

[Fourth Reprint]

SENATE, No. 2559

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 8, 2020

Sponsored by:

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Senator NIA H. GILL

District 34 (Essex and Passaic)

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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 amended by the General Assembly on June 21, 2021.

(Sponsorship Updated As Of: 12/2/2021)

1 AN ACT concerning telemedicine and telehealth ¹**[and]** ¹ amending
2 P.L.2017, c.117 ³, repealing P.L.2020, c.3 and P.L.2020, c.7^{3 1},
3 and making an appropriation¹ .
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

10 8. a. ³(1)³ A carrier that offers a health benefits plan in this
11 State shall provide coverage and payment for ²**[¹all forms of²**
12 physical and behavioral¹ health care services delivered to a covered
13 person through telemedicine or telehealth, on the same basis as, and
14 at a provider reimbursement rate that **[does not exceed]** equals the
15 provider reimbursement rate that is applicable, when the services
16 are delivered through in-person contact and consultation in New
17 Jersey ², provided the services are otherwise covered under the plan
18 when delivered through in-person contact and consultation in New
19 Jersey² . Reimbursement payments under this section may be
20 provided either to the individual practitioner who delivered the
21 reimbursable services, or to the agency, facility, or organization that
22 employs the individual practitioner who delivered the reimbursable
23 services, as appropriate ³**[²**; provided that, if a telemedicine or
24 telehealth organization does not provide a given service on an in-
25 person basis in New Jersey, the telemedicine or telehealth
26 organization shall not be subject to this requirement²] .

27 (2) The requirements of paragraph (1) of this subsection shall
28 not apply to:

29 (a) a health care service provided by a telemedicine or telehealth
30 organization that does not provide the health care service on an in-
31 person basis in New Jersey; or

32 (b) a physical health care service ⁴that was⁴ provided ⁴[using
33 telemedicine or telehealth utilizing] through⁴ real-time, two way
34 audio without a video component, whether or not utilized in
35 combination with asynchronous store-and-forward technology,
36 ⁴[the] including through audio-only telephone conversation. The⁴
37 reimbursement rate for ⁴[which] a⁴ physical health care service
38 ⁴that is subject to this subparagraph⁴ shall be determined under the
39 ⁴[plan when delivered through in-person contact and consultation in
40 New Jersey] contract between the carrier and the provider;
41 provided that the reimbursement rate for a physical health care
42 service when provided through audio-only telephone conversation
43 shall be at least 50 percent of the reimbursement rate for the service
44 when provided in person⁴ .

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:

¹Senate SHH committee amendments adopted January 14, 2021.

²Senate SBA committee amendments adopted March 22, 2021.

³Assembly AAP committee amendments adopted June 16, 2021.

⁴Assembly floor amendments adopted June 21, 2021.

1 (3) The provisions of subparagraph (b) of paragraph (2) of this
 2 subsection shall not apply to ⁴a⁴ behavioral health ⁴[services]
 3 service that was⁴ provided ⁴[using telemedicine or telehealth
 4 utilizing] through⁴ real-time, two way audio without a video
 5 component, whether or not utilized in combination with
 6 asynchronous store-and-forward technology, ⁴[which] including
 7 audio-only telephone conversation. A⁴ behavioral health care
 8 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
 9 that equals the provider reimbursement rate for the service when
 10 provided in person³.

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

18 (1) impose any restrictions on the location or setting of the
 19 distant site used by a health care provider to provide services using
 20 telemedicine and telehealth ¹or on the location or setting of the
 21 originating site where the patient is located when receiving services
 22 using telemedicine and telehealth¹ ; ¹[or]¹

23 (2) restrict the ability of a provider to use any electronic or
 24 technological platform ²[, including interactive, real-time, two-way
 25 audio in combination with asynchronous store-and-forward
 26 technology without video capabilities,] ³[that the federal Centers
 27 for Medicare and Medicaid Services has authorized for use in
 28 connection with the federal Medicare program²]³ to provide
 29 services using telemedicine or telehealth ³, including, but not
 30 limited to, interactive, real-time, two-way audio, which may be used
 31 in combination with asynchronous store-and-forward technology
 32 without video capabilities, ⁴including audio-only telephone
 33 conversations,⁴ to provide services using telemedicine or telehealth³
 34 ², provided² that ²[:

35 (a)] the platform² ³used :

36 (a)³ allows the provider to meet the same standard of care as
 37 would be provided if the services were provided in person ²[: and

38 (b) is compliant with the requirements of the federal health
 39 privacy rule set forth at 45 CFR Parts 160 and 164]² ¹; ³[or] and

40 (b) is compliant with the requirements of the federal health
 41 privacy rule set forth at 45 CFR Parts 160 and 164;³

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

1 (4) use telemedicine or telehealth to satisfy network adequacy
2 requirements with regard to a health care service; or

3 (5) limit coverage only to services delivered by select third
4 party telemedicine or telehealth organizations³ .¹

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

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

9 (2) allow a carrier to require a covered person to use
10 telemedicine or telehealth in lieu of receiving an in-person service
11 from an in-network provider ³**[²or]** ;

12 (3)³ allow a carrier to impose more stringent utilization
13 management requirements on the provision of services using
14 telemedicine and telehealth than apply when those services are
15 provided in person² ³; or

16 (4) allow a carrier to impose any other requirements for the use
17 of telemedicine or telehealth to provide a health care service that
18 are more restrictive than the requirements that apply when the
19 service is provided in person³ .

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

24 e. As used in this section:

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

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

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

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

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

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

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

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

41 ²"Telemedicine or telehealth organization" means the same as
42 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
43 (cf: P.L.2017, c.117, s.8)

44
45 2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to
46 read as follows:

47 7. a. ³**(1)³** The State Medicaid and NJ FamilyCare programs
48 shall provide coverage and payment for ²**[¹all forms of]²** physical

1 and behavioral¹ health care services delivered to a benefits recipient
2 through telemedicine or telehealth, on the same basis as, and at a
3 provider reimbursement rate that [does not exceed] equals the
4 provider reimbursement rate that is applicable, when the services
5 are delivered through in-person contact and consultation in New
6 Jersey², provided the services are otherwise covered when
7 delivered through in-person contact and consultation in New
8 Jersey². Reimbursement payments under this section may be
9 provided either to the individual practitioner who delivered the
10 reimbursable services, or to the agency, facility, or organization that
11 employs the individual practitioner who delivered the reimbursable
12 services, as appropriate³ [2; provided that, if a telemedicine or
13 telehealth organization does not provide a given service on an in-
14 person basis in New Jersey, the telemedicine or telehealth
15 organization shall not be subject to this requirement²].

16 (2) The requirements of paragraph (1) of this subsection shall
17 not apply to:

18 (a) a health care service provided by a telemedicine or telehealth
19 organization that does not provide the health care service on an in-
20 person basis in New Jersey; or

21 (b) a physical health care service⁴ that was⁴ provided⁴ [using
22 telemedicine or telehealth utilizing] through⁴ real-time, two way
23 audio without a video component, whether or not utilized in
24 combination with asynchronous store-and-forward technology,
25 [the] including through audio-only telephone conversation. The⁴
26 reimbursement rate for⁴ [which] a⁴ physical health care service
27 that is subject to this subparagraph⁴ shall be determined under the
28 [plan when delivered through in-person contact and consultation in
29 New Jersey] contract between the State Medicaid or NJ FamilyCare
30 program and the provider; provided that the reimbursement rate for
31 a physical health care service when provided through audio-only
32 telephone conversation shall be at least 50 percent of the
33 reimbursement rate for the service when provided in person⁴.

34 (3) The provisions of subparagraph (b) of paragraph (2) of this
35 subsection shall not apply to⁴ a⁴ behavioral health⁴ [services]
36 service that was⁴ provided⁴ [using telemedicine or telehealth
37 utilizing] through⁴ real-time, two way audio without a video
38 component, whether or not utilized in combination with
39 asynchronous store-and-forward technology, [which] including
40 audio-only telephone conversation. A⁴ behavioral health care
41 service⁴ described in this paragraph⁴ shall be reimbursed at a rate
42 that equals the provider reimbursement rate for the service when
43 provided in person³.

44 b. The State Medicaid and NJ FamilyCare programs may limit
45 coverage to services that are delivered by participating health care
46 providers, but may not charge any deductible, copayment, or
47 coinsurance for a health care service, delivered through

1 telemedicine or telehealth, in an amount that exceeds the deductible,
 2 copayment, or coinsurance amount that is applicable to an in-person
 3 consultation. In no case shall the State Medicaid and NJ
 4 FamilyCare programs:

5 (1) impose any restrictions on the location or setting of the
 6 distant site used by a health care provider to provide services using
 7 telemedicine and telehealth ¹or on the location or setting of the
 8 originating site where the patient is located when receiving services
 9 using telemedicine and telehealth ¹; ¹[or] ¹

10 (2) restrict the ability of a provider to use any electronic or
 11 technological platform ²[, including interactive, real-time, two-way
 12 audio in combination with asynchronous store-and-forward
 13 technology without video capabilities,] ³[that the federal Centers
 14 for Medicare and Medicaid Services has authorized for use in
 15 connection with the federal Medicare program ²³ to provide
 16 services using telemedicine or telehealth ³, including, but not
 17 limited to, interactive, real-time, two-way audio, which may be used
 18 in combination with asynchronous store-and-forward technology
 19 without video capabilities, ⁴including audio-only telephone
 20 conversations, ⁴ to provide services using telemedicine or
 21 telehealth ³ ², provided ² that ²:

22 (a) ² the platform ³ used :

23 (a) ³ allows the provider to meet the same standard of care as
 24 would be provided if the services were provided in person ²; and

25 (b) is compliant with the requirements of the federal health
 26 privacy rule set forth at 45 CFR Parts 160 and 164] ² ¹; ³[or] and

27 (b) is compliant with the requirements of the federal health
 28 privacy rule set forth at 45 CFR Parts 160 and 164; ³

29 (3) deny coverage for or refuse to provide reimbursement for
 30 routine patient monitoring performed using telemedicine and
 31 telehealth, including remote monitoring of a patient's vital signs
 32 and routine check-ins with the patient to monitor the patient's status
 33 and condition, if coverage and reimbursement would be provided if
 34 those services are provided in person ¹ ³; or

35 (4) limit coverage only to services delivered by select third
 36 party telemedicine or telehealth organizations ³ .

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

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

42 (2) allow the State Medicaid or NJ FamilyCare programs to
 43 require a benefits recipient to use telemedicine or telehealth in lieu
 44 of obtaining an in-person service from a participating health care
 45 provider ³[²or] ;

46 (3) ³ allow the State Medicaid or NJ FamilyCare programs to
 47 impose more stringent utilization management requirements on the

1 provision of services using telemedicine and telehealth than apply
2 when those services are provided in person^{2 3}; or

3 (4) allow the State Medicaid or NJ FamilyCare programs to
4 impose any other requirements for the use of telemedicine or
5 telehealth to provide a health care service that are more restrictive
6 than the requirements that apply when the service is provided in
7 person³ .

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

14 e. As used in this section:

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

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

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

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

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

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

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

35 ²"Telemedicine or telehealth organization" means the same as
36 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
37 (cf: P.L.2017, c.117, s.7)

38
39 ⁴3. Section 1 of P.L.2017, c.117 (C. 45:1-61) is amended to read
40 as follows:

41 1. As used in P.L.2017, c.117 (C.45:1-61 et al.):

42 "Asynchronous store-and-forward" means the acquisition and
43 transmission of images, diagnostics, data, and medical information
44 either to, or from, an originating site or to, or from, the health care
45 provider at a distant site, which allows for the patient to be
46 evaluated without being physically present.

47 "Cross-coverage service provider" means a health care provider,
48 acting within the scope of a valid license or certification issued

1 pursuant to Title 45 of the Revised Statutes, who engages in a
2 remote medical evaluation of a patient, without in-person contact, at
3 the request of another health care provider who has established a
4 proper provider-patient relationship with the patient.

5 "Distant site" means a site at which a health care provider, acting
6 within the scope of a valid license or certification issued pursuant to
7 Title 45 of the Revised Statutes, is located while providing health
8 care services by means of telemedicine or telehealth.

9 "Health care provider" means an individual who provides a
10 health care service to a patient, and includes, but is not limited to, a
11 licensed physician, nurse, nurse practitioner, psychologist,
12 psychiatrist, psychoanalyst, clinical social worker, physician
13 assistant, professional counselor, respiratory therapist, speech
14 pathologist, audiologist, optometrist, or any other health care
15 professional acting within the scope of a valid license or
16 certification issued pursuant to Title 45 of the Revised Statutes.

17 "On-call provider" means a licensed or certified health care
18 provider who is available, where necessary, to physically attend to
19 the urgent and follow-up needs of a patient for whom the provider
20 has temporarily assumed responsibility, as designated by the
21 patient's primary care provider or other health care provider of
22 record.

23 "Originating site" means a site at which a patient is located at the
24 time that health care services are provided to the patient by means
25 of telemedicine or telehealth.

26 "Telehealth" means the use of information and communications
27 technologies, including telephones, remote patient monitoring
28 devices, or other electronic means, to support clinical health care,
29 provider consultation, patient and professional health-related
30 education, public health, health administration, and other services in
31 accordance with the provisions of P.L.2017, c.117 (C.45:1-61 et
32 al.).

33 "Telemedicine" means the delivery of a health care service using
34 electronic communications, information technology, or other
35 electronic or technological means to bridge the gap between a
36 health care provider who is located at a distant site and a patient
37 who is located at an originating site, either with or without the
38 assistance of an intervening health care provider, and in accordance
39 with the provisions of P.L.2017, c.117 (C.45:1-61 et al.).
40 **["Telemedicine" does not include the use, in isolation, of audio-
41 only telephone conversation, electronic mail, instant messaging,
42 phone text, or facsimile transmission.]**

43 "Telemedicine or telehealth organization" means a corporation,
44 sole proprietorship, partnership, or limited liability company that is
45 organized for the primary purpose of administering services in the
46 furtherance of telemedicine or telehealth.⁴

47 (cf: P.L.2017, c.117, s.1)

1 ⁴[3.] ⁴ Section 2 of P.L.2017, c.117 (C.45:1-62) is amended
2 to read as follows:

3 2. a. Unless specifically prohibited or limited by federal or
4 State law, a health care provider who establishes a proper provider-
5 patient relationship with a patient may remotely provide health care
6 services to a patient through the use of telemedicine ¹[, regardless
7 of whether the health care provider is located in New Jersey at the
8 time the remote health care services are provided] ¹. A health care
9 provider may also engage in telehealth as may be necessary to
10 support and facilitate the provision of health care services to
11 patients. ³Nothing in P.L.2017, c.117 (C.45:1-61 et al.) shall be
12 construed to ⁴[restrict the right of a patient to receive health care
13 services on an in-person basis upon request, and no patient shall be
14 required to engage in a telemedicine or telehealth encounter to
15 receive health care services if those same services are available, in
16 person, from a provider that is reasonably accessible to the patient]
17 allow a provider to require a patient to use telemedicine or
18 telehealth in lieu of receiving services from an in-network
19 provider⁴ ³.

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

30 c. (1) Telemedicine services ¹[shall] may¹ be provided using
31 interactive, real-time, two-way communication technologies ¹or,
32 subject to the requirements of paragraph (2) of this paragraph,
33 asynchronous store-and-forward technology¹ .

34 (2) A health care provider engaging in telemedicine or
35 telehealth may use asynchronous store-and-forward technology ¹[to
36 allow for the electronic transmission of images, diagnostics, data,
37 and medical information; except that the health care provider may
38 use interactive, real-time, two-way audio in combination with
39 asynchronous store-and-forward technology, without video
40 capabilities,] to provide services¹ ²with or without the use of
41 interactive, real-time, two-way audio² if, after accessing and
42 reviewing the patient's medical records, the provider determines
43 that the provider is able to meet the same standard of care as if the
44 health care services were being provided in person ¹and ²informs²
45 the patient ²[concurs, in writing, in the provider's assessment that
46 the provider will be able to meet in-person standard of care
47 requirements when using asynchronous store-and forward

1 technology¹】 of this determination at the outset of the telemedicine
2 or telehealth encounter.²

3 (3) ³(a) At the time the patient requests health care services to
4 be provided using telemedicine or telehealth, the patient shall be
5 clearly advised that the telemedicine or telehealth encounter may be
6 with a health care provider who is not a physician, and that the
7 patient may specifically request that the telemedicine or telehealth
8 encounter be scheduled with a physician. If the patient requests that
9 the telemedicine or telehealth encounter be with a physician, the
10 encounter shall be scheduled with a physician.

11 (b)³ The identity, professional credentials, and contact
12 information of a health care provider providing telemedicine or
13 telehealth services shall be made available to the patient ²at the time
14 the patient schedules services to be provided using telemedicine or
15 telehealth, ³【except that, if the identity of the provider is not known
16 at the time the services are scheduled, this information】 if available,
17 or upon confirmation of the scheduled telemedicine or telehealth
18 encounter, and³ shall be made available to the patient² during and
19 after the provision of services ³【², and, at the time the services are
20 scheduled, the patient shall be advised that the health care provider
21 who provides services may not be a physician²】³ . The contact
22 information shall enable the patient to contact the health care
23 provider, or a substitute health care provider authorized to act on
24 behalf of the provider who provided services, for at least 72 hours
25 following the provision of services. ¹If the health care provider is
26 not a physician, ²【the health care provider shall request from the
27 patient, prior to the start of the telemedicine or telehealth encounter,
28 an affirmative written acknowledgement that the patient
29 understands the provider is not a physician and would still like to
30 proceed with the encounter】 and the patient requests that the
31 services be provided by a physician, the health care provider shall
32 assist the patient with scheduling a telemedicine or telehealth
33 encounter with a physician² .¹

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

45 (5) Following the provision of services using telemedicine or
46 telehealth, the patient's medical information shall be ²【made
47 available to the patient upon the patient's request, and, with the

1 patient's affirmative consent,] entered into the patient's³ medical
2 record, whether the medical record is a physical record, an³
3 electronic health record³, or both,³ and, if so requested to by the
4 patient² ³,³ forwarded directly to the patient's primary care provider
5 ²[or] ²,² health care provider of record ²[, or, upon request by the
6 patient, to] or any² other health care providers ²as may be specified
7 by the patient² . For patients without a primary care provider or
8 other health care provider of record, the health care provider
9 engaging in telemedicine or telehealth may advise the patient to
10 contact a primary care provider, and, upon request by the patient,
11 ²shall² assist the patient with locating a primary care provider or
12 other in-person medical assistance that, to the extent possible, is
13 located within reasonable proximity to the patient. The health care
14 provider engaging in telemedicine or telehealth shall also refer the
15 patient to appropriate follow up care where necessary, including
16 making appropriate referrals for ²in-person care or² emergency or
17 ³[complimentary] complementary³ care, if needed. Consent may
18 be oral, written, or digital in nature, provided that the chosen
19 method of consent is deemed appropriate under the standard of care.

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

26 (2) Diagnosis, treatment, and consultation recommendations,
27 including discussions regarding the risk and benefits of the patient's
28 treatment options, which are made through the use of telemedicine
29 or telehealth, including the issuance of a prescription based on a
30 telemedicine or telehealth encounter, shall be held to the same
31 standard of care or practice standards as are applicable to in-person
32 settings. Unless the provider has established a proper provider-
33 patient relationship with the patient, a provider shall not issue a
34 prescription to a patient based solely on the responses provided in
35 an online ¹static¹ questionnaire.

36 ¹(3) In the event that a mental health screener, screening service,
37 or screening psychiatrist subject to the provisions of P.L.1987,
38 c.116 (C.30:4-27.1 et seq.) determines that an in-person psychiatric
39 evaluation is necessary to meet standard of care requirements, or in
40 the event that a patient requests an in-person psychiatric evaluation
41 in lieu of a psychiatric evaluation performed using telemedicine or
42 telehealth, the mental health screener, screening service, or
43 screening psychiatrist may nevertheless perform a psychiatric
44 evaluation using telemedicine and telehealth if it is determined that
45 the patient cannot be scheduled for an in-person psychiatric
46 evaluation within the next 24 hours. Nothing in this paragraph shall
47 be construed to prevent a patient who receives a psychiatric
48 evaluation using telemedicine and telehealth as provided in this

1 paragraph from receiving a subsequent, in-person psychiatric
2 evaluation in connection with the same treatment event, provided
3 that the subsequent in-person psychiatric evaluation is necessary to
4 meet standard of care requirements for that patient.¹

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

21 f. A mental health screener, screening service, or screening
22 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
23 27.1 et seq.):

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

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

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

35 h. A health care provider shall not be subject to any
36 professional disciplinary action under Title 45 of the Revised
37 Statutes solely on the basis that the provider engaged in
38 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-
39 61 et al.).

40 i. (1) In accordance with the "Administrative Procedure Act,"
41 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
42 entities that, pursuant to Title 45 of the Revised Statutes, are
43 responsible for the licensure, certification, or registration of health
44 care providers in the State, shall each adopt rules and regulations
45 that are applicable to the health care providers under their
46 respective jurisdictions, as may be necessary to implement the
47 provisions of this section and facilitate the provision of
48 telemedicine and telehealth services. Such rules and regulations
49 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 (cf: P.L.2017, c.117, s.2)

26

27 ⁴[4.] 5.⁴ Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is
28 amended to read as follows:

29 9. a. ³(1)³ The State Health Benefits Commission shall ensure
30 that every contract purchased thereby, which provides hospital and
31 medical expense benefits, additionally provides coverage and
32 payment for ²[¹all forms of]² physical and behavioral¹ health care
33 services delivered to a covered person through telemedicine or
34 telehealth, on the same basis as, and at a provider reimbursement
35 rate that **[does not exceed]** equals the provider reimbursement rate
36 that is applicable, when the services are delivered through in-person
37 contact and consultation in New Jersey ², provided the services are
38 otherwise covered under the contract when delivered through in-
39 person contact and consultation in New Jersey² . Reimbursement
40 payments under this section may be provided either to the
41 individual practitioner who delivered the reimbursable services, or
42 to the agency, facility, or organization that employs the individual
43 practitioner who delivered the reimbursable services, as appropriate
44 ³[²: provided that, if a telemedicine or telehealth organization does
45 not provide a given service on an in-person basis in New Jersey, the
46 telemedicine or telehealth organization shall not be subject to this
47 requirement²] .

1 (2) The requirements of paragraph (1) of this subsection shall
 2 not apply to:

3 (a) a health care service provided by a telemedicine or telehealth
 4 organization that does not provide the health care service on an in-
 5 person basis in New Jersey; or

6 (b) a physical health care service ⁴that was⁴ provided ⁴[using
 7 telemedicine or telehealth utilizing] through⁴ real-time, two way
 8 audio without a video component, whether or not utilized in
 9 combination with asynchronous store-and-forward technology,
 10 ⁴[the] including audio-only telephone conversation. The⁴
 11 reimbursement rate for ⁴[which] a⁴ physical health care service
 12 ⁴that is subject to this subparagraph⁴ shall be determined under the
 13 ⁴[plan when delivered through in-person contact and consultation in
 14 New Jersey] contract purchased by the State Health Benefits
 15 Commission with the provider; provided that the reimbursement
 16 rate for a physical health care service when provided through audio-
 17 only telephone conversation shall be at least 50 percent of the
 18 reimbursement rate for the service when provided in person⁴ .

19 (3) The provisions of subparagraph (b) of paragraph (2) of this
 20 subsection shall not apply to ⁴a⁴ behavioral health ⁴[services]
 21 service that was⁴ provided ⁴[using telemedicine or telehealth
 22 utilizing] through⁴ real-time, two way audio without a video
 23 component, whether or not utilized in combination with
 24 asynchronous store-and-forward technology, ⁴[which] including
 25 audio-only telephone conversation. A⁴ behavioral health care
 26 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
 27 that equals the provider reimbursement rate for the service when
 28 provided in person³ .

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

38 (1) impose any restrictions on the location or setting of the
 39 distant site used by a health care provider to provide services using
 40 telemedicine and telehealth ¹or on the location or setting of the
 41 originating site where the patient is located when receiving services
 42 using telemedicine and telehealth¹ ; ¹[or]¹

43 (2) restrict the ability of a provider to use any electronic or
 44 technological platform ²[, including interactive, real-time, two-way
 45 audio in combination with asynchronous store-and-forward
 46 technology without video capabilities,] ³[that the federal Centers
 47 for Medicare and Medicaid Services has authorized for use in

1 connection with the federal Medicare program²]³ to provide
 2 services using telemedicine or telehealth³, including, but not
 3 limited to, interactive, real-time, two-way audio, which may be used
 4 in combination with asynchronous store-and-forward technology
 5 without video capabilities, ⁴including audio-only telephone
 6 conversations,⁴ to provide services using telemedicine or telehealth³
 7 ², provided² that ²[:

8 (a) the platform² ³used :

9 (a)³ allows the provider to meet the same standard of care as
 10 would be provided if the services were provided in person ²[: and

11 (b) is compliant with the requirements of the federal health
 12 privacy rule set forth at 45 CFR Parts 160 and 164]² ¹; ³[or] and

13 (b) is compliant with the requirements of the federal health
 14 privacy rule set forth at 45 CFR Parts 160 and 164;³

15 (3) deny coverage for or refuse to provide reimbursement for
 16 routine patient monitoring performed using telemedicine and
 17 telehealth, including remote monitoring of a patient's vital signs
 18 and routine check-ins with the patient to monitor the patient's status
 19 and condition, if coverage and reimbursement would be provided if
 20 those services are provided in person¹ ³;

21 (4) use telemedicine or telehealth to satisfy network adequacy
 22 requirements with regard to a health care service ⁴for plans or
 23 contracts entered into on or after the effective date of P.L. , c.
 24 (pending before the Legislature as this bill)⁴ ; or

25 (5) limit coverage only to services delivered by select third
 26 party telemedicine or telehealth organizations³ .

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

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

31 (2) allow the State Health Benefits Commission, or a contract
 32 purchased thereby, to require a covered person to use telemedicine
 33 or telehealth in lieu of receiving an in-person service from an in-
 34 network provider ³[²or] ;

35 (3)³ allow the State Health Benefits Commission, or a contract
 36 purchased thereby, to impose more stringent utilization
 37 management requirements on the provision of services using
 38 telemedicine and telehealth than apply when those services are
 39 provided in person² ³; or

40 (4) allow State Health Benefits Commission, or a contract
 41 purchased thereby, to impose any other requirements for the use of
 42 telemedicine or telehealth to provide a health care service that are
 43 more restrictive than the requirements that apply when the service is
 44 provided in person³ .

45 d. The State Health Benefits Commission shall adopt rules and
 46 regulations, pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
2 of this section.

3 e. As used in this section:

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

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

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

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

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

14 ²"Telemedicine or telehealth organization" means the same as
15 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²

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

17

18 ⁴**[5.] 6.⁴** Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
19 amended to read as follows:

20 10. a. ³**(1)³** The School Employees' Health Benefits
21 Commission shall ensure that every contract purchased thereby,
22 which provides hospital and medical expense benefits, additionally
23 provides coverage and payment for ²**[¹all forms of]²** physical and
24 behavioral¹ health care services delivered to a covered person
25 through telemedicine or telehealth, on the same basis as, and at a
26 provider reimbursement rate that **[does not exceed]** equals the
27 provider reimbursement rate that is applicable, when the services
28 are delivered through in-person contact and consultation in New
29 Jersey ², provided the services are otherwise covered under the
30 contract when delivered through in-person contact and consultation
31 in New Jersey² . Reimbursement payments under this section may
32 be provided either to the individual practitioner who delivered the
33 reimbursable services, or to the agency, facility, or organization that
34 employs the individual practitioner who delivered the reimbursable
35 services, as appropriate ³**[²; provided that, if a telemedicine or**
36 telehealth organization does not provide a given service on an in-
37 person basis in New Jersey, the telemedicine or telehealth
38 organization shall not be subject to this requirement²] .

39 (2) The requirements of paragraph (1) of this subsection shall
40 not apply to:

41 (a) a health care service provided by a telemedicine or telehealth
42 organization that does not provide the health care service on an in-
43 person basis in New Jersey; or

44 (b) a physical health care service ⁴that was⁴ provided ⁴[using
45 telemedicine or telehealth utilizing] through⁴ real-time, two way
46 audio without a video component, whether or not utilized in
47 combination with asynchronous store-and-forward technology,

1 ⁴the including audio-only telephone conversations. The⁴
 2 reimbursement rate for ⁴which a⁴ physical health care service
 3 that is subject to this subparagraph⁴ shall be determined under the
 4 ⁴plan when delivered through in-person contact and consultation in
 5 New Jersey contract purchased by the School Employees' Health
 6 Benefits Commission with the provider; provided that the
 7 reimbursement rate for a physical health care service when provided
 8 through audio-only telephone conversation shall be at least 50
 9 percent of the reimbursement rate for the service when provided in
 10 person⁴ .

11 (3) The provisions of subparagraph (b) of paragraph (2) of this
 12 subsection shall not apply to a⁴ behavioral health ⁴services
 13 service that was⁴ provided ⁴using telemedicine or telehealth
 14 utilizing through⁴ real-time, two way audio without a video
 15 component, whether or not utilized in combination with
 16 asynchronous store-and-forward technology, ⁴which including
 17 audio-only telephone conversation. A⁴ behavioral health care
 18 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
 19 that equals the provider reimbursement rate for the service when
 20 provided in person³ .

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

31 (1) impose any restrictions on the location or setting of the
 32 distant site used by a health care provider to provide services using
 33 telemedicine and telehealth ¹or on the location or setting of the
 34 originating site where the patient is located when receiving services
 35 using telemedicine and telehealth¹ ; ¹or¹

36 (2) restrict the ability of a provider to use any electronic or
 37 technological platform ², including interactive, real-time, two-way
 38 audio in combination with asynchronous store-and-forward
 39 technology without video capabilities, ³that the federal Centers
 40 for Medicare and Medicaid Services has authorized for use in
 41 connection with the federal Medicare program²³ to provide
 42 services using telemedicine or telehealth ³, including, but not
 43 limited to, interactive, real-time, two-way audio, which may be used
 44 in combination with asynchronous store-and-forward technology
 45 without video capabilities, ⁴including audio-only telephone
 46 conversations,⁴ to provide services using telemedicine or
 47 telehealth^{3 2}, provided² that ²:

1 (a) the platform^{2 3} used :
2 (a)³ allows the provider to meet the same standard of care as
3 would be provided if the services were provided in person²; and
4 (b) is compliant with the requirements of the federal health
5 privacy rule set forth at 45 CFR Parts 160 and 164]^{2 1; 3}[or] and
6 (b) is compliant with the requirements of the federal health
7 privacy rule set forth at 45 CFR Parts 160 and 164;³
8 (3) deny coverage for or refuse to provide reimbursement for
9 routine patient monitoring performed using telemedicine and
10 telehealth, including remote monitoring of a patient's vital signs
11 and routine check-ins with the patient to monitor the patient's status
12 and condition, if coverage and reimbursement would be provided if
13 those services are provided in person^{1 3};
14 (4) use telemedicine or telehealth to satisfy network adequacy
15 requirements with regard to a health care service⁴ for plans or
16 contracts entered into on or after the effective date of P.L. _____,
17 c. (pending before the Legislature as this bill)⁴ ; or
18 (5) limit coverage only to services delivered by select third
19 party telemedicine or telehealth organizations³ .
20 c. Nothing in this section shall be construed to:
21 (1) prohibit a health benefits contract from providing coverage
22 for only those services that are medically necessary, subject to the
23 terms and conditions of the covered person's health benefits plan; or
24 (2) allow the School Employees' Health Benefits Commission,
25 or a contract purchased thereby, to require a covered person to use
26 telemedicine or telehealth in lieu of receiving an in-person service
27 from an in-network provider³[²or] ;
28 (3)³ allow the School Employees' Health Benefits Commission,
29 or a contract purchased thereby, to impose more stringent utilization
30 management requirements on the provision of services using
31 telemedicine and telehealth than apply when those services are
32 provided in person^{2 3}; or
33 (4) allow the School Employees' Health Benefits Commission,
34 or a contract purchased thereby, to impose any other requirements
35 for the use of telemedicine or telehealth to provide a health care
36 service that are more restrictive than the requirements that apply
37 when the service is provided in person³ .
38 d. The School Employees' Health Benefits Commission shall
39 adopt rules and regulations, pursuant to the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement
41 the provisions of this section.
42 e. As used in this section:
43 "Asynchronous store-and-forward" means the same as that term
44 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
45 "Distant site" means the same as that term is defined by section 1
46 of P.L.2017, c.117 (C.45:1-61).

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

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

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

7 ²"Telemedicine or telehealth organization" means the same as
8 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
9 (cf: P.L.2017, c.117, s.10)

10
11 ³[²6. (New section) The Commissioner of Banking and
12 Insurance shall conduct a study to determine whether telemedicine
13 and telehealth may be appropriately used to satisfy network
14 adequacy requirements applicable to health benefits plans in New
15 Jersey. The commissioner shall prepare and submit a report to the
16 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
17 19.1), to the Legislature, no later than one year after the effective
18 date of this act outlining the commissioner's findings and any
19 recommendations for legislation, administrative action, or other
20 actions as the commissioner deems appropriate.²]³

21
22 ⁴[³6.] ⁴7. (New section) a. A carrier that offers a health
23 benefits plan in this State shall provide coverage, without the
24 imposition of any cost sharing requirements, including deductibles,
25 copayments, or coinsurance, prior authorization requirements, or
26 other medical management requirements, for the following items
27 and services furnished during any portion of the federal state of
28 emergency declared in response to the coronavirus disease 2019
29 (COVID-19) pandemic:

30 (1) testing for COVID-19, provided that a health care
31 practitioner has issued a medical order for the testing; and

32 (2) items and services furnished or provided to an individual
33 during health care provider office visits, including in-person visits
34 and telemedicine and telehealth encounters, urgency care center
35 visits, and emergency department visits, that result in an order for
36 administration of a test for COVID-19.

37 b. As used in this section, "carrier," means an insurance
38 company, health service corporation, hospital service corporation,
39 medical service corporation, or health maintenance organization
40 authorized to issue health benefits plans in this State, and shall
41 include the State Health Benefits Program and the School
42 Employees' Health Benefits Program.³

43
44 ²[6.] ⁴[^{7.}²] ⁴8. The Commissioner of Human Services shall
45 apply for such State plan amendments or waivers as may be
46 necessary to implement the provisions of this act and to secure
47 federal financial participation for State Medicaid expenditures
48 under the federal Medicaid program.

1 ²[¹7.] ⁴[^{8.}²] ^{9.}⁴ There is appropriated from the General Fund to
2 the Department of Human Services the sum of \$5,000,000 to
3 establish a program under which health care providers that provide
4 telemedicine or telehealth services to patients who are enrolled in
5 the State Medicaid program can be reimbursed for the costs of
6 ²[making telemedicine and telehealth technologies available to]
7 providing² those patients² with access, on a temporary or permanent
8 basis, to appropriate devices, programs, and technologies necessary
9 to enable patients who do not ordinarily have access to those
10 devices, programs, or technologies to engage in a telemedicine or
11 telehealth encounter² . The Commissioner of Human Services shall
12 establish standards and protocols for health care providers to apply
13 for reimbursement under the program established pursuant to this
14 section.¹ ²The funds appropriated pursuant to this section may only
15 be expended on acquiring electronic communication and
16 information devices, programs, and technologies for use by patients,
17 and in no case shall the funds be used to provide any form of direct
18 reimbursement to an individual provider for physical or behavioral
19 health care services provided to a patient using telemedicine or
20 telehealth, or to provide reimbursement for any electronic
21 communication or information device, program, or technology for
22 which payment may be made or covered or for which
23 reimbursement is provided by a health benefits plan or any other
24 State or federal program. Nothing in this section shall be construed
25 to require a health benefits plan, Medicaid or NJ FamilyCare, the
26 State Health Benefits Plan, or the School Employees' Health
27 Benefits plan to provide reimbursement for acquiring or providing
28 access to any electronic communication or information device,
29 program, or technology for which coverage would not ordinarily be
30 provided under the plan or contract.²

31
32 ⁴[³9.] ^{10.}⁴ P.L.2020, c.3 and P.L.2020, c.7 are repealed.³

33
34 ¹[^{7.}] ²[^{8.}¹] ³[^{9.}²] ⁴[^{10.}³] ^{11.}⁴ This act shall take effect
35 immediately ³[², except that sections 1, 2, 4, and 5 of this act shall
36 take effect January 1, 2022]³ and shall apply to all health benefits
37 plans or contracts issued or renewed on or after that date² .
38 ³Section 6 of this act shall expire upon the end of the federal state
39 of emergency declared in response to the coronavirus disease 2019
40 pandemic.³