

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 739 Session of 2023

INTRODUCED BY VOGEL, HAYWOOD, SANTARSIERO, LANGERHOLC, KANE, STEFANO, BARTOLOTTA, SCHWANK, COSTA, PENNYCUICK, J. WARD, LAUGHLIN, MARTIN, ROTHMAN, BAKER, YAW, AUMENT, ROBINSON, COLLETT AND STREET, JUNE 2, 2023

SENATOR DiSANTO, BANKING AND INSURANCE, AS AMENDED, JUNE 27, 2023

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 "Agreement with the Department of Human Services." An
14 agreement between an MA or CHIP managed care plan and the
15 Department of Human Services to manage the purchase and
16 provision of services. The term includes a county or multicounty
17 agreement with the Department of Human Services for behavioral

1 health services.

2 "Asynchronous interaction." An exchange of information  
3 between a patient and a health care provider that does not occur  
4 in real time, including the secure collection and transmission  
5 of a patient's medical information, clinical data, clinical  
6 images, laboratory results and self-reported medical history.

7 "Emergency medical services." As defined in 35 Pa.C.S. §  
8 8103 (relating to definitions).

9 "Emergency service." As follows:

10 (1) A health care service, including behavioral health  
11 services, provided to a patient after the sudden onset of a  
12 medical condition that manifests itself by acute symptoms of  
13 sufficient severity or severe pain such that a prudent  
14 layperson who possesses an average knowledge of health and  
15 medicine could reasonably expect the absence of immediate  
16 medical attention to result in:

17 (i) placing the health of the patient in serious  
18 jeopardy or, with respect to a pregnant woman, the health  
19 of the woman or the unborn child in serious jeopardy;

20 (ii) serious impairment to bodily functions; or

21 (iii) serious dysfunction of any bodily organ or  
22 part.

23 (2) The term includes emergency transportation, related  
24 emergency service or emergency medical services provided by  
25 an emergency medical services agency as defined in 35 Pa.C.S.  
26 § 8103.

27 "Enrollee." An individual who is entitled to receive health  
28 care services under an agreement with the Department of Human  
29 Services.

30 "Health care facility." An entity that is licensed to

1 provide a health care service under Article X of the act of June  
2 13, 1967 (P.L.31, No.21), known as the Human Services Code, or  
3 the act of July 19, 1979 (P.L.130, No.48), known as the Health  
4 Care Facilities Act. The term includes a federally qualified  
5 health center and a rural health clinic as defined in 42 U.S.C.  
6 § 1395x(aa)(2) and (4) (relating to definitions).

7 "Health care provider." A health care facility, medical  
8 equipment supplier or person that is licensed, certified or  
9 otherwise regulated to provide health care services under the  
10 laws of this Commonwealth or another state.

11 "Health care service." Any treatment, admission, procedure,  
12 medical supplies and equipment or other services, including  
13 behavioral health, prescribed or otherwise provided or proposed  
14 to be provided by a health care provider to a patient for the  
15 diagnosis, prevention, treatment, cure or relief of a health  
16 condition, illness, injury or disease.

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

21 "Health insurance policy." A policy, subscriber contract,  
22 certificate or plan issued by an insurer that provides medical  
23 or health care coverage. The term includes a dental only and a  
24 vision only policy. The term does not include:

- 25 (1) An accident only policy.
- 26 (2) A credit only policy.
- 27 (3) A long-term care or disability income policy.
- 28 (4) A specified disease policy.
- 29 (5) A Medicare supplement policy.
- 30 (6) A TRICARE policy, including a Civilian Health and

1 Medical Program of the Uniformed Services (CHAMPUS)  
2 supplement policy.

3 (7) A fixed indemnity policy.

4 (8) A hospital indemnity policy.

5 (9) A worker's compensation policy.

6 (10) An automobile medical payment policy under 75  
7 Pa.C.S. (relating to vehicles).

8 (11) A homeowner's insurance policy.

9 (12) Any other similar policies providing for limited  
10 benefits.

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

14 "Insurer." An entity licensed by the Insurance Department  
15 that offers, issues or renews a health insurance policy and  
16 governed under any of the 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 ~~(1)~~ (2) The act of December 29, 1972 (P.L.1701, No.364), <--  
21 known as the Health Maintenance Organization Act.

22 ~~(2)~~ (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan <--  
23 corporations).

24 ~~(3)~~ (4) 40 Pa.C.S. Ch. 63 (relating to professional <--  
25 health services plan corporations).

26 "Licensure board." Each licensing board within the Bureau of  
27 Professional and Occupational Affairs of the Department of State  
28 with jurisdiction over a health care provider.

29 "Medical Assistance or Children's Health Insurance Program  
30 managed care plan" or "MA or CHIP managed care plan." A health

1 care plan that uses a gatekeeper to manage the utilization of  
2 health care services by medical assistance or children's health  
3 insurance program enrollees and integrates the financing and  
4 delivery of health care services.

5 "Participating network provider." A health care provider  
6 that has entered a contractual or operating relationship with an  
7 insurer or MA or CHIP managed care plan to participate in one or  
8 more ~~designated~~ networks of the insurer or MA or CHIP managed <--  
9 care plan to provide health care services under the terms of a  
10 health insurance policy, or an agreement with the Department of <--  
11 Human Services.

12 ~~"Provider to provider consultation." An act of seeking <--~~  
13 ~~advice and recommendations concerning diagnostic studies,~~  
14 ~~therapeutic interventions or other health care services that may~~  
15 ~~benefit the patient of the health care provider from another~~  
16 ~~health care provider.~~

17 "Remote patient monitoring." The collection of physiological  
18 data from a patient in one location, which is transmitted via an  
19 electronic communication technology to a health care provider in  
20 a different location for use in care and related support of the  
21 patient.

22 "State." A state of the United States, the District of  
23 Columbia, the Commonwealth of Puerto Rico and any territory or  
24 possession of the United States.

25 "Synchronous interaction." A two-way or multiple-way  
26 exchange of information between a patient and a health care  
27 provider that occurs in real time via audio or video  
28 conferencing.

29 "Telemedicine." The delivery of health care services to a  
30 patient by a health care provider who is at a different

1 location, through synchronous interactions, asynchronous  
2 interactions or remote patient monitoring that meets the  
3 requirements of the Health Insurance Portability and  
4 Accountability Act of 1996, the Health Information Technology  
5 for Economic and Clinical Health Act or other applicable Federal  
6 law or law of this Commonwealth regarding the privacy and  
7 security of electronic transmission of health information. ~~The~~ <--  
8 ~~term does not include a provider to provider consultation.~~

9 Section 3. Oversight of telemedicine by professional licensure  
10 boards.

11 Each licensure board shall regulate health care providers  
12 under the licensure's board jurisdiction to ensure that the use  
13 of telemedicine is consistent with the health care provider's  
14 scope of practice and that health care services provided by  
15 telemedicine meet the same standard of care applicable to the  
16 same health care service provided in an in-person setting. A  
17 licensure board may not establish a separate standard of care  
18 for telemedicine.

19 Section 4. Compliance.

20 A health care provider providing health care services through  
21 telemedicine to a patient shall comply with Federal law, the  
22 laws of this Commonwealth and applicable regulations. Failure to  
23 comply with applicable laws and regulations shall subject the  
24 health care provider to discipline by the applicable  
25 Commonwealth authority.

26 Section 5. Evaluation and treatment.

27 (a) Requirements.--A health care provider who provides  
28 health care services through telemedicine to a patient shall  
29 comply with the following:

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

1 care provider does not have an established provider-patient  
2 relationship, disclose the health care provider's identity  
3 and applicable state and type of license, certificate or  
4 state-regulated credentials.

5 (2) Verify the state location and identity of the  
6 patient receiving care by requesting that the patient provide  
7 at least two patient identifiers, such as name and date of  
8 birth.

9 (3) Obtain and document consent in accordance with the  
10 act of December 16, 1999 (P.L.971, No.69), known as the  
11 Electronic Transactions Act, from the patient or other person  
12 acting in a health care decision-making capacity for the  
13 patient after disclosure regarding the delivery models and  
14 treatment methods or limitations of telemedicine, including  
15 when it is advisable to seek in-person care. The patient or  
16 other person acting in a health care decision-making  
17 capacity, including the parent or legal guardian of a child  
18 in accordance with the act of February 13, 1970 (P.L.19,  
19 No.10), entitled "An act enabling certain minors to consent  
20 to medical, dental and health services, declaring consent  
21 unnecessary under certain circumstances," has the right to  
22 choose the form of health care service delivery, which  
23 includes the right to refuse telemedicine without  
24 jeopardizing the patient's access to in-person health care  
25 services.

26 (4) Perform a clinical evaluation that is appropriate  
27 for the patient and the condition with which the patient  
28 presents before providing treatment or issuing a prescription  
29 using telemedicine.

30 (5) Establish a diagnosis and treatment plan consistent

1 with the health care provider's scope of practice.

2 (6) Document in the patient's medical record the health  
3 care services rendered using telemedicine according to the  
4 same standard as required for in-person services.

5 (7) Create a visit summary and offer to the patient.

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

8 (b) Applicability.--

9 (1) Subsection (a) (1) and (2) do not apply to emergency  
10 services.

11 (2) A health care provider licensed, certified or  
12 otherwise regulated under the laws of this Commonwealth may  
13 provide telemedicine to patients physically located in this  
14 Commonwealth at the time of the health care service.

15 Telemedicine may be provided to patients physically located  
16 outside this Commonwealth to the extent permissible by the  
17 laws of the state where the patient is located.

18 (3) A health care provider licensed, certified or  
19 otherwise regulated solely under the laws of another state  
20 may provide telemedicine to patients located in this  
21 Commonwealth only in the following circumstances:

22 (i) A patient for whom the health care provider has  
23 an existing provider-patient relationship in the state in  
24 which the provider is licensed, certified or otherwise  
25 regulated, and the patient is temporarily located within  
26 this Commonwealth. If the health care provider becomes  
27 aware that the patient's location within this  
28 Commonwealth is no longer temporary, the health care  
29 provider shall transition care with the patient's consent  
30 to a health care provider licensed, certified or



1 otherwise regulated within this Commonwealth.

2 (ii) A patient located within this Commonwealth  
3 prospectively seeking care or receiving follow-up care  
4 from a health care provider licensed, certified or  
5 otherwise regulated in another state for a health care  
6 service that would be or has been provided outside this  
7 Commonwealth.

8 (c) Standard of care.--A health care provider providing  
9 health care services through telemedicine shall be subject to  
10 the same standard of care that would apply to the health care  
11 services in an in-person setting.

12 Section 6. Insurance coverage and reimbursement of  
13 telemedicine.

14 (a) General rule.--

15 (1) A health insurance policy issued, delivered,  
16 executed or renewed in this Commonwealth shall provide  
17 coverage for medically necessary health care services  
18 provided through telemedicine and delivered by a  
19 participating network provider who provides a covered health  
20 care service through telemedicine consistent with the  
21 insurer's medical policies. A health insurance policy may not  
22 exclude a health care service ~~for~~ FROM coverage solely <--  
23 because the health care service is provided through  
24 telemedicine.

25 (2) Subject to paragraph (1), an insurer shall reimburse  
26 a participating network provider for COVERED health care <--  
27 services delivered through telemedicine and pursuant to a  
28 health insurance policy in accordance with the terms and  
29 conditions of the contract as negotiated between the insurer  
30 and the participating network provider. ~~The~~ A contract that <--

1 includes reimbursement for COVERED health care services <--  
2 delivered through telemedicine may not prohibit reimbursement  
3 solely because a health care service is provided by  
4 telemedicine. Reimbursement ~~shall~~ MAY not be conditioned upon <--  
5 the use of an exclusive proprietary telemedicine technology  
6 or vendor.

7 (b) Applicability.--

8 (1) Subsection (a) does not apply if the telemedicine-  
9 enabling device, technology or service fails to comply with  
10 applicable law and regulatory guidance.

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

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

21 (c) Construction.--This section may not be construed to:

22 (1) Prohibit an insurer from reimbursing other health  
23 care providers for covered health care services provided  
24 through telemedicine.

25 (2) Require an insurer to reimburse an out-of-network  
26 health care provider for health care services provided  
27 through telemedicine.

28 (3) Require an insurer to reimburse a participating  
29 network provider if the provision of the health care service  
30 through telemedicine would be inconsistent with the standard

1 of care.

2 Section 7. Medical assistance and children's health insurance  
3 program coverage.

4 (a) MA or CHIP managed care plan payment.--

5 (1) MA or CHIP managed care plan payments shall be made  
6 on behalf of enrollees for medically necessary health care  
7 services provided through telemedicine, as specified under  
8 sections 2, 4 and 5, if all of the following apply:

9 (i) The health care service would be covered through  
10 an in-person encounter.

11 (ii) The provision of the health care service  
12 through telemedicine is consistent with Federal law and  
13 the laws of this Commonwealth, applicable regulations and  
14 clinical guidance.

15 (iii) Federal approval, if necessary for the  
16 provision of the health care service through  
17 telemedicine, has been received by the Department of  
18 Human Services.

19 (2) The MA or CHIP managed care plan shall reimburse a  
20 participating network provider for covered health care  
21 services delivered through telemedicine in accordance with  
22 the terms and conditions of the contract as negotiated  
23 between the MA or CHIP managed care plan, the participating  
24 network provider and the agreement with the Department of  
25 Human Services.

26 (b) Applicability.--Subsection (a) does not apply if the  
27 telemedicine-enabling device, technology or service fails to  
28 comply with applicable law and regulatory guidance.

29 (c) Construction.--This section may not be construed to:

30 (1) Prohibit a MA or CHIP managed care plan from making

1 payments on behalf of enrollees to other health care  
2 providers for covered health care services provided through  
3 telemedicine.

4 (2) Require a MA or CHIP managed care plan to reimburse  
5 a participating network provider if the provision of the  
6 health care service through telemedicine would be  
7 inconsistent with the standard of care.

8 Section 8. Effective date.

9 This act shall take effect as follows:

10 (1) Sections 6 and 7 shall take effect in 90 days.

11 (2) The remainder of this act shall take effect  
12 immediately.