
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 872 Session of
2019

INTRODUCED BY DAY, BARRAR, T. DAVIS, HELM, HILL-EVANS, IRVIN,
KORTZ, McNEILL, OTTEN, SIMMONS, STRUZZI AND MACKENZIE,
APRIL 5, 2019

REFERRED TO COMMITTEE ON INSURANCE, APRIL 5, 2019

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 "Audio-only medium." A prerecorded audio presentation or
14 recording.

15 "Emergency medical condition." A medical condition
16 manifesting itself by acute symptoms of sufficient severity,
17 including severe pain, such that the absence of immediate
18 medical attention could reasonably be expected to result in

1 placing the health of the individual in serious jeopardy,
2 serious impairment to bodily functions or serious dysfunction of
3 a bodily organ or part.

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

5 (1) A health care practitioner as defined in section 103
6 of the act of July 19, 1979 (P.L.130, No.48), known as the
7 Health Care Facilities Act.

8 (2) A federally qualified health center as defined in
9 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,
10 42 U.S.C. § 1395x(aa)(4)).

11 (3) A rural health clinic as defined in section 1861(aa)
12 (2) of the Social Security Act (42 U.S.C. § 1395x(aa)(2)).

13 (4) A pharmacist who holds a valid license under the act
14 of September 27, 1961 (P.L.1700, No.699), known as the
15 Pharmacy Act.

16 (5) An occupational therapist who holds a valid license
17 under the act of June 15, 1982 (P.L.502, No.140), known as
18 the Occupational Therapy Practice Act.

19 (6) A speech-language pathologist who holds a valid
20 license under the act of December 21, 1984 (P.L.1253,
21 No.238), known as the Speech-Language Pathologists and
22 Audiologists Licensure Act.

23 (7) An audiologist who holds a valid license under the
24 Speech-Language Pathologists and Audiologists Licensure Act.

25 (8) A dental hygienist who holds a valid license under
26 the act of May 1, 1933 (P.L.216, No.76), known as The Dental
27 Law.

28 (9) A social worker, clinical social worker, marriage
29 and family therapist or professional counselor who holds a
30 valid license under the act of July 9, 1987 (P.L.220, No.39),

1 known as the Social Workers, Marriage and Family Therapists
2 and Professional Counselors Act.

3 (10) A registered nurse who holds a valid license under
4 the act of May 22, 1951 (P.L.317, No.69), known as The
5 Professional Nursing Law.

6 (11) A genetic counselor who holds a valid license under
7 the act of December 20, 1985 (P.L.457, No.112), known as the
8 Medical Practice Act of 1985, or the act of October 5, 1978
9 (P.L.1109, No.261), known as the Osteopathic Medical Practice
10 Act.

11 (12) An out-of-State health care provider.

12 "Health care services." Services for the diagnosis,
13 prevention, treatment, cure or relief of a health condition,
14 injury, disease or illness.

15 "Health Information Technology for Economic and Clinical
16 Health Act." The Health Information Technology for Economic and
17 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
18 467-496).

19 "Health insurance policy." As follows:

20 (1) An individual or group health insurance policy,
21 contract or plan that provides coverage for services provided
22 by a health care facility or health care provider that is
23 offered by a health insurer.

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

27 (3) Except as provided under paragraph (2), the term
28 does not include accident only, fixed indemnity, limited
29 benefit, credit, dental, vision, specified disease, Medicare
30 supplement, Civilian Health and Medical Program of the

1 Uniformed Services (CHAMPUS) supplement, long-term care or
2 disability income, workers' compensation or automobile
3 medical payment insurance.

4 "Health Insurance Portability and Accountability Act of
5 1996." The Health Insurance Portability and Accountability Act
6 of 1996 (Public Law 104-191, 110 Stat. 1936).

7 "Health insurer." An entity that holds a valid license by
8 the Insurance Department with accident and health authority to
9 issue a health insurance policy and governed under any of the
10 following:

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

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

16 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
17 corporations).

18 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
19 services plan corporations).

20 "Interactive audio and video." Real-time two-way or
21 multiple-way communication between a health care provider and a
22 patient.

23 "Licensure board." Each licensing board within the Bureau of
24 Professional and Occupational Affairs of the Department of State
25 with jurisdiction over a professional licensee identified as a
26 health care provider under this act.

27 "On-call or cross-coverage services." The provision of
28 telemedicine by a health care provider designated by another
29 provider with a provider-patient relationship to deliver
30 services on a temporary basis so long as the designated provider

1 is in the same group or health system, has access to the
2 patient's prior medical records, holds a valid license in this
3 Commonwealth and is in a position to coordinate care.

4 "Out-of-State health care provider." A health care provider
5 providing a telemedicine service that holds a valid license,
6 certificate or registration in another jurisdiction and is:

7 (1) discharging official duties in the armed forces of
8 the United States, the United States Public Health Services
9 or the United States Department of Veterans Affairs;

10 (2) providing telemedicine services to a patient through
11 a federally operated facility;

12 (3) providing telemedicine services in response to an
13 emergency medical condition, if the care for the patient is
14 referred to an appropriate health care provider in this
15 Commonwealth as promptly as possible under the circumstances;

16 (4) providing provider-to-provider consultation
17 services; or

18 (5) providing services which would otherwise be exempt
19 from the requirement of licensure, certification or
20 registration in this Commonwealth under the respective
21 licensure act.

22 "Participating network provider." Any of the following
23 providers who are under contract with a health insurer:

24 (1) A physician who holds a valid license under the act
25 of December 20, 1985 (P.L.457, No.112), known as the Medical
26 Practice Act of 1985, or the act of October 5, 1978
27 (P.L.1109, No.261), known as the Osteopathic Medical Practice
28 Act.

29 (2) A clinical nurse specialist or certified registered
30 nurse practitioner who holds a valid license under the act of

1 May 22, 1951 (P.L.317, No.69), known as The Professional
2 Nursing Law.

3 (3) A physician assistant who holds a valid license
4 under the Medical Practice Act of 1985 or the Osteopathic
5 Medical Practice Act.

6 (4) A dentist who holds a valid license under the act of
7 May 1, 1933 (P.L.216, No.76), known as The Dental Law.

8 (5) An optometrist who holds a valid license under the
9 act of June 6, 1980 (P.L.197, No.57), known as the Optometric
10 Practice and Licensure Act.

11 (6) A psychologist who holds a valid license under the
12 act of March 23, 1972 (P.L.136, No.52), known as the
13 Professional Psychologists Practice Act.

14 (7) A social worker, clinical social worker, marriage
15 and family therapist or professional counselor who holds a
16 valid license under the act of July 9, 1987 (P.L.220, No.39),
17 known as the Social Workers, Marriage and Family Therapists
18 and Professional Counselors Act.

19 (8) An occupational therapist who holds a valid license
20 under the act of June 15, 1982 (P.L.502, No.140), known as
21 the Occupational Therapy Practice Act.

22 (9) A podiatrist who holds a valid license under the act
23 of March 2, 1956 (1955 P.L.1206, No.375), known as the
24 Podiatry Practice Act.

25 "Provider-to-provider consultation." The act of seeking
26 advice and recommendations from another health care provider for
27 diagnostic studies, therapeutic interventions or other services
28 that may benefit the patient of the initiating health care
29 provider.

30 "Store-and-forward." Technology that stores and transmits or

1 grants access to a patient's clinical information for review by
2 a health care provider who is at a different location. The term
3 does not include the storage, transmission or use of electronic
4 medical records without the concurrent transmission of
5 additional clinical information not already present in the
6 electronic medical records.

7 "Telemedicine." The delivery of health care services
8 provided through telemedicine technologies to a patient by a
9 health care provider who is at a different location. The term
10 does not include a provider-to-provider consultation.

11 "Telemedicine technologies." As follows:

12 (1) Electronic information and telecommunications
13 technology, including, but not limited to, interactive audio
14 and video, remote patient monitoring or store-and-forward,
15 that meets the requirements of the Health Insurance
16 Portability and Accountability Act of 1996, the Health
17 Information Technology for Economic and Clinical Health Act
18 or other applicable Federal or State law.

19 (2) The term does not include the use of:

20 (i) Audio-only medium, voicemail, facsimile, e-mail,
21 instant messaging, text messaging or online
22 questionnaire, or any combination thereof.

23 (ii) A telephone call, except as provided under
24 section 5(a)(3).

25 Section 3. Regulation of telemedicine by professional licensure
26 boards.

27 (a) Requirements.--

28 (1) A health care provider that holds a valid license,
29 certificate or registration from a Commonwealth professional
30 licensure board shall be authorized to practice telemedicine

1 in accordance with this act and the corresponding licensure
2 board regulations.

3 (2) A health care provider who engages in telemedicine
4 in a manner that does not comply with the standards of care
5 or rules of practice shall be subject to discipline by the
6 appropriate licensure board, as provided by law.

7 (b) Regulations.--Each licensure board shall within 24
8 months of the effective date of this section promulgate final
9 regulations that are consistent with this act to provide for and
10 regulate telemedicine within the scope of practice and standard
11 of care regulated by the board. The regulations shall not
12 establish a separate standard of care for telemedicine. The
13 standard of care applicable to an in-person encounter shall
14 apply to a telemedicine encounter. The regulations shall:

15 (1) Consider model policies and clinical guidelines for
16 the appropriate use of telemedicine technologies.

17 (2) Include patient privacy and data security standards
18 that are in compliance with the Health Insurance Portability
19 and Accountability Act of 1996 and the Health Information
20 Technology for Economic and Clinical Health Act.

21 (c) Temporary regulations.--In order to facilitate the
22 prompt implementation of this act, the licensure boards shall
23 transmit notice of temporary regulations regarding
24 implementation of this act to the Legislative Reference Bureau
25 for publication in the Pennsylvania Bulletin within 120 days of
26 the effective date of this section. Temporary regulations are
27 not subject to:

28 (1) Sections 201, 202, 203, 204 and 205 of the act of
29 July 31, 1968 (P.L.769, No.240), referred to as the
30 Commonwealth Documents Law.

1 (2) Sections 204(b) and 301(10) of the act of October
2 15, 1980 (P.L.950, No.164), known as the Commonwealth
3 Attorneys Act.

4 (3) The act of June 25, 1982 (P.L.633, No.181), known as
5 the Regulatory Review Act.

6 (4) Section 612 of the act of April 9, 1929 (P.L.177,
7 No.175), known as The Administrative Code of 1929.

8 (d) Expiration.--Temporary regulations shall expire no later
9 than 24 months following publication of temporary regulations.
10 Regulations adopted after this period shall be promulgated as
11 provided by law.

12 (e) Construction.--The provisions of this act shall be in
13 full force and effect even if the licensure boards have not yet
14 published temporary regulations or implemented the regulations
15 required under this section.

16 Section 4. Compliance.

17 A health care provider providing telemedicine services to an
18 individual located within this Commonwealth shall comply with
19 all applicable Federal and State laws and regulations, and shall
20 hold a valid license, certificate or registration by an
21 appropriate Commonwealth licensure board. Failure to hold a
22 valid license, certificate or registration shall subject the
23 health care provider to discipline by the respective licensure
24 board for unlicensed practice.

25 Section 5. Evaluation and treatment.

26 (a) Requirements.--Except as provided under subsection (c),
27 a health care provider who provides telemedicine to an
28 individual located in this Commonwealth shall comply with the
29 following:

30 (1) For a telemedicine encounter in which the provider

1 does not have an established provider-patient relationship,
2 the provider shall:

3 (i) verify the location and identity of the
4 individual receiving care; and

5 (ii) disclose the health care provider's identity,
6 geographic location and medical specialty or applicable
7 credentials.

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

21 (3) Provide an appropriate examination or assessment
22 using telemedicine technologies. The health care provider may
23 utilize interactive audio without the requirement of
24 interactive video if it is used in conjunction with store-
25 and-forward technology and, after access and review of the
26 patient's medical records, the provider determines that the
27 provider is able to meet the same standards of care as if the
28 health care services were provided in person. When the health
29 care provider utilizes interactive audio without interactive
30 video, the provider shall inform the patient that the patient

1 has the option to request interactive audio and video.

2 (4) Establish a diagnosis and treatment plan or execute
3 a treatment plan.

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

10 (6) Provide a visit summary to the individual if
11 requested.

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

14 (8) The standard of care applicable to an in-person
15 encounter shall apply to a telemedicine encounter. If the use
16 of telemedicine would be inconsistent with the standard of
17 care, the health care provider shall direct the patient to
18 seek in-person care.

19 (b) Disclosures.--Providers offering online refractive
20 services shall inform patients that the service is not an ocular
21 health exam. This subsection shall not be construed to prohibit
22 online refractive services if the information notice is clearly
23 and conspicuously communicated to the patient prior to the
24 online refractive service.

25 (c) Applicability.--

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

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

30 (d) Limitations on treatment.--Telemedicine services or

1 technologies shall not be permitted to be utilized or employed
2 for the delivery or administration of any medications or health
3 care services, including, but not limited to, the dispensing,
4 administering or prescribing of medications or the performance
5 of services, which are, as of the effective date of this
6 subsection, required to be delivered or administered in a health
7 care clinic, medical facility, physician's office, hospital or
8 ambulatory surgical facility, according to Federal or State
9 statute, regulation or promulgated regulatory rule or by the
10 United States Food and Drug Administration Risk Evaluation and
11 Mitigation Strategies (REMS).

12 Section 6. Insurance coverage of telemedicine.

13 (a) Insurance coverage and reimbursement.--

14 (1) A health insurance policy issued, delivered,
15 executed or renewed in this Commonwealth after the effective
16 date of this section shall provide coverage for medically
17 necessary telemedicine delivered by a participating network
18 provider who provides a covered service via telemedicine
19 consistent with the insurer's medical policies. A health
20 insurance policy may not exclude a health care service for
21 coverage solely because the service is provided through
22 telemedicine.

23 (2) Subject to paragraph (1), a health insurer shall
24 reimburse a health care provider that is a participating
25 network provider for both in-person and telemedicine services
26 in accordance with the terms and conditions of the network
27 participation agreement between the insurer and the
28 participating provider. Reimbursement shall not be
29 conditioned upon the use of an exclusive telemedicine
30 platform or telemedicine vendor.

1 (3) Payment for a covered service provided via
2 telemedicine by any participating network provider shall be
3 established between the health care provider and health
4 insurer.

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

6 (1) Subsection (a)(1) and (2) shall not apply if the
7 telemedicine service is facilitated via a medical device or
8 other technology that provides clinical data or information,
9 excluding existing information in an electronic medical
10 records system, other than that independently provided
11 through interactive audio and video with, or store-and-
12 forward imaging provided by, the patient.

13 (2) For a health insurance policy for which either rates
14 or forms are required to be filed with the Federal Government
15 or the Insurance Department, this section shall apply to a
16 policy for which a form or rate is first filed on or after
17 180 days after the effective date of this section.

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

23 (c) Construction.--Nothing under this section shall be
24 construed to:

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

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

29 Section 7. Medicaid program reimbursement.

30 (a) Medical assistance payment.--Medical assistance payments

1 shall be made on behalf of eligible individuals for
2 telemedicine, consistent with Federal law, as specified under
3 this act if the service would be covered through an in-person
4 encounter.

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

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

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

12 Section 8. Effective date.

13 This act shall take effect as follows:

14 (1) Section 6 shall take effect upon publication in the
15 Pennsylvania Bulletin of the temporary regulations required
16 in section 3(c).

17 (2) Section 7 shall take effect in 90 days.

18 (3) The remainder of this act shall take effect
19 immediately.