

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 291**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

ADOPTED SEPTEMBER 26, 2016

**Sponsored by:**

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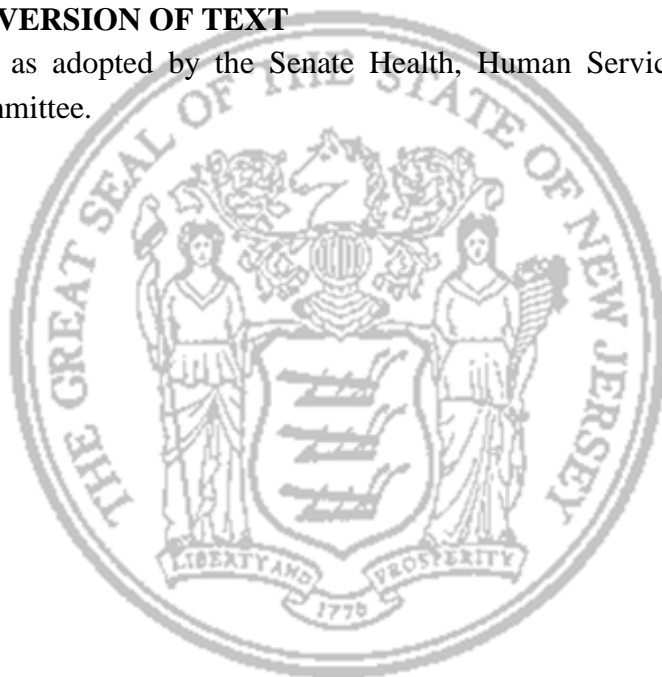
**Senators Codey and Addiego**

**SYNOPSIS**

Authorizes health care providers to engage in telehealth and telemedicine.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Health, Human Services and Senior Citizens Committee.



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

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

7  
8 1. As used in this act:

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

14 “Cross-coverage service provider” means a licensed or certified  
15 health care provider who engages in a remote medical evaluation of  
16 a patient, without in-person contact, at the request of another health  
17 care provider who has established a proper patient-provider  
18 relationship with the patient.

19 “Distant site” means a site at which a health care provider legally  
20 authorized to practice in this State is located while providing health  
21 care services by means of telemedicine.

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

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

38 “Originating site” means a site in New Jersey at which a patient  
39 is located at the time that health care services are provided to the  
40 patient by means of telemedicine, unless the term is otherwise  
41 defined with respect to the provisions in which it is used; provided,  
42 however, that insurers and health care providers may,  
43 notwithstanding any other provision of law, agree to alternative  
44 siting arrangements as deemed appropriate by the parties.

45 “Telehealth” means the use of information and communications  
46 technologies, including telephones, remote patient monitoring  
47 devices, or other electronic means, to support clinical health care,  
48 provider consultation, patient and professional health-related

1 education, public health, health administration, and other services  
2 as described in regulation.

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

12

13 2. a. Unless specifically prohibited or limited by federal or  
14 State law, a health care provider may remotely provide health care  
15 services to a patient in this State, and a proper patient-provider  
16 relationship may be established, as provided by section 3 of this act,  
17 through the use of telemedicine. A health care provider may also  
18 engage in telehealth activities as may be necessary to support and  
19 facilitate the provision of health care services to patients in the  
20 State.

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

30 c. A health care provider engaging in telemedicine shall use  
31 asynchronous store-and-forward technology to allow for the  
32 electronic transmission of images, diagnostics, data, and medical  
33 information, and, at the provider’s discretion, may additionally  
34 utilize video conferencing tools that allow for interactive, real-time  
35 communication. Wherever possible, the delivery of health care  
36 services through telemedicine shall be done using a combination of  
37 audio and video technologies; however, a health care provider may  
38 use interactive audio with asynchronous store-and-forward  
39 technology, without video capabilities, if, after accessing and  
40 reviewing the patient’s medical records, the provider determines  
41 that he or she is able to meet the same standard of care as if the  
42 health care services were being provided in person.

43 d. Treatment and consultation recommendations, which are  
44 made through the use of telemedicine, including the issuance of a  
45 prescription based on a telemedicine encounter, shall be held to the  
46 same standard of care or practice standards as are applicable to in-  
47 person settings. Unless a proper patient-provider relationship has  
48 been established in accordance with section 3 of this act, a provider

1 shall not issue a prescription to a patient based solely on the  
2 responses provided in an online questionnaire.

3 e. The prescription of controlled dangerous substances through  
4 the use of telemedicine shall be authorized only after an initial in-  
5 person examination of the patient, as provided by regulation, and a  
6 subsequent in-person visit with the patient shall be required every  
7 three months for the duration of time that the patient is being  
8 prescribed the controlled dangerous substance. However, the  
9 provisions of this subsection shall not apply, and the in-person  
10 examination or review of a patient shall not be required, when an  
11 appropriately licensed or certified health care provider is  
12 prescribing buprenorphine to a patient, or when a board certified  
13 psychiatrist or psychiatric nurse practitioner is prescribing a  
14 stimulant for use by a minor patient under the age of 18.

15 f. A mental health screener, screening service, or screening  
16 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-  
17 27.1 et seq.) shall not be required to obtain a separate authorization  
18 in order to engage in telemedicine for mental health screening  
19 purposes, and shall not be required to request and obtain a waiver  
20 from existing regulations, prior to engaging in telemedicine.

21 g. A health care provider who engages in telemedicine or  
22 telehealth activities, as authorized by this act, shall maintain a  
23 complete record of the patient's care, and shall comply with all  
24 applicable State and federal statutes and regulations for  
25 recordkeeping, confidentiality, and disclosure of the patient's  
26 medical record.

27 h. (1) In accordance with the "Administrative Procedure Act,"  
28 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other  
29 entities that, pursuant to Title 45 of the Revised Statutes, are  
30 responsible for the licensure, certification, or registration of health  
31 care providers in the State, shall each adopt rules and regulations  
32 that are applicable to the health care providers under their  
33 respective jurisdictions, as may be necessary to implement the  
34 provisions of this section and facilitate the providers' provision of  
35 health care services through telemedicine, as well as their  
36 engagement in telehealth activities. The State's licensing boards  
37 shall not establish a more restrictive standard for the professional  
38 practice of telemedicine or telehealth than the standard that is  
39 applicable to the practitioner's ordinary scope of practice, as  
40 authorized by the provider's practice act or other specifically  
41 applicable statute.

42 (2) The failure of any licensing board to adopt rules and  
43 regulations pursuant to this subsection shall not have the effect of  
44 delaying the implementation of this act, and shall not prevent health  
45 care providers from engaging in telemedicine or telehealth in  
46 accordance with the act's provisions and their respective practice  
47 acts.

1       3. a. Any health care provider who engages in telemedicine  
2 shall ensure that a proper provider-patient relationship is  
3 established. The establishment of a proper provider-patient  
4 relationship shall include, but shall not be limited to:

- 5       (1) properly identifying the patient;
- 6       (2) disclosing and validating the provider's identity and  
7 credentials, such as the license, title, and, if applicable, the specialty  
8 and board certifications held thereby;
- 9       (3) obtaining suitable consents from the patient, or from the  
10 patient's designated representative, following the provider's  
11 disclosure thereto of information regarding treatment delivery  
12 models, treatment methods, or treatment limitations, unless  
13 emergent circumstances render it impossible to obtain such  
14 consents. Consents under this paragraph may be oral, written, or  
15 digital in nature, provided that the chosen method of consent is  
16 deemed appropriate under the standard of care;
- 17       (4) establishing a patient history, and a diagnosis and treatment  
18 plan, either through the in-person examination of the patient, as  
19 provided by regulation, or through telemedicine, in accordance with  
20 acceptable practices and evidence-based clinical practice guidelines  
21 developed by a nationally recognized medical society for the  
22 applicable medical profession or specialty, and utilizing appropriate  
23 diagnostic and laboratory testing tools to identify underlying  
24 conditions or contraindications, or both, which are relevant to the  
25 treatment that is being recommended or provided;
- 26       (5) discussing with the patient, the diagnosis and evidence  
27 therefor, as well as the risks and benefits of various treatment  
28 options;
- 29       (6) ensuring the availability of coverage for appropriate follow-  
30 up care of the patient, including the establishment of procedures to  
31 make appropriate referrals for emergency or complimentary care, if  
32 needed; and
- 33       (7) providing the patient with access to a summary of the  
34 encounter or the patient's medical record, and, upon the patient's  
35 request and consent, timely sharing the summary of the encounter  
36 with the patient's primary health care provider or other health care  
37 provider of record.

38       b. Telemedicine may be practiced without a proper patient-  
39 provider relationship, as defined in subsection a. of this section, in  
40 the following circumstances:

- 41       (1) during informal consultations performed by a health care  
42 provider outside the context of a contractual relationship, or on an  
43 irregular or infrequent basis, without the expectation or exchange of  
44 direct or indirect compensation;
- 45       (2) during episodic consultations by a medical specialist located  
46 in another jurisdiction who provides consultation services, upon  
47 request, to a properly licensed or certified health care provider in  
48 this State;

1 (3) the furnishing of medical assistance by a health care  
2 provider in the case of an emergency or disaster, provided that there  
3 is no charge for the medical assistance; or

4 (4) the provision of health care services on an on-call or cross-  
5 coverage basis by a substitute health care provider acting on behalf  
6 of an absent health care provider in the same specialty, provided  
7 that the absent health care provider has designated the substitute  
8 provider as an on-call provider or cross-coverage service provider.

9  
10 4. a. The State Medicaid and NJ FamilyCare programs shall  
11 provide coverage and payment for health care services delivered to  
12 a benefits recipient through telemedicine, at least at the same rate  
13 that is applicable when the services are delivered through in-person  
14 contact and consultation.

15 b. The State Medicaid and NJ FamilyCare programs may limit  
16 coverage to services that are delivered by participating health care  
17 providers, but may not charge any deductible, copayment, or  
18 coinsurance for a health care service, delivered through  
19 telemedicine, in an amount that exceeds the deductible, copayment,  
20 or coinsurance amount that is applicable to an in-person  
21 consultation.

22 c. Nothing in this section shall:

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

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

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

36 e. As used in this section:

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

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

1 “Telemedicine” means the same as that term is defined by  
2 section 1 of P.L. , c. (C. ) (pending before the Legislature  
3 as this bill).

4  
5 5. a. A carrier that offers a managed care plan in this State  
6 shall provide coverage and payment for health care services  
7 delivered to a covered person through telemedicine, at least at the  
8 same rate that is applicable when the services are delivered through  
9 in-person contact and consultation.

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

16 c. Nothing in this section shall:

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

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

24 d. No carrier shall impose any annual or lifetime dollar  
25 maximum on coverage for telemedicine services, other than an  
26 annual or lifetime dollar maximum that applies in the aggregate to  
27 all items and services covered under the policy, or impose upon any  
28 person receiving health benefits under this section, any copayment,  
29 coinsurance, or deductible amounts, or any policy year, calendar  
30 year, lifetime, or other durational benefit limitations or maximum  
31 for benefits or services, which is not equally imposed upon all terms  
32 and services covered by the policy, contract, or plan.

33 e. The Commissioner of Banking and Insurance shall adopt  
34 rules and regulations, pursuant to the “Administrative Procedure  
35 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the  
36 provisions of this section, including provisions setting forth the  
37 criteria for carriers to include in-network telemedicine providers for  
38 the purposes of network adequacy.

39 f. As used in this section:

40 “Carrier” means the same as that term is defined by section 2 of  
41 P.L.1997, c.192 (C.26:2S-2).

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

44 “Managed care plan” means the same as that term is defined by  
45 section 2 of P.L.1997, c.192 (C.26:2S-2).

46 “Telemedicine” means the same as that term is defined by  
47 section 1 of P.L. , c. (C. ) (pending before the Legislature  
48 as this bill).

1       6. a. The State Health Benefits Commission shall ensure that  
2 every contract purchased thereby, which provides hospital and  
3 medical expense benefits, additionally provides coverage and  
4 payment for health care services delivered to a covered person  
5 through telemedicine, at least at the same rate that is applicable  
6 when the services are delivered through in-person contact and  
7 consultation.

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

16       c. Nothing in this section shall:

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

21       (2) allow the State Health Benefits Commission, or a contract  
22 purchased thereby, to require a covered person to use telemedicine  
23 in lieu of receiving an in-person service from an in-network  
24 provider.

25       d. No contract purchased by the State Health Benefits  
26 Commission shall impose any annual or lifetime dollar maximum  
27 on coverage for telemedicine services, other than an annual or  
28 lifetime dollar maximum that applies in the aggregate to all items  
29 and services covered under the policy, or impose upon any person  
30 receiving health benefits under this section, any copayment,  
31 coinsurance, or deductible amounts, or any policy year, calendar  
32 year, lifetime, or other durational benefit limitations or maximum  
33 for benefits or services, which is not equally imposed upon all terms  
34 and services covered by the policy, contract, or plan.

35       e. The State Health Benefits Commission shall adopt rules and  
36 regulations, pursuant to the "Administrative Procedure Act,"  
37 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions  
38 of this section, including provisions setting forth the criteria for  
39 carriers to include in-network telemedicine providers for the  
40 purposes of network adequacy.

41       f. As used in this section, "telemedicine" means the same as  
42 that term is defined by section 1 of P.L. , c. (C. ) (pending  
43 before the Legislature as this bill).

44  
45       7. a. The School Employees' Health Benefits Commission  
46 shall ensure that every contract purchased thereby, which provides  
47 hospital and medical expense benefits, additionally provides  
48 coverage and payment for health care services delivered to a



1 covered person through telemedicine, at least at the same rate that is  
2 applicable when the services are delivered through in-person  
3 contact and consultation.

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

12 c. Nothing in this section shall:

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

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

21 d. No contract purchased by the State Health Benefits  
22 Commission shall impose any annual or lifetime dollar maximum  
23 on coverage for telemedicine services, other than an annual or  
24 lifetime dollar maximum that applies in the aggregate to all items  
25 and services covered under the policy, or impose upon any person  
26 receiving health benefits under this section, any copayment,  
27 coinsurance, or deductible amounts, or any policy year, calendar  
28 year, lifetime, or other durational benefit limitations or maximum  
29 for benefits or services, which is not equally imposed upon all terms  
30 and services covered by the policy, contract, or plan.

31 e. The School Employees' Health Benefits Commission shall  
32 adopt rules and regulations, pursuant to the "Administrative  
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement  
34 the provisions of this section, including provisions setting forth the  
35 criteria for carriers to include in-network telemedicine providers for  
36 the purposes of network adequacy.

37 f. As used in this section, "telemedicine" means the same as  
38 that term is defined by section 1 of P.L. , c. (C. ) (pending  
39 before the Legislature as this bill).

40

41 8. This act shall become effective immediately.