

Representative Ken Ivory proposes the following substitute bill:

TELEHEALTH REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Allen M. Christensen

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 personal behavioral health care office
84 visits provided through telemedicine services at a rate set by the Medicaid program.

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 personal behavioral health care office visits
196 provided through telemedicine services at a rate set by the program.

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.