

AMENDMENTS TO SENATE BILL NO. 780

Sponsor: SENATOR VOGEL

Printer's No. 1709

1 Amend Bill, page 1, lines 1 through 4, by striking out all of
2 said lines and inserting

3 Relating to telemedicine; authorizing the regulation of
4 telemedicine by professional licensing boards; and providing
5 for insurance coverage of telemedicine.

6 Amend Bill, pages 8 through 15, lines 1 through 30; page 16,
7 lines 1 through 28; by striking out all of said lines on said
8 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 "Emergency medical condition." A medical condition
19 manifesting itself by acute symptoms of sufficient severity,
20 including severe pain, such that the absence of immediate
21 medical attention could reasonably be expected to result in
22 placing the health of the individual in serious jeopardy,
23 serious impairment to bodily functions or serious dysfunction of
24 a bodily organ or part.

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

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

29 (2) A federally qualified health center as defined in
30 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,
31 42 U.S.C. § 1395x(aa)(4)).

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

34 (4) A pharmacist who holds a valid license under the act
35 of September 27, 1961 (P.L.1700, No.699), known as the

1 Pharmacy Act.

2 (5) An occupational therapist who holds a valid license
3 under the act of June 15, 1982 (P.L.502, No.140), known as
4 the Occupational Therapy Practice Act.

5 (6) A speech-language pathologist who holds a valid
6 license under the act of December 21, 1984 (P.L.1253,
7 No.238), known as the Speech-Language Pathologists and
8 Audiologists Licensure Act.

9 (7) An audiologist who holds a valid license under the
10 Speech-Language Pathologists and Audiologists Licensure Act.

11 (8) A dental hygienist who holds a valid license under
12 the act of May 1, 1933 (P.L.216, No.76), known as The Dental
13 Law.

14 (9) A social worker, clinical social worker, marriage
15 and family therapist or professional counselor who holds a
16 valid license under the act of July 9, 1987 (P.L.220, No.39),
17 known as the Social Workers, Marriage and Family Therapists
18 and Professional Counselors Act.

19 (10) A registered nurse who holds a valid license under
20 the act of May 22, 1951 (P.L.317, No.69), known as The
21 Professional Nursing Law.

22 (11) An out-of-State health care provider.
23 "Health care services." Services for the diagnosis,
24 prevention, treatment, cure or relief of a health condition,
25 injury, disease or illness.

26 "Health Information Technology for Economic and Clinical
27 Health Act." The Health Information Technology for Economic and
28 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
29 467-496).

30 "Health insurance policy." As follows:

31 (1) An individual or group health insurance policy,
32 contract or plan that provides coverage for services provided
33 by a health care facility or health care provider that is
34 offered by a health insurer.

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

38 (3) Except as provided under paragraph (2), the term
39 does not include accident only, fixed indemnity, limited
40 benefit, credit, dental, vision, specified disease, Medicare
41 supplement, Civilian Health and Medical Program of the
42 Uniformed Services (CHAMPUS) supplement, long-term care or
43 disability income, workers' compensation or automobile
44 medical payment insurance.

45 "Health Insurance Portability and Accountability Act of
46 1996." The Health Insurance Portability and Accountability Act
47 of 1996 (Public Law 104-191, 110 Stat. 1936).

48 "Health insurer." An entity that holds a valid license by
49 the Insurance Department with accident and health authority to
50 issue a health insurance policy and governed under any of the
51 following:

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

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

6 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
7 corporations).

8 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
9 services plan corporations).

10 "Interactive audio and video." Real-time two-way or
11 multiple-way communication between a health care provider and a
12 patient.

13 "Licensure board." Each licensing board within the Bureau of
14 Professional and Occupational Affairs of the Department of State
15 with jurisdiction over a professional licensee identified as a
16 health care provider under this act.

17 "On-call or cross-coverage services." The provision of
18 telemedicine by a health care provider designated by another
19 provider with a provider-patient relationship to deliver
20 services on a temporary basis so long as the designated provider
21 is in the same group or health system, has access to the
22 patient's prior medical records, holds a valid license in this
23 Commonwealth and is in a position to coordinate care.

24 "Out-of-State health care provider." A health care provider
25 providing a telemedicine service that holds a valid license,
26 certificate or registration in another jurisdiction and is:

27 (1) discharging official duties in the armed forces of
28 the United States, the United States Public Health Services
29 or the United States Department of Veterans Affairs;

30 (2) providing telemedicine services to a patient through
31 a federally operated facility;

32 (3) providing telemedicine services in response to an
33 emergency medical condition, if the care for the patient is
34 referred to an appropriate health care provider in this
35 Commonwealth as promptly as possible under the circumstances;

36 (4) providing provider-to-provider consultation
37 services; or

38 (5) providing services which would otherwise be exempt
39 from the requirement of licensure, certification or
40 registration in this Commonwealth under the respective
41 licensure act.

42 "Participating network provider." Any of the following
43 providers who are under contract with a health insurer:

44 (1) A physician who holds a valid license under the act
45 of December 20, 1985 (P.L.457, No.112), known as the Medical
46 Practice Act of 1985, or the act of October 5, 1978
47 (P.L.1109, No.261), known as the Osteopathic Medical Practice
48 Act.

49 (2) A clinical nurse specialist or certified registered
50 nurse practitioner who holds a valid license under the act of
51 May 22, 1951 (P.L.317, No.69), known as The Professional

1 Nursing Law.

2 (3) A physician assistant who holds a valid license
3 under the Medical Practice Act of 1985.

4 (4) A dentist who holds a valid license under the act of
5 May 1, 1933 (P.L.216, No.76), known as The Dental Law.

6 (5) An optometrist who holds a valid license under the
7 act of June 6, 1980 (P.L.197, No.57), known as the Optometric
8 Practice and Licensure Act.

9 (6) A psychologist who holds a valid license under the
10 act of March 23, 1972 (P.L.136, No.52), known as the
11 Professional Psychologists Practice Act.

12 (7) A social worker, clinical social worker or
13 professional counselor who holds a valid license under the
14 act of July 9, 1987 (P.L.220, No.39), known as the Social
15 Workers, Marriage and Family Therapists and Professional
16 Counselors Act.

17 (8) An occupational therapist who holds a valid license
18 under the act of June 15, 1982 (P.L.502, No.140), known as
19 the Occupational Therapy Practice Act.

20 (9) A physical therapist who holds a valid license under
21 the act of October 10, 1975 (P.L.383, No.110), known as the
22 Physical Therapy Practice Act.

23 "Provider-to-provider consultation." The informal act of
24 seeking advice and recommendations from another health care
25 provider for diagnostic studies, therapeutic interventions or
26 other services that may benefit the patient of the initiating
27 health care provider.

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

31 "Telemedicine." The delivery of health care services
32 provided through telemedicine technologies to a patient by a
33 health care provider who is at a different location. The term
34 does not include a provider-to-provider consultation.

35 "Telemedicine technologies." As follows:

36 (1) Electronic information and telecommunications
37 technology, including, but not limited to, interactive audio
38 and video, remote patient monitoring or store-and-forward,
39 that meets the requirements of the Health Insurance
40 Portability and Accountability Act of 1996, the Health
41 Information Technology for Economic and Clinical Health Act
42 or other applicable Federal or State law.

43 (2) The term does not include the use of:

44 (i) Audio-only medium, voicemail, facsimile, e-mail,
45 instant messaging, text messaging or online
46 questionnaire, or any combination thereof.

47 (ii) A telephone call, except as provided under
48 section 5(a)(3).

49 Section 3. Regulation of telemedicine by professional licensure
50 boards.

51 (a) Requirements.--

1 (1) A health care provider that holds a valid license,
2 certificate or registration from a Commonwealth professional
3 licensure board shall be authorized to practice telemedicine
4 in accordance with this act and the corresponding licensure
5 board regulations.

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

10 (b) Regulations.--Each licensure board shall within 24
11 months of the effective date of this section promulgate
12 regulations that are consistent with this act to provide for and
13 regulate telemedicine within the scope of practice and standard
14 of care regulated by the board. The regulations shall:

15 (1) Consider model policies for the appropriate use of
16 telemedicine technologies.

17 (2) Include patient privacy and data security standards
18 that are in compliance with the Health Insurance Portability
19 and Accountability Act of 1996 and the Health Information
20 Technology for Economic and Clinical Health Act.

21 (c) Temporary regulations.--In order to facilitate the
22 prompt implementation of this act, the licensure boards shall
23 publish temporary regulations regarding implementation of this
24 act in the Pennsylvania Bulletin within 120 days of the
25 effective date of this section. Temporary regulations are not
26 subject to:

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

30 (2) Sections 204(b) and 301(10) of the act of October
31 15, 1980 (P.L.950, No.164), known as the Commonwealth
32 Attorneys Act.

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

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

37 (d) Expiration.--Temporary regulations shall expire no later
38 than 24 months following publication of temporary regulations.
39 Regulations adopted after this period shall be promulgated as
40 provided by law.

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

45 Section 4. Compliance.

46 A health care provider providing telemedicine services to an
47 individual located within this Commonwealth shall comply with
48 all applicable Federal and State laws and regulations, and shall
49 hold a valid license, certificate or registration by an
50 appropriate Commonwealth licensure board. Failure to hold a
51 valid license, certificate or registration shall subject the

1 health care provider to discipline by the respective licensure
2 board for unlicensed practice.

3 Section 5. Evaluation and treatment.

4 (a) Requirements.--Except as provided under subsection (c),
5 a health care provider who provides telemedicine to an
6 individual located in this Commonwealth shall comply with the
7 following:

8 (1) For a telemedicine encounter in which the provider
9 does not have an established provider-patient relationship,
10 the provider shall:

11 (i) verify the location and identity of the
12 individual receiving care; and

13 (ii) disclose the health care provider's identity,
14 geographic location and medical specialty or applicable
15 credentials.

16 (2) Obtain informed consent regarding the use of
17 telemedicine technologies from the individual or other person
18 acting in a health care decision-making capacity for the
19 individual. The individual or other person acting in a health
20 care decision-making capacity, including the parent or legal
21 guardian of a child in accordance with the act of February
22 13, 1970 (P.L.19, No.10), entitled "An act enabling certain
23 minors to consent to medical, dental and health services,
24 declaring consent unnecessary under certain circumstances,"
25 has the right to choose the form of service delivery, which
26 includes the right to refuse telemedicine services without
27 jeopardizing the individual's access to other available
28 services.

29 (3) Provide an appropriate examination or assessment
30 using telemedicine technologies. The health care provider may
31 utilize interactive audio without the requirement of
32 interactive video if it is used in conjunction with store-
33 and-forward technology and, after access and review of the
34 patient's medical records, the provider determines that the
35 provider is able to meet the same standards of care as if the
36 health care services were provided in person. The provider
37 shall inform the patient that the patient has the option to
38 request interactive audio and video.

39 (4) Establish a diagnosis and treatment plan or execute
40 a treatment plan.

41 (5) Create and maintain an electronic medical record or
42 update an existing electronic medical record for the patient
43 within 24 hours. An electronic medical record shall be
44 maintained in accordance with electronic medical records
45 privacy rules under the Health Insurance Portability and
46 Accountability Act of 1996.

47 (6) Provide a visit summary to the individual if
48 requested.

49 (7) Have an emergency action plan in place for medical
50 and behavioral health emergencies and referrals.

51 (b) Disclosures.--Providers offering online refractive

1 services shall inform patients that the service is not an ocular
2 health exam. This subsection shall not be construed to prohibit
3 online refractive services if the information notice is clearly
4 and conspicuously communicated to the patient prior to the
5 online refractive service.

6 (c) Applicability.--

7 (1) Subsection (a)(1) shall not apply to on-call or
8 cross-coverage services.

9 (2) Subsection (a)(1) and (2) shall not apply to an
10 emergency medical condition.

11 Section 6. Insurance coverage of telemedicine.

12 (a) Insurance coverage and reimbursement.--

13 (1) A health insurance policy issued, delivered,
14 executed or renewed in this Commonwealth after the effective
15 date of this section shall provide coverage for telemedicine
16 delivered by a participating network provider who provides a
17 covered service via telemedicine consistent with the
18 insurer's medical policies. A health insurance policy may not
19 exclude a health care service for coverage solely because the
20 service is provided through telemedicine.

21 (2) A health insurer shall reimburse a health care
22 provider that is a participating network provider for
23 telemedicine if the health insurer reimburses the same
24 participating provider for the same service through an in-
25 person encounter. The standard of care and rules of practice
26 applicable to an in-person encounter shall apply to a
27 telemedicine encounter.

28 (3) Payment for a covered service provided via
29 telemedicine by any network provider shall be established
30 between the health care provider and health insurer.

31 (b) Applicability.--This section shall apply as follows:

32 (1) Subsection (a)(1) and (2) shall not apply if the
33 telemedicine service is facilitated via a medical device or
34 other technology that provides clinical data or information,
35 excluding existing information in an electronic medical
36 records system, other than that independently provided
37 through interactive audio or video or written input from the
38 patient.

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

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

49 (c) Construction.--Nothing under this section shall be
50 construed to:

51 (1) Prohibit a health insurer from reimbursing other

1 providers for covered services provided via telemedicine.

2 (2) Require a health insurer to reimburse an out-of-
3 network provider for telemedicine.

4 Section 7. Medicaid program reimbursement.

5 (a) Medical assistance payment.--Medical assistance payments
6 shall be made on behalf of eligible individuals for
7 telemedicine, consistent with Federal law, as specified under
8 this act if the service would be covered through an in-person
9 encounter.

10 (b) Applicability.--Subsection (a) does not apply if:

11 (1) the telemedicine-enabling device, technology or
12 service fails to comply with applicable law and regulatory
13 guidance regarding the secure transmission and maintenance of
14 patient information; or

15 (2) the provision of the service using telemedicine
16 would be inconsistent with the standard of care.

17 Section 8. Effective date.

18 This act shall take effect as follows:

19 (1) The following provisions shall take effect in 90
20 days:

21 (i) Section 6.

22 (ii) Section 7.

23 (2) The remainder of this act shall take effect
24 immediately.