

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

828Z0398

SENATE BILL NO. 123

Introduced by: Senators Curd, Cronin, Kennedy, Langer, Maher, Peters, Rusch, Soholt, Stalzer, Tidemann, and White and Representatives Hunhoff, Bartels, Barthel, Bartling, Brunner, Carson, Chase, Glanzer, Hawley, Heinemann, Jensen (Kevin), Kettwig, Lake, Marty, McCleerey, Mills, Peterson (Kent), Pischke, Rasmussen, Reed, Rhoden, Rounds, Rozum, Schoenfish, Smith, Tulson, Willadsen, Wismer, and York

1 FOR AN ACT ENTITLED, An Act to provide for the utilization of telemedicine or telehealth
2 by a health care professional.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Health care professional," as defined in § 58-17F-1;

7 (2) "Telemedicine," the delivery of clinical health care services by means of real time
8 two-way electronic audio visual communications, including the application of secure
9 video conferencing or store and forward transfer technology to provide or support
10 health care delivery, which facilitates the assessment, diagnosis, consultation,
11 treatment, education, care management, and self-management of a patient's health
12 care while the patient is at an originating site and the health care provider is at a
13 distant site;



1 (3) "Telehealth," delivering health care services by means of information and
2 communications technologies consisting of telephones, remote patient monitoring
3 devices, or other electronic means which facilitate the assessment, diagnosis,
4 consultation, treatment, education, care management, and self-management of a
5 patient's health care while the patient is at the originating site and the health care
6 provider is at the distant site;

7 (4) "Store and forward transfer," the transmission of a patient's medical information from
8 an originating site to the provider at the distant site without the patient being present;

9 (5) "Distant site," a site at which a health care provider is located while providing health
10 care services by means of telemedicine or telehealth;

11 (6) "Originating site," a site at which a patient is located at the time health care services
12 are provided to the patient by means of telemedicine or telehealth.

13 Section 2. That the code be amended by adding a NEW SECTION to read:

14 Any health care professional treating a patient in the state through telemedicine or telehealth
15 or store and forward transfer shall be fully licensed to practice in the state and shall be subject
16 to regulation by the applicable South Dakota licensing body.

17 Section 3. That the code be amended by adding a NEW SECTION to read:

18 Telemedicine or telehealth may not be utilized by a health care professional with respect to
19 any patient located in the state in the absence of a provider-patient relationship. Any health care
20 provider who utilizes telemedicine shall ensure that a proper health care provider-patient
21 relationship is established, and includes:

22 (1) Verifying and authenticating the location and, to the extent reasonable, identifying
23 the requesting patient;

24 (2) Disclosing and validating the provider's identity and applicable credentials, as

1 appropriate;

2 (3) Obtaining appropriate consents for treatment from requesting patients after
3 disclosures regarding the delivery models and treatment methods or limitations;

4 (4) Establishing a diagnosis through the use of acceptable medical practices, including
5 a patient history, mental status examination, physical examination, and appropriate
6 diagnostic and laboratory testing;

7 (5) If the provider of record, discussing with the patient the diagnosis and its evidentiary
8 basis and the risks and benefits of various treatment options;

9 (6) Ensuring the availability of the distant site provider or coverage of the patient for
10 follow-up care; and

11 (7) Providing a visit summary to the patient or consult note to the distant site provider.

12 Exceptions to the requirements of this section include on-call, cross coverage situations;
13 consultation with another health care provider who has an ongoing health care provider
14 relationship with the patient who agrees to supervise the patient's care; emergency treatment;
15 and other exceptions that become recognized as meeting or improving the standard of care. If
16 a medical home does not exist, a health care provider shall facilitate the identification of a
17 medical home and treating health care providers where in-person services can be delivered in
18 coordination with telemedicine services.

19 Section 4. That the code be amended by adding a NEW SECTION to read:

20 Treatment and consultation recommendations made through telemedicine or telehealth,
21 including issuing a prescription via electronic means, shall be held to the same standards of
22 appropriate practice as those in traditional in-person settings.

23 Section 5. That the code be amended by adding a NEW SECTION to read:

24 A health care professional using telemedicine or telehealth technologies to provide medical

1 care to any patient located in the state shall provide an appropriate face-to-face examination
2 using real-time audio and visual technology prior to diagnosis and treatment of the patient, if
3 a face-to-face encounter would otherwise be required in the provision of the same service not
4 delivered via telemedicine.

5 Section 6. That the code be amended by adding a NEW SECTION to read:

6 Without a prior and proper patient-provider relationship, a health care professional using
7 telemedicine or telehealth technologies may not prescribe a controlled drug or substance, as
8 defined by § 34-20B-3, solely in response to an internet questionnaire or consult or to a
9 telehealth encounter, including encounters via telephone.

10 Section 7. That the code be amended by adding a NEW SECTION to read:

11 A health care professional using telemedicine or telehealth technologies shall follow any
12 applicable state and federal statutes and regulations for informed consent.

13 Section 8. That the code be amended by adding a NEW SECTION to read:

14 A health care professional or the originating health care facility treating a patient through
15 telemedicine shall:

- 16 (1) Maintain a complete record of the patient's care;
- 17 (2) Disclose the record to the patient consistent with state and federal laws; and
- 18 (3) Follow applicable state and federal statutes and regulations for medical record
19 keeping and confidentiality.