

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1923

98TH GENERAL ASSEMBLY

4616H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 208.670, 334.108, and 335.175, RSMo, and to enact in lieu thereof ten new sections relating to telehealth services, with an emergency clause for a certain section.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 208.670, 334.108, and 335.175, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 191.1145, 191.1146, 208.670, 208.671, 208.673, 208.675, 208.677, 208.686, 334.108, and 335.175, to read as follows:

191.1145. 1. As used in sections 191.1145 and 191.1146, the following terms shall mean:

(1) **"Asynchronous store-and-forward transfer"**, the collection of a patient's relevant health information and the subsequent transmission of that information from an originating site to a health care provider at a distant site without the patient being present;

(2) **"Clinical staff"**, any health care provider licensed in this state;

(3) **"Distant site"**, a site at which a health care provider is located while providing health care services by means of telemedicine;

(4) **"Health care provider"**, as that term is defined in section 376.1350;

(5) **"Originating site"**, a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine. For the purposes of asynchronous store-and-forward transfer, originating site shall also mean the location at which the health care provider transfers information to the distant site;

(6) **"Telehealth" or "telemedicine"**, the delivery of health care services by means of information and communication technologies which facilitate the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient's

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 health care while such patient is at the originating site and the health care provider is at
18 the distant site. Telehealth or telemedicine shall also include the use of asynchronous store-
19 and-forward technology.

20 2. Any licensed health care provider shall be authorized to provide telehealth
21 services if such services are within the scope of practice for which the health care provider
22 is licensed and are provided with the same standard of care as services provided in person.

23 3. In order to treat patients in this state through the use of telemedicine or
24 telehealth, health care providers shall be fully licensed to practice in this state and shall be
25 subject to regulation by their respective professional boards.

26 4. Nothing in subsection 3 of this section shall apply to:

27 (1) Informal consultation performed by a health care provider licensed in another
28 state, outside of the context of a contractual relationship, and on an irregular or infrequent
29 basis without the expectation or exchange of direct or indirect compensation;

30 (2) Furnishing of health care services by a health care provider licensed and located
31 in another state in case of an emergency or disaster; provided that, no charge is made for
32 the medical assistance; or

33 (3) Episodic consultation by a health care provider licensed and located in another
34 state who provides such consultation services on request to a physician in this state.

35 5. Nothing in this section shall be construed to alter the scope of practice of any
36 health care provider or to authorize the delivery of health care services in a setting or in
37 a manner not otherwise authorized by the laws of this state.

38 6. No originating site for services or activities provided under this section shall be
39 required to maintain immediate availability of on-site clinical staff during the telehealth
40 services, except as necessary to meet the standard of care for the treatment of the patient's
41 medical condition if such condition is being treated by an eligible health care provider who
42 is not at the originating site, has not previously seen the patient in person in a clinical
43 setting, and is not providing coverage for a health care provider who has an established
44 relationship with the patient.

45 7. Nothing in this section shall be construed to alter any collaborative practice
46 requirement as provided in chapters 334 and 335.

191.1146. 1. Physicians licensed under chapter 334 who use telemedicine shall
2 ensure that a properly established physician-patient relationship exists with the person
3 who receives the telemedicine services. The physician-patient relationship may be
4 established by:

5 (1) An in-person encounter through a medical interview and physical examination;

6 **(2) Consultation with another physician, or that physician's delegate, who has an**
7 **established relationship with the patient and an agreement with the physician to**
8 **participate in the patient's care; or**

9 **(3) A telemedicine encounter, if the standard of care does not require an in-person**
10 **encounter, and in accordance with evidence-based standards of practice and telemedicine**
11 **practice guidelines that address the clinical and technological aspects of telemedicine.**

12 **2. In order to establish a physician-patient relationship through telemedicine:**

13 **(1) The technology utilized shall be sufficient to establish an informed diagnosis as**
14 **though the medical interview and physical examination has been performed in person; and**

15 **(2) Prior to providing treatment, including issuing prescriptions, a physician who**
16 **uses telemedicine shall interview the patient, collect or review relevant medical history, and**
17 **perform an examination sufficient for the diagnosis and treatment of the patient. A**
18 **questionnaire completed by the patient, whether via the internet or telephone, does not**
19 **constitute an acceptable medical interview and examination for the provision of treatment**
20 **by telehealth.**

208.670. 1. As used in this section, these terms shall have the following meaning:

2 **(1) "Provider", any provider of medical services and mental health services, including**
3 **all other medical disciplines;**

4 **(2) "Telehealth", [the use of medical information exchanged from one site to another via**
5 **electronic communications to improve the health status of a patient] the same meaning as such**
6 **term is defined in section 191.1145.**

7 **2. Reimbursement for the use of asynchronous store-and-forward technology in the**
8 **practice of telehealth in the MO HealthNet program shall only be allowed for orthopedics,**
9 **dermatology, ophthalmology and optometry, in cases of diabetic retinopathy, burn and**
10 **wound care, dental services which require a diagnosis, and maternal-fetal medicine**
11 **ultrasounds.**

12 **[2.] 3. The department of social services, in consultation with the departments of mental**
13 **health and health and senior services, shall promulgate rules governing the practice of telehealth**
14 **in the MO HealthNet program. Such rules shall address, but not be limited to, appropriate**
15 **standards for the use of telehealth, certification of agencies offering telehealth, and payment for**
16 **services by providers. Telehealth providers shall be required to obtain [patient] participant**
17 **consent before telehealth services are initiated and to ensure confidentiality of medical**
18 **information.**

19 **[3.] 4. Telehealth may be utilized to service individuals who are qualified as MO**
20 **HealthNet participants under Missouri law. Reimbursement for such services shall be made in**
21 **the same way as reimbursement for in-person contacts.**

22 **5. The provisions of section 208.671 shall apply to the use of asynchronous store-**
23 **and-forward technology in the practice of telehealth in the MO HealthNet program.**

208.671. 1. As used in this section and section 208.673, the following terms shall
2 **mean:**

3 **(1) "Asynchronous store-and-forward", the transfer of a participant's clinically**
4 **important digital samples, such as still images, videos, audio, text files, and relevant data**
5 **from an originating site through the use of a camera or similar recording device that stores**
6 **digital samples that are forwarded via telecommunication to a distant site for consultation**
7 **by a consulting provider without requiring the simultaneous presence of the participant**
8 **and the participant's treating provider;**

9 **(2) "Asynchronous store-and-forward technology", cameras or other recording**
10 **devices that store images which may be forwarded via telecommunication devices at a later**
11 **time;**

12 **(3) "Consultation", a type of evaluation and management service as defined by the**
13 **most recent edition of the Current Procedural Terminology published annually by the**
14 **American Medical Association;**

15 **(4) "Consulting provider", a provider who, upon referral by the treating provider,**
16 **evaluates a participant and appropriate medical data or images delivered through**
17 **asynchronous store-and-forward technology. If a consulting provider is unable to render**
18 **an opinion due to insufficient information, the consulting provider may request additional**
19 **information to facilitate the rendering of an opinion or decline to render an opinion;**

20 **(5) "Distant site", the site where a consulting provider is located at the time the**
21 **consultation service is provided;**

22 **(6) "Originating site", the site where a MO HealthNet participant receiving services**
23 **and such participant's treating provider are both physically located;**

24 **(7) "Provider", any provider of medical, mental health, optometric, or dental**
25 **health services, including all other medical disciplines, licensed in this state who has the**
26 **authority to refer participants for medical, mental health, optometric, dental, or other**
27 **health care services within the scope of practice and licensure of the provider;**

28 **(8) "Telehealth", as that term is defined in section 191.1145;**

29 **(9) "Treating provider", a provider who:**

30 **(a) Evaluates a participant;**

31 **(b) Determines the need for a consultation;**

32 **(c) Arranges the services of a consulting provider for the purpose of diagnosis and**
33 **treatment; and**

34 (d) Provides or supplements the participant's history and provides pertinent
35 physical examination findings and medical information to the consulting provider.

36 2. The department of social services, in consultation with the departments of mental
37 health and health and senior services, shall promulgate rules governing the use of
38 asynchronous store-and-forward technology in the practice of telehealth in the MO
39 HealthNet program. Such rules shall include, but not be limited to:

40 (1) Appropriate standards for the use of asynchronous store-and-forward
41 technology in the practice of telehealth;

42 (2) Certification of agencies offering asynchronous store-and-forward technology
43 in the practice of telehealth;

44 (3) Timelines for completion and communication of a consulting provider's
45 consultation or opinion, or if the consulting provider is unable to render an opinion,
46 timelines for communicating a request for additional information or that the consulting
47 provider declines to render an opinion;

48 (4) Length of time digital files of such asynchronous store-and-forward services are
49 to be maintained;

50 (5) Security and privacy of such digital files;

51 (6) Participant consent for asynchronous store-and-forward services; and

52 (7) Payment for services by providers; except that, consulting providers who
53 decline to render an opinion shall not receive payment under this section unless and until
54 an opinion is rendered.

55

56 Telehealth providers using asynchronous store-and-forward technology shall be required
57 to obtain participant consent before asynchronous store-and-forward services are initiated
58 and to ensure confidentiality of medical information.

59 3. Asynchronous store-and-forward technology in the practice of telehealth may
60 be utilized to service individuals who are qualified as MO HealthNet participants under
61 Missouri law. The total payment for both the treating provider and the consulting
62 provider shall not exceed the payment for a face-to-face consultation of the same level.

63 4. The standard of care for the use of asynchronous store-and-forward technology
64 in the practice of telehealth shall be the same as the standard of care for services provided
65 in person.

208.673. 1. There is hereby established the "Telehealth Services Advisory
2 Committee" to advise the department of social services and propose rules regarding the
3 coverage of telehealth services in the MO HealthNet program utilizing asynchronous store-
4 and-forward technology.

5 **2. The committee shall be comprised of the following members:**

6 **(1) The director of the MO HealthNet division or the director's designee;**

7 **(2) The medical director of the MO HealthNet division;**

8 **(3) A representative from a Missouri institution of higher education with expertise**
9 **in telehealth;**

10 **(4) A representative from the Missouri office of primary care and rural health;**

11 **(5) Two board-certified specialists licensed to practice medicine in this state;**

12 **(6) A representative from a hospital located in this state that utilizes telehealth;**

13 **(7) A primary care physician from a federally qualified health center (FQHC) or**
14 **rural health clinic;**

15 **(8) A primary care physician from a rural setting other than from an FQHC or**
16 **rural health clinic;**

17 **(9) A dentist licensed to practice in this state; and**

18 **(10) A psychologist, or a physician who specializes in psychiatry, licensed to**
19 **practice in this state.**

20 **3. Members of the committee listed in subdivisions (3) to (10) of subsection 2 of this**
21 **section shall be appointed by the governor with the advice and consent of the senate. The**
22 **first appointments to the committee shall consist of three members to serve three-year**
23 **terms, three members to serve two-year terms, and two members to serve a one-year term**
24 **as designated by the governor. Each member of the committee shall serve for a term of**
25 **three years thereafter.**

26 **4. Members of the committee shall not receive any compensation for their services**
27 **but shall be reimbursed for any actual and necessary expenses incurred in the performance**
28 **of their duties.**

29 **5. Any member appointed by the governor may be removed from office by the**
30 **governor without cause. If there is a vacancy for any cause, the governor shall make an**
31 **appointment to become effective immediately for the unexpired term.**

32 **6. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
33 **created under the authority delegated in this section shall become effective only if it**
34 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
35 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
36 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
37 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
38 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,**
39 **shall be invalid and void.**

208.675. For purposes of the provision of telehealth services in the MO HealthNet program, the following individuals, licensed in Missouri, shall be considered eligible health care providers:

- (1) Physicians, assistant physicians, and physician assistants;**
- (2) Advanced practice registered nurses;**
- (3) Dentists, oral surgeons, and dental hygienists under the supervision of a currently registered and licensed dentist;**
- (4) Psychologists and provisional licensees;**
- (5) Pharmacists;**
- (6) Speech, occupational, or physical therapists;**
- (7) Clinical social workers;**
- (8) Podiatrists;**
- (9) Optometrists;**
- (10) Licensed professional counselors; and**
- (11) Eligible health care providers under subdivisions (1) through (10) of this section practicing in a rural health clinic, federally qualified health center, or community mental health center.**

208.677. 1. For purposes of the provision of telehealth services in the MO HealthNet program, the term “originating site” shall mean a telehealth site where the MO HealthNet participant receiving the telehealth service is located for the encounter. The standard of care in the practice of telehealth shall be the same as the standard of care for services provided in person. An originating site shall be one of the following locations:

- (1) An office of a physician or health care provider;**
- (2) A hospital;**
- (3) A critical access hospital;**
- (4) A rural health clinic;**
- (5) A federally qualified health center;**
- (6) A long-term care facility licensed under chapter 198;**
- (7) A dialysis center;**
- (8) A Missouri state habilitation center or regional office;**
- (9) A community mental health center;**
- (10) A Missouri state mental health facility;**
- (11) A Missouri state facility;**
- (12) A Missouri residential treatment facility licensed by and under contract with the children’s division (CD) that has a contract with the CD. Facilities shall have multiple campuses and have the ability to adhere to technology requirements. Only Missouri**

20 licensed psychiatrists, licensed psychologists or provisionally licensed psychologists, and
21 advanced practice registered nurses who are enrolled MO HealthNet providers shall be
22 consulting providers at these locations;

23 (13) A comprehensive substance treatment and rehabilitation (CSTAR) program;

24 (14) A school;

25 (15) The MO HealthNet recipient's home;

26 (16) A clinical designated area in a pharmacy; or

27 (17) A child assessment center as described in section 210.001.

28 2. If the originating site is a school, the school shall obtain permission from the
29 parent or guardian of any student receiving telehealth services prior to each provision of
30 service.

208.686. 1. Subject to appropriations, the department shall establish a statewide
2 program that permits reimbursement under the MO HealthNet program for home
3 telemonitoring services. For the purposes of this section, "home telemonitoring service"
4 shall mean a health care service that requires scheduled remote monitoring of data related
5 to a participant's health and transmission of the data to a health call center accredited by
6 the Utilization Review Accreditation Commission (URAC).

7 2. The program shall:

8 (1) Provide that home telemonitoring services are available only to persons who:

9 (a) Are diagnosed with one or more of the following conditions:

10 a. Pregnancy;

11 b. Diabetes;

12 c. Heart disease;

13 d. Cancer;

14 e. Chronic obstructive pulmonary disease;

15 f. Hypertension;

16 g. Congestive heart failure;

17 h. Mental illness or serious emotional disturbance;

18 i. Asthma;

19 j. Myocardial infarction; or

20 k. Stroke; and

21 (b) Exhibit two or more of the following risk factors:

22 a. Two or more hospitalizations in the prior twelve-month period;

23 b. Frequent or recurrent emergency department admissions;

24 c. A documented history of poor adherence to ordered medication regimens;

25 d. A documented history of falls in the prior six-month period;

- 26 e. Limited or absent informal support systems;
27 f. Living alone or being home alone for extended periods of time;
28 g. A documented history of care access challenges; or
29 h. A documented history of consistently missed appointments with health care
30 providers;

31 (2) Ensure that clinical information gathered by a home health agency or hospital
32 while providing home telemonitoring services is shared with the participant's physician;
33 and

34 (3) Ensure that the program does not duplicate any disease management program
35 services provided by MO HealthNet.

36 3. If, after implementation, the department determines that the program
37 established under this section is not cost effective, the department may discontinue the
38 program and stop providing reimbursement under the MO HealthNet program for home
39 telemonitoring services.

40 4. The department shall determine whether the provision of home telemonitoring
41 services to persons who are eligible to receive benefits under both the MO HealthNet and
42 Medicare programs achieves cost savings for the Medicare program.

43 5. If, before implementing any provision of this section, the department determines
44 that a waiver or authorization from a federal agency is necessary for implementation of
45 that provision, the department shall request the waiver or authorization and may delay
46 implementing that provision until the waiver or authorization is granted.

47 6. The department shall promulgate rules and regulations to implement the
48 provisions of this section. Any rule or portion of a rule, as that term is defined in section
49 536.010, that is created under the authority delegated in this section shall become effective
50 only if it complies with and is subject to all of the provisions of chapter 536 and, if
51 applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of
52 the powers vested with the general assembly pursuant to chapter 536 to review, to delay
53 the effective date, or to disapprove and annul a rule are subsequently held
54 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
55 after August 28, 2016, shall be invalid and void.

334.108. 1. Prior to prescribing any drug, controlled substance, or other treatment
2 through telemedicine, as defined in section 191.1145, or the internet, a physician shall establish
3 a valid physician-patient relationship as described in section 191.1146. This relationship shall
4 include:

5 (1) Obtaining a reliable medical history and performing a physical examination of the
6 patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify
7 underlying conditions or contraindications to the treatment recommended or provided;

8 (2) Having sufficient dialogue with the patient regarding treatment options and the risks
9 and benefits of treatment or treatments;

10 (3) If appropriate, following up with the patient to assess the therapeutic outcome;

11 (4) Maintaining a contemporaneous medical record that is readily available to the patient
12 and, subject to the patient's consent, to the patient's other health care professionals; and

13 (5) [Including] **Maintaining** the electronic prescription information as part of the
14 patient's medical record.

15 2. The requirements of subsection 1 of this section may be satisfied by the prescribing
16 physician's designee when treatment is provided in:

17 (1) A hospital as defined in section 197.020;

18 (2) A hospice program as defined in section 197.250;

19 (3) Home health services provided by a home health agency as defined in section
20 197.400;

21 (4) Accordance with a collaborative practice agreement as defined in section 334.104;

22 (5) Conjunction with a physician assistant licensed pursuant to section 334.738;

23 (6) **Conjunction with an assistant physician licensed under section 334.036;**

24 (7) Consultation with another physician who has an ongoing physician-patient
25 relationship with the patient, and who has agreed to supervise the patient's treatment, including
26 use of any prescribed medications; or

27 [(7)] (8) On-call or cross-coverage situations.

28 **3. No health care provider, as defined in section 376.1350, shall prescribe any drug,**
29 **controlled substance, or other treatment to a patient based solely on an evaluation over the**
30 **telephone; except that, a physician, such physician's on-call designee, an advanced practice**
31 **registered nurse in a collaborative practice arrangement with such physician, a physician**
32 **assistant in a supervision agreement with such physician, or an assistant physician in a**
33 **supervision agreement with such physician may prescribe any drug, controlled substance,**
34 **or other treatment that is within his or her scope of practice to a patient based solely on a**
35 **telephone evaluation if a previously established and ongoing physician-patient relationship**
36 **exists between such physician and the patient being treated.**

37 **4. No health care provider shall prescribe any drug, controlled substance, or other**
38 **treatment to a patient based solely on an internet request or an internet questionnaire.**

335.175. 1. No later than January 1, 2014, there is hereby established within the state
2 board of registration for the healing arts and the state board of nursing the "Utilization of

3 Telehealth by Nurses". An advanced practice registered nurse (APRN) providing nursing
4 services under a collaborative practice arrangement under section 334.104 may provide such
5 services outside the geographic proximity requirements of section 334.104 if the collaborating
6 physician and advanced practice registered nurse utilize telehealth in the care of the patient and
7 if the services are provided in a rural area of need. Telehealth providers shall be required to
8 obtain patient consent before telehealth services are initiated and ensure confidentiality of
9 medical information.

10 2. As used in this section, "telehealth" [means the use of medical information exchanged
11 from one site to another via electronic communications to improve the health status of a patient,
12 as defined in section 208.670] **shall have the same meaning ascribed to it as in section**
13 **191.1145.**

14 3. (1) The boards shall jointly promulgate rules governing the practice of telehealth
15 under this section. Such rules shall address, but not be limited to, appropriate standards for the
16 use of telehealth.

17 (2) Any rule or portion of a rule, as that term is defined in section 536.010, that is created
18 under the authority delegated in this section shall become effective only if it complies with and
19 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section
20 and chapter 536 are nonseverable and if any of the powers vested with the general assembly
21 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule
22 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
23 proposed or adopted after August 28, 2013, shall be invalid and void.

24 4. For purposes of this section, "rural area of need" means any rural area of this state
25 which is located in a health professional shortage area as defined in section 354.650.

26 5. Under section 23.253 of the Missouri sunset act:

27 (1) The provisions of the new program authorized under this section shall automatically
28 sunset six years after August 28, 2013, unless reauthorized by an act of the general assembly; and

29 (2) If such program is reauthorized, the program authorized under this section shall
30 automatically sunset twelve years after the effective date of the reauthorization of this section;
31 and

32 (3) This section shall terminate on September first of the calendar year immediately
33 following the calendar year in which the program authorized under this section is sunset.

Section B. Because immediate action is necessary to ensure the continued provision of
2 health care services to residents of Missouri, the enactment of section 191.1145 of this act is
3 deemed necessary for the immediate preservation of the public health, welfare, peace and safety,
4 and is hereby declared to be an emergency act within the meaning of the constitution, and the

5 enactment of section 191.1145 of this act shall be in full force and effect upon its passage and
6 approval.

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