

SENATE, No. 3372

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JANUARY 21, 2021

Sponsored by:

Senator KRISTIN M. CORRADO

District 40 (Bergen, Essex, Morris and Passaic)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

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Senator Pou

SYNOPSIS

Revises requirements for health insurers to cover telemedicine and telehealth; requires telemedicine and telehealth systems to include accessible communication features for individuals with disabilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/20/2021)

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.

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

e. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

(2) restrict the ability of a provider to use any electronic or technological platform, including interactive, real-time, two-way 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 Telemedicine and telehealth systems shall include accessible
19 communication features to facilitate the use of telemedicine and
20 telehealth by individuals with a disability and individuals with a
21 sensory impairment, including, but not limited to, individuals who
22 are deaf, hard of hearing, visually impaired, blind, or deaf-blind.

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

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

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

1 patient relationship, the provider may review the information prior
2 to initiating contact with the patient or contemporaneously with the
3 telemedicine or telehealth encounter.

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

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

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

38 e. The prescription of Schedule II controlled dangerous
39 substances through the use of telemedicine or telehealth shall be
40 authorized only after an initial in-person examination of the patient,
41 as provided by regulation, and a subsequent in-person visit with the
42 patient shall be required every three months for the duration of time
43 that the patient is being prescribed the Schedule II controlled
44 dangerous substance. However, the provisions of this subsection
45 shall not apply, and the in-person examination or review of a patient
46 shall not be required, when a health care provider is prescribing a
47 stimulant which is a Schedule II controlled dangerous substance for
48 use by a minor patient under the age of 18, provided that the health

1 care provider is using interactive, real-time, two-way audio and
2 video technologies when treating the patient and the health care
3 provider has first obtained written consent for the waiver of these
4 in-person examination requirements from the minor patient's parent
5 or guardian.

6 f. A mental health screener, screening service, or screening
7 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
8 27.1 et seq.):

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

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

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

20 h. A health care provider shall not be subject to any
21 professional disciplinary action under Title 45 of the Revised
22 Statutes solely on the basis that the provider engaged in
23 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-
24 61 et al.).

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

35 (a) include best practices for the professional engagement in
36 telemedicine and telehealth;

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

40 (c) include measures to prevent fraud and abuse in connection
41 with the use of telemedicine and telehealth, including requirements
42 concerning the filing of claims and maintaining appropriate records
43 of services provided; and

44 (d) provide substantially similar metrics for evaluating quality
45 of care and patient outcomes in connection with services provided
46 using telemedicine and telehealth as currently apply to services
47 provided in person.

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

(3) The failure of any licensing board to adopt rules and regulations pursuant to this subsection shall not have the effect of delaying the implementation of this act, and shall not prevent health care providers from engaging in telemedicine or telehealth in accordance with the provisions of this act and the practice act applicable to the provider's professional licensure, certification, or registration.

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

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

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

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

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

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

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

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

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

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

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

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

15 e. As used in this section:

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

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

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

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

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

25
26 5. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
27 amended to read as follows:

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

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

1 contract purchased by the School Employees' Health Benefits
2 Commission:

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

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

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

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

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

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

19 (2) allow the School Employees' Health Benefits Commission,
20 or a contract purchased thereby, to require a covered person to use
21 telemedicine or telehealth in lieu of receiving an in-person service
22 from an in-network provider.

23 d. The School Employees' Health Benefits Commission shall
24 adopt rules and regulations, pursuant to the "Administrative
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement
26 the provisions of this section.

27 e. As used in this section:

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

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

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

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

36 (cf: P.L.2017, c.117, s.10)

37

38 6. This act shall take effect immediately.

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40

41

STATEMENT

42

43 This bill revises the telemedicine and telehealth law, P.L.2017,
44 c.117 (C.45:1-61 et al.), to require health benefits plans, Medicaid
45 and NJ FamilyCare, and the State Health Benefits Program (SHBP)
46 and School Employees' Health Benefits Program (SEHBP), to
47 provide expanded coverage for services provided using
48 telemedicine and telehealth.

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

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

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

23 The bill requires telemedicine and telehealth systems to include
24 accessible communication features to facilitate the use of
25 telemedicine and telehealth by individuals with a disability and
26 individuals with a sensory impairment, including, but not limited to,
27 individuals who are deaf, hard of hearing, visually impaired, blind,
28 or deaf-blind.

29 This bill implements a recommendation included in the initial
30 report of the New Jersey COVID-19 Disability Action Committee,
31 issued in Fall 2020.