

HB0340S01 compared with HB0340

~~deleted text~~ shows text that was in HB0340 but was deleted in HB0340S01.

inserted text shows text that was not in HB0340 but was inserted into HB0340S01.

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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;

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- ▶ 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

26-18-13.5, Utah Code Annotated 1953

26-58-101, Utah Code Annotated 1953

26-58-102, Utah Code Annotated 1953

26-58-103, Utah Code Annotated 1953

26-58-104, Utah Code Annotated 1953

26-58-105, Utah Code Annotated 1953

49-20-414, Utah Code Annotated 1953

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

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

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

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

- (i) the communication by telemedicine meets the requirements of administrative rules

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adopted in accordance with Subsection (3); and

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

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

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

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

(b) may be based on:

(i) a monthly reimbursement rate;

(ii) a daily reimbursement rate; or

(iii) an encounter rate.

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

(a) the particular telemedicine services that are considered face to face encounters for reimbursement purposes under the state's medical assistance program; and

(b) the reimbursement methodology for the telemedicine services designated under Subsection (3)(a).

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

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

(1) As used in this section:

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

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

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

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(2) This section applies to:

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

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

(3) The reimbursement rate for in-office behavioral health care visits provided through telemedicine services that comply with federal Medicaid requirements may be determined by applying:

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

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

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

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

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

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

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

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

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

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

CHAPTER 58. TELEHEALTH ACT

26-58-101. Title.

This chapter is known as the "Telehealth Act."

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

26-58-102. Definitions.

As used in this chapter:

(1) "Asynchronous store and forward transfer" means the transmission of a patient's health care information from an originating site to a provider at a distant site over a secure

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connection that complies with state and federal security and privacy laws.

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

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

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

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

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

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

(8) "Telemedicine services" means telehealth services:

(a) including:

(i) clinical care;

(ii) health education;

(iii) health administration;

(iv) home health; or

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

(b) provided by a provider to a patient through ~~the use of~~ a method of communication

that:

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

~~(iii);~~ (B) uses synchronous interaction~~;~~; and

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

(A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L.

No. 104-191, 110 Stat. 1936, as amended; and

(B) the federal Health Information Technology for Economic and Clinical Health Act,

Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

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

26-58-103. Scope of telehealth practice.

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(1) A provider offering telehealth services shall:

(a) at all times:

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

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

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

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

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

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

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

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

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

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

26-58-104. Enforcement.

The Division of Occupational and Professional Licensing, created in Section 58-1-103, is authorized to enforce the provisions of this chapter.

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

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

The Legislature's Public Utilities and Technology Interim Committee and Health Reform Task Force shall receive the reports required in Sections 26-18-13.5 and 49-20-414, and study:

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

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

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

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

and

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

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

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

(1) As used in this section:

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

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

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

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

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

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

(b) the rate described in Subsection (3)(a) with an applicable Medicare relative value

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adjustment for telemedicine; or

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

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

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

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

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

and

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

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

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

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

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

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

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

(3) A pharmacy shall:

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

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

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

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

(b) electronic prescribing is conducted in a secure manner, consistent with industry

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standards; and

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

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

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

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

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†