

AMENDMENTS TO SENATE BILL NO. 857

Sponsor: REPRESENTATIVE DAY

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1 Amend Bill, page 1, lines 1 through 3, by striking out all of
2 said lines and inserting

3 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
4 Statutes, providing for telemedicine, authorizing the
5 regulation of telemedicine by professional licensing boards
6 and providing for insurance coverage of telemedicine.

7 Amend Bill, page 1, lines 6 through 17; pages 2 through 12,
8 lines 1 through 30; page 13, lines 1 through 18; by striking out
9 all of said lines on said pages and inserting

10 Section 1. Title 40 of the Pennsylvania Consolidated
11 Statutes is amended by adding a chapter to read:

12 CHAPTER 41
13 TELEMEDICINE

14 Sec.

15 4101. Scope of chapter.

16 4102. Definitions.

17 4103. Regulation of telemedicine by professional licensure
18 boards.

19 4104. Compliance.

20 4105. Evaluation and treatment.

21 4106. Insurance coverage of telemedicine.

22 4107. Medicaid program reimbursement.

23 § 4101. Scope of chapter.

24 This chapter relates to telemedicine, the regulation of
25 telemedicine by professional licensing boards and insurance
26 coverage of telemedicine.

27 § 4102. Definitions.

28 The following words and phrases when used in this chapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

31 "Audio-only medium." A prerecorded audio presentation or
32 recording.

33 "Emergency medical condition." A medical condition
34 manifesting itself by acute symptoms of sufficient severity,
35 including severe pain, such that the absence of immediate

1 medical attention could reasonably be expected to result in
2 placing the health of the individual in serious jeopardy,
3 serious impairment to bodily functions or serious dysfunction of
4 a bodily organ or part.

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

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

9 (2) A federally qualified health center as defined in
10 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,
11 42 U.S.C. § 1395x(aa)(4)).

12 (3) A rural health clinic as defined in section 1861(aa)
13 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
14 1395x(aa)(2)).

15 (4) A general, mental, chronic disease or other type of
16 hospital licensed in this Commonwealth.

17 (5) A pharmacist who holds a valid license under the act
18 of September 27, 1961 (P.L.1700, No.699), known as the
19 Pharmacy Act.

20 (6) An occupational therapist who holds a valid license
21 under the act of June 15, 1982 (P.L.502, No.140), known as
22 the Occupational Therapy Practice Act.

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

27 (8) An audiologist who holds a valid license under the
28 Speech-Language Pathologists and Audiologists Licensure Act.

29 (9) A dental hygienist who holds a valid license under
30 the act of May 1, 1933 (P.L.216, No.76), known as The Dental
31 Law.

32 (10) A social worker, clinical social worker, marriage
33 and family therapist or professional counselor who holds a
34 valid license under the act of July 9, 1987 (P.L.220, No.39),
35 known as the Social Workers, Marriage and Family Therapists
36 and Professional Counselors Act.

37 (11) A registered nurse who holds a valid license under
38 the act of May 22, 1951 (P.L.317, No.69), known as The
39 Professional Nursing Law.

40 (12) A genetic counselor who holds a valid license under
41 the act of December 20, 1985 (P.L.457, No.112), known as the
42 Medical Practice Act of 1985, or the act of October 5, 1978
43 (P.L.1109, No.261), known as the Osteopathic Medical Practice
44 Act.

45 (13) An out-of-State health care provider.

46 "Health care services." Services for the diagnosis,
47 prevention, treatment, cure or relief of a health condition,
48 injury, disease or illness.

49 "Health Information Technology for Economic and Clinical
50 Health Act." The Health Information Technology for Economic and
51 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and

1 467-496).

2 "Health insurance policy." As follows:

3 (1) An individual or group health insurance policy,
4 contract or plan that provides coverage for services provided
5 by a health care facility or health care provider that is
6 offered by a health insurer.

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

10 (3) Except as provided under paragraph (2), the term
11 does not include accident only, fixed indemnity, limited
12 benefit, credit, dental, vision, specified disease, Medicare
13 supplement, Civilian Health and Medical Program of the
14 Uniformed Services (CHAMPUS) supplement, long-term care or
15 disability income, workers' compensation or automobile
16 medical payment insurance.

17 "Health Insurance Portability and Accountability Act of
18 1996." The Health Insurance Portability and Accountability Act
19 of 1996 (Public Law 104-191, 110 Stat. 1936).

20 "Health insurer." An entity that holds a valid license by
21 the department with accident and health authority to issue a
22 health insurance policy and governed under any of the following:

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

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

28 (3) Chapter 61 (relating to hospital plan corporations).

29 (4) Chapter 63 (relating to professional health services
30 plan corporations).

31 "Interactive audio and video." Real-time two-way or
32 multiple-way communication between a health care provider and a
33 patient.

34 "Licensure board." Each licensing board within the Bureau of
35 Professional and Occupational Affairs of the Department of State
36 with jurisdiction over a professional licensee identified as a
37 health care provider under this chapter.

38 "On-call or cross-coverage services." The provision of
39 telemedicine by a health care provider designated by another
40 provider with a provider-patient relationship to deliver
41 services on a temporary basis so long as the designated provider
42 is in the same group or health system, has access to the
43 patient's prior medical records, holds a valid license in this
44 Commonwealth and is in a position to coordinate care.

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

48 (1) discharging official duties in the armed forces of
49 the United States, the United States Public Health Services
50 or the United States Department of Veterans Affairs;

51 (2) providing telemedicine services to a patient through

1 a federally operated facility;

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

6 (4) providing provider-to-provider consultation
7 services; or

8 (5) providing services which would otherwise be exempt
9 from the requirement of licensure, certification or
10 registration in this Commonwealth under the respective
11 licensure act.

12 "Participating network provider." A health care provider
13 that has a network participation agreement with an insurer.

14 "Provider-to-provider consultation." The act of seeking
15 advice and recommendations from another health care provider for
16 diagnostic studies, therapeutic interventions or other services
17 that may benefit the patient of the initiating health care
18 provider.

19 "Store-and-forward." As follows:

20 (1) Technology that stores and transmits or grants
21 access to a patient's clinical information for review by a
22 health care provider who is at a different location.

23 (2) The term does not include the storage, transmission
24 or use of electronic medical records without the concurrent
25 transmission of additional clinical information not already
26 present in the electronic medical records.

27 "Telemedicine." As follows:

28 (1) The delivery of health care services provided
29 through telemedicine technologies to a patient by a health
30 care provider who is at a different location.

31 (2) The term does not include a provider-to-provider
32 consultation.

33 "Telemedicine technologies." As follows:

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

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

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

45 (ii) A telephone call, except as provided under
46 section 4105(a)(3) (relating to evaluation and
47 treatment).

48 § 4103. Regulation of telemedicine by professional licensure
49 boards.

50 (a) Requirements.--

51 (1) A health care provider who holds a valid license,

1 certificate or registration from a Commonwealth professional
2 licensure board shall be authorized to practice telemedicine
3 in accordance with this chapter and the corresponding
4 licensure board regulations.

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

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

14 (1) Consider model policies and clinical guidelines for
15 the appropriate use of telemedicine technologies.

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

20 (c) Temporary regulations.--In order to facilitate the
21 prompt implementation of this chapter, the licensure boards
22 shall transmit notice of temporary regulations regarding
23 implementation of this chapter to the Legislative Reference
24 Bureau for publication in the Pennsylvania Bulletin within 120
25 days of the effective date of this section. Temporary
26 regulations are not 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 chapter shall be
42 in full force and effect even if the licensure boards have not
43 yet published temporary regulations or implemented the
44 regulations required under this section.

45 § 4104. 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 § 4105. Evaluation and treatment.

4 (a) Requirements.--Except as provided under subsection (d),
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. If the health
37 care provider utilizes interactive audio without interactive
38 video, the provider shall inform the patient that the patient
39 has the option to request interactive audio and video.

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

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

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

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

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

7 (c) Limitations on treatment.--Telemedicine services or
8 telemedicine technologies may not be permitted to be utilized or
9 employed for the delivery or administration of any medications
10 or health care services, which are, as of July 1, 2019, required
11 to be delivered or administered in a health care clinic, medical
12 facility, physician's office, hospital or ambulatory surgical
13 facility, according to Federal or State statute, regulation or
14 promulgated regulatory rule or by the United States Food and
15 Drug Administration Risk Evaluation and Mitigation Strategies
16 (REMS).

17 (d) Applicability.--

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

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

22 § 4106. Insurance coverage of telemedicine.

23 (a) Insurance coverage and reimbursement.--

24 (1) A health insurance policy issued, delivered,
25 executed or renewed in this Commonwealth after the effective
26 date of this section shall provide coverage for medically
27 necessary telemedicine delivered by a participating network
28 provider who provides a covered service via telemedicine
29 consistent with the insurer's medical policies. A health
30 insurance policy may not exclude a health care service for
31 coverage solely because the service is provided through
32 telemedicine.

33 (2) Subject to paragraph (1), a health insurer shall
34 reimburse a health care provider that is a participating
35 network provider for both in-person and telemedicine services
36 in accordance with the terms and conditions of the network
37 participation agreement as negotiated between the insurer and
38 the participating provider, the form of which shall be filed
39 with and subject to review by the Department of Health. The
40 network participation agreement may not prohibit
41 reimbursement solely because a health care service is
42 provided by telemedicine. Reimbursement shall not be
43 conditioned upon the use of an exclusive or proprietary
44 telemedicine technology or vendor.

45 (3) Payment for a covered service provided via
46 telemedicine by any participating network provider shall be
47 negotiated between the health care provider and health
48 insurer.

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

50 (1) Subsection (a)(1) and (2) shall not apply if the
51 telemedicine service is facilitated via a medical device or

1 other technology that provides clinical data or information,
2 excluding existing information in an electronic medical
3 records system, other than that independently provided
4 through interactive audio and video with, or store-and-
5 forward imaging provided by, the patient.

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 department, this section shall apply to a policy for
9 which a form or rate is first filed on or after 180 days
10 after 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 department, this section shall apply to a
14 policy issued or renewed on or after 180 days after the
15 effective date of this section.

16 (c) Construction.--Nothing under this section shall be
17 construed to:

18 (1) Prohibit a health insurer from reimbursing other
19 providers for covered services provided via telemedicine.

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

22 § 4107. Medicaid program reimbursement.

23 (a) Medical assistance payment.--Medical assistance payments
24 shall be made on behalf of eligible individuals for
25 telemedicine, consistent with Federal law, as specified under
26 this chapter if the service would be covered through an in-
27 person encounter.

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

29 (1) the telemedicine-enabling device, technology or
30 service fails to comply with applicable law and regulatory
31 guidance regarding the secure transmission and maintenance of
32 patient information; or

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

35 Section 2. This act shall take effect as follows:

36 (1) The addition of 40 Pa.C.S. § 4106 shall take effect
37 upon publication in the Pennsylvania Bulletin of the
38 temporary regulations required in 40 Pa.C.S. § 4103(c).

39 (2) The addition of 40 Pa.C.S. § 4107 shall take effect
40 in 90 days.

41 (3) The remainder of this act shall take effect
42 immediately.