
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 857 Session of
2019

INTRODUCED BY VOGEL, ARGALL, AUMENT, BAKER, BARTOLOTTA, BLAKE,
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STREET, J. WARD, K. WARD, YAW AND YUDICHAK,
SEPTEMBER 19, 2019

REFERRED TO BANKING AND INSURANCE, SEPTEMBER 19, 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

1 medical attention could reasonably be expected to result in
2 placing the health of the individual in serious jeopardy,
3 serious impairment to bodily functions or serious dysfunction of
4 a bodily organ or part.

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

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

9 (2) A federally qualified health center as defined in
10 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,
11 42 U.S.C. § 1395x(aa)(4)).

12 (3) A rural health clinic as defined in section 1861(aa)
13 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
14 1395x(aa)(2)).

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

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

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

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

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

30 (9) A social worker, clinical social worker, marriage

1 and family therapist or professional counselor who holds a
2 valid license under the act of July 9, 1987 (P.L.220, No.39),
3 known as the Social Workers, Marriage and Family Therapists
4 and Professional Counselors Act.

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

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

9 "Health care services." Services for the diagnosis,
10 prevention, treatment, cure or relief of a health condition,
11 injury, disease or illness.

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

16 "Health insurance policy." As follows:

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

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

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

1 "Health Insurance Portability and Accountability Act of
2 1996." The Health Insurance Portability and Accountability Act
3 of 1996 (Public Law 104-191, 110 Stat. 1936).

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

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

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

13 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
14 corporations).

15 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
16 services plan corporations).

17 "Interactive audio and video." Real-time two-way or
18 multiple-way communication between a health care provider and a
19 patient.

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

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

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

4 (1) discharging official duties in the armed forces of
5 the United States, the United States Public Health Services
6 or the United States Department of Veterans Affairs;

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

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

13 (4) providing provider-to-provider consultation
14 services; or

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

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

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

26 (2) A clinical nurse specialist or certified registered
27 nurse practitioner who holds a valid license under The
28 Professional Nursing Law.

29 (3) A physician assistant who holds a valid license
30 under the Medical Practice Act of 1985.

1 (4) A dentist who holds a valid license under The Dental
2 Law.

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

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

9 (7) A social worker, clinical social worker or
10 professional counselor who holds a valid license under the
11 Social Workers, Marriage and Family Therapists and
12 Professional Counselors Act.

13 (8) An occupational therapist who holds a valid license
14 under the Occupational Therapy Practice Act.

15 (9) A physical therapist who holds a valid license under
16 the act of October 10, 1975 (P.L.383, No.110), known as the
17 Physical Therapy Practice Act.

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

23 "Store-and-forward." Technology that stores and transmits or
24 grants access to a patient's clinical information for review by
25 a health care provider who is at a different location.

26 "Telemedicine." The delivery of health care services
27 provided through telemedicine technologies to a patient by a
28 health care provider who is at a different location. The term
29 does not include a provider-to-provider consultation.

30 "Telemedicine technologies." As follows:

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

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

9 (i) Audio-only medium, voicemail, facsimile, e-mail,
10 instant messaging, text messaging or online
11 questionnaire, or any combination thereof.

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

14 Section 3. Regulation of telemedicine by professional licensure
15 boards.

16 (a) Requirements.--

17 (1) A health care provider that holds a valid license,
18 certificate or registration from a Commonwealth professional
19 licensure board shall be authorized to practice telemedicine
20 in accordance with this act and the corresponding licensure
21 board regulations.

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

26 (b) Regulations.--Each licensure board shall within 24
27 months of the effective date of this section promulgate
28 regulations that are consistent with this act to provide for and
29 regulate telemedicine within the scope of practice and standard
30 of care regulated by the board. The regulations shall:

1 (1) Consider model policies for the appropriate use of
2 telemedicine technologies.

3 (2) Include patient privacy and data security standards
4 that are in compliance with the Health Insurance Portability
5 and Accountability Act of 1996 and the Health Information
6 Technology for Economic and Clinical Health Act.

7 (c) Temporary regulations.--In order to facilitate the
8 prompt implementation of this act, the licensure boards shall
9 transmit notice of temporary regulations regarding
10 implementation of this act to the Legislative Reference Bureau
11 for publication in the Pennsylvania Bulletin within 120 days of
12 the effective date of this section. Temporary regulations are
13 not subject to:

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

17 (2) Sections 204(b) and 301(10) of the act of October
18 15, 1980 (P.L.950, No.164), known as the Commonwealth
19 Attorneys Act.

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

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

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

28 (e) Construction.--The provisions of this act shall be in
29 full force and effect even if the licensure boards have not yet
30 published temporary regulations or implemented the regulations

1 required under this section.

2 Section 4. Compliance.

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

11 Section 5. Evaluation and treatment.

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

16 (1) For a telemedicine encounter in which the provider
17 does not have an established provider-patient relationship,
18 the provider shall:

19 (i) verify the location and identity of the
20 individual receiving care; and

21 (ii) disclose the health care provider's identity,
22 geographic location and medical specialty or applicable
23 credentials.

24 (2) Obtain informed consent regarding the use of
25 telemedicine technologies from the individual or other person
26 acting in a health care decision-making capacity for the
27 individual. The individual or other person acting in a health
28 care decision-making capacity, including the parent or legal
29 guardian of a child in accordance with the act of February
30 13, 1970 (P.L.19, No.10), entitled "An act enabling certain

1 minors to consent to medical, dental and health services,
2 declaring consent unnecessary under certain circumstances,"
3 has the right to choose the form of service delivery, which
4 includes the right to refuse telemedicine services without
5 jeopardizing the individual's access to other available
6 services.

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

18 (4) Establish a diagnosis and treatment plan or execute
19 a treatment plan.

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

26 (6) Provide a visit summary to the individual if
27 requested.

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

30 (b) Disclosures.--Providers offering online refractive

1 services shall inform patients that the service is not an ocular
2 health exam. This subsection shall not be construed to prohibit
3 online refractive services if the information notice is clearly
4 and conspicuously communicated to the patient prior to the
5 online refractive service.

6 (c) Applicability.--

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

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

11 Section 6. Insurance coverage of telemedicine.

12 (a) Insurance coverage and reimbursement.--

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

21 (2) A health insurer shall reimburse a health care
22 provider that is a participating network provider for
23 telemedicine if the health insurer reimburses the same
24 participating provider for the same service through an in-
25 person encounter. The standard of care and rules of practice
26 applicable to an in-person encounter shall apply to a
27 telemedicine encounter.

28 (3) Payment for a covered service provided via
29 telemedicine by any network provider shall be established
30 between the health care provider and health insurer.

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

2 (1) Subsection (a) (1) and (2) shall not apply if the
3 telemedicine service is facilitated via a medical device or
4 other technology that provides clinical data or information,
5 excluding existing information in an electronic medical
6 records system, other than that independently provided
7 through interactive audio or video or written input from the
8 patient.

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

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

19 (c) Construction.--Nothing under this section shall be
20 construed to:

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

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

25 Section 7. Medicaid program reimbursement.

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

- 1 (b) Applicability.--Subsection (a) does not apply if:
- 2 (1) the telemedicine-enabling device, technology or
- 3 service fails to comply with applicable law and regulatory
- 4 guidance regarding the secure transmission and maintenance of
- 5 patient information; or
- 6 (2) the provision of the service using telemedicine
- 7 would be inconsistent with the standard of care.

8 Section 8. Effective date.

9 This act shall take effect as follows:

- 10 (1) The following provisions shall take effect in 90
- 11 days:
- 12 (i) Section 6.
- 13 (ii) Section 7.
- 14 (2) The remainder of this act shall take effect
- 15 immediately.