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SYNOPSIS
Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning telemedicine and telehealth and amending P.L.2017, c.117.

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

1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to read as follows:

8. a. A carrier that offers a health benefits plan in this State shall provide coverage and payment for health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that [does not exceed] equals the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. A carrier may limit coverage to services that are delivered by health care providers in the health benefits plan's network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall a carrier:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth; or

(2) restrict the ability of a provider to use any electronic or technological platform, including interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without video capabilities, to provide services using telemedicine or telehealth that:

(a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

c. Nothing in this section shall be construed to:

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

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

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

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
"Carrier" means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).
"Covered person" means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).
"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
"Health benefits plan" means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).
"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
(cf: P.L.2017, c.117, s.8)

2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to read as follows:

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

b. The State Medicaid and NJ FamilyCare programs may limit coverage to services that are delivered by participating health care providers, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall the State Medicaid and NJ FamilyCare programs:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth; or

(2) restrict the ability of a provider to use any electronic or technological platform, including interactive, real-time, two-way audio in combination with asynchronous store-and-forward
technology without video capabilities, to provide services using telemedicine or telehealth that:

(a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

c. Nothing in this section shall be construed to:

(1) prohibit the State Medicaid or NJ FamilyCare programs from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the recipient's benefits plan; or

(2) allow the State Medicaid or NJ FamilyCare programs to require a benefits recipient to use telemedicine or telehealth in lieu of obtaining an in-person service from a participating health care provider.

d. The Commissioner of Human Services, in consultation with the Commissioner of Children and Families, shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this section and to secure federal financial participation for State expenditures under the federal Medicaid program and Children's Health Insurance Program.

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Benefits recipient" or "recipient" means a person who is eligible for, and who is receiving, hospital or medical benefits under the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or under the NJ FamilyCare program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as appropriate.

"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Participating health care provider" means a licensed or certified health care provider who is registered to provide health care services to benefits recipients under the State Medicaid or NJ FamilyCare programs, as appropriate.

"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

(cf: P.L.2017, c.117, s.7)

3. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read as follows:

2. a. Unless specifically prohibited or limited by federal or State law, a health care provider who establishes a proper provider-patient relationship with a patient may remotely provide health care services to a patient through the use of telemedicine, regardless of
whether the health care provider is located in New Jersey at the
time the remote health care services are provided. A health care
provider may also engage in telehealth as may be necessary to
support and facilitate the provision of health care services to
patients.

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

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

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

(3) The identity, professional credentials, and contact
information of a health care provider providing telemedicine or
telehealth services shall be made available to the patient during and
after the provision of services. The contact information shall enable
the patient to contact the health care provider, or a substitute health
care provider authorized to act on behalf of the provider who
provided services, for at least 72 hours following the provision of
services.

(4) A health care provider engaging in telemedicine or
telehealth shall review the medical history and any medical records
provided by the patient. For an initial encounter with the patient,
the provider shall review the patient's medical history and medical
records prior to initiating contact with the patient, as required
pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,
c.117 (C.45:1-63). In the case of a subsequent telemedicine or
telehealth encounter conducted pursuant to an ongoing provider-
patient relationship, the provider may review the information prior
to initiating contact with the patient or contemporaneously with the
telemedicine or telehealth encounter.

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

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

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

e. The prescription of Schedule II controlled dangerous substances through the use of telemedicine or telehealth shall be authorized only after an initial in-person examination of the patient, as provided by regulation, and a subsequent in-person visit with the patient shall be required every three months for the duration of time that the patient is being prescribed the Schedule II controlled dangerous substance. However, the provisions of this subsection shall not apply, and the in-person examination or review of a patient shall not be required, when a health care provider is prescribing a stimulant which is a Schedule II controlled dangerous substance for use by a minor patient under the age of 18, provided that the health care provider is using interactive, real-time, two-way audio and video technologies when treating the patient and the health care provider has first obtained written consent for the waiver of these in-person examination requirements from the minor patient's parent or guardian.
f. A mental health screener, screening service, or screening psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.):
(1) shall not be required to obtain a separate authorization in order to engage in telemedicine or telehealth for mental health screening purposes; and
(2) shall not be required to request and obtain a waiver from existing regulations, prior to engaging in telemedicine or telehealth.

g. A health care provider who engages in telemedicine or telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall maintain a complete record of the patient's care, and shall comply with all applicable State and federal statutes and regulations for recordkeeping, confidentiality, and disclosure of the patient's medical record.

h. A health care provider shall not be subject to any professional disciplinary action under Title 45 of the Revised Statutes solely on the basis that the provider engaged in telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-61 et al.).

i. (1) In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other entities that, pursuant to Title 45 of the Revised Statutes, are responsible for the licensure, certification, or registration of health care providers in the State, shall each adopt rules and regulations that are applicable to the health care providers under their respective jurisdictions, as may be necessary to implement the provisions of this section and facilitate the provision of telemedicine and telehealth services. Such rules and regulations shall, at a minimum:
(a) include best practices for the professional engagement in telemedicine and telehealth;
(b) ensure that the services patients receive using telemedicine or telehealth are appropriate, medically necessary, and meet current quality of care standards;
(c) include measures to prevent fraud and abuse in connection with the use of telemedicine and telehealth, including requirements concerning the filing of claims and maintaining appropriate records of services provided; and
(d) provide substantially similar metrics for evaluating quality of care and patient outcomes in connection with services provided using telemedicine and telehealth as currently apply to services provided in person.

(2) In no case shall the rules and regulations adopted pursuant to paragraph (1) of this subsection require a provider to conduct an initial in-person visit with the patient as a condition of providing services using telemedicine or telehealth.

(3) The failure of any licensing board to adopt rules and regulations pursuant to this subsection shall not have the effect of
delaying the implementation of this act, and shall not prevent health
care providers from engaging in telemedicine or telehealth in
accordance with the provisions of this act and the practice act
applicable to the provider's professional licensure, certification, or
registration.
(cf: P.L.2017, c.117, s.2)

4. Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is amended
to read as follows:

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

b. A health benefits contract purchased by the State Health
Benefits Commission may limit coverage to services that are
delivered by health care providers in the health benefits plan's
network, but may not charge any deductible, copayment, or
coinsurance for a health care service, delivered through
telemedicine or telehealth, in an amount that exceeds the deductible,
copayment, or coinsurance amount that is applicable to an in-person
consultation. In no case shall a health benefits contract purchased
by the State Health Benefits Commission:

(1) impose any restrictions on the location or setting of the
distant site used by a health care provider to provide services using
telemedicine and telehealth; or

(2) restrict the ability of a provider to use any electronic or
technological platform, including interactive, real-time, two-way
audio in combination with asynchronous store-and-forward
technology without video capabilities, to provide services using
telemedicine or telehealth that:

(a) allows the provider to meet the same standard of care as
would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health
privacy rule set forth at 45 CFR Parts 160 and 164.

c. Nothing in this section shall be construed to:

(1) prohibit a health benefits contract from providing coverage
for only those services that are medically necessary, subject to the
terms and conditions of the covered person's health benefits plan; or
(2) allow the State Health Benefits Commission, or a contract purchased thereby, to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

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

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

(cf: P.L.2017, c.117, s.9)

5. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is amended to read as follows:

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

b. A health benefits contract purchased by the School Employees' Health Benefits Commission may limit coverage to services that are delivered by health care providers in the health benefits plan's network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall a health benefits contract purchased by the School Employees’ Health Benefits Commission:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth; or
(2) restrict the ability of a provider to use any electronic or technological platform, including interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology without video capabilities, to provide services using telemedicine or telehealth that:
   (a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and
   (b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

c. Nothing in this section shall be construed to:
   (1) prohibit a health benefits contract from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's health benefits plan; or
   (2) allow the School Employees' Health Benefits Commission, or a contract purchased thereby, to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

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

e. As used in this section:
   "Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
   "Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
   "Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
   "Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
   (cf: P.L.2017, c.117, s.10)

6. The Commissioner of Human Services shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this act and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

7. This act shall take effect immediately.

STATEMENT

This bill revises the telemedicine and telehealth law, P.L.2017, c.117 (C.45:1-1 et al.), to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees’ Health Benefits Program (SEHBP), to
provide expanded coverage for services provided using
telemedicine and telehealth.
Specifically, the bill requires that reimbursement for
telemedicine and telehealth services be equal to the reimbursement
rate for the same services when they are provided in person.
Current law provides telemedicine and telehealth services may be
reimbursed up to the amount at which the service would be
reimbursed if provided in person.
The bill also prohibits health benefits plans, Medicaid and NJ
FamilyCare, and the SHBP and SEHBP from imposing “place of
service” requirements on services provided using telemedicine and
telehealth, and expressly allows health care providers to provide
services using telemedicine and telehealth regardless of whether the
provider is located in New Jersey when providing services,
provided that the provider is otherwise licensed to practice health
care in New Jersey.
The bill prohibits health benefits plans, Medicaid and NJ
FamilyCare, and the SHBP and SEHBP from placing restrictions on
the electronic or technological platform used to provide
telemedicine and telehealth, if the services provided when using
that platform would meet the in-person standard of care for that
service, and if the platform is otherwise compliant with the
requirements of the federal health privacy rule set forth at 45 CFR
Parts 160 and 164.