House Professional Licensure Committee
Public Hearing on SB 780, PN 1852
September 12, 2018
9:30 a.m.
Hearing Room 1, North Office Building
Written Testimony of Peter Speaks, Deputy Secretary for Regulatory Programs
Pennsylvania Department of State

Thank you, Chairman Mustio, Minority Chairman Readshaw and members of the Professional Licensure Committee for allowing the Department of State to submit written comments for the record on SB 780, PN 1852, which would define telemedicine, offer guidelines outlining who can provide telemedicine services and provide clarity around insurance company reimbursement for such services offered within the commonwealth. The department, through its Bureau of Professional Occupations and Affairs ("Bureau") administers and enforces practice requirements for the professional licensure of 29 professional boards and commissions, effectively regulating roughly 255 different license classifications, and one million licensees. The Pennsylvania State Board of Medicine is responsible for oversight of 93,276 active licensees across 36 different licensee classes and issued 11,577 new licenses in 2017.

I. Department of State Position Statement Regarding SB 780, PN 1852

When legislation is introduced that purports to establish a new licensure class or expand the scope of practice within an existing occupation or board, the department must consider: 1) whether licensure will support the health, safety and well-being of its citizens; 2) the cost of regulating the profession; 3) the effect on the availability of practitioners of the profession; 4) the need for minimum standards and continuing education; and 5) whether less burdensome alternatives to licensure exist.

Upon review of Senator Vogel's proposed legislation, the Administration and the Department of State support the bill as amended. The various health-related boards under the Bureau of Professional and Occupational Affairs are supportive of the intent of the legislation, and this latest iteration, PN 1852, amends the proposed legislation to address some of the concerns the department raised in prior drafts, namely, to address physicians and other health care providers licensed outside the commonwealth who provide telehealth services to patients located within the commonwealth and limiting the practice of telemedicine by out-of-state health care providers to certain identified circumstances.

II. Updates Made to SB 780 by PN 1852

SB 780 PN 1852 adds new definitions and modifies existing definitions to clarify who can provide telemedicine services to patients within the commonwealth and under what conditions may such services be provided.

PN 1852 deletes the definitions for "consultation" and "medical emergency" and adds definitions for "emergency medical condition." The new definition addresses the concern that

department previously raised regarding the definition of "medical emergency" including a person being unconscious; noting that normal sleep constitutes being unconscious.

PN 1852 maintains the previous iteration's multi-part definition for "health care provider" or "provider" while amending the "licensed" professional under the pertinent practice act to a professional "who holds a valid license" under the pertinent practice act.

Most significantly, PN 1852 adds "out-of-state" health care providers to the definition of "health care provider" or "provider." Under PN 1852, the definition of "health care provider" or "provider" includes (1) a health care practitioner as defined in section 103 of the act of July 19, 1979 (P.L. 130, No.48), known as the Health Care Facilities Act. (2) a federally qualified health center as defined in section 1861(aa)(4) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395x(aa)(4)), (3) a rural health clinic as defined in section 1861(aa)(2) of the Social Security Act (42 U.S.C. § 1395x(aa)(2)), (4) a pharmacist who holds a valid license under the act of September 27, 1961 (P.L.1700, No.699), known as The Pharmacy Act, (5) an occupational therapist who holds a valid license under the act of June 15, 1982 (P.L.502, No.140), known as the Occupational Therapy Practice Act, (6) a speech-language pathologist who holds a valid license under the act of December 21, 1984 (P.L.1253, No.238), known as the Speech-Language Pathologists and Audiologists Licensure Act, (7) an audiologist licensed under the Speech-Language Pathologists and Audiologists Licensure Act, (8) a dental hygienist who holds a valid license under the act of May 1, 1933 (P.L.216, No.76), known as the Dental Law, (9) a social worker, clinical social worker, marriage and family therapist or professional counselor who holds a valid license under the act of July 9, 1987 (P.L.220, No.39), known as the Social Workers, Marriage and Family Therapists and Professional Counselors Act, or (10) a registered nurse who holds a valid license under the act of May 22, 1951 (P.L.317, No.69), known as the Professional Nursing Law, or (11) an out-of-state health care provider. .

PN 1852 adds a definition of "out-of-state health care provider," which addresses the department's previously expressed concern that SB 780 did not address out-of-state providers providing telemedicine services to patients located within the commonwealth. PN 1852 restricts the ability of out-of-state health care providers who do not hold a license within the commonwealth to certain circumstances.

An out-of-state provider is a health care provider providing a telemedicine service that holds a valid license, certificate or registration in another jurisdiction and is (1) discharging official duties in the United States armed forces, the US public health services, or the US Department of Veterans Affairs; (2) providing telemedicine services to a patient through a federally operated facility; (3) 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; (4) providing provider-to-provider consultation; or (5) providing services which would otherwise be exempt from the requirement of licensure, certification or registration in this commonwealth under the respective licensure act. In other words, except under the five circumstances identified in the definition of "out-of-state health care provider" an individual must hold a valid license by the appropriate commonwealth licensing board to provide telemedicine services to a patient located within the commonwealth. PN 1852 restricts the ability of out of state health care providers who do not hold a license within the commonwealth to certain circumstances.

PN 1852 amends the definition of "on-call or cross-coverage services" to limit provision of telemedicine by a health care provider designated by another provider with a provider-patient relationship to deliver services "on a temporary basis" so long as the designated provider is in the same group or health system, has access to the patient's prior medical records, "holds a valid license in the commonwealth" and is in a position to coordinate care. PN 1852's amendment to "on-call or cross-coverage services" addresses the concern that the department previously raised regarding a potential 'loophole' where a single physician or practice is designated as the primary care physician (PCP) for an inordinate number of patients, maintains a minimal number of office hours (e.g. only Tuesday mornings) and the telemedicine service then is designated as the "on-call" provider for essentially all of his/her active patients (effectively acting as the PCP due to the lack of reasonable in-person access to the PCP).

PN 1852 adds the definition of "participating network provider" and includes the following providers who hold a valid license under their respective practice acts; physician; a clinical nurse specialist or certified registered nurse practitioner; physician assistant under the Medical Practice Act of 1985 (the proposed legislation inexplicably omits physician assistants licensed under the Osteopathic Medical Practice Act); a dentist, a psychologist; a social worker, clinical social worker or professional counselor, an occupational therapist and a physical therapist.

PN 1852 adds the definition of "provider-to-provider consultation," which appears to address the department's concern that the definition of "consultation" failed to ensure that the initial provider maintains responsibility for the patient and is only receiving additional information/advice from the other practitioner. PN 1852 defines "provider to provider consultation" as the informal act of seeking advice and recommendations from another health care provider for diagnostic studies, therapeutic interventions or other services that may benefit the patient of the initiating health care provider.

A. Implementation of SB 780 by the Department of State

The department recognizes that this legislation intends to formalize the process of telemedicine within the commonwealth by clarifying that Pennsylvania licensure is required for providers servicing any patients within this commonwealth. Because this requirement does not modify or enlarge the existing scope of practice, and the rules and regulations which apply to in-person treatment apply equally to telemedicine, the department finds no negative implication to public safety or undue burden upon the regulated community. To the contrary, the legislation requires consistent insurance coverage for telemedicine services, and should remove most of the potential cloud of Federal Trade Commission enforcement action from the regulation of telehealth. The regulations will require that both temporary and final regulations be drafted by 10 health licensing boards. To the extent that the proposed legislation requires licensure of providers not licensed within the commonwealth but providing telemedicine within the commonwealth, the fiscal costs would generally be covered by the fee-for-service nature of the license application process and the standard renewal fees utilized for general board enforcement activities. These costs will be passed down to the regulated community, however this perceived detriment must be weighed against perceived positive factors: reduced resource

waste and availability for providers, and reduced length of stay, increased rate of diagnosis and higher satisfaction for patients.

Thank you for allowing us to provide these comments for your review. Please let the department know if you have any additional questions or concerns.