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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2454 Session of  
2020

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CIRESI, MADDEN, O'MARA, ROZZI, MERSKI, WEBSTER, McCLINTON AND  
ZABEL, APRIL 27, 2020

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REFERRED TO COMMITTEE ON INSURANCE, APRIL 27, 2020

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AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated  
2 Statutes, providing for telemedicine, authorizing the  
3 regulation of telemedicine by professional licensing boards  
4 and providing for insurance coverage of telemedicine.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 40 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 41

10 TELEMEDICINE

11 Sec.

12 4101. Scope of chapter.

13 4102. Definitions.

14 4103. Regulation of telemedicine by professional licensure  
15 boards.

16 4104. Compliance.

1 4105. Evaluation and treatment.

2 4106. Insurance coverage of telemedicine.

3 4107. Insurance reimbursement of telemedicine services during  
4 COVID-19 pandemic.

5 4108. Medicaid program reimbursement.

6 4109. Children's Health Insurance Program reimbursement.

7 § 4101. Scope of chapter.

8 This chapter relates to telemedicine, the regulation of  
9 telemedicine by professional licensing boards and insurance  
10 coverage of telemedicine.

11 § 4102. Definitions.

12 The following words and phrases when used in this chapter  
13 shall have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

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

17 "Emergency medical condition." A medical condition  
18 manifesting itself by acute symptoms of sufficient severity,  
19 including severe pain, such that the absence of immediate  
20 medical attention could reasonably be expected to result in  
21 placing the health of the individual in serious jeopardy,  
22 serious impairment to bodily functions or serious dysfunction of  
23 a bodily organ or part.

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

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

28 (2) A federally qualified health center as defined in  
29 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,  
30 42 U.S.C. § 1395x(aa)(4)).

1       (3) A rural health clinic as defined in section 1861(aa)  
2       (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §  
3       1395x(aa) (2)).

4       (4) A general, mental, chronic disease or other type of  
5       hospital licensed in this Commonwealth.

6       (5) A pharmacist who holds a valid license under the act  
7       of September 27, 1961 (P.L.1700, No.699), known as the  
8       Pharmacy Act.

9       (6) An occupational therapist who holds a valid license  
10       under the act of June 15, 1982 (P.L.502, No.140), known as  
11       the Occupational Therapy Practice Act.

12       (7) A speech-language pathologist who holds a valid  
13       license under the act of December 21, 1984 (P.L.1253,  
14       No.238), known as the Speech-Language Pathologists and  
15       Audiologists Licensure Act.

16       (8) An audiologist who holds a valid license under the  
17       Speech-Language Pathologists and Audiologists Licensure Act.

18       (9) A dental hygienist who holds a valid license under  
19       the act of May 1, 1933 (P.L.216, No.76), known as The Dental  
20       Law.

21       (10) A social worker, clinical social worker, marriage  
22       and family therapist or professional counselor who holds a  
23       valid license under the act of July 9, 1987 (P.L.220, No.39),  
24       known as the Social Workers, Marriage and Family Therapists  
25       and Professional Counselors Act.

26       (11) A registered nurse who holds a valid license under  
27       the act of May 22, 1951 (P.L.317, No.69), known as The  
28       Professional Nursing Law.

29       (12) A genetic counselor who holds a valid license under  
30       the act of December 20, 1985 (P.L.457, No.112), known as the

1 Medical Practice Act of 1985, or the act of October 5, 1978  
2 (P.L.1109, No.261), known as the Osteopathic Medical Practice  
3 Act.

4 (13) An out-of-State health care provider.  
5 "Health care services." Services for the diagnosis,  
6 prevention, treatment, cure or relief of a health condition,  
7 injury, disease or illness.

8 "Health Information Technology for Economic and Clinical  
9 Health Act." The Health Information Technology for Economic and  
10 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and  
11 467-496).

12 "Health insurance policy." As follows:

13 (1) An individual or group health insurance policy,  
14 contract or plan that provides coverage for services provided  
15 by a health care facility or health care provider that is  
16 offered by a health insurer.

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

20 (3) Except as provided under paragraph (2), the term  
21 does not include accident only, fixed indemnity, limited  
22 benefit, credit, dental, vision, specified disease, Medicare  
23 supplement, Civilian Health and Medical Program of the  
24 Uniformed Services (CHAMPUS) supplement, long-term care or  
25 disability income, workers' compensation or automobile  
26 medical payment insurance.

27 "Health Insurance Portability and Accountability Act of  
28 1996." The Health Insurance Portability and Accountability Act  
29 of 1996 (Public Law 104-191, 110 Stat. 1936).

30 "Health insurer." An entity that holds a valid license by

1 the department with accident and health authority to issue a  
2 health insurance policy and governed under any of the following:

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

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

8 (3) Chapter 61 (relating to hospital plan corporations).

9 (4) Chapter 63 (relating to professional health services  
10 plan corporations).

11 "Interactive audio and video." Real-time two-way or  
12 multiple-way communication between a health care provider and a  
13 patient.

14 "Licensure board." Each licensing board within the Bureau of  
15 Professional and Occupational Affairs of the Department of State  
16 with jurisdiction over a professional licensee identified as a  
17 health care provider under this chapter.

18 "On-call or cross-coverage services." The provision of  
19 telemedicine by a health care provider designated by another  
20 provider with a provider-patient relationship to deliver  
21 services on a temporary basis so long as the designated provider  
22 is in the same group or health system, has access to the  
23 patient's prior medical records, holds a valid license in this  
24 Commonwealth and is in a position to coordinate care.

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

28 (1) discharging official duties in the armed forces of  
29 the United States, the United States Public Health Services  
30 or the United States Department of Veterans Affairs;

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

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

7       (4) providing provider-to-provider consultation  
8 services; or

9       (5) providing services which would otherwise be exempt  
10 from the requirement of licensure, certification or  
11 registration in this Commonwealth under the respective  
12 licensure act.

13       "Participating network provider." A health care provider  
14 that has a network participation agreement with an insurer.

15       "Provider-to-provider consultation." The act of seeking  
16 advice and recommendations from another health care provider for  
17 diagnostic studies, therapeutic interventions or other services  
18 that may benefit the patient of the initiating health care  
19 provider.

20       "Store-and-forward." As follows:

21       (1) Technology that stores and transmits or grants  
22 access to a patient's clinical information for review by a  
23 health care provider who is at a different location.

24       (2) The term does not include the storage, transmission  
25 or use of electronic medical records without the concurrent  
26 transmission of additional clinical information not already  
27 present in the electronic medical records.

28       "Telemedicine." As follows:

29       (1) The delivery of health care services provided  
30 through telemedicine technologies to a patient by a health

1 care provider who is at a different location.

2 (2) The term does not include a provider-to-provider  
3 consultation.

4 "Telemedicine technologies." As follows:

5 (1) Electronic information and telecommunications  
6 technology, including, but not limited to, interactive audio  
7 and video, remote patient monitoring or store-and-forward,  
8 that meets the requirements of the Health Insurance  
9 Portability and Accountability Act of 1996, the Health  
10 Information Technology for Economic and Clinical Health Act  
11 or other applicable Federal or State law.

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

13 (i) Audio-only medium, voicemail, facsimile, e-mail,  
14 instant messaging, text messaging or online  
15 questionnaire, or any combination thereof.

16 (ii) A telephone call, except as provided under  
17 section 4105(a)(3) (relating to evaluation and  
18 treatment).

19 § 4103. Regulation of telemedicine by professional licensure  
20 boards.

21 (a) Requirements.--

22 (1) A health care provider who holds a valid license,  
23 certificate or registration from a Commonwealth professional  
24 licensure board shall be authorized to practice telemedicine  
25 in accordance with this chapter and the corresponding  
26 licensure board regulations.

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

1 (b) Regulations.--Each licensure board shall within 24  
2 months of the effective date of this section promulgate final  
3 regulations that are consistent with this chapter to provide for  
4 and regulate telemedicine within the scope of practice and  
5 standard of care regulated by the board. The regulations shall:

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

8 (2) Include patient privacy and data security standards  
9 that are in compliance with the Health Insurance Portability  
10 and Accountability Act of 1996 and the Health Information  
11 Technology for Economic and Clinical Health Act.

12 (c) Temporary regulations.--In order to facilitate the  
13 prompt implementation of this chapter, the licensure boards  
14 shall transmit notice of temporary regulations regarding  
15 implementation of this chapter to the Legislative Reference  
16 Bureau for publication in the Pennsylvania Bulletin within 120  
17 days of the effective date of this section. Temporary  
18 regulations are not subject to:

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

22 (2) Sections 204(b) and 301(10) of the act of October  
23 15, 1980 (P.L.950, No.164), known as the Commonwealth  
24 Attorneys Act.

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

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

29 (d) Expiration.--Temporary regulations shall expire no later  
30 than 24 months following publication of temporary regulations.

1 Regulations adopted after this period shall be promulgated as  
2 provided by law.

3 (e) Construction.--The provisions of this chapter shall be  
4 in full force and effect even if the licensure boards have not  
5 yet published temporary regulations or implemented the  
6 regulations required under this section.

7 § 4104. Compliance.

8 A health care provider providing telemedicine services to an  
9 individual located within this Commonwealth shall comply with  
10 all applicable Federal and State laws and regulations, and shall  
11 hold a valid license, certificate or registration by an  
12 appropriate Commonwealth licensure board. Failure to hold a  
13 valid license, certificate or registration shall subject the  
14 health care provider to discipline by the respective licensure  
15 board for unlicensed practice.

16 § 4105. Evaluation and treatment.

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

21 (1) For a telemedicine encounter in which the provider  
22 does not have an established provider-patient relationship,  
23 the provider shall:

24 (i) verify the location and identity of the  
25 individual receiving care; and

26 (ii) disclose the health care provider's identity,  
27 geographic location and medical specialty or applicable  
28 credentials.

29 (2) Obtain informed consent regarding the use of  
30 telemedicine technologies from the individual or other person

1 acting in a health care decision-making capacity for the  
2 individual. The individual or other person acting in a health  
3 care decision-making capacity, including the parent or legal  
4 guardian of a child in accordance with the act of February  
5 13, 1970 (P.L.19, No.10), entitled "An act enabling certain  
6 minors to consent to medical, dental and health services,  
7 declaring consent unnecessary under certain circumstances,"  
8 has the right to choose the form of service delivery, which  
9 includes the right to refuse telemedicine services without  
10 jeopardizing the individual's access to other available  
11 services.

12 (3) Provide an appropriate examination or assessment  
13 using telemedicine technologies. The health care provider may  
14 utilize interactive audio without the requirement of  
15 interactive video if it is used in conjunction with store-  
16 and-forward technology and, after access and review of the  
17 patient's medical records, the provider determines that the  
18 provider is able to meet the same standards of care as if the  
19 health care services were provided in person. If the health  
20 care provider utilizes interactive audio without interactive  
21 video, the provider shall inform the patient that the patient  
22 has the option to request interactive audio and video.

23 (4) Establish a diagnosis and treatment plan or execute  
24 a treatment plan.

25 (5) Create and maintain an electronic medical record or  
26 update an existing electronic medical record for the patient  
27 within 24 hours. An electronic medical record shall be  
28 maintained in accordance with electronic medical records  
29 privacy rules under the Health Insurance Portability and  
30 Accountability Act of 1996.

1           (6) Provide a visit summary to the individual if  
2 requested.

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

5           (b) Disclosures.--Providers offering online refractive  
6 services shall inform patients that the service is not an ocular  
7 health exam. This subsection shall not be construed to prohibit  
8 online refractive services if the information notice is clearly  
9 and conspicuously communicated to the patient prior to the  
10 online refractive service.

11          (c) Applicability.--

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

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

16 § 4106. Insurance coverage of telemedicine.

17          (a) Insurance coverage and reimbursement.--

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

27           (2) Subject to paragraph (1), a health insurer shall  
28 reimburse a health care provider that is a participating  
29 network provider for both in-person and telemedicine services  
30 in accordance with the terms and conditions of the network

1 participation agreement as negotiated between the insurer and  
2 the participating provider, the form of which shall be filed  
3 with and subject to review by the Department of Health. The  
4 network participation agreement may not prohibit  
5 reimbursement solely because a health care service is  
6 provided by telemedicine. Reimbursement shall not be  
7 conditioned upon the use of an exclusive or proprietary  
8 telemedicine technology or vendor.

9 (3) Payment for a covered service provided via  
10 telemedicine by any participating network provider shall be  
11 negotiated between the health care provider and health  
12 insurer.

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

14 (1) Subsection (a) (1) and (2) shall not apply if the  
15 telemedicine service is facilitated via a medical device or  
16 other technology that provides clinical data or information,  
17 excluding existing information in an electronic medical  
18 records system, other than that independently provided  
19 through interactive audio and video with, or store-and-  
20 forward imaging provided by, the patient.

21 (2) For a health insurance policy for which either rates  
22 or forms are required to be filed with the Federal Government  
23 or the department, this section shall apply to a policy for  
24 which a form or rate is first filed on or after 180 days  
25 after the effective date of this section.

26 (3) For a health insurance policy for which neither  
27 rates nor forms are required to be filed with the Federal  
28 Government or the department, this section shall apply to a  
29 policy issued or renewed on or after 180 days after the  
30 effective date of this section.

1 (c) Construction.--Nothing under this section shall be  
2 construed to:

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

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

7 § 4107. Insurance reimbursement of telemedicine services during  
8 COVID-19 pandemic.

9 (a) Conditions.--Notwithstanding section 4106 (relating to  
10 insurance coverage of telemedicine), the following shall apply  
11 for the duration of the proclamation of disaster emergency  
12 issued by the Governor on March 6, 2020, published at 50 Pa.B.  
13 1644 (March 21, 2020), and any renewal of the state of disaster  
14 emergency thereafter:

15 (1) A health insurer shall reimburse a health care  
16 provider for a medically necessary COVID-19-related health  
17 care service provided by telemedicine.

18 (2) Reimbursement shall be equal to what the health care  
19 provider would have received if the health care service had  
20 been rendered through an in-person encounter.

21 (b) Expiration.--This section shall expire upon the  
22 termination or expiration under 35 Pa.C.S. § 7301(c) (relating  
23 to general authority of Governor) of the disaster emergency.

24 § 4108. Medicaid program reimbursement.

25 (a) Medical assistance payment.--Medical assistance payments  
26 shall be made on behalf of eligible individuals for  
27 telemedicine, consistent with Federal law, as specified under  
28 this chapter if the service would be covered through an in-  
29 person encounter.

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

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

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

7 § 4109. Children's Health Insurance Program reimbursement.

8       (a) Children's Health Insurance Program payment.--Children's  
9 Health Insurance Program payments shall be made on behalf of  
10 eligible individuals for telemedicine, consistent with Federal  
11 law, as specified under this chapter if the service would be  
12 covered through an in-person encounter.

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

14           (1) the telemedicine-enabling device, technology or  
15 service fails to comply with applicable law and regulatory  
16 guidance regarding the secure transmission and maintenance of  
17 patient information; or

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

20       (c) Definitions.--As used in this section, the following  
21 words and phrases shall have the meanings given to them in this  
22 subsection unless the context clearly indicates otherwise:

23       "Children's Health Insurance Program." The children's health  
24 insurance program under Article XXIII-A of the act of May 17,  
25 1921 (P.L.682, No.284), known as The Insurance Company Law of  
26 1921.

27       Section 2. This act shall take effect as follows:

28           (1) The addition of 40 Pa.C.S. § 4106 shall take effect  
29 upon publication in the Pennsylvania Bulletin of the  
30 temporary regulations required in 40 Pa.C.S. § 4103(c).

1           (2) The addition of 40 Pa.C.S. §§ 4108 and 4109 shall  
2 take effect in 90 days.

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