

SENATE, No. 2559

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 8, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senators Corrado, Diegnan, Brown, T.Kean Singer and Turner

SYNOPSIS

Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2020)

1 AN ACT concerning telemedicine and telehealth and amending
2 P.L.2017, c.117.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to
8 read as follows:

9 8. a. A carrier that offers a health benefits plan in this State
10 shall provide coverage and payment for health care services
11 delivered to a covered person through telemedicine or telehealth, on
12 the same basis as, and at a provider reimbursement rate that **[does**
13 **not exceed]** equals the provider reimbursement rate that is
14 applicable, when the services are delivered through in-person
15 contact and consultation in New Jersey. Reimbursement payments
16 under this section may be provided either to the individual
17 practitioner who delivered the reimbursable services, or to the
18 agency, facility, or organization that employs the individual
19 practitioner who delivered the reimbursable services, as appropriate.

20 b. A carrier may limit coverage to services that are delivered
21 by health care providers in the health benefits plan's network, but
22 may not charge any deductible, copayment, or coinsurance for a
23 health care service, delivered through telemedicine or telehealth, in
24 an amount that exceeds the deductible, copayment, or coinsurance
25 amount that is applicable to an in-person consultation. In no case
26 shall a carrier:

27 (1) impose any restrictions on the location or setting of the
28 distant site used by a health care provider to provide services using
29 telemedicine and telehealth; or

30 (2) restrict the ability of a provider to use any electronic or
31 technological platform, including interactive, real-time, two-way
32 audio in combination with asynchronous store-and-forward
33 technology without video capabilities, to provide services using
34 telemedicine or telehealth that:

35 (a) allows the provider to meet the same standard of care as
36 would be provided if the services were provided in person; and

37 (b) is compliant with the requirements of the federal health
38 privacy rule set forth at 45 CFR Parts 160 and 164.

39 c. Nothing in this section shall be construed to:

40 (1) prohibit a carrier from providing coverage for only those
41 services that are medically necessary, subject to the terms and
42 conditions of the covered person's health benefits plan; or

43 (2) allow a carrier to require a covered person to use
44 telemedicine or telehealth in lieu of receiving an in-person service
45 from an in-network provider.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 d. The Commissioner of Banking and Insurance shall adopt
2 rules and regulations, pursuant to the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
4 provisions of this section.

5 e. As used in this section:

6 "Asynchronous store-and-forward" means the same as that term
7 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

8 "Carrier" means the same as that term is defined by section 2 of
9 P.L.1997, c.192 (C.26:2S-2).

10 "Covered person" means the same as that term is defined by
11 section 2 of P.L.1997, c.192 (C.26:2S-2).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Health benefits plan" means the same as that term is defined by
15 section 2 of P.L.1997, c.192 (C.26:2S-2).

16 "Telehealth" means the same as that term is defined by section 1
17 of P.L.2017, c.117 (C.45:1-61).

18 "Telemedicine" means the same as that term is defined by
19 section 1 of P.L.2017, c.117 (C.45:1-61).

20 (cf: P.L.2017, c.117, s.8)

21

22 2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to
23 read as follows:

24 7. a. The State Medicaid and NJ FamilyCare programs shall
25 provide coverage and payment for health care services delivered to
26 a benefits recipient through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. The State Medicaid and NJ FamilyCare programs may limit
36 coverage to services that are delivered by participating health care
37 providers, but may not charge any deductible, copayment, or
38 coinsurance for a health care service, delivered through
39 telemedicine or telehealth, in an amount that exceeds the deductible,
40 copayment, or coinsurance amount that is applicable to an in-person
41 consultation. In no case shall the State Medicaid and NJ
42 FamilyCare programs:

43 (1) impose any restrictions on the location or setting of the
44 distant site used by a health care provider to provide services using
45 telemedicine and telehealth; or

46 (2) restrict the ability of a provider to use any electronic or
47 technological platform, including interactive, real-time, two-way
48 audio in combination with asynchronous store-and-forward

1 technology without video capabilities, to provide services using
2 telemedicine or telehealth that:

3 (a) allows the provider to meet the same standard of care as
4 would be provided if the services were provided in person; and

5 (b) is compliant with the requirements of the federal health
6 privacy rule set forth at 45 CFR Parts 160 and 164.

7 c. Nothing in this section shall be construed to:

8 (1) prohibit the State Medicaid or NJ FamilyCare programs
9 from providing coverage for only those services that are medically
10 necessary, subject to the terms and conditions of the recipient's
11 benefits plan; or

12 (2) allow the State Medicaid or NJ FamilyCare programs to
13 require a benefits recipient to use telemedicine or telehealth in lieu
14 of obtaining an in-person service from a participating health care
15 provider.

16 d. The Commissioner of Human Services, in consultation with
17 the Commissioner of Children and Families, shall apply for such
18 State plan amendments or waivers as may be necessary to
19 implement the provisions of this section and to secure federal
20 financial participation for State expenditures under the federal
21 Medicaid program and Children's Health Insurance Program.

22 e. As used in this section:

23 "Asynchronous store-and-forward" means the same as that term
24 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

25 "Benefits recipient" or "recipient" means a person who is eligible
26 for, and who is receiving, hospital or medical benefits under the
27 State Medicaid program established pursuant to P.L.1968, c.413
28 (C.30:4D-1 et seq.), or under the NJ FamilyCare program
29 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
30 appropriate.

31 "Distant site" means the same as that term is defined by section 1
32 of P.L.2017, c.117 (C.45:1-61).

33 "Participating health care provider" means a licensed or certified
34 health care provider who is registered to provide health care
35 services to benefits recipients under the State Medicaid or NJ
36 FamilyCare programs, as appropriate.

37 "Telehealth" means the same as that term is defined by section 1
38 of P.L.2017, c.117 (C.45:1-61).

39 "Telemedicine" means the same as that term is defined by
40 section 1 of P.L.2017, c.117 (C.45:1-61).

41 (cf: P.L.2017, c.117, s.7)

42

43 3. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read
44 as follows:

45 2. a. Unless specifically prohibited or limited by federal or
46 State law, a health care provider who establishes a proper provider-
47 patient relationship with a patient may remotely provide health care
48 services to a patient through the use of telemedicine, regardless of

1 whether the health care provider is located in New Jersey at the
2 time the remote health care services are provided. A health care
3 provider may also engage in telehealth as may be necessary to
4 support and facilitate the provision of health care services to
5 patients.

6 b. Any health care provider who uses telemedicine or engages
7 in telehealth while providing health care services to a patient, shall:
8 (1) be validly licensed, certified, or registered, pursuant to Title 45
9 of the Revised Statutes, to provide such services in the State of New
10 Jersey; (2) remain subject to regulation by the appropriate New
11 Jersey State licensing board or other New Jersey State professional
12 regulatory entity; (3) act in compliance with existing requirements
13 regarding the maintenance of liability insurance; and (4) remain
14 subject to New Jersey jurisdiction if either the patient or the
15 provider is located in New Jersey at the time services are provided.

16 c. (1) Telemedicine services shall be provided using
17 interactive, real-time, two-way communication technologies.

18 (2) A health care provider engaging in telemedicine or
19 telehealth may use asynchronous store-and-forward technology to
20 allow for the electronic transmission of images, diagnostics, data,
21 and medical information; except that the health care provider may
22 use interactive, real-time, two-way audio in combination with
23 asynchronous store-and-forward technology, without video
24 capabilities, if, after accessing and reviewing the patient's medical
25 records, the provider determines that the provider is able to meet the
26 same standard of care as if the health care services were being
27 provided in person.

28 (3) The identity, professional credentials, and contact
29 information of a health care provider providing telemedicine or
30 telehealth services shall be made available to the patient during and
31 after the provision of services. The contact information shall enable
32 the patient to contact the health care provider, or a substitute health
33 care provider authorized to act on behalf of the provider who
34 provided services, for at least 72 hours following the provision of
35 services.

36 (4) A health care provider engaging in telemedicine or
37 telehealth shall review the medical history and any medical records
38 provided by the patient. For an initial encounter with the patient,
39 the provider shall review the patient's medical history and medical
40 records prior to initiating contact with the patient, as required
41 pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,
42 c.117 (C.45:1-63). In the case of a subsequent telemedicine or
43 telehealth encounter conducted pursuant to an ongoing provider-
44 patient relationship, the provider may review the information prior
45 to initiating contact with the patient or contemporaneously with the
46 telemedicine or telehealth encounter.

47 (5) Following the provision of services using telemedicine or
48 telehealth, the patient's medical information shall be made available

1 to the patient upon the patient's request, and, with the patient's
2 affirmative consent, forwarded directly to the patient's primary care
3 provider or health care provider of record, or, upon request by the
4 patient, to other health care providers. For patients without a
5 primary care provider or other health care provider of record, the
6 health care provider engaging in telemedicine or telehealth may
7 advise the patient to contact a primary care provider, and, upon
8 request by the patient, assist the patient with locating a primary care
9 provider or other in-person medical assistance that, to the extent
10 possible, is located within reasonable proximity to the patient. The
11 health care provider engaging in telemedicine or telehealth shall
12 also refer the patient to appropriate follow up care where necessary,
13 including making appropriate referrals for emergency or
14 complimentary care, if needed. Consent may be oral, written, or
15 digital in nature, provided that the chosen method of consent is
16 deemed appropriate under the standard of care.

17 d. (1) Any health care provider providing health care services
18 using telemedicine or telehealth shall be subject to the same
19 standard of care or practice standards as are applicable to in-person
20 settings. If telemedicine or telehealth services would not be
21 consistent with this standard of care, the health care provider shall
22 direct the patient to seek in-person care.

23 (2) Diagnosis, treatment, and consultation recommendations,
24 including discussions regarding the risk and benefits of the patient's
25 treatment options, which are made through the use of telemedicine
26 or telehealth, including the issuance of a prescription based on a
27 telemedicine or telehealth encounter, shall be held to the same
28 standard of care or practice standards as are applicable to in-person
29 settings. Unless the provider has established a proper provider-
30 patient relationship with the patient, a provider shall not issue a
31 prescription to a patient based solely on the responses provided in
32 an online questionnaire.

33 e. The prescription of Schedule II controlled dangerous
34 substances through the use of telemedicine or telehealth shall be
35 authorized only after an initial in-person examination of the patient,
36 as provided by regulation, and a subsequent in-person visit with the
37 patient shall be required every three months for the duration of time
38 that the patient is being prescribed the Schedule II controlled
39 dangerous substance. However, the provisions of this subsection
40 shall not apply, and the in-person examination or review of a patient
41 shall not be required, when a health care provider is prescribing a
42 stimulant which is a Schedule II controlled dangerous substance for
43 use by a minor patient under the age of 18, provided that the health
44 care provider is using interactive, real-time, two-way audio and
45 video technologies when treating the patient and the health care
46 provider has first obtained written consent for the waiver of these
47 in-person examination requirements from the minor patient's parent
48 or guardian.

1 f. A mental health screener, screening service, or screening
2 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
3 27.1 et seq.):

4 (1) shall not be required to obtain a separate authorization in
5 order to engage in telemedicine or telehealth for mental health
6 screening purposes; and

7 (2) shall not be required to request and obtain a waiver from
8 existing regulations, prior to engaging in telemedicine or telehealth.

9 g. A health care provider who engages in telemedicine or
10 telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall
11 maintain a complete record of the patient's care, and shall comply
12 with all applicable State and federal statutes and regulations for
13 recordkeeping, confidentiality, and disclosure of the patient's
14 medical record.

15 h. A health care provider shall not be subject to any
16 professional disciplinary action under Title 45 of the Revised
17 Statutes solely on the basis that the provider engaged in
18 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-
19 61 et al.).

20 i. (1) In accordance with the "Administrative Procedure Act,"
21 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
22 entities that, pursuant to Title 45 of the Revised Statutes, are
23 responsible for the licensure, certification, or registration of health
24 care providers in the State, shall each adopt rules and regulations
25 that are applicable to the health care providers under their
26 respective jurisdictions, as may be necessary to implement the
27 provisions of this section and facilitate the provision of
28 telemedicine and telehealth services. Such rules and regulations
29 shall, at a minimum:

30 (a) include best practices for the professional engagement in
31 telemedicine and telehealth;

32 (b) ensure that the services patients receive using telemedicine
33 or telehealth are appropriate, medically necessary, and meet current
34 quality of care standards;

35 (c) include measures to prevent fraud and abuse in connection
36 with the use of telemedicine and telehealth, including requirements
37 concerning the filing of claims and maintaining appropriate records
38 of services provided; and

39 (d) provide substantially similar metrics for evaluating quality
40 of care and patient outcomes in connection with services provided
41 using telemedicine and telehealth as currently apply to services
42 provided in person.

43 (2) In no case shall the rules and regulations adopted pursuant to
44 paragraph (1) of this subsection require a provider to conduct an
45 initial in-person visit with the patient as a condition of providing
46 services using telemedicine or telehealth.

47 (3) The failure of any licensing board to adopt rules and
48 regulations pursuant to this subsection shall not have the effect of

1 delaying the implementation of this act, and shall not prevent health
2 care providers from engaging in telemedicine or telehealth in
3 accordance with the provisions of this act and the practice act
4 applicable to the provider's professional licensure, certification, or
5 registration.

6 (cf: P.L.2017, c.117, s.2)

7

8 4. Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is amended
9 to read as follows:

10 9. a. The State Health Benefits Commission shall ensure that
11 every contract purchased thereby, which provides hospital and
12 medical expense benefits, additionally provides coverage and
13 payment for health care services delivered to a covered person
14 through telemedicine or telehealth, on the same basis as, and at a
15 provider reimbursement rate that **[does not exceed]** equals the
16 provider reimbursement rate that is applicable, when the services
17 are delivered through in-person contact and consultation in New
18 Jersey. Reimbursement payments under this section may be
19 provided either to the individual practitioner who delivered the
20 reimbursable services, or to the agency, facility, or organization that
21 employs the individual practitioner who delivered the reimbursable
22 services, as appropriate.

23 b. A health benefits contract purchased by the State Health
24 Benefits Commission may limit coverage to services that are
25 delivered by health care providers in the health benefits plan's
26 network, but may not charge any deductible, copayment, or
27 coinsurance for a health care service, delivered through
28 telemedicine or telehealth, in an amount that exceeds the deductible,
29 copayment, or coinsurance amount that is applicable to an in-person
30 consultation. In no case shall a health benefits contract purchased
31 by the State Health Benefits Commission:

32 (1) impose any restrictions on the location or setting of the
33 distant site used by a health care provider to provide services using
34 telemedicine and telehealth; or

35 (2) restrict the ability of a provider to use any electronic or
36 technological platform, including interactive, real-time, two-way
37 audio in combination with asynchronous store-and-forward
38 technology without video capabilities, to provide services using
39 telemedicine or telehealth that:

40 (a) allows the provider to meet the same standard of care as
41 would be provided if the services were provided in person; and

42 (b) is compliant with the requirements of the federal health
43 privacy rule set forth at 45 CFR Parts 160 and 164.

44 c. Nothing in this section shall be construed to:

45 (1) prohibit a health benefits contract from providing coverage
46 for only those services that are medically necessary, subject to the
47 terms and conditions of the covered person's health benefits plan; or

1 (2) allow the State Health Benefits Commission, or a contract
2 purchased thereby, to require a covered person to use telemedicine
3 or telehealth in lieu of receiving an in-person service from an in-
4 network provider.

5 d. The State Health Benefits Commission shall adopt rules and
6 regulations, pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
8 of this section.

9 e. As used in this section:

10 "Asynchronous store-and-forward" means the same as that term
11 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Telehealth" means the same as that term is defined by section 1
15 of P.L.2017, c.117 (C.45:1-61).

16 "Telemedicine" means the same as that term is defined by
17 section 1 of P.L.2017, c.117 (C.45:1-61).

18 (cf: P.L.2017, c.117, s.9)

19

20 5. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
21 amended to read as follows:

22 10. a. The School Employees' Health Benefits Commission
23 shall ensure that every contract purchased thereby, which provides
24 hospital and medical expense benefits, additionally provides
25 coverage and payment for health care services delivered to a
26 covered person through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. A health benefits contract purchased by the School
36 Employees' Health Benefits Commission may limit coverage to
37 services that are delivered by health care providers in the health
38 benefits plan's network, but may not charge any deductible,
39 copayment, or coinsurance for a health care service, delivered
40 through telemedicine or telehealth, in an amount that exceeds the
41 deductible, copayment, or coinsurance amount that is applicable to
42 an in-person consultation. In no case shall a health benefits
43 contract purchased by the School Employees' Health Benefits
44 Commission:

45 (1) impose any restrictions on the location or setting of the
46 distant site used by a health care provider to provide services using
47 telemedicine and telehealth; or

1 provide expanded coverage for services provided using
2 telemedicine and telehealth.

3 Specifically, the bill requires that reimbursement for
4 telemedicine and telehealth services be equal to the reimbursement
5 rate for the same services when they are provided in person.
6 Current law provides telemedicine and telehealth services may be
7 reimbursed up to the amount at which the service would be
8 reimbursed if provided in person.

9 The bill also prohibits health benefits plans, Medicaid and NJ
10 FamilyCare, and the SHBP and SEHBP from imposing “place of
11 service” requirements on services provided using telemedicine and
12 telehealth, and expressly allows health care providers to provide
13 services using telemedicine and telehealth regardless of whether the
14 provider is located in New Jersey when providing services,
15 provided that the provider is otherwise licensed to practice health
16 care in New Jersey.

17 The bill prohibits health benefits plans, Medicaid and NJ
18 FamilyCare, and the SHBP and SEHBP from placing restrictions on
19 the electronic or technological platform used to provide
20 telemedicine and telehealth, if the services provided when using
21 that platform would meet the in-person standard of care for that
22 service, and if the platform is otherwise compliant with the
23 requirements of the federal health privacy rule set forth at 45 CFR
24 Parts 160 and 164.