



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 857

PRINTERS NO. 1388

PRIME SPONSOR: Vogel

COST / (SAVINGS)

FUND	FY 2019/20	FY 2020/21
General Fund	\$0	See "Fiscal Impact"
Professional Licensure Augmentation Account	\$0	\$0

SUMMARY: Amends Title 40 (Insurance) authorizing health care providers to use telemedicine; and to require insurers to provide coverage and reimbursement for its appropriate use by participating network providers. Section 4106 (relating to insurance coverage of telemedicine) of the legislation would take effect upon publication of the temporary regulations. Section 4107 (relating to Medicaid Program reimbursement) of the legislation would take effect in 90 days. The remainder of the legislation would take effect immediately.

ANALYSIS: This legislation authorizes providers to use telemedicine and requires insurers to provide coverage and reimbursement.

- Authorizes health care providers who are licensed, certified or registered by a Commonwealth professional licensure board, to practice telemedicine in accordance with this act and corresponding licensure board regulations.
- "Telemedicine" is defined as the delivery of health care services provided through telemedicine technologies to a patient by a health care provider who is at a different location. The term does not include a "provider-to-provider consultation" where an initiating provider seeks advice and recommendations from another provider for diagnostic studies, therapeutic interventions or other services that may benefit the patient of the initiating provider.
- "Health care provider" is defined as the following:
 - Licensed practitioners of the healing arts, which includes physicians, certified registered nurse practitioners, physician assistants, midwives, podiatrists, optometrists, chiropractors, physical therapists, athletic trainers, dentists, and psychologists;
 - Federally qualified health centers;
 - Rural health clinics;
 - Licensed pharmacists;
 - Licensed occupational therapists;

- Licensed speed-language pathologists and audiologists;
 - Licensed dental hygienists;
 - Licensed social workers, clinical social workers, marriage and family therapists, and professional counselors;
 - Licensed registered nurses;
 - Licensed genetic counselors; and
 - Out-of-state health care providers
- “Out-of-state health care provider” is defined as a health care provider providing telemedicine services that holds a valid license, certificate or registration in another jurisdiction and is:
 - Discharging official duties in the armed forces of the United States, the United States Public Health Services or the United State Department of Veterans Affairs;
 - Providing telemedicine services to a patient through a federally operated facility;
 - 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;
 - Delivering provider-to-provider consultation services; or
 - Providing services which would otherwise be exempt from the requirement of licensure, certification or registration in the Commonwealth under the respective licensure act.
 - “Participating network provider” is defined as a health care provider that has a network participation agreement with an insurer.
 - “Telemedicine technologies” is defined as electronic information and telecommunications technology, including, but not limited to, interactive audio and video, remote patient monitoring, and store-and-forward, that meets the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH Act), or other applicable Federal or State law.
 - The term does not include the use of:
 - Audio-only medium, voicemail, facsimile, email, instant messaging, text messaging or online questionnaire, or any combination thereof; or
 - A telephone call, except as provided under section 5(a)(3).
 - Section 4103 requires the professional licensure boards with jurisdiction over the health care providers to promulgate final regulations within 24 months of the effective date to provide for and regulate telemedicine consistent with this act. The regulations shall consider model policies and clinical guidelines for the appropriate use of telemedicine technologies and include patient privacy and data security standards that comply with HIPAA and the HITECH Act. To facilitate prompt implementation, the boards are required to publish temporary regulations within 120 days of enactment. The temporary regulations shall expire no later than 24 months after publication.

- Section 4104 establishes that health care providers providing telemedicine to an individual in PA shall comply with all applicable federal and state laws and regulations, and hold a valid license, certificate or registration by an appropriate PA licensure board.
- Section 4105 requires health care providers providing telemedicine to patients in PA to comply with the following:
 - For a telemedicine encounter in which the provider does not have an established provider-patient relationship, the provider shall verify the location and identity of the patient, and disclose the provider's identity, location and medical credentials. On-call, cross-coverage and emergency treatment are exempted from this requirement.
 - Obtain informed consent regarding the use of telemedicine technologies from the patient or the patient's health care proxy. Emergency treatment is exempted from this requirement.
 - Provide an appropriate examination or assessment using telemedicine technologies. A provider may use interactive audio without the required 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 they can meet the same standards of care as if the health care services were provided in person. In this situation, the provider shall inform the patient that they have the option to request interactive audio and video.
 - Establish a diagnosis and treatment plan or execute a treatment plan.
 - Create and maintain an electronic medical record or update an existing record within 24 hours. The electronic medical record shall comply with HIPAA.
 - Provide a visit summary to the patient if requested.
 - Have an emergency action plan in place for health emergencies and referrals.
 - Providers delivering online refractive services are required to inform patients that the service is not an ocular health exam prior to the online service.
- Section 4106 requires insurance coverage for telemedicine.
 - A health insurance policy issued, delivered, executed or renewed in PA 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 policy may not exclude a health care service for coverage solely because the service is provided via telemedicine.
 - Consistent with insurer's terms and conditions of the network participation agreement, a health insurer shall reimburse a participating network provider for telemedicine as negotiated with the insurer and participating provider. Reimbursement may not be conditioned upon use of an exclusive or proprietary telemedicine technology or vendor.
 - Payment for a covered service provided via telemedicine shall be established between the insurer and the provider.
 - The provisions requiring coverage and reimbursement do not apply if the

telemedicine service is facilitated via a medical device or other technology that provides clinical data or information (excluding information in an electronic medical records systems) other than that independently provided via interactive audio and video with, or store-and-forward imaging provided by, the patient.

- The insurance requirements shall apply to policies issued or renewed on or after 180 days after the publication of temporary regulations.
- Insurers are not prohibited from reimbursing other providers (those not defined as participating network providers) for telemedicine, and insurers are not required to reimburse any out-of-network provider.
- Section 4107 requires Medicaid program reimbursement for telemedicine.
 - Medical assistance payments shall be made on behalf of eligible individuals for telemedicine, consistent with federal law, if the service would be covered through an in-person encounter.
 - This requirement shall not apply if the telemedicine technology fails to comply with applicable law and regulatory guidance regarding secure transmission and maintenance of patient information, or if the use of telemedicine would be inconsistent with the standard of care.

FISCAL IMPACT: According to the Department of Human Services, there could be a minimal cost to the Medicaid Program in the 2020-21 fiscal year. The remainder of the legislation would have no adverse fiscal impact on Commonwealth funds.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: November 20, 2019

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.