

SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 291 SCS, 652 and 1954

STATE OF NEW JERSEY
217th LEGISLATURE

ADOPTED JUNE 19, 2017

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SYNOPSIS

Authorizes health care providers to engage in telemedicine and telehealth.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate.

(Sponsorship Updated As Of: 6/23/2017)

1 **AN ACT** authorizing the provision of health care services through
2 telemedicine and telehealth, and supplementing various parts of
3 the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Asynchronous store-and-forward” means the acquisition and
11 transmission of images, diagnostics, data, and medical information
12 either to, or from, an originating site or to, or from, the health care
13 provider at a distant site, which allows for the patient to be
14 evaluated without being physically present.

15 “Cross-coverage service provider” means a health care provider,
16 acting within the scope of a valid license or certification issued
17 pursuant to Title 45 of the Revised Statutes, who engages in a
18 remote medical evaluation of a patient, without in-person contact, at
19 the request of another health care provider who has established a
20 proper provider-patient relationship with the patient.

21 “Distant site” means a site at which a health care provider, acting
22 within the scope of a valid license or certification issued pursuant to
23 Title 45 of the Revised Statutes, is located while providing health
24 care services by means of telemedicine or telehealth.

25 “Health care provider” means an individual who provides a
26 health care service to a patient, and includes, but is not limited to, a
27 licensed physician, nurse, nurse practitioner, psychologist,
28 psychiatrist, psychoanalyst, clinical social worker, physician
29 assistant, professional counselor, respiratory therapist, speech
30 pathologist, audiologist, optometrist, or any other health care
31 professional acting within the scope of a valid license or
32 certification issued pursuant to Title 45 of the Revised Statutes.

33 “On-call provider” means a licensed or certified health care
34 provider who is available, where necessary, to physically attend to
35 the urgent and follow-up needs of a patient for whom the provider
36 has temporarily assumed responsibility, as designated by the
37 patient’s primary care provider or other health care provider of
38 record.

39 “Originating site” means a site at which a patient is located at the
40 time that health care services are provided to the patient by means
41 of telemedicine or telehealth.

42 “Telehealth” means the use of information and communications
43 technologies, including telephones, remote patient monitoring
44 devices, or other electronic means, to support clinical health care,
45 provider consultation, patient and professional health-related
46 education, public health, health administration, and other services in
47 accordance with the provisions of P.L. , c. (C.) (pending
48 before the Legislature as this bill).

1 “Telemedicine” means the delivery of a health care service using
2 electronic communications, information technology, or other
3 electronic or technological means to bridge the gap between a
4 health care provider who is located at a distant site and a patient
5 who is located at an originating site, either with or without the
6 assistance of an intervening health care provider, and in accordance
7 with the provisions of P.L. , c. (C.) (pending before the
8 Legislature as this bill). “Telemedicine” does not include the use,
9 in isolation, of audio-only telephone conversation, electronic mail,
10 instant messaging, phone text, or facsimile transmission.

11 “Telemedicine or telehealth organization” means a corporation,
12 sole proprietorship, partnership, or limited liability company that is
13 organized for the primary purpose of administering services in the
14 furtherance of telemedicine or telehealth.

15

16 2. a. Unless specifically prohibited or limited by federal or
17 State law, a health care provider who establishes a proper provider-
18 patient relationship with a patient may remotely provide health care
19 services to a patient through the use of telemedicine. A health care
20 provider may also engage in telehealth as may be necessary to
21 support and facilitate the provision of health care services to
22 patients.

23 b. Any health care provider who uses telemedicine or engages
24 in telehealth while providing health care services to a patient, shall:
25 (1) be validly licensed, certified, or registered, pursuant to Title 45
26 of the Revised Statutes, to provide such services in the State of New
27 Jersey; (2) remain subject to regulation by the appropriate New
28 Jersey State licensing board or other New Jersey State professional
29 regulatory entity; (3) act in compliance with existing requirements
30 regarding the maintenance of liability insurance; and (4) remain
31 subject to New Jersey jurisdiction if either the patient or the
32 provider is located in New Jersey at the time services are provided.

33 c. (1) Telemedicine services shall be provided using
34 interactive, real-time, two-way communication technologies.

35 (2) A health care provider engaging in telemedicine or
36 telehealth may use asynchronous store-and-forward technology to
37 allow for the electronic transmission of images, diagnostics, data,
38 and medical information; except that the health care provider may
39 use interactive, real-time, two-way audio in combination with
40 asynchronous store-and-forward technology, without video
41 capabilities, if, after accessing and reviewing the patient’s medical
42 records, the provider determines that the provider is able to meet the
43 same standard of care as if the health care services were being
44 provided in person.

45 (3) The identity, professional credentials, and contact
46 information of a health care provider providing telemedicine or
47 telehealth services shall be made available to the patient during and
48 after the provision of services. The contact information shall enable

1 the patient to contact the health care provider, or a substitute health
2 care provider authorized to act on behalf of the provider who
3 provided services, for at least 72 hours following the provision of
4 services.

5 (4) A health care provider engaging in telemedicine or
6 telehealth shall review the medical history and any medical records
7 provided by the patient. For an initial encounter with the patient,
8 the provider shall review the patient's medical history and medical
9 records prior to initiating contact with the patient, as required
10 pursuant to paragraph (3) of subsection a. of section 3 of P.L. , c.
11 (C.) (pending before the Legislature as this bill). In the case of
12 a subsequent telemedicine or telehealth encounter conducted
13 pursuant to an ongoing provider-patient relationship, the provider
14 may review the information prior to initiating contact with the
15 patient or contemporaneously with the telemedicine or telehealth
16 encounter.

17 (5) Following the provision of services using telemedicine or
18 telehealth, the patient's medical information shall be made available
19 to the patient upon the patient's request, and, with the patient's
20 affirmative consent, forwarded directly to the patient's primary care
21 provider or health care provider of record, or, upon request by the
22 patient, to other health care providers. For patients without a
23 primary care provider or other health care provider of record, the
24 health care provider engaging in telemedicine or telehealth may
25 advise the patient to contact a primary care provider, and, upon
26 request by the patient, assist the patient with locating a primary care
27 provider or other in-person medical assistance that, to the extent
28 possible, is located within reasonable proximity to the patient. The
29 health care provider engaging in telemedicine or telehealth shall
30 also refer the patient to appropriate follow up care where necessary,
31 including making appropriate referrals for emergency or
32 complimentary care, if needed. Consent may be oral, written, or
33 digital in nature, provided that the chosen method of consent is
34 deemed appropriate under the standard of care.

35 d. (1) Any health care provider providing health care services
36 using telemedicine or telehealth shall be subject to the same
37 standard of care or practice standards as are applicable to in-person
38 settings. If telemedicine or telehealth services would not be
39 consistent with this standard of care, the health care provider shall
40 direct the patient to seek in-person care.

41 (2) Diagnosis, treatment, and consultation recommendations,
42 including discussions regarding the risk and benefits of the patient's
43 treatment options, which are made through the use of telemedicine
44 or telehealth, including the issuance of a prescription based on a
45 telemedicine or telehealth encounter, shall be held to the same
46 standard of care or practice standards as are applicable to in-person
47 settings. Unless the provider has established a proper provider-
48 patient relationship with the patient, a provider shall not issue a

1 prescription to a patient based solely on the responses provided in
2 an online questionnaire.

3 e. The prescription of Schedule II controlled dangerous
4 substances through the use of telemedicine or telehealth shall be
5 authorized only after an initial in-person examination of the patient,
6 as provided by regulation, and a subsequent in-person visit with the
7 patient shall be required every three months for the duration of time
8 that the patient is being prescribed the Schedule II controlled
9 dangerous substance. However, the provisions of this subsection
10 shall not apply, and the in-person examination or review of a patient
11 shall not be required, when a health care provider is prescribing a
12 stimulant which is a Schedule II controlled dangerous substance for
13 use by a minor patient under the age of 18, provided that the health
14 care provider is using interactive, real-time, two-way audio and
15 video technologies when treating the patient and the health care
16 provider has first obtained written consent for the waiver of these
17 in-person examination requirements from the minor patient's parent
18 or guardian.

19 f. A mental health screener, screening service, or screening
20 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
21 27.1 et seq.):

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

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

27 g. A health care provider who engages in telemedicine or
28 telehealth, as authorized by P.L. , c. (C.) (pending before
29 the Legislature as this bill), shall maintain a complete record of the
30 patient's care, and shall comply with all applicable State and federal
31 statutes and regulations for recordkeeping, confidentiality, and
32 disclosure of the patient's medical record.

33 h. A health care provider shall not be subject to any
34 professional disciplinary action under Title 45 of the Revised
35 Statutes solely on the basis that the provider engaged in
36 telemedicine or telehealth pursuant to P.L. , c. (C.)
37 (pending before the Legislature as this bill).

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

- 1 (a) include best practices for the professional engagement in
2 telemedicine and telehealth;
- 3 (b) ensure that the services patients receive using telemedicine
4 or telehealth are appropriate, medically necessary, and meet current
5 quality of care standards;
- 6 (c) include measures to prevent fraud and abuse in connection
7 with the use of telemedicine and telehealth, including requirements
8 concerning the filing of claims and maintaining appropriate records
9 of services provided; and
- 10 (d) provide substantially similar metrics for evaluating quality
11 of care and patient outcomes in connection with services provided
12 using telemedicine and telehealth as currently apply to services
13 provided in person.
- 14 (2) In no case shall the rules and regulations adopted pursuant to
15 paragraph (1) of this subsection require a provider to conduct an
16 initial in-person visit with the patient as a condition of providing
17 services using telemedicine or telehealth.
- 18 (3) The failure of any licensing board to adopt rules and
19 regulations pursuant to this subsection shall not have the effect of
20 delaying the implementation of this act, and shall not prevent health
21 care providers from engaging in telemedicine or telehealth in
22 accordance with the provisions of this act and the practice act
23 applicable to the provider's professional licensure, certification, or
24 registration.
- 25
- 26 3. a. Any health care provider who engages in telemedicine or
27 telehealth shall ensure that a proper provider-patient relationship is
28 established. The establishment of a proper provider-patient
29 relationship shall include, but shall not be limited to:
- 30 (1) properly identifying the patient using, at a minimum, the
31 patient's name, date of birth, phone number, and address. When
32 properly identifying the patient, the provider may additionally use
33 the patient's assigned identification number, social security number,
34 photo, health insurance policy number, or other appropriate patient
35 identifier associated directly with the patient;
- 36 (2) disclosing and validating the provider's identity and
37 credentials, such as the provider's license, title, and, if applicable,
38 specialty and board certifications;
- 39 (3) prior to initiating contact with a patient in an initial
40 encounter for the purpose of providing services to the patient using
41 telemedicine or telehealth, reviewing the patient's medical history
42 and any available medical records; and
- 43 (4) prior to initiating contact with a patient for the purpose of
44 providing services to the patient using telemedicine or telehealth,
45 determining whether the provider will be able to provide the same
46 standard of care using telemedicine or telehealth as would be
47 provided if the services were provided in person. The provider

1 shall make this determination prior to each unique patient
2 encounter.

3 b. Telemedicine or telehealth may be practiced without a
4 proper provider-patient relationship, as defined in subsection a. of
5 this section, in the following circumstances:

6 (1) during informal consultations performed by a health care
7 provider outside the context of a contractual relationship, or on an
8 irregular or infrequent basis, without the expectation or exchange of
9 direct or indirect compensation;

10 (2) during episodic consultations by a medical specialist located
11 in another jurisdiction who provides consultation services, upon
12 request, to a properly licensed or certified health care provider in
13 this State;

14 (3) when a health care provider furnishes medical assistance in
15 response to an emergency or disaster, provided that there is no
16 charge for the medical assistance; or

17 (4) when a substitute health care provider, who is acting on
18 behalf of an absent health care provider in the same specialty,
19 provides health care services on an on-call or cross-coverage basis,
20 provided that the absent health care provider has designated the
21 substitute provider as an on-call provider or cross-coverage service
22 provider.

23

24 4. a. Each telemedicine or telehealth organization operating in
25 the State shall annually register with the Department of Health.

26 b. Each telemedicine or telehealth organization operating in the
27 State shall submit an annual report to the Department of Health in a
28 manner as determined by the commissioner. The annual report
29 shall include de-identified encounter data including, but not limited
30 to: the total number of telemedicine and telehealth encounters
31 conducted; the type of technology utilized to provide services using
32 telemedicine or telehealth; the category of medical condition for
33 which services were sought; the geographic region of the patient
34 and the provider; the patient's age and sex; and any prescriptions
35 issued. The commissioner may require the reporting of any
36 additional information as the commissioner deems necessary and
37 appropriate, subject to all applicable State and federal laws, rules,
38 and regulations for recordkeeping and privacy. Commencing six
39 months after the effective date of P.L. , c. (C.) (pending
40 before the Legislature as this bill), telemedicine and telehealth
41 organizations shall include in the annual report, for each
42 telemedicine or telehealth encounter: the patient's race and
43 ethnicity; the diagnostic codes; the evaluation management codes;
44 and the source of payment for the encounter.

45 c. The Department of Health shall compile the information
46 provided in the reports submitted by telemedicine and telehealth
47 organizations pursuant to subsection b. of this section to generate
48 Statewide data concerning telemedicine and telehealth services

1 provided in the State. The department shall annually share the
2 Statewide data with the Department of Human Services, the
3 Department of Banking and Insurance, the Telemedicine and
4 Telehealth Review Commission established pursuant to section 5 of
5 P.L. , c. (C.) (pending before the Legislature as this bill),
6 State boards and other entities that, under Title 45 of the Revised
7 Statutes, are responsible for the professional licensure, certification,
8 or registration of health care providers in the State who provide
9 health care services using telemedicine or telehealth pursuant to
10 P.L. , c. (C.) (pending before the Legislature as this bill),
11 and the Legislature pursuant section 2 of P.L.1991, c.164 (C.52:14-
12 19.1). The department shall also transmit a report to the Legislature
13 and the Telemedicine and Telehealth Review Commission that
14 includes: an analysis of each rule and regulation adopted pursuant
15 to subsection i. of section 2 of P.L. , c. (C.) (pending
16 before the Legislature as this bill) by a State board or other entity
17 responsible for the professional licensure, certification, or
18 registration of health care providers in the State who provide health
19 care services using telemedicine or telehealth; and an assessment of
20 the effect that telemedicine and telehealth is having on health care
21 delivery, health care outcomes, population health, and in-person
22 health care services provided in facility-based and office-based
23 settings.

24 d. A telemedicine or telehealth organization that fails to
25 register with the Department of Health pursuant to subsection a. of
26 this section or that fails to submit the annual report required
27 pursuant to subsection b. of this section shall be liable to such
28 disciplinary actions as the Commissioner of Health may prescribe
29 by regulation.

30
31 5. a. Six months after the effective date of P.L. , c. (C.)
32 (pending before the Legislature as this bill), there shall be
33 established in the Department of Health the Telemedicine and
34 Telehealth Review Commission, which shall review the information
35 reported by telemedicine and telehealth organizations pursuant to
36 subsection b. of section 4 of P.L. , c. (C.) (pending before
37 the Legislature as this bill) and make recommendations for such
38 executive, legislative, regulatory, administrative, and other actions
39 as may be necessary and appropriate to promote and improve the
40 quality, efficiency, and effectiveness of telemedicine and telehealth
41 services provided in this State.

42 b. The commission shall consist of seven members, as follows:
43 the Commissioner of Health, or a designee, who shall serve ex
44 officio, and six public members, with two members each to be
45 appointed by the Governor, the Senate President, and the Speaker of
46 the General Assembly. The public members shall be health care
47 professionals with a background in the provision of health care
48 services using telemedicine and telehealth. The public members

1 shall serve at the pleasure of the appointing authority, and vacancies
2 in the membership shall be filled in the same manner as the original
3 appointments.

4 c. Members of the commission shall serve without
5 compensation but may be reimbursed for necessary travel expenses
6 incurred in the performance of their duties within the limits of funds
7 made available for that purpose.

8 d. The members shall select a chairperson and a vice
9 chairperson from among the members. The chairperson may
10 appoint a secretary, who need not be a member of the commission.
11 The Department of Health shall provide staff and administrative
12 support to the commission.

13 e. The commission shall meet at least twice a year and at such
14 other times as the chairperson may require. The commission shall
15 be entitled to call to its assistance and avail itself of the services of
16 the employees of any State, county, or municipal department, board,
17 bureau, commission, or agency as it may require and as may be
18 available for its purposes.

19 f. The commission shall report its findings and
20 recommendations to the Governor, the Commissioner of Health, the
21 State boards or other entities that, pursuant to Title 45 of the
22 Revised Statutes, are responsible for the licensure, certification, or
23 registration of health care providers in the State who provide health
24 care services using telemedicine or telehealth pursuant to P.L. , c.
25 (C.) (pending before the Legislature as this bill), and, pursuant
26 to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature no
27 later than two years after the date the commission first meets. The
28 commission shall expire upon submission of its report.

29
30 6. If any provision of P.L. , c. (C.) (pending before the
31 Legislature as this bill) or its application to any person or
32 circumstance is held to be invalid, the invalidity shall not affect any
33 other provision or application of P.L. , c. (C.) (pending
34 before the Legislature as this bill) which can be given effect without
35 the invalid provision or application, and, to this end, the provisions
36 of P.L. , c. (C.) (pending before the Legislature as this bill)
37 are severable.

38
39 7. a. The State Medicaid and NJ FamilyCare programs shall
40 provide coverage and payment for health care services delivered to
41 a benefits recipient through telemedicine or telehealth, on the same
42 basis as, and at a provider reimbursement rate that does not exceed
43 the provider reimbursement rate that is applicable, when the
44 services are delivered through in-person contact and consultation in
45 New Jersey. Reimbursement payments under this section may be
46 provided either to the individual practitioner who delivered the
47 reimbursable services, or to the agency, facility, or organization that

- 1 employs the individual practitioner who delivered the reimbursable
2 services, as appropriate.
- 3 b. The State Medicaid and NJ FamilyCare programs may limit
4 coverage to services that are delivered by participating health care
5 providers, but may not charge any deductible, copayment, or
6 coinsurance for a health care service, delivered through
7 telemedicine or telehealth, in an amount that exceeds the deductible,
8 copayment, or coinsurance amount that is applicable to an in-person
9 consultation.
- 10 c. Nothing in this section shall be construed to:
- 11 (1) prohibit the State Medicaid or NJ FamilyCare programs
12 from providing coverage for only those services that are medically
13 necessary, subject to the terms and conditions of the recipient’s
14 benefits plan; or
- 15 (2) allow the State Medicaid or NJ FamilyCare programs to
16 require a benefits recipient to use telemedicine or telehealth in lieu
17 of obtaining an in-person service from a participating health care
18 provider.
- 19 d. The Commissioner of Human Services, in consultation with
20 the Commissioner of Children and Families, shall apply for such
21 State plan amendments or waivers as may be necessary to
22 implement the provisions of this section and to secure federal
23 financial participation for State expenditures under the federal
24 Medicaid program and Children’s Health Insurance Program.
- 25 e. As used in this section:
- 26 “Benefits recipient” or “recipient” means a person who is
27 eligible for, and who is receiving, hospital or medical benefits under
28 the State Medicaid program established pursuant to P.L.1968, c.413
29 (C.30:4D-1 et seq.), or under the NJ FamilyCare program
30 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
31 appropriate.
- 32 “Participating health care provider” means a licensed or certified
33 health care provider who is registered to provide health care
34 services to benefits recipients under the State Medicaid or NJ
35 FamilyCare programs, as appropriate.
- 36 “Telehealth” means the same as that term is defined by section 1
37 of P.L. , c. (C.) (pending before the Legislature as this
38 bill).
- 39 “Telemedicine” means the same as that term is defined by
40 section 1 of P.L. , c. (C.) (pending before the Legislature
41 as this bill).
- 42
- 43 8. a. A carrier that offers a health benefits plan in this State
44 shall provide coverage and payment for health care services
45 delivered to a covered person through telemedicine or telehealth, on
46 the same basis as, and at a provider reimbursement rate that does
47 not exceed the provider reimbursement rate that is applicable, when
48 the services are delivered through in-person contact and

1 consultation in New Jersey. Reimbursement payments under this
2 section may be provided either to the individual practitioner who
3 delivered the reimbursable services, or to the agency, facility, or
4 organization that employs the individual practitioner who delivered
5 the reimbursable services, as appropriate.

6 b. A carrier may limit coverage to services that are delivered
7 by health care providers in the health benefits plan's network, but
8 may not charge any deductible, copayment, or coinsurance for a
9 health care service, delivered through telemedicine or telehealth, in
10 an amount that exceeds the deductible, copayment, or coinsurance
11 amount that is applicable to an in-person consultation.

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

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

16 (2) allow a carrier to require a covered person to use
17 telemedicine or telehealth in lieu of receiving an in-person service
18 from an in-network provider.

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

23 e. As used in this section:

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

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

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

30 "Telehealth" means the same as that term is defined by section 1
31 of P.L. , c. (C.) (pending before the Legislature as this
32 bill).

33 "Telemedicine" means the same as that term is defined by
34 section 1 of P.L. , c. (C.) (pending before the Legislature
35 as this bill).

36
37 9. a. The State Health Benefits Commission shall ensure that
38 every contract purchased thereby, which provides hospital and
39 medical expense benefits, additionally provides coverage and
40 payment for health care services delivered to a covered person
41 through telemedicine or telehealth, on the same basis as, and at a
42 provider reimbursement rate that does not exceed the provider
43 reimbursement rate that is applicable, when the services are
44 delivered through in-person contact and consultation in New Jersey.
45 Reimbursement payments under this section may be provided either
46 to the individual practitioner who delivered the reimbursable
47 services, or to the agency, facility, or organization that employs the

1 individual practitioner who delivered the reimbursable services, as
2 appropriate.

3 b. A health benefits contract purchased by the State Health
4 Benefits Commission may limit coverage to services that are
5 delivered by health care providers in the health benefits plan's
6 network, but may not charge any deductible, copayment, or
7 coinsurance for a health care service, delivered through
8 telemedicine or telehealth, in an amount that exceeds the deductible,
9 copayment, or coinsurance amount that is applicable to an in-person
10 consultation.

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

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

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

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

24 e. As used in this section:

25 "Telehealth" means the same as that term is defined by section 1
26 of P.L. , c. (C.) (pending before the Legislature as this
27 bill).

28 "Telemedicine" means the same as that term is defined by
29 section 1 of P.L. , c. (C.) (pending before the Legislature
30 as this bill).

31

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

45 b. A health benefits contract purchased by the State Health
46 Benefits Commission may limit coverage to services that are
47 delivered by health care providers in the health benefits plan's
48 network, but may not charge any deductible, copayment, or

1 coinsurance for a health care service, delivered through
2 telemedicine or telehealth, in an amount that exceeds the deductible,
3 copayment, or coinsurance amount that is applicable to an in-person
4 consultation.

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

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

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

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

18 e. As used in this section:

19 "Telehealth" means the same as that term is defined by section 1
20 of P.L. , c. (C.) (pending before the Legislature as this
21 bill).

22 "Telemedicine" means the same as that term is defined by
23 section 1 of P.L. , c. (C.) (pending before the Legislature
24 as this bill).

25

26 11. This act shall take effect immediately, and section 5 of this
27 act shall expire upon submission of the commission's report.

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29

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STATEMENT

31

32 This Senate floor substitute authorizes health care providers,
33 including, but not limited to, licensed physicians, nurses, nurse
34 practitioners, psychologists, psychiatrists, psychoanalysts, clinical
35 social workers, physician assistants, professional counselors,
36 respiratory therapists, speech pathologists, audiologists, and
37 optometrists, to remotely provide health care services to patients
38 through the use of telemedicine and telehealth.

39 "Telehealth" is defined to mean the use of information and
40 communications technologies, including telephones, remote patient
41 monitoring devices, or other electronic means, to support clinical
42 health care, provider consultation, patient and professional health-
43 related education, public health, health administration, and other
44 services as described in regulation.

45 "Telemedicine" is defined to mean means the delivery of a health
46 care service using electronic communications, information
47 technology, or other electronic or technological means to bridge the
48 gap between a health care provider who is located at a distant site

1 and a patient who is located at an originating site, either with or
2 without the assistance of an intervening health care provider.
3 “Telemedicine” would not include the use, in isolation, of audio-
4 only telephone conversation, electronic mail, instant messaging,
5 phone text, or facsimile transmission.

6 Specifically, a health care provider will be permitted to remotely
7 provide health care services to a patient through the use of
8 telemedicine, and will be permitted to engage in telehealth as may
9 be necessary to support and facilitate the provision of health care
10 services to patients.

11 The substitute bill requires any health care provider who uses
12 telemedicine or engages in telehealth while providing health care
13 services to a patient to: (1) be validly licensed, certified, or
14 registered to provide such services in the State of New Jersey; (2)
15 remain subject to regulation by the appropriate New Jersey State
16 licensing board or professional regulatory entity; (3) act in
17 compliance with existing requirements regarding the maintenance
18 of liability insurance; and (4) remain subject to New Jersey
19 jurisdiction if either the patient or the provider is located in New
20 Jersey at the time services are provided.

21 The bill requires telemedicine services to be provided using
22 interactive, real-time, two-way communication technologies. A
23 health care provider engaging in telemedicine or telehealth may use
24 asynchronous store-and-forward technology to allow for the
25 electronic transmission of images, diagnostics, data, and medical
26 information; except that the health care provider may use
27 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. The provider’s identity, professional
33 credentials, and contact information are to be made available to the
34 patient during and after the provision of services. The substitute
35 bill requires the contact information to enable the patient to contact
36 the health care provider, or a substitute health care provider
37 authorized to act on the provider’s behalf, for at least 72 hours
38 following the provision of services.

39 A health care provider engaging in telemedicine or telehealth
40 will be required to review the medical history and any medical
41 records provided by the patient. In the case of an initial encounter
42 with the patient, the provider is to conduct the review before
43 initiating contact with the patient; in the case of a subsequent
44 encounter pursuant to an ongoing provider-patient relationship, the
45 provider may conduct the review prior to initiating contact or
46 contemporaneously with the telemedicine or telehealth encounter.

47 Health care providers who engage in telemedicine or telehealth
48 will be required to maintain a complete record of the patient’s care

1 and comply with all applicable State and federal statutes and
2 regulations for recordkeeping, confidentiality, and disclosure of the
3 patient's medical record. Health care providers will not be subject
4 to any professional disciplinary action under Title 45 of the Revised
5 Statutes solely on the basis that the provider engaged in
6 telemedicine or telehealth pursuant to the substitute bill.

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

25 Health care providers providing health care services using
26 telemedicine or telehealth will be subject to the same standard of
27 care or practice standards as are applicable to in-person settings. If
28 telemedicine services would not be consistent with this standard of
29 care, the health care provider is to direct the patient to seek in-
30 person care. Similarly, diagnosis, treatment, and consultation
31 recommendations made through the use of telemedicine or
32 telehealth, including the issuance of a prescription based on a
33 telemedicine encounter, are to be held to the same standard of care
34 or practice standards as are applicable to in-person settings. A
35 provider may not issue a prescription to a patient based solely on
36 the responses provided in an online questionnaire, unless the
37 provider has established a proper provider-patient relationship with
38 the patient.

39 Schedule II controlled dangerous substances may be prescribed
40 through the use of telemedicine only after the provider conducts an
41 initial in-person examination of the patient. Subsequent in-person
42 visits with the patient will be required every three months for the
43 duration of time that the patient is being prescribed the Schedule II
44 controlled dangerous substance. However, these restrictions do not
45 apply when a health care provider is prescribing a stimulant which
46 is a Schedule II controlled dangerous substance for use by a minor
47 patient under the age of 18, provided that the health care provider is
48 using interactive, real-time, two-way audio and video technologies

1 when treating the patient, and the provider has first obtained written
2 consent for the waiver of these in-person examination requirements
3 from the minor patient's parent or guardian.

4 The substitute bill provides that mental health screeners,
5 screening services, and screening psychiatrists subject to the
6 provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.) will not be
7 required to obtain a separate authorization in order to engage in
8 telemedicine or telehealth for mental health screening purposes, and
9 will not be required to request and obtain a waiver from existing
10 regulations prior to engaging in telemedicine or telehealth.

11 Professional licensing and certification boards will be required to
12 adopt rules and regulations, which will be applicable to the health
13 care providers under their respective jurisdictions, in order to
14 implement the provisions of the bill and facilitate the provision of
15 telemedicine and telehealth services. The rules and regulations are
16 to, at a minimum: include best practices for the professional
17 engagement in telemedicine and telehealth; ensure that the services
18 patients receive using telemedicine or telehealth are appropriate,
19 medically necessary, and meet current quality of care standards;
20 include measures to prevent fraud and abuse in connection with the
21 use of telemedicine and telehealth, including requirements
22 concerning the filing of claims and maintaining appropriate records
23 of services provided; and provide substantially similar metrics for
24 evaluating quality of care and patient outcomes in connection with
25 services provided using telemedicine and telehealth as currently
26 apply to services provided in person. The rules and regulations may
27 not include any provision requiring an initial in-person visit with a
28 patient before providing services using telemedicine or telehealth.

29 In order to engage in telemedicine or telehealth, a health care
30 provider will be required to establish a proper patient-provider
31 relationship with the patient. Establishing this relationship
32 includes, but is not be limited to: (1) properly identifying the patient
33 using certain patient identifiers, including, at a minimum, the
34 patient's name, date of birth, phone number, address, and social
35 security number, whenever possible; (2) disclosing and validating
36 the provider's identity and credentials; (3) prior to initiating contact
37 with a patient during an initial encounter, reviewing the patient's
38 medical history and any available medical records; and (4) prior to
39 initiating contact with the patient, determining whether the provider
40 will be able to provide the appropriate standard of care using
41 telemedicine and telehealth as would be provided in an inpatient
42 setting.

43 Telemedicine may be practiced without establishing a proper
44 provider-patient relationship during informal consultations without
45 compensation; during episodic consultations by a medical specialist
46 located in another jurisdiction; when a health care provider
47 furnishes medical assistance in response to an emergency or
48 disaster, provided that there is no charge for the medical assistance;

1 and when a substitute health care provider acting on behalf of an
2 absent health care provider in the same specialty provides health
3 care services on an on-call or cross-coverage basis, provided that
4 the absent health care provider has designated the substitute
5 provider as an on-call provider or cross-coverage service provider.

6 The substitute bill requires each telemedicine or telehealth
7 organization operating in the State to annually register with the
8 Department of Health (DOH) and to submit an annual report to
9 DOH in a manner as determined by the commissioner. A
10 telemedicine or telehealth organization that fails to register or that
11 fails to submit the annual report will be subject to disciplinary
12 action.

13 The annual report submitted by each telemedicine and telehealth
14 organization is to include de-identified encounter data setting forth
15 the total number of telemedicine encounters conducted; the type of
16 technology utilized to provide services using telemedicine or
17 telehealth; the category of medical condition for which services
18 were sought; the geographic region of the patient and the provider;
19 the patient's age and sex; and any prescriptions issued. The
20 commissioner may require the reporting of any additional
21 information as the commissioner deems necessary and appropriate,
22 subject to all applicable State and federal laws, rules, and
23 regulations for recordkeeping and privacy. Commencing six
24 months after the effective date of the bill, the annual report
25 submitted by telemedicine and telehealth organizations is to
26 additionally, include, for each telemedicine or telehealth encounter:
27 the patient's race and ethnicity; the diagnostic code; the encounter
28 management code; and the source of payment for the encounter.
29 DOH will be required to share the reported information with the
30 Legislature, the Department of Human Services, the Department of
31 Banking and Insurance, the Telemedicine and Telehealth Review
32 Commission established under the bill, and the appropriate boards
33 and entities that license or certify professionals who provide health
34 care services in the State using telemedicine or telehealth.

35 Additionally, DOH will be required to compile the reported
36 information to generate Statewide data concerning telemedicine and
37 telehealth services provided in New Jersey, and report the Statewide
38 data to the Legislature and the Telemedicine and Telehealth Review
39 Commission on an annual basis. The report is to include an
40 analysis of each rule and regulation adopted by State boards and
41 entities responsible for the licensure or certification of health care
42 providers using telemedicine and telehealth, and an assessment of
43 the effect that the provision of health care services using
44 telemedicine and telehealth is having in New Jersey on health care
45 delivery, health care outcomes, population health, and in-person
46 health care services provided in facility-based and office-based
47 settings.

1 Six months after the effective date of the substitute bill, the
2 Telemedicine and Telehealth Review Commission will be
3 established in DOH. The commission will be required to review the
4 information reported by telemedicine and telehealth organizations
5 and make recommendations for such executive, legislative,
6 regulatory, administrative, and other actions as may be necessary
7 and appropriate to promote and improve the quality, efficiency, and
8 effectiveness of telemedicine and telehealth services provided in
9 New Jersey. The commission will consist of seven members: the
10 Commissioner of Health, or a designee, who will serve ex officio,
11 and six public members, with two members each to be appointed by
12 the Governor, the Senate President, and the Speaker of the General
13 Assembly. The public members are to be health care professionals
14 with a background in the provision of health care services using
15 telemedicine and telehealth. The public members will serve at the
16 pleasure of the appointing authority, and vacancies in the
17 membership shall be filled in the same manner as the original
18 appointments. Members of the commission will serve without
19 compensation but may be reimbursed for necessary travel expenses
20 incurred in the performance of their duties within the limits of funds
21 made available for that purpose. The commission will meet at least
22 twice a year and at such other times as the chairperson may require.
23 The commission will be entitled to call to its assistance and avail
24 itself of the services of the employees of any State, county, or
25 municipal department, board, bureau, commission, or agency as it
26 may require and as may be available for its purposes. The
27 commission will be required to report its findings and
28 recommendations to the Governor, the Commissioner of Health, the
29 State boards or other entities which are responsible for the
30 licensure, certification, or registration of health care providers in
31 the State who provide health care services using telemedicine or
32 telehealth, and the Legislature no later than two years after the date
33 the commission first meets, and will expire upon submission of the
34 report.

35 The substitute bill specifies that Medicaid, NJ FamilyCare, and
36 certain health insurance providers, including the carriers of health
37 benefits plans, the State Health Benefits Commission, and the
38 School Employees' Health Benefits Commission, are each to
39 provide coverage and payment for services provided through
40 telemedicine and telehealth on the same basis as, and at a provider
41 reimbursement rate that does not exceed the provider
42 reimbursement rate that is applicable, when the services are
43 delivered in-person in New Jersey. Reimbursement payments may
44 be made to the individual practitioner who delivered the
45 reimbursable services, or to the telemedicine or telehealth
46 organization that employs the practitioner.

47 Each such carrier or insurance provider will be authorized to
48 charge a deductible, copayment, or coinsurance for a health care

1 service delivered through telemedicine or telehealth, provided that
2 the amount charged does not exceed the charge for an in-person
3 consultation. Where applicable, each carrier or insurance provider
4 will be limited in its ability to impose annual or lifetime dollar
5 maximum amounts on the coverage of services provided through
6 telemedicine. Nothing in the substitute bill will prohibit a carrier or
7 other insurance provider from providing coverage only for services
8 deemed to be medically necessary, and nothing will allow a carrier
9 or other insurance provider to coerce a covered person to use
10 telehealth or telemedicine in lieu of receiving an in-person service.