

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



28 *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) "Provider" means an individual who is:

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

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

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

44 (6) "Synchronous interaction" means real-time communication through interactive
45 technology that enables a provider at a distant site and a patient at an originating site to interact
46 simultaneously through two-way audio and video transmission.

47 (7) "Telehealth services" means the transmission of health-related services or
48 information through the use of electronic communication or information technology.

49 (8) "Telemedicine services" means telehealth services:

50 (a) including:

51 (i) clinical care;

52 (ii) health education;

53 (iii) health administration;

54 (iv) home health; [~~or~~]

55 (v) facilitation of self-managed care and caregiver support; [~~and~~] or

56 (vi) remote patient monitoring occurring incidentally to general supervision; and

57 (b) provided by a provider to a patient through a method of communication that:

58 (i) (A) uses asynchronous store and forward transfer; or

59 (B) uses synchronous interaction; and
60 (ii) meets industry security and privacy standards, including compliance with:
61 (A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L.
62 No. 104-191, 110 Stat. 1936, as amended; and
63 (B) the federal Health Information Technology for Economic and Clinical Health Act,
64 Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

65 Section 2. Section **26-60-103** is amended to read:

66 **26-60-103. Scope of telehealth practice.**

67 (1) A provider offering telehealth services shall:

68 (a) at all times:

69 (i) act within the scope of the provider's license under Title 58, Occupations and
70 Professions, in accordance with the provisions of this chapter and all other applicable laws and
71 rules; and

72 (ii) be held to the same standards of practice as those applicable in traditional health
73 care settings;

74 (b) if the provider does not already have a provider-patient relationship with the
75 patient, establish a provider-patient relationship during the patient encounter in a manner
76 consistent with the standards of practice, determined by the Division of Professional Licensing
77 in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
78 including providing the provider's licensure and credentials to the patient;

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

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

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

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

88 [~~(d)~~] (e) be familiar with available medical resources, including emergency resources
89 near the originating site, in order to make appropriate patient referrals when medically

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

94 (g) if the patient has a primary care provider who is not the telemedicine provider,
 95 provide to the patient's primary care provider a medical record or other report containing an
 96 explanation of the treatment provided to the patient and the telemedicine provider's evaluation,
 97 analysis, or diagnosis of the patient's condition within three business days after the day on
 98 which the telemedicine provider provides services to the patient, unless the patient asks the
 99 provider to not send the evaluation, analysis, or diagnosis.

100 (2) Except as specifically provided in Title 58, Chapter 83, Online Prescribing,
 101 Dispensing, and Facilitation Licensing Act, and unless a provider has established a
 102 provider-patient relationship with a patient, a provider offering telemedicine services may not
 103 diagnose a patient, provide treatment, or prescribe a prescription drug based solely on:

- 104 (a) an online questionnaire;
- 105 (b) an email message;
- 106 (c) a patient-generated medical history; or
- 107 (d) an audio-only electronic consultation.

108 ~~(2)~~ (3) A provider may not offer telehealth services if:

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

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

114 **31A-22-649.5. Insurance parity for telemedicine services.**

115 (1) As used in this section:

- 116 (a) "Preauthorization requirement" means the same as that term is defined in Section
 117 [31A-22-650.](#)
- 118 (b) "Service" means diagnosis, consultation, treatment, or care that is included in a
 119 health benefit plan and is provided to an insured.

120 (c) "Telehealth services" means the same as that term is defined in Section [26-60-102.](#)

121 (d) "Telemedicine services" means the same as that term is defined in Section
122 26-60-102.

123 (2) Notwithstanding the provisions of Section 31A-22-618.5, a health benefit plan
124 offered in the individual market, the small group market, or the large group market and entered
125 into or renewed on or after January 1, 2021, shall provide coverage and reimbursement for
126 telemedicine services in accordance with the requirements of this section.

127 (3) If a health benefit plan provides in-network or out-of-network coverage for a
128 healthcare provider that offers services in person and that healthcare provider offers the same
129 services via telemedicine services, the health benefit plan shall provide the same coverage for
130 both the in-person services and the telemedicine services at the rate described in Subsection
131 (5), on the same basis, and to the same extent that the health benefit plan covers the same
132 services in person.

133 (4) A health benefit plan shall reimburse a healthcare provider for telemedicine
134 services at the rate described in Subsection (5), on the same basis, and to the same extent that
135 the health benefit plan would reimburse for those services if they had been delivered in an
136 in-person encounter with the healthcare provider.

137 (5) A health benefit plan shall reimburse a healthcare provider for telemedicine
138 services at a commercially reasonable rate that:

139 (a) covers a proportionate share of the fixed and variable costs of the provider;

140 (b) does not require the provider to shift costs to other reimbursement sources;

141 (c) is negotiated in good faith with the provider; and

142 (d) that the provider agrees to pay.

143 (6) If a health benefit plan and a provider cannot agree on the rate described in
144 Subsection (5), either party may request the department to determine a rate that complies with
145 the requirements described in Subsections (5)(a) and (b).

146 (7) If the department receives a request described in Subsection (6), the department
147 shall determine a rate that complies with the requirements described in Subsections (5)(a) and
148 (b).

149 (8) A health benefit plan may require a deductible, co-payment, or coinsurance for a
150 telemedicine service if:

151 (a) the deductible, co-payment, or coinsurance for the telemedicine service does not

152 exceed the deductible, co-payment, or coinsurance the plan requires for the same in-person
153 service; and

154 (b) the plan counts the deductible, co-payment, or coinsurance for the telemedicine
155 service as contributing to the same deductible, co-payment, or coinsurance the plan requires for
156 the same in-person service.

157 (9) Notwithstanding Section 31A-45-303, a health benefit plan providing treatment
158 under Subsection (3) or (4) may not impose originating site restrictions, geographic or
159 distance-based restrictions, or other restrictions or conditions on coverage or reimbursement for
160 telemedicine services.

161 (10) A health benefit plan may not:

162 (a) subject telemedicine services to deductible, co-payment, or coinsurance
163 requirements that are additional to or separate from a deductible, co-payment, or coinsurance
164 the health benefit plan requires for the same in-person services;

165 (b) impose an annual maximum or lifetime-dollar maximum on coverage for
166 telemedicine services other than an annual maximum or lifetime-dollar maximum that applies
167 in the aggregate to all items and services covered under the health benefit plan;

168 (c) impose terms for telemedicine services that are not equally imposed upon all terms
169 and services covered under the health benefit plan, including terms regulating:

170 (i) deductibles;

171 (ii) co-payments;

172 (iii) coinsurance;

173 (iv) policy year, calendar year, lifetime, or other time-restrictive benefits; or

174 (v) maximums for benefits or services;

175 (d) limit coverage for telemedicine services only to services provided by select
176 corporate telemedicine healthcare providers;

177 (e) impose preauthorization requirements on telemedicine services beyond those
178 imposed on the same in-person services; or

179 (f) refuse to cover a service solely because the service is provided through telemedicine
180 services and is not provided through in-person services.

181 (11) Other terms and conditions in the health benefit plan that apply to other benefits
182 covered by the health benefit plan apply to coverage required by this section.