

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

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 30, 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 general, mental, chronic disease or other type of
16 hospital licensed in this Commonwealth.

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

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

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

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

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

1 Law.

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

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

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

15 (13) An out-of-State health care provider.

16 "Health care services." Services for the diagnosis,
17 prevention, treatment, cure or relief of a health condition,
18 injury, disease or illness.

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

23 "Health insurance policy." As follows:

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

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

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

8 "Health Insurance Portability and Accountability Act of
9 1996." The Health Insurance Portability and Accountability Act
10 of 1996 (Public Law 104-191, 110 Stat. 1936).

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

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

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

20 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
21 corporations).

22 (4) 40 Pa.C.S. Ch. 63 (relating to professional health
23 services plan corporations).

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

27 "Licensure board." Each licensing board within the Bureau of
28 Professional and Occupational Affairs of the Department of State
29 with jurisdiction over a professional licensee identified as a
30 health care provider under this act.

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

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

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

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

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

20 (4) providing provider-to-provider consultation
21 services; or

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

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

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

1 that may benefit the patient of the initiating health care
2 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.--

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

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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) 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.~~ SUBJECT TO PARAGRAPH <--

19 (1), A HEALTH INSURER SHALL REIMBURSE A HEALTH CARE PROVIDER
20 THAT IS A PARTICIPATING NETWORK PROVIDER FOR BOTH IN-PERSON
21 AND TELEMEDICINE SERVICES IN ACCORDANCE WITH THE TERMS AND
22 CONDITIONS OF THE NETWORK PARTICIPATION AGREEMENT AS
23 NEGOTIATED BETWEEN THE INSURER AND THE PARTICIPATING
24 PROVIDER, THE FORM OF WHICH SHALL BE FILED WITH AND SUBJECT
25 TO REVIEW BY THE DEPARTMENT OF HEALTH. THE NETWORK
26 PARTICIPATION AGREEMENT MAY NOT PROHIBIT REIMBURSEMENT SOLELY
27 BECAUSE A HEALTH CARE SERVICE IS PROVIDED BY TELEMEDICINE.
28 Reimbursement shall not be conditioned upon the use of an
29 exclusive or proprietary telemedicine technology or vendor.

30 (3) Payment for a covered service provided via

1 telemedicine by any participating network provider shall be
2 negotiated between the health care provider and health
3 insurer.

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

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

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

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

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

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

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

28 Section 7. Medicaid program reimbursement.

29 (a) Medical assistance payment.--Medical assistance payments
30 shall be made on behalf of eligible individuals for

1 telemedicine, consistent with Federal law, as specified under
2 this act if the service would be covered through an in-person
3 encounter.

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

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

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

11 Section 8. Effective date.

12 This act shall take effect as follows:

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

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

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