

**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 Medicaid program shall reimburse for the telehealth equivalent of in-office  
84 behavioral health care visits that comply with federal Medicaid requirements.

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

- 87 (a) the result of the reimbursement requirement described in Subsection (3);
- 88 (b) existing and potential uses of telehealth and telemedicine services;
- 89 (c) issues of reimbursement to a provider offering telehealth and telemedicine services;
- 90 (d) potential rules or legislation related to:
- 91 (i) providers offering and insurers reimbursing for telehealth and telemedicine services;
- 92 and
- 93 (ii) increasing access to health care, increasing the efficiency of health care, and
- 94 decreasing the costs of health care; and
- 95 (e) the department's efforts to obtain a waiver for the federal requirement that
- 96 telemedicine communication be face-to-face communication.

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

98 **CHAPTER 58. TELEHEALTH ACT**

99 **26-58-101. Title.**

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

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

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

103 As used in this chapter:

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

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

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

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

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

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

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

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

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

120 (a) including:

121 (i) clinical care;

122 (ii) health education;

123 (iii) health administration;

124 (iv) home health; or

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

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

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

128 (B) uses synchronous interaction; and

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

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

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

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

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

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

135 **26-58-103. Scope of telehealth practice.**

136 (1) A provider offering telehealth services shall:

137 (a) at all times:

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

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

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

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

148 (c) be available to a patient who receives telehealth services from the provider for

149 subsequent care related to the initial telemedicine services, in accordance with community  
150 standards of practice;

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

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

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

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

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

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

163 **26-58-104. Enforcement.**

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

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

167 **26-58-105. Study by Public Utilities and Technology Interim Committee and**  
168 **Health Reform Task Force.**

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

172 (1) the result of the reimbursement requirement described in Sections [26-18-13.5](#) and  
173 [49-20-414](#);

174 (2) practices and efforts of private health care facilities, health care providers,  
175 self-funded employers, third-party payors, and health maintenance organizations to reimburse  
176 for telehealth services.

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

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

179 and

180 (5) potential rules or legislation related to:

181 (a) providers offering and insurers reimbursing for telehealth and telemedicine  
182 services; and

183 (b) increasing access to health care, increasing the efficiency of health care, and  
184 decreasing the costs of health care.

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

186 **49-20-414. Mental health telemedicine services -- Reimbursement -- Reporting.**

187 (1) As used in this section:

188 (a) "Behavioral health care" means the same as that term is defined in Section  
189 26-18-13.5.

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

191 (c) "Telemedicine services" means the same as that term is defined in Section  
192 26-58-102.

193 (2) This section applies to the risk pool established for the state under Subsection  
194 49-20-201(1)(a).

195 (3) The program shall reimburse for the telehealth equivalent of in-office behavioral  
196 health care visits.

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

199 (a) the result of the reimbursement requirement described in Subsection (3);

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

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

202 and

203 (d) potential rules or legislation related to:

204 (i) providers offering and insurers reimbursing for telehealth and telemedicine services;

205 and

206 (ii) increasing access to health care, increasing the efficiency of health care, and  
207 decreasing the costs of health care.

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

209 **58-82-201. Electronic prescriptions -- Restrictions -- Rulemaking authority.**

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

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

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

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

219 (3) A pharmacy shall:

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

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

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

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

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

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

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

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

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

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

240 (6) The division may, by rule, grant an exemption from the requirements of this section  
241 to a pharmacy or a practitioner to the extent that the pharmacy or practitioner can establish, to



242 the satisfaction of the division, that compliance with the requirements of this section would  
243 impose an extreme financial hardship on the pharmacy or practitioner.

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