

**TELEHEALTH AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Allen M. Christensen

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends the Medical Assistance Act regarding reimbursement for telemedicine services;
- ▶ amends the Insurance Code to require insurer transparency regarding telehealth reimbursement;
- ▶ amends the Public Employees' 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; ~~and~~
- ▶ 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:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-18-13**, as enacted by Laws of Utah 2008, Chapter 41

34 **31A-22-613.5**, as last amended by Laws of Utah 2015, Chapters 257 and 283

35 ~~§ → [—58-82-201, as last amended by Laws of Utah 2012, Chapter 160] ← §~~

36 ENACTS:

37 **26-18-13.5**, Utah Code Annotated 1953

38 **26-59-101**, Utah Code Annotated 1953

39 **26-59-102**, Utah Code Annotated 1953

40 **26-59-103**, Utah Code Annotated 1953

41 **26-59-104**, Utah Code Annotated 1953

42 **26-59-105**, Utah Code Annotated 1953

43 **49-20-414**, Utah Code Annotated 1953



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

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

47 **26-18-13. Telemedicine -- Reimbursement -- Rulemaking.**

48 (1) (a) [~~On or after July 1, 2008;~~] As used in this section, communication by  
49 telemedicine is considered [~~face-to-face~~] face-to-face contact between a health care provider  
50 and a patient under the state's medical assistance program if:

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

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

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

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

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

59 (b) may be based on:

60 (i) a monthly reimbursement rate;

61 (ii) a daily reimbursement rate; or

62 (iii) an encounter rate.

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

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

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

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

70 **26-18-13.5. Mental health telemedicine services -- Reimbursement -- Reporting.**

71 (1) As used in this section:

72 (a) "Mental health therapy" means the same as the term "practice of mental health  
73 therapy" is defined in Section [58-60-102](#).

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

77 (c) "Telehealth services" means the same as that term is defined in Section [26-59-102](#).

78 (d) "Telemedicine services" means the same as that term is defined in Section  
79 [26-59-102](#).

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 mental health therapy office  
84 visits provided through telemedicine services at a rate set by the Medicaid program.

85 (4) Before December 1, 2017, the department shall report to the Legislature's Public  
86 Utilities, Energy, and Technology Interim Committee and Health Reform Task Force 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 from the federal requirement that
- 96 telemedicine communication be face-to-face communication.

97 Section 3. Section 26-59-101 is enacted to read:

98 **CHAPTER 59. TELEHEALTH ACT**

99 **26-59-101. Title.**

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

101 Section 4. Section 26-59-102 is enacted to read:

102 **26-59-102. 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 who is:

113 (a) licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection  
114 Act;

115 (b) licensed under Title 58, Occupations and Professions, to provide health care; or

116 (c) licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.

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

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

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

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

123 (a) including:

124 (i) clinical care;

125 (ii) health education;

126 (iii) health administration;

127 (iv) home health; or

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

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

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

131 (B) uses synchronous interaction; and

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

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

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

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

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

137 Section 5. Section **26-59-103** is enacted to read:

138 **26-59-103. Scope of telehealth practice.**

139 (1) A provider offering telehealth services shall:

140 (a) at all times:

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

142 Professions, in accordance with the provisions of this chapter and all other applicable laws and

143 rules; and

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

145 care settings;

146 (b) in accordance with Title 58, Chapter 82, Electronic Prescribing Act, before

147 providing treatment or prescribing a prescription drug, establish a diagnosis and identify

148 underlying conditions and contraindications to a recommended treatment after:

149 (i) obtaining from the patient or another provider the patient's relevant clinical history;

150 and

151 (ii) documenting the patient's relevant clinical history and current symptoms;

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 **26-59-104** is enacted to read:

167 **26-59-104. Enforcement.**

168 (1) The Division of Occupational and Professional Licensing created in Section  
169 58-1-103 is authorized to enforce the provisions of Section 26-59-103 as it relates to providers  
170 licensed under Title 58, Occupations and Professions.

171 (2) The department is authorized to enforce the provisions of Section 26-59-103 as it  
172 relates to providers licensed under this title.

173 (3) The Department of Human Services created in Section 62A-1-102 is authorized to  
174 enforce the provisions of Section 26-59-103 as it relates to providers licensed under Title 62A,  
175 Chapter 2, Licensure of Programs and Facilities.

176 Section 7. Section **26-59-105** is enacted to read:

177 **26-59-105. Study by Public Utilities, Energy, and Technology Interim Committee**  
178 **and Health Reform Task Force.**

179 The Legislature's Public Utilities, Energy, and Technology Interim Committee and  
180 Health Reform Task Force shall receive the reports required in Sections 26-18-13.5 and  
181 49-20-414 and study:

182 (1) the result of the reimbursement requirement described in Sections 26-18-13.5 and

183 [49-20-414](#);

184 (2) practices and efforts of private health care facilities, health care providers,  
185 self-funded employers, third-party payors, and health maintenance organizations to reimburse  
186 for telehealth services;

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

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

189 and

190 (5) potential rules or legislation related to:

191 (a) providers offering and insurers reimbursing for telehealth and telemedicine  
192 services; and

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

195 Section 8. Section **31A-22-613.5** is amended to read:

196 **31A-22-613.5. Price and value comparisons of health insurance.**

197 (1) (a) This section applies to all health benefit plans.

198 (b) Subsection (2) applies to:

199 (i) all health benefit plans; and

200 (ii) coverage offered to state employees under Subsection [49-20-202\(1\)\(a\)](#).

201 (2) (a) The commissioner shall promote informed consumer behavior and responsible  
202 health benefit plans by requiring an insurer issuing a health benefit plan to:

203 (i) provide to all enrollees, prior to enrollment in the health benefit plan, written  
204 disclosure of:

205 (A) restrictions or limitations on prescription drugs and biologics including:

206 (I) the use of a formulary;

207 (II) co-payments and deductibles for prescription drugs; and

208 (III) requirements for generic substitution;

209 (B) coverage limits under the plan;

210 (C) any limitation or exclusion of coverage including:

211 (I) a limitation or exclusion for a secondary medical condition related to a limitation or  
212 exclusion from coverage; and

213 (II) easily understood examples of a limitation or exclusion of coverage for a secondary

214 medical condition; [~~and~~]

215 (D) whether the insurer permits an exchange of the adoption indemnity benefit in  
216 Section [31A-22-610.1](#) for infertility treatments, in accordance with Subsection  
217 [31A-22-610.1\(1\)\(c\)\(ii\)](#) and the terms associated with the exchange of benefits; and

218 (E) whether the insurer provides coverage for telehealth services in accordance with  
219 Section [26-18-13.5](#) and terms associated with that coverage; and

220 (ii) provide the commissioner with:

221 (A) the information described in Subsections [31A-22-635\(5\)](#) through (7) in the  
222 standardized electronic format required by Subsection [63N-11-107\(1\)](#); and

223 (B) information regarding insurer transparency in accordance with Subsection (4).

224 (b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to  
225 the commissioner:

226 (i) upon commencement of operations in the state; and

227 (ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):

228 (A) treatment policies;

229 (B) practice standards;

230 (C) restrictions;

231 (D) coverage limits of the insurer's health benefit plan or health insurance policy; or

232 (E) limitations or exclusions of coverage including a limitation or exclusion for a  
233 secondary medical condition related to a limitation or exclusion of the insurer's health  
234 insurance plan.

235 (c) An insurer shall provide the enrollee with notice of an increase in costs for  
236 prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):

237 (i) either:

238 (A) in writing; or

239 (B) on the insurer's website; and

240 (ii) at least 30 days prior to the date of the implementation of the increase in cost, or as  
241 soon as reasonably possible.

242 (d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make  
243 available to prospective enrollees and maintain evidence of the fact of the disclosure of:

244 (i) the drugs included;



- 245 (ii) the patented drugs not included;
- 246 (iii) any conditions that exist as a precedent to coverage; and
- 247 (iv) any exclusion from coverage for secondary medical conditions that may result
- 248 from the use of an excluded drug.
- 249 (e) (i) The commissioner shall develop examples of limitations or exclusions of a
- 250 secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).
- 251 (ii) Examples of a limitation or exclusion of coverage provided under Subsection
- 252 (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact
- 253 situation to fall within the description of an example does not, by itself, support a finding of
- 254 coverage.
- 255 (3) The commissioner:
- 256 (a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to
- 257 the Health Insurance Exchange created under Section [63N-11-104](#); and
- 258 (b) may request information from an insurer to verify the information submitted by the
- 259 insurer under this section.
- 260 (4) The commissioner shall:
- 261 (a) convene a group of insurers, a member representing the Public Employees' Benefit
- 262 and Insurance Program, consumers, and an organization that provides multipayer and
- 263 multiprovider quality assurance and data collection, to develop information for consumers to
- 264 compare health insurers and health benefit plans on the Health Insurance Exchange, which
- 265 shall include consideration of:
- 266 (i) the number and cost of an insurer's denied health claims;
- 267 (ii) the cost of denied claims that is transferred to providers;
- 268 (iii) the average out-of-pocket expenses incurred by participants in each health benefit
- 269 plan that is offered by an insurer in the Health Insurance Exchange;
- 270 (iv) the relative efficiency and quality of claims administration and other administrative
- 271 processes for each insurer offering plans in the Health Insurance Exchange; and
- 272 (v) consumer assessment of each insurer or health benefit plan;
- 273 (b) adopt an administrative rule that establishes:
- 274 (i) definition of terms;
- 275 (ii) the methodology for determining and comparing the insurer transparency

276 information;

277 (iii) the data, and format of the data, that an insurer shall submit to the commissioner in  
278 order to facilitate the consumer comparison on the Health Insurance Exchange in accordance  
279 with Section [63N-11-107](#); and

280 (iv) the dates on which the insurer shall submit the data to the commissioner in order  
281 for the commissioner to transmit the data to the Health Insurance Exchange in accordance with  
282 Section [63N-11-107](#); and

283 (c) implement the rules adopted under Subsection (4)(b) in a manner that protects the  
284 business confidentiality of the insurer.

285 Section 9. Section **49-20-414** is enacted to read:

286 **49-20-414. Mental health telemedicine services -- Reimbursement -- Reporting.**

287 (1) As used in this section:

288 (a) "Mental health therapy" means the same as the term "practice of mental health  
289 therapy" is defined in Section [58-60-102](#).

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

291 (c) "Network provider" means a health care provider who has an agreement with the  
292 program to provide health care services to a patient with an expectation of receiving payment,  
293 other than coinsurance, copayments, or deductibles, directly from the managed care  
294 organization.

295 (d) "Telehealth services" means the same as that term is defined in Section [26-59-102](#).

296 (e) "Telemedicine services" means the same as that term is defined in Section  
297 [26-59-102](#).

298 (2) This section applies to the risk pool established for the state under Subsection  
299 [49-20-201\(1\)\(a\)](#).

300 (3) The program shall reimburse a network provider for personal mental health therapy  
301 office visits provided through telemedicine services at a rate set by the program.

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

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

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

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

307 and

308 (d) potential rules or legislation related to:

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

310 and

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

313 ~~§→ [Section 10. Section 58-82-201 is amended to read:~~

314 ~~———— 58-82-201. Electronic prescriptions -- Restrictions -- Rulemaking authority:~~

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

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

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

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

324 ~~———— (3) A pharmacy shall:~~

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

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

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

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

332 ~~———— (b) electronic prescribing is conducted in a secure manner, consistent with industry~~  
 333 ~~standards; and~~

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

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

337 ~~———— (a) transmit to the pharmacy the prescription for the drug prescribed by the prescribing~~

338 ~~practitioner however, this Subsection (5)(a) does not prohibit the use of an electronic~~  
339 ~~intermediary if the electronic intermediary does not over-ride a patient's or prescriber's choice~~  
340 ~~of pharmacy;~~  
341 ~~—— (b) transmit only scientifically accurate, objective, and unbiased information to~~  
342 ~~prescribing practitioners; and~~  
343 ~~—— (c) allow a prescribing practitioner to electronically override a formulary or preferred~~  
344 ~~drug status when medically necessary.~~  
345 ~~—— (6) The division may, by rule, grant an exemption from the requirements of this section~~  
346 ~~to a pharmacy or a practitioner to the extent that the pharmacy or practitioner can establish, to~~  
347 ~~the satisfaction of the division, that compliance with the requirements of this section would~~  
348 ~~impose an extreme financial hardship on the pharmacy or practitioner.~~  
349 ~~—— §→ [(7) A practitioner treating a patient through telehealth services, as described in Title 26,~~  
350 ~~Chapter 59, Telehealth Act, may not issue a prescription through electronic prescribing for a~~  
351 ~~drug or treatment to cause an abortion] ←§ §→ [, except in cases of rape, incest, or if the life of the~~  
352 ~~mother would be endangered without an abortion] ←§ §→ [.] ←§] ←§~~

Legislative Review Note  
Office of Legislative Research and General Counsel