Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator NIA H. GILL
District 34 (Essex and Passaic)

Co-Sponsored by:
Senators Corrado, Diegnan, Brown, T.Kean, Singer, Turner and O'Scanlon

SYNOPSIS
Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth; appropriates $5 million.

CURRENT VERSION OF TEXT
As reported by the Senate Health, Human Services and Senior Citizens Committee on January 14, 2021, with amendments.
AN ACT concerning telemedicine and telehealth § and § amending P.L.2017, c.117 § and making an appropriation §.

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 § all forms of physical and behavioral § 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 on the location or setting of the originating site where the patient is located when receiving services using telemedicine and telehealth §;

(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 §;

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient’s vital signs and routine check-ins with the patient to monitor the patient’s status and condition, if coverage and reimbursement would be provided if those services are provided in person §.

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.
Matter enclosed in superscript numerals has been adopted as follows:

§Senate SHH committee amendments adopted January 14, 2021.
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.

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).

"Originating 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).

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 all forms of physical and behavioral health care services delivered to a benefits recipient through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that 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 on the location or setting of the
originating site where the patient is located when receiving services
using telemedicine and telehealth;

(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;

(3) deny coverage for or refuse to provide reimbursement for
routine patient monitoring performed using telemedicine and
telehealth, including remote monitoring of a patient’s vital signs and
routine check-ins with the patient to monitor the patient’s status and
condition, if coverage and reimbursement would be provided if those
services are provided in person;

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
   “Distant site” means the same as that term is defined by section 1
"Originating 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 may be provided using interactive, real-time, two-way communication technologies or, subject to the requirements of paragraph (2) of this paragraph, asynchronous store-and-forward technology.

(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, to provide services 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 and the patient concurs, in writing, in the provider’s assessment that
the provider will be able to meet in-person standard of care
requirements when using asynchronous store-and-forward technology.¹

(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. ²If the health care provider
is not a physician, the health care provider shall request from the
patient, prior to the start of the telemedicine or telehealth encounter, an
affirmative written acknowledgement that the patient understands the
provider is not a physician and would still like to proceed with the
encounter.¹

(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 telemedicine or telehealth encounter, shall be held to the same standard of care or practice standards as are applicable to in-person settings.

(3) In the event that 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.) determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours.

Nothing in this paragraph shall be construed to prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth as provided in this paragraph from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

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 all forms of physical and behavioral health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that 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 on the location or setting of the originating site where the patient is located when receiving 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 or

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient’s vital signs and routine check-ins with the patient to monitor the patient’s status and condition, if coverage and reimbursement would be provided if those services are provided in person.

(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).

"Originating 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 all forms of physical and behavioral health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that 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 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 on the location or setting of the
originating site where the patient is located when receiving 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; or

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient’s vital signs and routine check-ins with the patient to monitor the patient’s status and condition, if coverage and reimbursement would be provided if those services are provided in person; or

(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).

"Originating 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. There is appropriated from the General Fund to the
Department of Human Services the sum of $5,000,000 to establish a
program under which health care providers that provide telemedicine
or telehealth services to patients who are enrolled in the State
Medicaid program can be reimbursed for the costs of making
telemedicine and telehealth technologies available to those patients.
The Commissioner of Human Services shall establish standards and
protocols for health care providers to apply for reimbursement under
the program established pursuant to this section.

\[7.\] & 1 This act shall take effect immediately.