

TELEHEALTH PARITY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions related to insurance coverage for telehealth services and telemedicine services.

Highlighted Provisions:

This bill:

- ▶ amends the definition of telemedicine services;
- ▶ clarifies the scope of telehealth practice; and
- ▶ requires certain health benefit plans to provide coverage parity and commercially

reasonable reimbursement for telehealth services and telemedicine services.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-60-102, as enacted by Laws of Utah 2017, Chapter 241

26-60-103, as enacted by Laws of Utah 2017, Chapter 241

ENACTS:

31A-22-649.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

29 Section 1. Section **26-60-102** is amended to read:

30 **26-60-102. Definitions.**

31 As used in this chapter:

32 (1) "Asynchronous store and forward transfer" means the transmission of a patient's
33 health care information from an originating site to a provider at a distant site.

34 (2) "Distant site" means the physical location of a provider delivering telemedicine
35 services.

36 (3) "Originating site" means the physical location of a patient receiving telemedicine
37 services.

38 (4) "Patient" means an individual seeking telemedicine services.

39 (5) (a) "Patient-generated medical history" means medical data about a patient that the
40 patient creates, records, or gathers.

41 (b) "Patient-generated medical history" does not include a patient's medical record that
42 a healthcare professional creates and the patient personally delivers to a different healthcare
43 professional.

44 [~~5~~] (6) "Provider" means an individual who is:

45 (a) licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection
46 Act;

47 (b) licensed under Title 58, Occupations and Professions, to provide health care; or

48 (c) licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.

49 [~~6~~] (7) "Synchronous interaction" means real-time communication through interactive
50 technology that enables a provider at a distant site and a patient at an originating site to interact
51 simultaneously through two-way audio and video transmission.

52 [~~7~~] (8) "Telehealth services" means the transmission of health-related services or
53 information through the use of electronic communication or information technology.

54 [~~8~~] (9) "Telemedicine services" means telehealth services:

55 (a) including:

- 56 (i) clinical care;
- 57 (ii) health education;
- 58 (iii) health administration;
- 59 (iv) home health; [or]
- 60 (v) facilitation of self-managed care and caregiver support; [and] or
- 61 (vi) remote patient monitoring occurring incidentally to general supervision; and
- 62 (b) provided by a provider to a patient through a method of communication that:
 - 63 (i) (A) uses asynchronous store and forward transfer; or
 - 64 (B) uses synchronous interaction; and
 - 65 (ii) meets industry security and privacy standards, including compliance with:
 - 66 (A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L.
 - 67 No. 104-191, 110 Stat. 1936, as amended; and
 - 68 (B) the federal Health Information Technology for Economic and Clinical Health Act,
 - 69 Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.
- 70 Section 2. Section **26-60-103** is amended to read:
 - 71 **26-60-103. Scope of telehealth practice.**
 - 72 (1) A provider offering telehealth services shall:
 - 73 (a) at all times:
 - 74 (i) act within the scope of the provider's license under Title 58, Occupations and
 - 75 Professions, in accordance with the provisions of this chapter and all other applicable laws and
 - 76 rules; and
 - 77 (ii) be held to the same standards of practice as those applicable in traditional health
 - 78 care settings;
 - 79 (b) if the provider does not already have a provider-patient relationship with the
 - 80 patient, establish a provider-patient relationship during the patient encounter in a manner
 - 81 consistent with the standards of practice, determined by the Division of Professional Licensing
 - 82 in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

83 including providing the provider's licensure and credentials to the patient;

84 ~~[(b)]~~ (c) in accordance with Title 58, Chapter 82, Electronic Prescribing Act, before
85 providing treatment or prescribing a prescription drug, establish a diagnosis and identify
86 underlying conditions and contraindications to a recommended treatment after:

87 (i) obtaining from the patient or another provider the patient's relevant clinical history;
88 and

89 (ii) documenting the patient's relevant clinical history and current symptoms;

90 ~~[(e)]~~ (d) be available to a patient who receives telehealth services from the provider for
91 subsequent care related to the initial telemedicine services, in accordance with community
92 standards of practice;

93 ~~[(d)]~~ (e) be familiar with available medical resources, including emergency resources
94 near the originating site, in order to make appropriate patient referrals when medically
95 indicated; ~~[and]~~

96 ~~[(e)]~~ (f) in accordance with any applicable state and federal laws, rules, and
97 regulations, generate, maintain, and make available to each patient receiving telehealth services
98 the patient's medical records~~[-];~~ and

99 (g) if the patient has a designated health care provider who is not the telemedicine
100 provider:

101 (i) consult with the patient regarding whether to provide the patient's designated health
102 care provider a medical record or other report containing an explanation of the treatment
103 provided to the patient and the telemedicine provider's evaluation, analysis, or diagnosis of the
104 patient's condition;

105 (ii) collect from the patient the contact information of the patient's designated health
106 care provider; and

107 (iii) within two weeks after the day on which the telemedicine provider provides
108 services to the patient, and to the extent allowed under HIPAA as that term is defined in
109 Section 26-18-17, provide the medical record or report to the patient's designated health care

110 provider, unless the patient indicates that the patient does not want the telemedicine provider to
 111 send the medical record or report to the patient's designated health care provider.

112 (2) Subsection (1)(g) does not apply to prescriptions for eyeglasses or contacts.

113 (3) Except as specifically provided in Title 58, Chapter 83, Online Prescribing,
 114 Dispensing, and Facilitation Licensing Act, and unless a provider has established a
 115 provider-patient relationship with a patient, a provider offering telemedicine services may not
 116 diagnose a patient, provide treatment, or prescribe a prescription drug based solely on one of
 117 the following:

- 118 (a) an online questionnaire;
- 119 (b) an email message; or
- 120 (c) a patient-generated medical history.

121 ~~[(2)]~~ (4) A provider may not offer telehealth services if:

- 122 (a) the provider is not in compliance with applicable laws, rules, and regulations
 123 regarding the provider's licensed practice; or
- 124 (b) the provider's license under Title 58, Occupations and Professions, is not active and
 125 in good standing.

126 Section 3. Section **31A-22-649.5** is enacted to read:

127 **31A-22-649.5. Insurance parity for telemedicine services.**

128 (1) As used in this section:

- 129 (a) "Telehealth services" means the same as that term is defined in Section [26-60-102](#).
- 130 (b) "Telemedicine services" means the same as that term is defined in Section
 131 [26-60-102](#).

132 (2) Notwithstanding the provisions of Section [31A-22-618.5](#), a health benefit plan
 133 offered in the individual market, the small group market, or the large group market and entered
 134 into or renewed on or after January 1, 2021, shall:

- 135 (a) provide coverage for telemedicine services that are covered by Medicare; and
- 136 (b) reimburse, at a commercially reasonable rate, a network provider that provides the

137 telemedicine services described in Subsection (2)(a).

138 (3) Notwithstanding Section [31A-45-303](#), a health benefit plan providing treatment
139 under Subsection (2) may not impose originating site restrictions, geographic restrictions, or
140 distance-based restrictions.