AN ACT

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

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

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

CHAPTER 41

TELEMEDICINE

Sec.

4101. Scope of chapter.

4102. Definitions.

4103. Regulation of telemedicine by professional licensing boards.

4104. Compliance.
4106. Insurance coverage of telemedicine.
4108. Medicaid program reimbursement.
4109. Children's Health Insurance Program reimbursement.
§ 4101. Scope of chapter.
This chapter relates to telemedicine, the regulation of telemedicine by professional licensing boards and insurance coverage of telemedicine.
§ 4102. Definitions.
The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"Audio-only medium." A prerecorded audio presentation or recording.
"Emergency medical condition." A medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions or serious dysfunction of a bodily organ or part.
"Health care provider" or "provider." Any of the following:
(1) A health care practitioner as defined in section 103 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.
(2) A federally qualified health center as defined in section 1861(aa)(4) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395x(aa)(4)).
(3) A rural health clinic as defined in section 1861(aa) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395x(aa)(2)).

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

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

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

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

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

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

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

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

(12) A genetic counselor who holds a valid license under the act of December 20, 1985 (P.L.457, No.112), known as the

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

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

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

"Health insurance policy." As follows:

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

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

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


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

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

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

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

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

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

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

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

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

(1) discharging official duties in the armed forces of
the United States, the United States Public Health Services
or the United States Department of Veterans Affairs;
(2) providing telemedicine services to a patient through a federally operated facility;
(3) providing telemedicine services in response to an emergency medical condition, if the care for the patient is referred to an appropriate health care provider in this Commonwealth as promptly as possible under the circumstances;
(4) providing provider-to-provider consultation services; or
(5) providing services which would otherwise be exempt from the requirement of licensure, certification or registration in this Commonwealth under the respective licensure act.

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

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

"Store-and-forward." As follows:

(1) Technology that stores and transmits or grants access to a patient's clinical information for review by a health care provider who is at a different location.
(2) The term does not include the storage, transmission or use of electronic medical records without the concurrent transmission of additional clinical information not already present in the electronic medical records.

"Telemedicine." As follows:

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

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

"Telemedicine technologies." As follows:

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

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

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

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

§ 4103. Regulation of telemedicine by professional licensure boards.

(a) Requirements.--

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

(2) A health care provider who engages in telemedicine in a manner that does not comply with the standards of care or rules of practice shall be subject to discipline by the appropriate licensure board, as provided by law.
(b) Regulations.--Each licensure board shall within 24 months of the effective date of this section promulgate final regulations that are consistent with this chapter to provide for and regulate telemedicine within the scope of practice and standard of care regulated by the board. The regulations shall:

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

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

(c) Temporary regulations.--In order to facilitate the prompt implementation of this chapter, the licensure boards shall transmit notice of temporary regulations regarding implementation of this chapter to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin within 120 days of the effective date of this section. Temporary regulations are not subject to:

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

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


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

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

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

§ 4104. Compliance.

A health care provider providing telemedicine services to an individual located within this Commonwealth shall comply with all applicable Federal and State laws and regulations, and shall hold a valid license, certificate or registration by an appropriate Commonwealth licensure board. Failure to hold a valid license, certificate or registration shall subject the health care provider to discipline by the respective licensure board for unlicensed practice.


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

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

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

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

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

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

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

(5) Create and maintain an electronic medical record or update an existing electronic medical record for the patient within 24 hours. An electronic medical record shall be maintained in accordance with electronic medical records privacy rules under the Health Insurance Portability and Accountability Act of 1996.
(6) Provide a visit summary to the individual if requested.

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

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

(c) Applicability.--

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

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

§ 4106. Insurance coverage of telemedicine.

(a) Insurance coverage and reimbursement.--

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

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

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

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

(1) Subsection (a)(1) and (2) shall not apply if the
telemedicine service is facilitated via a medical device or
other technology that provides clinical data or information,
excluding existing information in an electronic medical
records system, other than that independently provided
through interactive audio and video with, or store-and-
forward imaging provided by, the patient.

(2) For a health insurance policy for which either rates
or forms are required to be filed with the Federal Government
or the department, this section shall apply to a policy for
which a form or rate is first filed on or after 180 days
after the effective date of this section.

(3) For a health insurance policy for which neither
rates nor forms are required to be filed with the Federal
Government or the department, this section shall apply to a
policy issued or renewed on or after 180 days after the
effective date of this section.
(c) Construction.--Nothing under this section shall be construed to:

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

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


(a) Conditions.--Notwithstanding section 4106 (relating to insurance coverage of telemedicine), the following shall apply for the duration of the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency thereafter:

(1) A health insurer shall reimburse a health care provider for a medically necessary COVID-19-related health care service provided by telemedicine.

(2) Reimbursement shall be equal to what the health care provider would have received if the health care service had been rendered through an in-person encounter.

(b) Expiration.--This section shall expire upon the termination or expiration under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor) of the disaster emergency.

§ 4108. Medicaid program reimbursement.

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

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

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

§ 4109. Children's Health Insurance Program reimbursement.
(a) Children's Health Insurance Program payment.--Children's
Health Insurance Program payments shall be made on behalf of
eligible individuals for telemedicine, consistent with Federal
law, as specified under this chapter if the service would be
covered through an in-person encounter.

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

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

(c) Definitions.--As used in this section, the following
words and phrases shall have the meanings given to them in this
subsection unless the context clearly indicates otherwise:
"Children's Health Insurance Program." The children's health
insurance program under Article XXIII-A of the act of May 17,
1921 (P.L.682, No.284), known as The Insurance Company Law of
1921.

Section 2. This act shall take effect as follows:
(1) The addition of 40 Pa.C.S. § 4106 shall take effect
upon publication in the Pennsylvania Bulletin of the
temporary regulations required in 40 Pa.C.S. § 4103(c).
(2) The addition of 40 Pa.C.S. §§ 4108 and 4109 shall take effect in 90 days.

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