

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 857

**PRINTER NO.** 1326

**AMOUNT**

\$333,000  
\$680,000

**FUND**

General Fund  
Federal Funds

**DATE INTRODUCED**

September 19, 2019

**PRIME SPONSOR**

Senator Vogel

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 857 establishes the Telemedicine Act (act).

Senate Bill 857 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.

The bill defines “telemedicine” 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.

The bill defines “health care provider” to include the following:

- Licensed practitioners of the healing arts which includes medical doctors, osteopathic doctors, certified registered nurse practitioners, physician assistants, midwives, podiatrists, chiropractors, physical therapists, dentists, and psychologists;
- Licensed general, mental, chronic or other type of hospital;
- Licensed pharmacists;
- Licensed occupational therapists;
- Licensed speech-language pathologists and audiologists;
- Licensed dental hygienists;
- Licensed social workers, clinical social workers, marriage and family therapists, and professional counselors;
- Licensed registered nurses;
- Federally qualified health centers;
- Rural health clinics; and
- Out-of-state health care providers.

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The bill defines “out-of-state health care provider” 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 States 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.

The bill defines “telemedicine technologies” 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; and
- A telephone call, except as provided under section 5(a)(3) regarding appropriate examinations or assessments using telemedicine technologies.

The bill instructs the professional licensure boards that have jurisdiction over the health care providers defined under this act to promulgate regulations within 24 months of the effective date of the act to regulate telemedicine within the scope of practice regulated by that board. The legislation also requires the regulations to consider model policies for the appropriate use of telemedicine technologies and to include patient privacy and data security standards that are in compliance with HIPAA and the HITECH Act.

The bill allows for temporary regulations to be issued within 120 days to facilitate the prompt implementation of this act. The temporary regulations will expire no later than 24 months following publication in the Pennsylvania Bulletin. Senate Bill 857 provides that the act will be in full force and effect even if the licensure boards have not published temporary regulations or implemented regulations as required.

The bill mandates providers who provide telemedicine to individuals located in this Commonwealth to comply with all applicable federal and state laws and regulations, and to hold a valid license, certificate or registration by an appropriate Commonwealth licensure board or be subject to discipline by the respective board for unlicensed practice.

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The bill requires a health care provider who provides telemedicine to individuals located in this Commonwealth to satisfy each of 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 individual receiving care and disclose the provider's identity, location, and medical specialty or applicable credentials;
- Obtain informed consent regarding the use of telemedicine technologies from the individual or the individual's health care proxy;
- Provide an appropriate examination or assessment using telemedicine technologies. The bill allows a provider to use 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. The bill also requires the provider to inform the patient that the patient has 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;
- Provide a visit summary to the individual, if requested;
- Have an emergency action plan in place for health emergencies and referrals; and
- The standard of care applicable to an in-person encounter shall apply to a telemedicine encounter. If the use of telemedicine would be inconsistent with the standard of care, the health care provider shall direct the patient to seek in-person care.

The bill requires providers delivering online refractive services to inform patients that the service is not an ocular health exam by clearly and conspicuously communicating that information to the patient prior to the online service.

The bill requires a health insurance policy to provide coverage for 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 through telemedicine.

The bill requires a health insurer to reimburse a participating network provider for telemedicine if the insurer reimburses the same participating provider for the same service through an in-person encounter. Reimbursement shall not be conditioned upon the use of an exclusive or proprietary telemedicine technology or vendor. Payment for a covered service provided via telemedicine by any network provider shall be negotiated between the provider and insurer.

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A “participating network provider” is defined as one of the following:

- A medical doctor and osteopathic doctor;
- A clinical nurse specialist and certified registered nurse practitioner;
- A physician assistant;
- A dentist;
- An optometrist;
- A psychologist;
- A social worker, clinical social worker, marriage and family therapist and professional counselor;
- An occupational therapist; and
- A podiatrist.

The provisions related to coverage or reimbursement do not apply if the telemedicine service is facilitated by 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.

For a health insurance policy for which either rates or forms are required to be filed with the federal government or the Insurance 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. For a health insurance policy for which neither rates nor forms are required to be filed with the federal government or the Insurance Department, this section shall apply to a policy issued or renewed on or after 180 days after the effective date of this section.

The bill requires medical assistance payments to 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 provision does not apply if 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 the provision of the service using telemedicine would be inconsistent with the standard of care.

The provision related to insurance coverage is effective upon publication of the temporary regulations and the provision of medical assistance is effective in 90 days. The remainder of the act is effective immediately.

### **FISCAL IMPACT:**

Senate Bill 857 is estimated to cost the Department of Human Services \$1.013 million in total funds (\$333,000 in state funds and \$680,000 in federal funds) for Fiscal Year 2019-20 based on a projected number of telemedicine procedures and the additional technology fee of \$15.72 per service required by the bill.

The estimated cost is based upon actual claims data for telemedicine billed for in Fiscal Year 2016-17, increased for projected eligibility growth in Fiscal Year 2017-18 and 2018-19, resulting in 64,440 projected Medical Assistance procedures utilizing telemedicine in FY 2019-20.