
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 642 Session of
2021

INTRODUCED BY SAPPEY, HILL-EVANS, HOWARD, SCHLOSSBERG, KINSEY,
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McNEILL, ISAACSON, N. NELSON, FRANKEL, HOHENSTEIN, HARRIS,
GAINNEY AND SCHLEGEL CULVER, FEBRUARY 24, 2021

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 24, 2021

AN ACT

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

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

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

9 CHAPTER 41

10 TELEMEDICINE

11 Sec.

12 4101. Scope of chapter.

13 4102. Definitions.

14 4103. Regulation of telemedicine by professional licensure
15 boards.

16 4104. Compliance.

17 4105. Evaluation and treatment.

1 4106. Insurance coverage of telemedicine.

2 4107. Insurance reimbursement of telemedicine services during
3 COVID-19 pandemic.

4 4108. Medicaid program reimbursement.

5 4109. Children's Health Insurance Program reimbursement.

6 § 4101. Scope of chapter.

7 This chapter relates to telemedicine, the regulation of
8 telemedicine by professional licensure boards and insurance
9 coverage of telemedicine.

10 § 4102. Definitions.

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

14 "Audio-only medium." A prerecorded audio presentation or
15 recording.

16 "Emergency medical condition." A medical condition
17 manifesting itself by acute symptoms of sufficient severity,
18 including severe pain, such that the absence of immediate
19 medical attention could reasonably be expected to result in
20 placing the health of the individual in serious jeopardy,
21 serious impairment to bodily functions or serious dysfunction of
22 a bodily organ or part.

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

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

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

30 (3) A rural health clinic as defined in section 1861(aa)

1 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
2 1395x(aa) (2)).

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

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

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

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

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

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

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

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

28 (12) A genetic counselor who holds a valid license under
29 the act of December 20, 1985 (P.L.457, No.112), known as the
30 Medical Practice Act of 1985, or the act of October 5, 1978

1 (P.L.1109, No.261), known as the Osteopathic Medical Practice
2 Act.

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

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

7 "Health Information Technology for Economic and Clinical
8 Health Act." The Health Information Technology for Economic and
9 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
10 467-496).

11 "Health insurance policy." As follows:

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

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

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

26 "Health Insurance Portability and Accountability Act of
27 1996." The Health Insurance Portability and Accountability Act
28 of 1996 (Public Law 104-191, 110 Stat. 1936).

29 "Health insurer." An entity that holds a valid license by
30 the department with accident and health authority to issue a

1 health insurance policy and governed under any of the following:

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

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

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

8 (4) Chapter 63 (relating to professional health services
9 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 chapter.

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

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.

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

3 "Telemedicine technologies." As follows:

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

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

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

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

18 § 4103. Regulation of telemedicine by professional licensure
19 boards.

20 (a) Requirements.--

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

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

30 (b) Regulations.--Each licensure board shall within 24

1 months of the effective date of this section promulgate final
2 regulations that are consistent with this chapter to provide for
3 and regulate telemedicine within the scope of practice and
4 standard of care regulated by the board. The regulations shall:

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

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

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

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

21 (2) Sections 204(b) and 301(10) of the act of October
22 15, 1980 (P.L.950, No.164), known as the Commonwealth
23 Attorneys Act.

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

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

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

1 provided by law.

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

6 § 4104. Compliance.

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

15 § 4105. Evaluation and treatment.

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

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

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

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

28 (2) Obtain informed consent regarding the use of
29 telemedicine technologies from the individual or other person
30 acting in a health care decision-making capacity for the

1 individual. The individual or other person acting in a health
2 care decision-making capacity, including the parent or legal
3 guardian of a child in accordance with the act of February
4 13, 1970 (P.L.19, No.10), entitled "An act enabling certain
5 minors to consent to medical, dental and health services,
6 declaring consent unnecessary under certain circumstances,"
7 has the right to choose the form of service delivery, which
8 includes the right to refuse telemedicine services without
9 jeopardizing the individual's access to other available
10 services.

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

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

24 (5) Create and maintain an electronic medical record or
25 update an existing electronic medical record for the patient
26 within 24 hours. An electronic medical record shall be
27 maintained in accordance with electronic medical records
28 privacy rules under the Health Insurance Portability and
29 Accountability Act of 1996.

30 (6) Provide a visit summary to the individual if

1 requested.

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

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

10 (c) Applicability.--

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

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

15 § 4106. Insurance coverage of telemedicine.

16 (a) Insurance coverage and reimbursement.--

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

26 (2) Subject to paragraph (1), a health insurer shall
27 reimburse a health care provider that is a participating
28 network provider for both in-person and telemedicine services
29 in accordance with the terms and conditions of the network
30 participation agreement as negotiated between the insurer and

1 the participating provider, the form of which shall be filed
2 with and subject to review by the Department of Health. The
3 network participation agreement may not prohibit
4 reimbursement solely because a health care service is
5 provided by telemedicine. Reimbursement shall not be
6 conditioned upon the use of an exclusive or proprietary
7 telemedicine technology or vendor.

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

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

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

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

25 (3) For a health insurance policy for which neither
26 rates nor forms are required to be filed with the Federal
27 Government or the department, this section shall apply to a
28 policy issued or renewed on or after 180 days after the
29 effective date of this section.

30 (c) Construction.--Nothing under this section shall be

1 construed to:

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

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

6 § 4107. Insurance reimbursement of telemedicine services during
7 COVID-19 pandemic.

8 (a) Conditions.--Notwithstanding section 4106 (relating to
9 insurance coverage of telemedicine), the following shall apply
10 for the duration of the proclamation of disaster emergency
11 issued by the Governor on March 6, 2020, published at 50 Pa.B.
12 1644 (March 21, 2020), and any renewal of the state of disaster
13 emergency thereafter:

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

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

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

23 § 4108. Medicaid program reimbursement.

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

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

30 (1) the telemedicine-enabling device, technology or

1 service fails to comply with applicable law and regulatory
2 guidance regarding the secure transmission and maintenance of
3 patient information; or

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

6 § 4109. Children's Health Insurance Program reimbursement.

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

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

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

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

19 (c) Definitions.--As used in this section, the following
20 words and phrases shall have the meanings given to them in this
21 subsection unless the context clearly indicates otherwise:

22 "Children's Health Insurance Program." The children's health
23 insurance program under Article XXIII-A of the act of May 17,
24 1921 (P.L.682, No.284), known as The Insurance Company Law of
25 1921.

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

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

30 (2) The addition of 40 Pa.C.S. §§ 4108 and 4109 shall

1 take effect in 90 days.

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