relating to telemedicine; authorizing the practice of  
4 telemedicine by health care providers; and providing for  
5 insurance coverage of telemedicine.

6 Amend Bill, page 1, lines 4 through 16; pages 2 through 8,  
7 lines 1 through 30; page 9, lines 1 through 7; by striking out  
8 all of said lines on said pages and inserting

9 Section 1. Short title.

10 This act shall be known and may be cited as the Telemedicine  
11 Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "Audio-only medium." A prerecorded audio presentation or  
17 recording.

18 "Consultation." The act of seeking assistance from another  
19 health care provider for diagnostic studies, therapeutic  
20 interventions or other services that may benefit the patient of  
21 a health care provider who has an ongoing provider-patient  
22 relationship with the individual.

23 "Health care provider" or "provider." Any of the following:

24 (1) A health care practitioner as defined in section 103  
25 of the act of July 19, 1979 (P.L.130, No.48), known as the  
26 Health Care Facilities Act.

27 (2) A federally qualified health center as defined in  
28 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,  
29 42 U.S.C. § 1395x(aa)(4)).

30 (3) A rural health clinic as defined in section 1861(aa)  
31 (2) of the Social Security Act (42 U.S.C. § 1395x(aa)(2)).

32 (4) A pharmacist licensed under the act of September 27,  
33 1961 (P.L.1700, No.699), known as the Pharmacy Act.

34 (5) An occupational therapist licensed under the act of  
35 June 15, 1982 (P.L.502, No.140), known as the Occupational

1 Therapy Practice Act.

2 (6) A speech-language pathologist licensed under the act  
3 of December 21, 1984 (P.L.1253, No.238), known as the Speech-  
4 Language Pathologists and Audiologists Licensure Act.

5 (7) An audiologist licensed under the Speech-Language  
6 Pathologists and Audiologists Licensure Act.

7 (8) A dental hygienist licensed under the act of May 1,  
8 1933 (P.L.216, No.76), known as The Dental Law.

9 (9) A social worker, clinical social worker, marriage  
10 and family therapist or professional counselor licensed under  
11 the act of July 9, 1987 (P.L.220, No.39), known as the Social  
12 Workers, Marriage and Family Therapists and Professional  
13 Counselors Act.

14 (10) A registered nurse licensed under the act of May  
15 22, 1951 (P.L.317, No.69), known as The Professional Nursing  
16 Law.

17 "Health care services." Services for the diagnosis,  
18 prevention, treatment, cure or relief of a health condition,  
19 injury, disease or illness.

20 "Health insurance policy." As follows:

21 (1) An individual or group health insurance policy,  
22 contract or plan that provides coverage for services provided  
23 by a health care facility or health care provider that is  
24 offered by a health insurer.

25 (2) The term includes an individual or group health  
26 insurance policy, contract or plan that provides dental or  
27 vision coverage through a provider network.

28 (3) Except as provided in paragraph (2), the term does  
29 not include accident only, fixed indemnity, limited benefit,  
30 credit, dental, vision, specified disease, Medicare  
31 supplement, Civilian Health and Medical Program of the  
32 Uniformed Services (CHAMPUS) supplement, long-term care or  
33 disability income, workers' compensation or automobile  
34 medical payment insurance.

35 "Health insurer." An entity licensed by the Insurance  
36 Department with accident and health authority to issue a health  
37 insurance policy and governed under any of the following:

38 (1) The act of May 17, 1921 (P.L.682, No.284), known as  
39 The Insurance Company Law of 1921, including section 630 and  
40 Article XXIV.

41 (2) The act of December 29, 1972 (P.L.1701, No.364),  
42 known as the Health Maintenance Organization Act.

43 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
44 corporations).

45 (4) 40 Pa.C.S. Ch. 63 (relating to professional health  
46 services plan corporations).

47 "Interactive audio and video." Real-time two-way or  
48 multiple-way communication between a health care provider and a  
49 patient.

50 "Licensure board." Each licensing board within the Bureau of  
51 Professional and Occupational Affairs of the Department of State

1 with jurisdiction over a professional licensee identified as a  
2 health care provider under this act.

3 "Medical emergency." A condition wherein an individual is  
4 unconscious or the probability of harm to an individual because  
5 of failure to treat is great and surpasses any threatened harm  
6 from the treatment itself.

7 "On-call or cross-coverage services." The provision of  
8 telemedicine by a health care provider designated by another  
9 provider with a provider-patient relationship to deliver  
10 services so long as the designated provider is in the same group  
11 or health system, has access to the patient's prior medical  
12 records and is in a position to coordinate care.

13 "Store-and-forward." Technology that stores and transmits or  
14 grants access to a patient's clinical information for review by  
15 a health care provider who is at a different location.

16 "Telemedicine." The delivery of health care services  
17 provided through technology, including, but not limited to,  
18 interactive audio or video, store-and-forward and remote patient  
19 monitoring, to a patient by a health care provider who is at a  
20 different location. The term does not include the use of audio-  
21 only medium, voicemail, facsimile, e-mail, instant messaging,  
22 text messaging, online questionnaire or any combination thereof.

23 Section 3. Practice of telemedicine by health care providers.

24 (a) Requirements.--

25 (1) A health care provider licensed, certified or  
26 registered by a Commonwealth professional licensure board  
27 shall be authorized to practice telemedicine in accordance  
28 with this act and the corresponding licensure board  
29 regulations.

30 (2) A health care provider who engages in telemedicine  
31 in a manner that does not comply with the standards of care  
32 or rules of practice shall be subject to discipline by the  
33 appropriate licensure board, as provided by law.

34 (b) Regulations.--Each licensure board shall within 24  
35 months of the effective date of this section promulgate  
36 regulations consistent with this act to provide for and regulate  
37 telemedicine within the scope of practice and standard of care  
38 regulated by the board. The regulations shall:

39 (1) Consider model policies for the appropriate use of  
40 telemedicine technologies.

41 (2) Include patient privacy and data security standards  
42 that are in compliance with the Federal Health Insurance  
43 Portability and Accountability Act of 1996 (Public Law 104-  
44 191, 110 Stat. 1936) and the Health Information Technology  
45 for Economic and Clinical Health Act (Public Law 111-5, 123  
46 Stat. 226-279 and 467-496).

47 (c) Temporary regulations.--In order to facilitate the  
48 prompt implementation of this act, the licensure boards shall  
49 publish temporary regulations regarding implementation of this  
50 act in the Pennsylvania Bulletin within 60 days of the effective  
51 date of this section. Temporary regulations are not subject to:

1 (1) Sections 201, 202, 203, 204 and 205 of the act of  
2 July 31, 1968 (P.L.769, No.240), referred to as the  
3 Commonwealth Documents Law.

4 (2) Sections 204(b) and 301(10) of the act of October  
5 15, 1980 (P.L.950, No.164), known as the Commonwealth  
6 Attorneys Act.

7 (3) The act of June 25, 1982 (P.L.633, No.181), known as  
8 the Regulatory Review Act.

9 (4) Section 612 of the act of April 9, 1929 (P.L.177,  
10 No.175), known as The Administrative Code of 1929.

11 (d) Expiration.--Temporary regulations shall expire no later  
12 than 24 months following publication of temporary regulations.  
13 Regulations adopted after this period shall be promulgated as  
14 provided by law.

15 (e) Construction.--The provisions of this act shall be in  
16 full force and effect even if the licensure boards have not yet  
17 published temporary regulations or implemented the regulations  
18 required under this section.

19 Section 4. Compliance.

20 A health care provider engaging in telemedicine shall comply  
21 with all applicable Federal and State laws and regulations.

22 Section 5. Evaluation and treatment.

23 (a) Requirements.--Except as provided in subsection (c), a  
24 health care provider who provides telemedicine to an individual  
25 located in this Commonwealth shall, prior to treatment of the  
26 individual, establish a provider-patient relationship with the  
27 individual that includes the following:

28 (1) Verifying the location and identity of the  
29 individual receiving care each time telemedicine is provided.

30 (2) Disclosing the health care provider's identity,  
31 geographic location and medical specialty or applicable  
32 credentials.

33 (3) Obtaining informed consent regarding the use of  
34 telemedicine technologies from the individual or other person  
35 acting in a health care decision-making capacity for the  
36 individual. The individual or other person acting in a health  
37 care decision-making capacity, including the parent or legal  
38 guardian of a child in accordance with the act of February  
39 13, 1970 (P.L.19, No.10), entitled "An act enabling certain  
40 minors to consent to medical, dental and health services,  
41 declaring consent unnecessary under certain circumstances,"  
42 has the right to choose the form of service delivery, which  
43 includes the right to refuse telemedicine services without  
44 jeopardizing the individual's access to other available  
45 services.

46 (4) Providing an appropriate virtual examination or  
47 assessment using telemedicine technologies and any  
48 peripherals and diagnostic tests necessary for an accurate  
49 diagnosis or care management if the examination or assessment  
50 would otherwise be medically appropriate in an in-person  
51 encounter. The health care provider may utilize interactive

1 audio without the requirement of interactive video if, after  
2 access and review of the patient's medical records, the  
3 provider determines that the provider is able to meet the  
4 same standards of care as if the health care services were  
5 provided in person. The provider shall inform the patient  
6 that the patient has the option to request interactive audio  
7 and video.

8 (5) Establishing a diagnosis and treatment plan or  
9 executing a treatment plan.

10 (6) Creating and maintaining an electronic medical  
11 record or updating an existing electronic medical record for  
12 the patient within 24 hours. An electronic medical record  
13 shall be maintained in accordance with electronic medical  
14 records privacy rules under the Federal Health Insurance  
15 Portability and Accountability Act of 1996 (Public Law 104-  
16 191, 110 Stat. 1936).

17 (7) Providing a visit summary to the individual if  
18 requested.

19 (8) Having an emergency action plan in place for medical  
20 and behavioral health emergencies and referrals.

21 (b) Disclosures.--Providers offering online refractive  
22 services shall inform patients that the service is not an ocular  
23 health exam. This subsection shall not be construed to prohibit  
24 online refractive services if the information notice is clearly  
25 and conspicuously communicated to the patient prior to the  
26 online refractive service.

27 (c) Exceptions to provider-patient relationship  
28 requirements.--Subsection (a) does not apply to the following:

29 (1) Consultations.

30 (2) On-call or cross-coverage services.

31 (3) Medical emergency.

32 Section 6. Insurance coverage of telemedicine.

33 (a) Insurance coverage and reimbursement.--

34 (1) A health insurance policy issued, delivered,  
35 executed or renewed in this Commonwealth after the effective  
36 date of this section shall provide coverage for telemedicine  
37 delivered by a participating network provider consistent with  
38 the insurer's medical policies. A health insurance policy may  
39 not exclude a health care service for coverage solely because  
40 the service is provided through telemedicine with the same  
41 provider.

42 (2) A health insurer shall reimburse a health care  
43 provider that is a participating provider in its network for  
44 telemedicine if the health insurer reimburses the same  
45 participating provider for the same service through an in-  
46 person encounter. The standard of care and rules of practice  
47 applicable to an in-person encounter shall apply to a  
48 telemedicine encounter. Payment for telemedicine encounters  
49 shall be established between the health care provider and  
50 health insurer.

51 (b) Applicability.--This section applies as follows:

1           (1) Subsection (a)(2) does not apply if the  
2 telemedicine-enabling device, technology or service fails to  
3 comply with applicable law and regulatory guidance regarding  
4 the secure transmission and maintenance of patient  
5 information.

6           (2) For a health insurance policy for which either rates  
7 or forms are required to be filed with the Federal Government  
8 or the Insurance Department, this section shall apply to a  
9 policy for which a form or rate is first filed on or after  
10 the effective date of this section.

11           (3) For a health insurance policy for which neither  
12 rates nor forms are required to be filed with the Federal  
13 Government or the Insurance Department, this section shall  
14 apply to a policy issued or renewed on or after 180 days  
15 after the effective date of this section.

16           (c) Construction.--Nothing in this act shall prohibit a  
17 health insurer from providing reimbursement for telemedicine  
18 where the same or similar service is not otherwise eligible for  
19 reimbursement when provided through an in-person encounter or  
20 other contact between a health care provider and an individual.  
21 Section 7. Medicaid program reimbursement.

22           The Department of Human Services shall provide medical  
23 assistance coverage and payment for telemedicine in accordance  
24 with this act. Nothing in this act shall require the Department  
25 of Human Services to provide coverage for services that would  
26 not be covered if delivered through an in-person encounter or  
27 for services that are inconsistent with Federal financial  
28 participation requirements for the specific service or for  
29 telemedicine.

30 Section 8. Effective date.

31           This act shall take effect as follows:

32           (1) The following provisions shall take effect in 90  
33 days:

34                   (i) Section 6.

35                   (ii) Section 7.

36           (2) The remainder of this act shall take effect  
37 immediately.