

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 780 Session of 2017

INTRODUCED BY VOGEL, YAW, BARTOLOTTA, BREWSTER, MARTIN, AUMENT, KILLION, COSTA, VULAKOVICH, RAFFERTY, YUDICHAK, MENSCH, BAKER, ARGALL, LANGERHOLC, WHITE, WARD, STEFANO, BLAKE, LEACH, GREENLEAF AND BROWNE, JUNE 22, 2017

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, JANUARY 30, 2018

AN ACT

1 Providing for telemedicine and for insurance coverage.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Telemedicine
6 Act.

7 Section 2. Definitions.

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

11 ~~"Ancillary service plans." Any individual or group health <--~~
12 ~~insurance plan, subscriber contract or certificate that provides~~
13 ~~exclusive coverage for dental services or vision services.~~

14 "Health care practitioner." Any of the following:

15 (1) A health care practitioner as defined in section 103
16 of the act of July 19, 1979 (P.L.130, No.48), known as the

1 Health Care Facilities Act.

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

5 (3) A rural health clinic as defined in section 1861(aa)
6 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
7 1395x(aa)(2)).

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

11 "Health insurance policy." As follows:

12 (1) An individual or group health insurance policy,
13 contract or plan that provides medical or health care
14 coverage by a health care facility or health care
15 practitioner that is offered by an entity subject to any of
16 the following:

17 (i) The act of May 17, 1921 (P.L.682, No.284), known
18 as The Insurance Company Law of 1921.

19 (ii) Article XXIV of The Insurance Company Law of
20 1921.

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

24 (iv) 40 Pa.C.S. Ch. 61 (relating to hospital plan
25 corporations).

26 (v) 40 Pa.C.S. Ch. 63 (relating to professional
27 health services plan corporations).

28 (2) The term INCLUDES AN INDIVIDUAL OR GROUP HEALTH
29 INSURANCE POLICY, CONTRACT OR PLAN THAT PROVIDES DENTAL OR
30 VISION COVERAGE THROUGH A PROVIDER NETWORK. <--

1 (3) EXCEPT AS PROVIDED IN PARAGRAPH (2), THE TERM does
2 not include accident only, fixed indemnity, limited benefit,
3 credit, DENTAL, VISION, specified disease, Medicare <--
4 supplement, Civilian Health and Medical Program of the
5 Uniformed Services (CHAMPUS) supplement, long-term care or
6 disability income, workers' compensation or automobile
7 medical payment insurance.

8 ~~"Interactive audio." The use of asynchronous store and <--~~
9 ~~forward technology in conjunction with synchronous audio~~
10 ~~interaction between a health care practitioner and a patient.~~

11 ~~"Store and forward technology." Technology that stores and~~
12 ~~transmits or grants access to a patient's clinical information~~
13 ~~for review by a health care practitioner who is at a different~~
14 ~~location.~~

15 "Telemedicine" or "telehealth." The delivery of health care
16 services provided through ~~technology~~ SYNCHRONOUS OR ASYNCHRONOUS <--
17 TECHNOLOGY, INCLUDING, BUT NOT LIMITED TO, REMOTE PATIENT

18 MONITORING, to a patient by a health care practitioner who is at
19 a different location. ~~The term includes a real time encounter <--~~
20 ~~between the patient and health care practitioner through~~

21 ~~interactive audio, video or other telecommunications or~~
22 ~~electronic technology and the acquisition, evaluation and~~
23 ~~transmission of patient information outside of a real time~~

24 ~~encounter, including store and forward technology and remote~~
25 ~~patient monitoring of medical data.~~ The term does not include
26 the use of audio-only telephone conversation, voicemail,

27 facsimile, e-mail, instant messaging, text messaging, an online
28 questionnaire or any combination thereof, ~~nor an automated <--~~
29 ~~computer program used to diagnose or treat ocular or refractive~~

30 conditions.

1 Section 3. Licensure of health care ~~practitioner~~ PRACTITIONERS. <--

2 ~~(a) Requirements. The Commonwealth's health professional~~ <--

3 (A) REQUIREMENTS.-- <--

4 (1) HEALTH CARE PRACTITIONERS PRACTICING TELEMEDICINE IN
5 THIS COMMONWEALTH SHALL BE LICENSED, CERTIFIED OR REGISTERED
6 BY THE APPROPRIATE COMMONWEALTH HEALTH PROFESSIONAL LICENSURE
7 BOARD.

8 (2) THE COMMONWEALTH'S HEALTH PROFESSIONAL licensure
9 boards shall maintain consistent licensure ~~or~~, certification <--
10 OR REGISTRATION and standards of care requirements between <--
11 in-person and telemedicine-provided practices for health care
12 practitioners. Nothing in this section is intended to create
13 any new standards of care.

14 (3) NOTHING IN THIS ACT IS INTENDED TO EXPAND A HEALTH <--
15 CARE PRACTITIONER'S SCOPE OF PRACTICE SUBJECT TO STATE
16 LICENSURE LAWS.

17 (b) Rules and regulations.--The board or licensing entity
18 governing a health care practitioner covered by this section may
19 promulgate regulations consistent with this act to provide for
20 and regulate the use of telemedicine ~~in the delivery of health~~ <--
21 ~~care services~~ within the scope of practice regulated by the
22 board or licensing entity. The board or licensing entity shall
23 not establish a more restrictive standard of professional
24 practice for the practice of telemedicine than that specifically
25 authorized by the health care practitioner's practice act or
26 other specifically applicable statute, ~~including prescribing and~~ <--
27 ~~dispensing controlled substances.~~

28 Section 4. Compliance.

29 A health care practitioner USING TELEMEDICINE shall comply <--
30 with all applicable Federal and State laws and regulations that

1 would apply if the practitioner were located in this
2 Commonwealth.

3 Section 5. Evaluation and treatment.

4 (a) Requirements.--Except as provided in subsection (b), a
5 health care practitioner who provides ~~a health care service~~ <--
6 TELEMEDICINE to an individual located in this Commonwealth <--
7 ~~through telemedicine~~ shall be subject to and comply with the <--
8 following:

9 (1) A health care practitioner shall: <--

10 ~~(i) establish a practitioner-patient relationship~~
11 ~~with the individual in accordance with subsection (c);~~

12 ~~(ii) prior~~ ESTABLISH A PRACTITIONER-PATIENT <--

13 RELATIONSHIP WITH THE INDIVIDUAL AS PART OF THE
14 TELEMEDICINE SERVICE IN ACCORDANCE WITH SUBSECTION (C)
15 AND SHALL, PRIOR to treatment of the individual, provide
16 an appropriate virtual examination initiated through a
17 consultation using telemedicine technologies and any
18 peripherals and diagnostic tests necessary to provide an
19 accurate diagnosis, if an in-person examination would
20 otherwise be medically appropriate in the provision of
21 the same service not delivered via telemedicine, as
22 reasonably determined by the professional independent
23 judgment of the health care practitioner; ~~or~~ <--

24 ~~(iii) establish a telemedicine practitioner-patient~~
25 ~~relationship that meets standards included in evidence-~~
26 ~~based telemedicine clinical practice guidelines.~~

27 (2) The same ~~standards~~ STANDARD of care applicable to <--
28 traditional, in-person health care services shall apply to
29 treatment and consultation recommendations made via
30 telemedicine.

1 (3) A health care practitioner ~~practicing telemedicine~~ <--
2 may utilize ~~interactive~~ audio without the requirement of <--
3 video if, after access and review of the patient's medical
4 records, the practitioner determines that the practitioner is
5 able to meet the same standard of care as if the health care
6 services were provided in person. The practitioner shall
7 inform the patient that the patient has the option to request
8 telemedicine services that include video.

9 ~~(4) The health care practitioner shall have an emergency <--
10 action plan in place for medical emergencies and referrals
11 when needed.~~

12 (4) PRACTITIONERS PROVIDING ONLINE REFRACTIVE SERVICES <--
13 SHALL INFORM PATIENTS THAT THE SERVICE IS NOT AN OCULAR
14 HEALTH EXAM. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO
15 PROHIBIT ONLINE REFRACTIVE SERVICES IF THE INFORMATION IS
16 CLEARLY AND CONSPICUOUSLY COMMUNICATED TO THE PATIENT PRIOR
17 TO THE ONLINE REFRACTIVE SERVICE.

18 (b) Exceptions.--This section shall not apply to the
19 following:

20 (1) Consultation by a health care practitioner with
21 another health care practitioner who has an ongoing
22 practitioner-patient relationship with the individual that
23 was established through an in-person or appropriate virtual
24 examination and agrees to supervise the individual's care.

25 (2) The provision of on-call or cross-coverage health
26 care services to the active patients of another health care
27 practitioner in the same specialty, provided that the health
28 care practitioner whose active patients are being provided
29 the health care services has designated the exempted health
30 care practitioner as an on-call or cross-coverage health care

1 practitioner for the health care practitioner's active
2 patients.

3 (c) Practitioner-patient relationship.--For purposes of
4 subsection (a)(1), a practitioner-patient relationship is
5 established when the health care practitioner satisfies each of
6 the following:

7 (1) Verifies the location and identity of the individual
8 receiving care each time ~~health care services are provided~~ <--
9 ~~through~~ telemedicine IS PROVIDED. <--

10 (2) Discloses the health care practitioner's identity,
11 geographic location and medical specialty or applicable
12 credentials.

13 (3) Obtains informed consent regarding the use of
14 telemedicine technologies from the individual or other person
15 acting in a health care decision-making capacity for the
16 individual.

17 (4) Establishes a diagnosis and treatment plan, ~~as~~ <--
18 ~~reasonably determined by the professional independent~~
19 ~~judgment of the health care practitioner.~~

20 (5) Creates and maintains an electronic medical record
21 or updates an existing electronic medical record for the
22 patient within 24 hours. An electronic medical record shall
23 be maintained in accordance with electronic medical records
24 privacy rules under the Federal Health Insurance Portability
25 and Accountability Act of 1996 (Public Law 104-191, 110 Stat.
26 1936).

27 (6) Provides a visit summary to the individual.

28 Section 6. Coverage of telemedicine ~~services~~. <--

29 (a) Insurance coverage and reimbursement.--

30 (1) A health insurance policy ~~or ancillary service plan~~ <--

1 issued, delivered, executed or renewed in this Commonwealth
2 after the effective date of this section shall provide
3 coverage for ~~health care services~~ TELEMEDICINE consistent <--
4 with the insurer's medical policy. A health insurance policy
5 ~~or ancillary service plan~~ shall not exclude a health care <--
6 service for coverage solely because the service is provided
7 through telemedicine.

8 (2) An insurer, corporation or health maintenance
9 organization shall reimburse the health care practitioner for
10 ~~health care services delivered through~~ telemedicine if the <--
11 insurer, corporation or health maintenance organization
12 reimburses for the same service through in-person
13 consultation. Payment for telemedicine encounters shall be
14 established between the health care practitioner and insurer.

15 (b) Construction of law.--Nothing in this act shall prohibit
16 a health insurance policy ~~or ancillary service plan~~ from <--
17 providing reimbursement for ~~a health care service delivered~~ <--
18 ~~through~~ telemedicine where the same or similar service is not
19 otherwise eligible for reimbursement when provided through in-
20 person consultation or other contact between a health care
21 practitioner and an individual.

22 ~~Section 7. Expansion.~~ <--

23 ~~Nothing in this act shall expand a health care practitioner's~~
24 ~~scope of practice subject to State licensure laws.~~

25 Section 8 7. Medicaid program reimbursement. <--

26 The Department of Human Services shall provide medical
27 assistance coverage and reimbursement, including medical
28 assistance fee-for-service and managed care programs, for ~~health~~ <--
29 ~~care services delivered through~~ telemedicine in accordance with
30 this act. Nothing in this act shall require the department to

1 provide reimbursement for ~~health care services~~ TELEMEDICINE THAT <--
2 IS ineligible for reimbursement under medical assistance fee-
3 for-service and managed care program guidelines established
4 under 42 CFR Ch. IV Subch. C (relating to medical assistance
5 programs).

6 Section 9 8. Effective date. <--

7 This act shall take effect in 90 days.