

1 **TELEHEALTH REVISIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: \_\_\_\_\_

6 Cosponsor: Steve Eliason



8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Medical Assistance Act and the Public Employees' Benefit and  
11 Insurance Program Act to provide coverage for certain telehealth services.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ amends the Medical Assistance Act regarding reimbursement for telemedicine  
16 services;
- 17 ▶ amends the Public Employees' Health Benefit and Insurance Program Act (PEHP)  
18 regarding reimbursement for telemedicine services;
- 19 ▶ requires the Department of Health and PEHP to report to a legislative interim  
20 committee and a task force regarding telehealth services;
- 21 ▶ requires a legislative study;
- 22 ▶ describes responsibilities of a provider offering telehealth services; and
- 23 ▶ amends the Electronic Prescribing Act to restrict certain prescriptions in conjunction  
24 with telehealth services.

25 **Money Appropriated in this Bill:**

26 None



27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-18-13**, as enacted by Laws of Utah 2008, Chapter 41

32 **58-82-201**, as last amended by Laws of Utah 2012, Chapter 160

33 ENACTS:

34 **26-18-13.5**, Utah Code Annotated 1953

35 **26-58-101**, Utah Code Annotated 1953

36 **26-58-102**, Utah Code Annotated 1953

37 **26-58-103**, Utah Code Annotated 1953

38 **26-58-104**, Utah Code Annotated 1953

39 **26-58-105**, Utah Code Annotated 1953

40 **49-20-414**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **26-18-13** is amended to read:

44 **26-18-13. Telemedicine -- Reimbursement -- Rulemaking.**

45 (1) (a) [~~On or after July 1, 2008~~] Except as provided in Section **26-18-13.5** or Title 26,  
46 Chapter 58, Telehealth Act, communication by telemedicine is considered face-to-face contact  
47 between a health care provider and a patient under the state's medical assistance program if:

48 (i) the communication by telemedicine meets the requirements of administrative rules  
49 adopted in accordance with Subsection (3); and

50 (ii) the health care services are eligible for reimbursement under the state's medical  
51 assistance program.

52 (b) This Subsection (1) applies to any managed care organization that contracts with  
53 the state's medical assistance program.

54 (2) The reimbursement rate for telemedicine services approved under this section:

55 (a) shall be subject to reimbursement policies set by the state plan; and

56 (b) may be based on:

57 (i) a monthly reimbursement rate;

- 58 (ii) a daily reimbursement rate; or
- 59 (iii) an encounter rate.

60 (3) The department shall adopt administrative rules in accordance with Title 63G,  
61 Chapter 3, Utah Administrative Rulemaking Act, which establish:

- 62 (a) the particular telemedicine services that are considered face to face encounters for  
63 reimbursement purposes under the state's medical assistance program; and
- 64 (b) the reimbursement methodology for the telemedicine services designated under  
65 Subsection (3)(a).

66 Section 2. Section **26-18-13.5** is enacted to read:

67 **26-18-13.5. Mental health telemedicine services -- Reimbursement -- Reporting.**

68 (1) As used in this section:

69 (a) "Behavioral health care" means treatment or prevention of mental illness, whether  
70 in person or remotely, by means of observation, description, evaluation, interpretation,  
71 intervention, or treatment to effect modification of human behavior by the application of  
72 generally recognized clinical mental health counseling principles, methods, and procedures for  
73 the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction,  
74 accompanying symptoms, or maladaptive behavior.

75 (b) "Mental illness" means a mental or emotional condition defined in an approved  
76 diagnostic and statistical manual for mental disorders generally recognized in the professions of  
77 mental health therapy listed in Section [58-60-102](#).

78 (c) "Telemedicine services" means the same as that term is defined in Section  
79 [26-58-102](#).

80 (2) This section applies to:

81 (a) a managed care organization that contracts with the Medicaid program; and

82 (b) a provider who is reimbursed for health care services under the Medicaid program.

83 (3) The reimbursement rate for in-office behavioral health care visits provided through  
84 telemedicine services may be determined by applying:

85 (a) the same reimbursement rate offered for a traditional face-to-face in-office  
86 behavioral health care visit;

87 (b) the rate described in Subsection (3)(a) with an applicable Medicare relative value  
88 adjustment for telemedicine; or

89 (c) a rate that is at or above the rate offered for behavioral health care visits that the  
90 Medicaid program has established with a telemedicine-based provider.

91 (4) The department shall report to the Legislature's Public Utilities and Technology  
92 Interim Committee and Health Reform Task Force, before December 1, 2017, on:

93 (a) the result of the reimbursement rate parity described in Subsection (3);

94 (b) existing and potential uses of telehealth and telemedicine services;

95 (c) issues of reimbursement to a provider offering telehealth and telemedicine services;

96 and

97 (d) potential rules or legislation related to providers offering and insurers reimbursing  
98 for telehealth and telemedicine services.

99 Section 3. Section 26-58-101 is enacted to read:

100 **CHAPTER 58. TELEHEALTH ACT**

101 **26-58-101. Title.**

102 This chapter is known as the "Telehealth Act."

103 Section 4. Section 26-58-102 is enacted to read:

104 **26-58-102. Definitions.**

105 As used in this chapter:

106 (1) "Asynchronous store and forward transfer" means the transmission of a patient's  
107 health care information from an originating site to a provider at a distant site over a secure  
108 connection that complies with state and federal security and privacy laws.

109 (2) "Distant site" means the physical location of a provider delivering telemedicine  
110 services.

111 (3) "Originating site" means the physical location of a patient receiving telemedicine  
112 services.

113 (4) "Patient" means an individual seeking telemedicine services.

114 (5) "Provider" means an individual licensed in the state, under Title 58, Occupations  
115 and Professions, to provide health care.

116 (6) "Synchronous interaction" means real-time communication through interactive  
117 technology that enables a provider at a distant site and a patient at an originating site to interact  
118 simultaneously through two-way audio and video transmission.

119 (7) "Telehealth services" means the transmission of health-related services or

120 information through the use of electronic communication or information technology.

121 (8) "Telemedicine services" means telehealth services:

122 (a) including:

123 (i) clinical care;

124 (ii) health education;

125 (iii) health administration;

126 (iv) home health; or

127 (v) facilitation of self-managed care and caregiver support; and

128 (b) provided by a provider to a patient through the use of:

129 (i) asynchronous store and forward transfer; or

130 (ii) synchronous interaction.

131 Section 5. Section **26-58-103** is enacted to read:

132 **26-58-103. Scope of telehealth practice.**

133 (1) A provider offering telehealth services shall:

134 (a) at all times:

135 (i) act within the scope of the provider's license under Title 58, Occupations and

136 Professions, in accordance with the provisions of this chapter and all other applicable laws and  
137 rules; and

138 (ii) be held to the same standards of practice as those applicable in traditional health  
139 care settings;

140 (b) in accordance with Title 58, Chapter 82, Electronic Prescribing Act, before  
141 providing treatment or ordering a prescription drug, obtain, from the patient or another  
142 provider, and document the patient's relevant clinical history and current symptoms to establish  
143 a diagnosis and identify underlying conditions and contraindications to a recommended  
144 treatment;

145 (c) be available to a patient who receives telehealth services from the provider for  
146 subsequent care related to the initial telemedicine services, in accordance with community  
147 standards of practice;

148 (d) be familiar with available medical resources, including emergency resources near  
149 the originating site, in order to make appropriate patient referrals when medically indicated;  
150 and

151 (e) in accordance with any applicable state and federal laws, rules, and regulations,  
152 generate, maintain, and make available to each patient receiving telehealth services the patient's  
153 medical records.

154 (2) A provider may not offer telehealth services if:

155 (a) the provider is not in compliance with applicable laws, rules, and regulations  
156 regarding the provider's licensed practice; or

157 (b) the provider's license under Title 58, Occupations and Professions, is not active and  
158 in good standing.

159 Section 6. Section **26-58-104** is enacted to read:

160 **26-58-104. Enforcement.**

161 The Division of Occupational and Professional Licensing, created in Section [58-1-103](#),  
162 is authorized to enforce the provisions of this chapter.

163 Section 7. Section **26-58-105** is enacted to read:

164 **26-58-105. Study by Public Utilities and Technology Interim Committee and**  
165 **Health Reform Task Force.**

166 The Legislature's Public Utilities and Technology Interim Committee and Health  
167 Reform Task Force shall receive the reports required in Sections [26-18-13.5](#) and [49-20-414](#),  
168 and study:

169 (1) the result of the reimbursement rate parity described in Sections [26-18-13.5](#) and  
170 [49-20-414](#);

171 (2) practices and efforts of private health care facilities, health care providers,  
172 self-funded employers, third-party payors, and health maintenance organizations to create  
173 parity between reimbursement rates for telehealth services, as defined in Section [28-58-102](#),  
174 and reimbursement rates offered in a traditional face-to-face setting;

175 (3) existing and potential uses of telehealth and telemedicine services;

176 (4) issues of reimbursement to a provider offering telehealth and telemedicine services;  
177 and

178 (5) potential rules or legislation related to providers offering and insurers reimbursing  
179 for telehealth and telemedicine services.

180 Section 8. Section **49-20-414** is enacted to read:

181 **49-20-414. Mental health telemedicine services -- Reimbursement -- Reporting.**

182 (1) As used in this section:

183 (a) "Behavioral health care" means the same as that term is defined in Section  
184 26-18-13.5.

185 (b) "Mental illness" means the same as that term is defined in Section 26-18-13.5.

186 (c) "Telemedicine services" means the same as that term is defined in Section  
187 26-58-102.

188 (2) This section applies to the risk pool established for the state under Subsection  
189 49-20-201(1)(a).

190 (3) The reimbursement rate under the program for in-office behavioral health care  
191 visits provided through telemedicine services may be determined by applying:

192 (a) the same reimbursement rate offered for a traditional face-to-face in-office  
193 behavioral health care visit;

194 (b) the rate described in Subsection (3)(a) with an applicable Medicare relative value  
195 adjustment for telemedicine; or

196 (c) a rate that is at or above the rate offered for behavioral health care visits that the  
197 program has established with a telemedicine-based provider.

198 (4) The program shall report to the Legislature's Public Utilities and Technology  
199 Interim Committee and Health Reform Task Force, before December 1, 2017, on:

200 (a) the result of the reimbursement rate parity described in Subsection (3);

201 (b) existing and potential uses of telehealth and telemedicine services;

202 (c) issues of reimbursement to a provider offering telehealth and telemedicine services;  
203 and

204 (d) potential rules or legislation related to providers offering and insurers reimbursing  
205 for telehealth and telemedicine services.

206 Section 9. Section **58-82-201** is amended to read:

207 **58-82-201. Electronic prescriptions -- Restrictions -- Rulemaking authority.**

208 (1) Subject to the provisions of this section, a practitioner shall:

209 (a) provide each existing patient of the practitioner with the option of participating in  
210 electronic prescribing for prescriptions issued for the patient, if the practitioner prescribes a  
211 drug or device for the patient on or after July 1, 2012; and

212 (b) offer the patient a choice regarding to which pharmacy the practitioner will issue

213 the electronic prescription.

214 (2) A practitioner may not issue a prescription through electronic prescribing for a  
215 drug, device, or federal controlled substance that the practitioner is prohibited by federal law or  
216 federal rule from issuing through electronic prescribing.

217 (3) A pharmacy shall:

218 (a) accept an electronic prescription that is transmitted in accordance with the  
219 requirements of this section and division rules; and

220 (b) dispense a drug or device as directed in an electronic prescription described in

221 Subsection (3)(a).

222 (4) The division shall make rules to ensure that:

223 (a) except as provided in Subsection (6), practitioners and pharmacies comply with this  
224 section;

225 (b) electronic prescribing is conducted in a secure manner, consistent with industry  
226 standards; and

227 (c) each patient is fully informed of the patient's rights, restrictions, and obligations  
228 pertaining to electronic prescribing.

229 (5) An entity that facilitates the electronic prescribing process under this section shall:

230 (a) transmit to the pharmacy the prescription for the drug prescribed by the prescribing  
231 practitioner however, this Subsection (5)(a) does not prohibit the use of an electronic  
232 intermediary if the electronic intermediary does not over-ride a patient's or prescriber's choice  
233 of pharmacy;

234 (b) transmit only scientifically accurate, objective, and unbiased information to  
235 prescribing practitioners; and

236 (c) allow a prescribing practitioner to electronically override a formulary or preferred  
237 drug status when medically necessary.

238 (6) The division may, by rule, grant an exemption from the requirements of this section  
239 to a pharmacy or a practitioner to the extent that the pharmacy or practitioner can establish, to  
240 the satisfaction of the division, that compliance with the requirements of this section would  
241 impose an extreme financial hardship on the pharmacy or practitioner.

242 (7) A practitioner treating a patient through telehealth services, as described in Title 26,  
243 Chapter 58, Telehealth Act, may not issue a prescription through electronic prescribing for a

244 drug or treatment to cause an abortion, except in cases of rape, incest, or if the life of the  
245 mother would be endangered without an abortion.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**