

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 2559

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 14, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2559.

As amended by the committee, 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 amended bill requires that reimbursement for telemedicine and telehealth services for all forms of physical and behavioral health care 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 amended bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

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.

The amended bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing 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.

The bill as amended provides for expanded use of asynchronous store-and-forward technologies to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, 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. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill as amended revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies any time the provider determines that the in-person standard of care can be met using those technologies. The amended bill adds a requirement that the patient concur, in writing, in the provider's assessment that the standard of care can be met.

The amended bill adds a requirement that, at the outset of a telemedicine or telehealth encounter, if the provider is not a physician, the provider request an affirmative written acknowledgement that the patient understands the provider is not a physician and would still like to proceed with the encounter.

As amended by the committee, the bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist 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 the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth 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.

As amended, the bill includes a \$5 million appropriation from the General Fund to the Department of Human Services 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 will be required to establish standards and protocols for health care providers to apply for reimbursement under the program.

COMMITTEE AMENDMENTS:

The committee amendments add language clarifying that health insurance coverage for telemedicine and telehealth services is to include all forms of physical and behavioral health care services.

The committee amendments revise a provision establishing a prohibition against site of service requirements for providers to additionally prohibit the imposition of site of service requirements on patients.

The committee amendments add a provision prohibiting health benefits plans from denying coverage or refusing reimbursement for routine patient monitoring and routine patient check-ins using telemedicine or telehealth if the monitoring or check-ins would be covered or reimbursed if performed in person.

The committee amendments remove language expressly allowing a licensed New Jersey health care provider to provide services using telemedicine and telehealth while located outside New Jersey.

The committee amendments remove certain limitations on using asynchronous store-and-forward technologies to provide telemedicine or telehealth services, such that asynchronous store-and-forward technologies may be used any time the in-person standard of care can be met. The amendments add a requirement that the patient provide written agreement with the health care provider's determination that standard of care requirements can be met when using asynchronous store-and-forward technologies.

The committee amendments add a new requirement that, when a health care provider is not a physician, the provider is to request that the patient provide an affirmative written acknowledgement that the patient knows the provider is not a physician and that the patient would still like to proceed with the telemedicine or telehealth encounter.

The committee amendments revise a restriction on issuing prescriptions using telemedicine and telehealth solely based on the responses provided in an online questionnaire to provide that the restriction applies to online static questionnaires.

The committee amendments add a requirement that, in the event that a mental health screener, screening service, or screening psychiatrist 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. The patient will not be prohibited from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event if the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

The committee amendments add in a \$5 million appropriation for the Department of Human Services 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 will be required to establish standards and protocols for health care providers to apply for reimbursement under the program.

The committee amendments revise the title and synopsis of the bill to reflect that the bill now makes an appropriation.