

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 857 Session of 2019

INTRODUCED BY VOGEL, ARGALL, AUMENT, BAKER, BARTOLOTTA, BLAKE, BREWSTER, COSTA, GORDNER, HAYWOOD, KILLION, LANGERHOLC, MARTIN, MENSCH, PHILLIPS-HILL, SANTARSIERO, SCHWANK, STEFANO, STREET, J. WARD, K. WARD, YAW AND YUDICHAK, SEPTEMBER 19, 2019

SENATOR SCAVELLO, BANKING AND INSURANCE, AS AMENDED, OCTOBER 28, 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,

1 including severe pain, such that the absence of immediate
2 medical attention could reasonably be expected to result in
3 placing the health of the individual in serious jeopardy,
4 serious impairment to bodily functions or serious dysfunction of
5 a bodily organ or part.

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

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

10 (2) A federally qualified health center as defined in
11 section 1861(aa)(4) of the Social Security Act (49 Stat. 620,
12 42 U.S.C. § 1395x(aa)(4)).

13 (3) A rural health clinic as defined in section 1861(aa)
14 (2) of the Social Security Act (49 Stat. 620, 42 U.S.C. §
15 1395x(aa)(2)).

16 (4) A GENERAL, MENTAL, CHRONIC DISEASE OR OTHER TYPE OF <--
17 HOSPITAL LICENSED IN THIS COMMONWEALTH.

18 ~~(4)~~ (5) A pharmacist who holds a valid license under the <--
19 act of September 27, 1961 (P.L.1700, No.699), known as the
20 Pharmacy Act.

21 ~~(5)~~ (6) An occupational therapist who holds a valid <--
22 license under the act of June 15, 1982 (P.L.502, No.140),
23 known as the Occupational Therapy Practice Act.

24 ~~(6)~~ (7) A speech-language pathologist who holds a valid <--
25 license under the act of December 21, 1984 (P.L.1253,
26 No.238), known as the Speech-Language Pathologists and
27 Audiologists Licensure Act.

28 ~~(7)~~ (8) An audiologist who holds a valid license under <--
29 the Speech-Language Pathologists and Audiologists Licensure
30 Act.

1 ~~(8)~~ (9) A dental hygienist who holds a valid license <--
2 under the act of May 1, 1933 (P.L.216, No.76), known as The
3 Dental Law.

4 ~~(9)~~ (10) A social worker, clinical social worker, <--
5 marriage and family therapist or professional counselor who
6 holds a valid license under the act of July 9, 1987 (P.L.220,
7 No.39), known as the Social Workers, Marriage and Family
8 Therapists and Professional Counselors Act.

9 ~~(10)~~ (11) A registered nurse who holds a valid license <--
10 under the act of May 22, 1951 (P.L.317, No.69), known as The
11 Professional Nursing Law.

12 (12) A GENETIC COUNSELOR WHO HOLDS A VALID LICENSE UNDER <--
13 THE ACT OF DECEMBER 20, 1985 (P.L.457, NO.112), KNOWN AS THE
14 MEDICAL PRACTICE ACT OF 1985, OR THE ACT OF OCTOBER 5, 1978
15 (P.L.1109, NO.261), KNOWN AS THE OSTEOPATHIC MEDICAL PRACTICE
16 ACT.

17 ~~(11)~~ (13) An out-of-State health care provider. <--
18 "Health care services." Services for the diagnosis,
19 prevention, treatment, cure or relief of a health condition,
20 injury, disease or illness.

21 "Health Information Technology for Economic and Clinical
22 Health Act." The Health Information Technology for Economic and
23 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and
24 467-496).

25 "Health insurance policy." As follows:

26 (1) An individual or group health insurance policy,
27 contract or plan that provides coverage for services provided
28 by a health care facility or health care provider that is
29 offered by a health insurer.

30 (2) The term includes an individual or group health

1 insurance policy, contract or plan that provides dental or
2 vision coverage through a provider network.

3 (3) Except as provided under paragraph (2), the term
4 does not include accident only, fixed indemnity, limited
5 benefit, credit, dental, vision, specified disease, Medicare
6 supplement, Civilian Health and Medical Program of the
7 Uniformed Services (CHAMPUS) supplement, long-term care or
8 disability income, workers' compensation or automobile
9 medical payment insurance.

10 "Health Insurance Portability and Accountability Act of
11 1996." The Health Insurance Portability and Accountability Act
12 of 1996 (Public Law 104-191, 110 Stat. 1936).

13 "Health insurer." An entity that holds a valid license by
14 the Insurance Department with accident and health authority to
15 issue a health insurance policy and governed under any of the
16 following:

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

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

22 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
23 corporations).

24 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
25 services plan corporations).

26 "Interactive audio and video." Real-time two-way or
27 multiple-way communication between a health care provider and a
28 patient.

29 "Licensure board." Each licensing board within the Bureau of
30 Professional and Occupational Affairs of the Department of State

1 with jurisdiction over a professional licensee identified as a
2 health care provider under this act.

3 "On-call or cross-coverage services." The provision of
4 telemedicine by a health care provider designated by another
5 provider with a provider-patient relationship to deliver
6 services on a temporary basis so long as the designated provider
7 is in the same group or health system, has access to the
8 patient's prior medical records, holds a valid license in this
9 Commonwealth and is in a position to coordinate care.

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

13 (1) discharging official duties in the armed forces of
14 the United States, the United States Public Health Services
15 or the United States Department of Veterans Affairs;

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

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

22 (4) providing provider-to-provider consultation
23 services; or

24 (5) providing services which would otherwise be exempt
25 from the requirement of licensure, certification or
26 registration in this Commonwealth under the respective
27 licensure act.

28 "Participating network provider." ~~Any of the following~~ <--
29 ~~providers who are under contract with a health insurer:~~

30 ~~(1) A physician who holds a valid license under the act~~

1 of December 20, 1985 (P.L.457, No.112), known as the Medical
2 Practice Act of 1985, or the act of October 5, 1978
3 (P.L.1109, No.261), known as the Osteopathic Medical Practice
4 Act.

5 ~~(2) A clinical nurse specialist or certified registered~~
6 ~~nurse practitioner who holds a valid license under The~~
7 ~~Professional Nursing Law.~~

8 ~~(3) A physician assistant who holds a valid license~~
9 ~~under the Medical Practice Act of 1985.~~

10 ~~(4) A dentist who holds a valid license under The Dental~~
11 ~~Law.~~

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

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

18 ~~(7) A social worker, clinical social worker or~~
19 ~~professional counselor who holds a valid license under the~~
20 ~~Social Workers, Marriage and Family Therapists and~~
21 ~~Professional Counselors Act.~~

22 ~~(8) An occupational therapist who holds a valid license~~
23 ~~under the Occupational Therapy Practice Act.~~

24 ~~(9) A physical therapist who holds a valid license under~~
25 ~~the act of October 10, 1975 (P.L.383, No.110), known as the~~
26 ~~Physical Therapy Practice Act. A HEALTH CARE PROVIDER THAT <--~~

27 HAS A NETWORK PARTICIPATION AGREEMENT WITH AN INSURER.

28 "Provider-to-provider consultation." The ~~informal~~ act of <--
29 seeking advice and recommendations from another health care
30 provider for diagnostic studies, therapeutic interventions or

1 other services that may benefit the patient of the initiating
2 health care provider.

3 "Store-and-forward." Technology that stores and transmits or
4 grants access to a patient's clinical information for review by
5 a health care provider who is at a different location. THE TERM <--
6 DOES NOT INCLUDE THE STORAGE, TRANSMISSION OR USE OF ELECTRONIC
7 MEDICAL RECORDS WITHOUT THE CONCURRENT TRANSMISSION OF
8 ADDITIONAL CLINICAL INFORMATION NOT ALREADY PRESENT IN THE
9 ELECTRONIC MEDICAL RECORDS.

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

14 "Telemedicine technologies." As follows:

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

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

23 (i) Audio-only medium, voicemail, facsimile, e-mail,
24 instant messaging, text messaging or online
25 questionnaire, or any combination thereof.

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

28 Section 3. Regulation of telemedicine by professional licensure
29 boards.

30 (a) Requirements.--

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

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

10 (b) Regulations.--Each licensure board shall within 24
11 months of the effective date of this section promulgate FINAL <--
12 regulations that are consistent with this act to provide for and
13 regulate telemedicine within the scope of practice and standard
14 of care regulated by the board. THE REGULATIONS SHALL NOT <--
15 ESTABLISH A SEPARATE STANDARD OF CARE FOR TELEMEDICINE. THE
16 STANDARD OF CARE APPLICABLE TO AN IN-PERSON ENCOUNTER SHALL
17 APPLY TO A TELEMEDICINE ENCOUNTER. The regulations shall:

18 (1) Consider model policies AND CLINICAL GUIDELINES for <--
19 the appropriate use of telemedicine technologies.

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

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

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

4 (2) Sections 204(b) and 301(10) of the act of October
5 15, 1980 (P.L.950, No.164), known as the Commonwealth
6 Attorneys Act.

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

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

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

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

19 Section 4. Compliance.

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

28 Section 5. Evaluation and treatment.

29 (a) Requirements.--Except as provided under subsection (c),
30 a health care provider who provides telemedicine to an

1 individual located in this Commonwealth shall comply with the
2 following:

3 (1) For a telemedicine encounter in which the provider
4 does not have an established provider-patient relationship,
5 the provider shall:

6 (i) verify the location and identity of the
7 individual receiving care; and

8 (ii) disclose the health care provider's identity,
9 geographic location and medical specialty or applicable
10 credentials.

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

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

1 health care services were provided in person. If the health
2 care provider utilizes interactive audio without interactive
3 video, the provider shall inform the patient that the patient
4 has the option to request interactive audio and video.

5 (4) Establish a diagnosis and treatment plan or execute
6 a treatment plan.

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

13 (6) Provide a visit summary to the individual if
14 requested.

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

17 (8) THE STANDARD OF CARE APPLICABLE TO AN IN-PERSON <--
18 ENCOUNTER SHALL APPLY TO A TELEMEDICINE ENCOUNTER. IF THE USE
19 OF TELEMEDICINE WOULD BE INCONSISTENT WITH THE STANDARD OF
20 CARE, THE HEALTH CARE PROVIDER SHALL DIRECT THE PATIENT TO
21 SEEK IN-PERSON CARE.

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

28 (c) Applicability.--

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

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

3 Section 6. Insurance coverage of telemedicine.

4 (a) Insurance coverage and reimbursement.--

5 (1) A health insurance policy issued, delivered,
6 executed or renewed in this Commonwealth after the effective
7 date of this section shall provide coverage for MEDICALLY <--
8 NECESSARY telemedicine delivered by a participating network
9 provider who provides a covered service via telemedicine
10 consistent with the insurer's medical policies. A health
11 insurance policy may not exclude a health care service for
12 coverage solely because the service is provided through
13 telemedicine.

14 (2) ~~A~~ SUBJECT TO PARAGRAPH (1), A health insurer shall <--
15 reimburse a health care provider that is a participating
16 network provider for telemedicine if the health insurer
17 reimburses the same participating provider for the same
18 service through an in-person encounter. ~~The standard of care~~ <--
19 ~~and rules of practice applicable to an in-person encounter~~
20 ~~shall apply to a telemedicine encounter.~~ REIMBURSEMENT SHALL <--
21 NOT BE CONDITIONED UPON THE USE OF AN EXCLUSIVE OR
22 PROPRIETARY TELEMEDICINE TECHNOLOGY OR VENDOR.

23 (3) Payment for a covered service provided via
24 telemedicine by any PARTICIPATING network provider shall be <--
25 ~~established~~ NEGOTIATED between the health care provider and <--
26 health insurer.

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

28 (1) Subsection (a)(1) and (2) shall not apply if the
29 telemedicine service is facilitated via a medical device or
30 other technology that provides clinical data or information,

1 excluding existing information in an electronic medical
2 records system, other than that independently provided
3 through interactive audio ~~or video or written input from~~ AND <--
4 VIDEO WITH, OR STORE-AND-FORWARD IMAGING PROVIDED BY, the
5 patient.

6 (2) For a health insurance policy for which either rates
7 or forms are required to be filed with the Federal Government
8 or the Insurance Department, this section shall apply to a
9 policy for which a form or rate is first filed on or after
10 180 DAYS AFTER the effective date of this section. <--

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

16 (c) Construction.--Nothing under this section shall be
17 construed to:

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

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

22 Section 7. Medicaid program reimbursement.

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

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

29 (1) the telemedicine-enabling device, technology or
30 service fails to comply with applicable law and regulatory

1 guidance regarding the secure transmission and maintenance of
2 patient information; or

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

5 Section 8. Effective date.

6 This act shall take effect as follows:

7 ~~(1) The following provisions shall take effect in 90~~ <--
8 ~~days:~~

9 ~~(i) Section 6.~~

10 ~~(ii) Section 7.~~

11 (1) SECTION 6 SHALL TAKE EFFECT UPON PUBLICATION IN THE <--
12 PENNSYLVANIA BULLETIN OF THE TEMPORARY REGULATIONS REQUIRED
13 IN SECTION 3(C).

14 (2) SECTION 7 SHALL TAKE EFFECT IN 90 DAYS.

15 ~~(2)~~ (3) The remainder of this act shall take effect <--
16 immediately.