

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 705 Session of 2021

INTRODUCED BY VOGEL, LANGERHOLC, ARGALL, STREET, BARTOLOTTA, MARTIN, MENSCH, J. WARD, YUDICHAK, YAW, BAKER, COSTA, GORDNER, STEFANO, AUMENT AND HAYWOOD, MAY 21, 2021

SENATOR DISANTO, BANKING AND INSURANCE, AS AMENDED, JUNE 23, 2021

AN ACT

1 Relating to telemedicine; authorizing the regulation of
2 telemedicine by professional licensing boards; and providing
3 for insurance coverage of telemedicine.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Telemedicine
8 Act.

9 Section 2. Definitions.

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

13 "Asynchronous interaction." An exchange of information
14 between a patient and a health care provider that does not occur
15 in real time, including the secure collection and transmission
16 of a patient's medical information, clinical data, clinical
17 images, laboratory results and self-reported medical history.

1 "Emergency medical condition." A medical condition
2 manifesting itself by acute symptoms of sufficient severity,
3 including severe pain, such that the absence of immediate
4 medical attention could reasonably be expected to result in
5 placing the health of the individual in serious jeopardy,
6 serious impairment to bodily functions or serious dysfunction of
7 a bodily organ or part.

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

9 (1) An individual ~~who is~~ licensed, certified, ~~—~~ <--
10 ~~registered, permitted or otherwise authorized by law~~ <--
11 REGULATED to provide health care services ~~in~~ UNDER THE LAWS <--
12 OF this Commonwealth.

13 (2) A federally qualified health center as defined in
14 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,
15 42 U.S.C. § 1395x(aa)(4)).

16 (3) A rural health clinic as defined in section 1861(aa)
17 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
18 1395x(aa)(2)).

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

21 "Health care services." Services for the diagnosis,
22 prevention, treatment, HABILITATION, REHABILITATION, cure or <--
23 relief of a health condition, injury, disease or illness.

24 "Health Information Technology for Economic and Clinical
25 Health Act." The Health Information Technology for Economic and
26 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
27 467-496).

28 "Health insurance policy." As follows:

29 (1) An individual or group health insurance policy,
30 contract or plan that provides coverage for services provided

1 by a health care facility or health care provider that is
2 offered by a health insurer.

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

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

13 "Health Insurance Portability and Accountability Act of
14 1996." The Health Insurance Portability and Accountability Act
15 of 1996 (Public Law 104-191, 110 Stat. 1936).

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

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

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

25 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
26 corporations).

27 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
28 services plan corporations).

29 "Licensure board." Each licensing board within the Bureau of
30 Professional and Occupational Affairs of the Department of State

1 with jurisdiction over a health care provider under this act.

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

9 "Participating network provider." A health care provider
10 who has a network participation agreement with an insurer.

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

16 "Remote patient monitoring." The collection of physiological
17 data from a patient in one location, which is transmitted via
18 electronic communication technologies to a provider in a
19 different location for use in care and related support of the
20 patient.

21 "Synchronous interaction." A two-way or multiple-way
22 exchange of information between a patient and a health care
23 provider that occurs in real time via audio or video
24 conferencing.

25 "Telemedicine." The delivery of health care services to a
26 patient by a health care provider who is at a different
27 location, through synchronous interactions, asynchronous
28 interactions or remote patient monitoring that meet the
29 requirements of the Health Insurance Portability and
30 Accountability Act of 1996, the Health Information Technology

1 for Economic and Clinical Health Act or other applicable Federal
2 or State law regarding the privacy and security of electronic
3 transmission of health information. The term does not include
4 any of the following:

5 (1) The provision of health care services solely through
6 the use of voicemail, facsimile, e-mail or instant messaging
7 or a combination thereof.

8 (2) A provider-to-provider consultation.

9 Section 3. Regulation of telemedicine by professional licensure
10 boards.

11 Each licensure board shall promulgate regulations that are
12 consistent with this act to provide for and regulate
13 telemedicine within the scope of practice and standard of care
14 regulated by the board. The regulations shall:

15 (1) Consider model policies and clinical guidelines for
16 the appropriate use of synchronous interactions, asynchronous
17 interactions and remote patient monitoring.

18 (2) Include patient privacy and data security standards
19 that comply with Federal and State law, including the Health
20 Insurance Portability and Accountability Act of 1996 and the
21 Health Information Technology for Economic and Clinical
22 Health Act.

23 Section 4. Compliance.

24 A health care provider providing telemedicine services to an
25 individual located within this Commonwealth shall comply with
26 all applicable Federal and State laws and regulations. Failure
27 to comply with applicable laws and regulations shall subject the
28 health care provider to discipline by the respective licensure
29 board.

30 Section 5. Evaluation and treatment.

1 (a) Requirements.--A health care provider who provides
2 ~~healthcare~~ HEALTH CARE services via telemedicine to an <--
3 individual located in this Commonwealth shall comply with the
4 following:

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

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

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

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

26 (3) Perform a clinical evaluation that is appropriate
27 for the patient and the condition with which the patient
28 presents before providing treatment or issuing a prescription
29 through the use of telemedicine. A ~~healthcare~~ HEALTH CARE <--
30 provider may use a synchronous telemedicine interaction or an

1 asynchronous telemedicine interaction to perform the clinical
2 evaluation.

3 (4) Establish a diagnosis and treatment plan or execute
4 a treatment plan. IF DEEMED APPROPRIATE IN THE HEALTH CARE <--
5 PROVIDER'S CLINICAL JUDGMENT.

6 (5) Create and maintain an electronic medical record or
7 update an existing electronic medical record for the patient
8 within 24 hours. An electronic medical record shall be
9 maintained in accordance with electronic medical records
10 privacy rules under the Health Insurance Portability and
11 Accountability Act of 1996.

12 (6) Provide a visit summary to the individual if
13 requested.

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

16 (b) Disclosures.--Providers offering online refractive
17 services OR ONLINE DENTAL EVALUATIONS shall inform patients that <--
18 the service is not an ocular health exam OR A COMPREHENSIVE <--
19 DENTAL EXAMINATION. This subsection shall not be construed to
20 prohibit online refractive services OR ONLINE DENTAL EVALUATIONS <--
21 if the information notice is clearly and conspicuously
22 communicated to the patient prior to the online refractive
23 service OR ONLINE DENTAL EVALUATION. <--

24 (c) Applicability.--

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

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

29 (d) Standard of care.--A health care provider providing
30 health care services through telemedicine shall be subject to

1 the standard of care that would apply to the provision of the
2 same health care services in an in-person setting.

3 Section 6. Insurance coverage of telemedicine.

4 (a) Insurance coverage and reimbursement.--

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

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

26 (3) Payment for a covered service provided via
27 telemedicine by any participating network provider shall be
28 negotiated between the ~~health care~~ PARTICIPATING NETWORK <--
29 provider and health insurer.

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

1 (1) Subsection (a)(1) and (2) shall not apply if the
2 telemedicine service is facilitated via a medical device or
3 other technology that provides clinical data or information,
4 excluding existing information in an electronic medical
5 records system, other than that independently provided
6 through synchronous or asynchronous interactions OR REMOTE <--
7 PATIENT MONITORING with the patient.

8 (2) For a health insurance policy for which either rates
9 or forms are required to be filed with the Federal Government
10 or the Insurance Department, this section shall apply to a
11 policy for which a form or rate is first filed on or after
12 180 days after the effective date of this section.

13 (3) For a health insurance policy for which neither
14 rates nor forms are required to be filed with the Federal
15 Government or the Insurance Department, this section shall
16 apply to a policy issued or renewed on or after 180 days
17 after the effective date of this section.

18 (c) Construction.--Nothing under this section shall be
19 construed to:

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

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

24 (3) REQUIRE A HEALTH INSURER TO REIMBURSE A <--
25 PARTICIPATING NETWORK PROVIDER IF THE PROVISION OF THE
26 SERVICE USING TELEMEDICINE WOULD BE INCONSISTENT WITH THE
27 STANDARD OF CARE.

28 Section 7. Medicaid program reimbursement.

29 (a) Medical assistance payment.--Medical assistance payments
30 shall be made on behalf of eligible individuals for

1 telemedicine, consistent with Federal law, as specified under
2 this act if the service would be covered through an in-person
3 encounter.

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

5 (1) the telemedicine-enabling device, technology or
6 service fails to comply with applicable law and regulatory
7 guidance regarding the secure transmission and maintenance of
8 patient information; or

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

11 Section 8. Effective date.

12 This act shall take effect as follows:

13 (1) Section 7 shall take effect in 90 days.

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