

Representative Ken Ivory proposes the following substitute bill:

TELEHEALTH REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

Cosponsor: Steve Eliason

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the Medical Assistance Act regarding reimbursement for telemedicine services;
- ▶ amends the Public Employees' Health Benefit and Insurance Program Act (PEHP) regarding reimbursement for telemedicine services;
- ▶ requires the Department of Health and PEHP to report to a legislative interim committee and a task force regarding telehealth services;
- ▶ requires a legislative study;
- ▶ describes responsibilities of a provider offering telehealth services; and
- ▶ amends the Electronic Prescribing Act to restrict certain prescriptions in conjunction 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~~] As used in this section, communication by
46 telemedicine is considered face-to-face contact between a health care provider and a patient
47 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 that comply with federal Medicaid requirements may be determined by
85 applying:

86 (a) the same reimbursement rate offered for a traditional face-to-face in-office

87 behavioral health care visit;

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

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

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

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

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

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

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

99 (e) the department's efforts to obtain a waiver for the federal requirement that
100 telemedicine communication be face-to-face communication.

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

102 **CHAPTER 58. TELEHEALTH ACT**

103 **26-58-101. Title.**

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

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

106 **26-58-102. Definitions.**

107 As used in this chapter:

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

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

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

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

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

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

121 (7) "Telehealth services" means the transmission of health-related services or
122 information through the use of electronic communication or information technology.

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

124 (a) including:

125 (i) clinical care;

126 (ii) health education;

127 (iii) health administration;

128 (iv) home health; or

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

130 (b) provided by a provider to a patient through a method of communication that:

131 (i) (A) uses asynchronous store and forward transfer; or

132 (B) uses synchronous interaction; and

133 (ii) meets industry security and privacy standards, including compliance with:

134 (A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L.
135 No. 104-191, 110 Stat. 1936, as amended; and

136 (B) the federal Health Information Technology for Economic and Clinical Health Act,
137 Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

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

139 **26-58-103. Scope of telehealth practice.**

140 (1) A provider offering telehealth services shall:

141 (a) at all times:

142 (i) act within the scope of the provider's license under Title 58, Occupations and
143 Professions, in accordance with the provisions of this chapter and all other applicable laws and
144 rules; and

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

147 (b) in accordance with Title 58, Chapter 82, Electronic Prescribing Act, before
148 providing treatment or ordering a prescription drug, obtain, from the patient or another

149 provider, and document the patient's relevant clinical history and current symptoms to establish
150 a diagnosis and identify underlying conditions and contraindications to a recommended
151 treatment;

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

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

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

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

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

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

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

167 **26-58-104. Enforcement.**

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

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

171 **26-58-105. Study by Public Utilities and Technology Interim Committee and**
172 **Health Reform Task Force.**

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

176 (1) the result of the reimbursement rate parity described in Sections [26-18-13.5](#) and
177 [49-20-414](#);

178 (2) practices and efforts of private health care facilities, health care providers,
179 self-funded employers, third-party payors, and health maintenance organizations to create

180 parity between reimbursement rates for telehealth services, as defined in Section 28-58-102,
181 and reimbursement rates offered in a traditional face-to-face setting;

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

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

184 and

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

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

188 **49-20-414. Mental health telemedicine services -- Reimbursement -- Reporting.**

189 (1) As used in this section:

190 (a) "Behavioral health care" means the same as that term is defined in Section
191 26-18-13.5.

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

193 (c) "Telemedicine services" means the same as that term is defined in Section
194 26-58-102.

195 (2) This section applies to the risk pool established for the state under Subsection
196 49-20-201(1)(a).

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

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

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

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

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

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

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

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

210 and

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

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

214 **58-82-201. Electronic prescriptions -- Restrictions -- Rulemaking authority.**

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

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

219 (b) offer the patient a choice regarding to which pharmacy the practitioner will issue
220 the electronic prescription.

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

224 (3) A pharmacy shall:

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

227 (b) dispense a drug or device as directed in an electronic prescription described in
228 Subsection (3)(a).

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

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

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

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

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

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

241 (b) transmit only scientifically accurate, objective, and unbiased information to

242 prescribing practitioners; and

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

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

249 (7) A practitioner treating a patient through telehealth services, as described in Title 26,
250 Chapter 58, Telehealth Act, may not issue a prescription through electronic prescribing for a
251 drug or treatment to cause an abortion, except in cases of rape, incest, or if the life of the
252 mother would be endangered without an abortion.