

## 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.