

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 705

PRINTER NO. 949

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

May 21, 2021

PRIME SPONSOR

Senator Vogel

DESCRIPTION

Senate Bill 705 establishes the Telemedicine Act and provides for the regulation of telemedicine by professional licensing boards, for insurance coverage of telemedicine, and for payment of health care providers for telemedicine services.

The legislation provides for definitions including the following:

- Asynchronous interaction - an information exchange between patients and providers not in real time, including the secure collection and transmission of a patient’s medical information, clinical data and images, lab results, and self-reported medical history;
- Health care provider or provider is any of the following:
 - An individual who is licensed, certified, registered, permitted or otherwise authorized by law to provide health care services in this Commonwealth;
 - A federally qualified health center;
 - A rural health clinic; or
 - A hospital licensed in this Commonwealth.
- Provider-to-provider consultation - the act of seeking advice and recommendations from another provider for diagnostic studies, therapeutic interventions, or other services that may benefit the patient;
- Remote patient monitoring - the collection of physiological data from a patient in one location, which is transmitted via electronic communication technologies to a provider in a different location for use in case and related support of the patient;
- Synchronous interaction - two-way or multiple-way exchange of information between a patient and provider that occurs in real time via audio or video conferencing; and
- Telemedicine - the delivery of health care services to a patient by a provider who is at a different location, through synchronous interactions, asynchronous interactions, or remote patient monitoring that meet HIPPA requirements and other privacy law requirements. The term does not include:

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- The provision of health care services solely using voicemail, facsimile, e-mail or instant messaging or a combination thereof;
- A provider-to-provider consultation.

The bill requires each professional licensure board to promulgate regulations within the scope of practice and standard of care. The regulations shall consider model policies and clinical guidelines for appropriate use of synchronous and asynchronous interactions and remote patient monitoring. Regulations shall also include patient privacy and data security standards compliant with federal and state law.

Senate Bill 705 mandates providers to comply with all applicable federal and state laws and regulations. Failure to comply shall subject a provider to discipline by the respective licensure board.

The bill requires a health care provider who provides healthcare services via telemedicine to patients located in the Commonwealth to comply with the following:

- Verify the location and identity of the patient receiving care and disclose the health provider's identity, location and specialty for all encounters in which the health provider does not have an established provider-patient relationship;
- Obtain oral or written consent from the patient, informing patients of the right to choose the form of service delivery, including the right to refuse telemedicine services without jeopardizing patient access to other services;
- Perform an appropriate clinical evaluation before providing treatment using either synchronous or asynchronous interactions;
- Establish a diagnosis and treatment plan or execute a treatment plan;
- Create, maintain and/or update a patient's electronic medical record within 24 hours;
- Provide a visit summary to the patient if requested; and
- Have an emergency action plan in place for medical and behavioral health emergencies and referrals.

The legislation requires providers of online refractive services to inform patients the service is not an ocular health exam by clearly communicating the information to the patient prior to online service.

The bill states that providers using telemedicine shall be subject to the standard of care applicable to the same health services in an in-person setting.

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Health insurance policies shall provide coverage for medically necessary telemedicine delivered by participating network providers who provide a covered service via telemedicine consistent with an insurer's medical policies. Insurance policies may not exclude a service for coverage solely because the service is provided through telemedicine.

Insurers shall reimburse providers, as negotiated, for both in-person and telemedicine services, the form of which shall be filed with and subject to Department of Health review. Reimbursement is not contingent upon use of exclusive or proprietary technology or vendors.

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

Nothing shall prohibit an insurer from reimbursing other providers for covered services via telemedicine nor require reimbursement for an out-of-network provider for telemedicine.

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 technology or service fails to comply with applicable laws and regulations regarding the secure transmission and maintenance of patient information or the telemedicine service is inconsistent with the standard of care.

This act shall take effect immediately except the section related to the Medicaid program which shall take effect in 90 days.

FISCAL IMPACT:

Enactment of this legislation will have no fiscal impact on Commonwealth funds. The bill will codify into statute the current practice that is being utilized by the Commonwealth authorized by Act 73 of 2021 which allows the interim use of telemedicine as a COVID-19 temporary regulatory waiver service until March 31, 2022.