

1 **TELEHEALTH AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Telehealth Act and the Online Prescribing, Dispensing, and
10 Facilitation Licensing Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends definitions;
- 14 ▶ amends provisions related to a telehealth provider establishing a provider-patient
15 relationship;
- 16 ▶ amends provisions related to a telehealth provider providing a patient's medical
17 record to another health care provider;
- 18 ▶ addresses prescribing by a provider who uses only asynchronous interaction to
19 establish a provider-patient relationship with a patient;
- 20 ▶ repeals an obsolete reporting requirement; and
- 21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 [26-60-102](#), as last amended by Laws of Utah 2020, Chapter 119

29 [26-60-103](#), as last amended by Laws of Utah 2021, Chapter 64

30 [58-83-102](#), as enacted by Laws of Utah 2010, Chapter 180

31 [58-83-301](#), as enacted by Laws of Utah 2010, Chapter 180

32 REPEALS:

33 [26-60-105](#), as last amended by Laws of Utah 2019, Chapter 249



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

36 Section 1. Section [26-60-102](#) is amended to read:

37 **[26-60-102](#). Definitions.**

38 As used in this chapter:

39 (1) "Asynchronous [~~store and forward transfer~~] interaction" means the [~~transmission~~]
40 exchange of a patient's health care information from an originating site to a provider at a distant
41 site that does not occur in real time.

42 (2) "Controlled substance" means the same as that term is defined in Section [58-37-2](#).

43 [~~(2)~~] (3) "Distant site" means the physical location of a provider delivering
44 telemedicine services.

45 [~~(3)~~] (4) "Originating site" means the physical location of a patient receiving
46 telemedicine services.

47 [~~(4)~~] (5) "Patient" means an individual seeking telemedicine services.

48 [~~(5)~~] (a) "~~Patient-generated medical history~~" means medical data about a patient that the
49 patient creates, records, or gathers.]

50 [(b) "~~Patient-generated medical history~~" does not include a patient's medical record that
51 a healthcare professional creates and the patient personally delivers to a different healthcare
52 professional.]

53 (6) "Prescription drug" means the same as that term is defined in Section [58-17b-102](#).

54 [~~(6)~~] (7) "Provider" means an individual who is:

55 (a) licensed under [~~Title 26;~~] Chapter 21, Health Care Facility Licensing and Inspection
56 Act;

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

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

59 [(7)] (8) "Synchronous interaction" means real-time communication through interactive
60 technology that enables a provider at a distant site and a patient at an originating site to interact
61 simultaneously through two-way audio and video transmission.

62 [(8)] (9) "Telehealth services" means the transmission of health-related services or
63 information through the use of electronic communication or information technology.

64 [(9)] (10) "Telemedicine services" means telehealth services:

65 (a) including:

66 (i) clinical care;

67 (ii) health education;

68 (iii) health administration;

69 (iv) home health;

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

71 (vi) remote patient monitoring occurring incidentally to general supervision; and

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

73 [(i) (A) ~~uses asynchronous store and forward transfer; or~~]

74 (i) (A) asynchronous interaction; or

75 (B) [~~uses~~] synchronous interaction; and

76 (ii) meets industry security and privacy standards, including, when applicable,

77 compliance with:

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

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

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

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

82 Section 2. Section **26-60-103** is amended to read:

83 **26-60-103. Scope of telehealth practice.**

84 (1) A provider offering telehealth services shall:

85 (a) at all times:

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

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

88 rules; and

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

90 care settings;

91 (b) if the provider does not already have a provider-patient relationship with the
92 patient, establish a provider-patient relationship during the patient encounter;

93 (i) in a manner consistent with:

94 (A) the same standards of practice~~[-determined by the Division of Professional~~
95 ~~Licensing in rule made in accordance with Title 63G, Chapter 3, Utah Administrative~~
96 ~~Rulemaking Act]~~ as those applicable in traditional health care settings, including providing the
97 provider's licensure and credentials to the patient; and

98 (B) rules made by the division consistent with the standards of practice described in
99 Subsection (1)(a)(ii); and

100 (ii) using synchronous or asynchronous interaction;

101 (c) before providing treatment or prescribing a prescription drug, establish a diagnosis
102 and identify underlying conditions and contraindications to a recommended treatment after:

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

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

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

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

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

114 ~~[(g) if the patient has a designated health care provider who is not the telemedicine~~
115 ~~provider:]~~

116 ~~[(i) consult with the patient regarding whether to provide the patient's designated health~~
117 ~~care provider a medical record or other report containing an explanation of the treatment~~
118 ~~provided to the patient and the telemedicine provider's evaluation, analysis, or diagnosis of the~~
119 ~~patient's condition;]~~

120 ~~[(ii) collect from the patient the contact information of the patient's designated health~~

121 ~~care provider; and]~~

122 ~~[(iii) within two weeks after the day on which the telemedicine provider provides~~
123 ~~services to the patient, and to the extent allowed under HIPAA as that term is defined in~~
124 ~~Section 26-18-17, provide the medical record or report to the patient's designated health care~~
125 ~~provider, unless the patient indicates that the patient does not want the telemedicine provider to~~
126 ~~send the medical record or report to the patient's designated health care provider.]~~

127 (g) if requested by the patient, provide the patient's medical record to another health
128 care provider designated by the patient, to the extent allowed under HIPAA, as defined in
129 Section 26-18-17.

130 (2) Subsection (1)(g) does not apply to prescriptions for eyeglasses or contacts.

131 ~~[(3) Except as specifically provided in Title 58, Chapter 83, Online Prescribing,~~
132 ~~Dispensing, and Facilitation Licensing Act, and unless a provider has established a~~
133 ~~provider-patient relationship with a patient, a provider offering telemedicine services may not~~
134 ~~diagnose a patient, provide treatment, or prescribe a prescription drug based solely on one of~~
135 ~~the following:]~~

136 ~~[(a) an online questionnaire;]~~

137 ~~[(b) an email message; or]~~

138 ~~[(c) a patient-generated medical history.]~~

139 (3) (a) Except as provided in Subsection (3)(b), a provider may not prescribe a
140 prescription drug to a patient if the provider:

141 (i) offers telehealth services to the patient; and

142 (ii) uses only asynchronous interaction to establish a provider-patient relationship with
143 the patient.

144 (b) A provider described in Subsection (3)(a) may prescribe a prescription drug to a
145 patient if the prescription drug:

146 (i) is not subject to Title 58, Chapter 83, Online Prescribing, Dispensing, and
147 Facilitation Licensing Act;

148 (ii) is approved by the division by rule under Subsection (4); and

149 (iii) is prescribed to the patient to treat:

150 (A) dermatological conditions;

151 (B) gastrointestinal disorders;

- 152 (C) infertility;
- 153 (D) mental health;
- 154 (E) metabolic disorders;
- 155 (F) sexual health;
- 156 (G) sleep disorders; and
- 157 (H) smoking cessation.
- 158 (c) A provider described in Subsection (3)(a) may order laboratory-based diagnostic
- 159 testing for a patient.

160 (4) (a) The division shall make rules in accordance with Title 63G, Chapter 3, Utah
161 Administrative Rulemaking Act, to specify:

- 162 (i) the prescription drugs that may be prescribed under Subsection (3); and
- 163 (ii) the conditions for which the prescription drugs described in Subsection (4)(a)(i)
- 164 may be prescribed.

165 (b) The division shall make rules under this Subsection (4) in collaboration with:

- 166 (i) the Physicians Licensing Board created in Section [58-67-201](#); and
- 167 (ii) the Osteopathic Physician and Surgeon's Licensing Board created in Section
- 168 [58-68-201](#).

169 (c) The division may not authorize a provider to prescribe a controlled substance under
170 this section.

171 [~~4~~] (5) A provider may not offer telehealth services if:

- 172 (a) the provider is not in compliance with applicable laws, rules, and regulations
- 173 regarding the provider's licensed practice; or
- 174 (b) the provider's license under Title 58, Occupations and Professions, is not active and
- 175 in good standing.

176 Section 3. Section **58-83-102** is amended to read:

177 **58-83-102. Definitions.**

178 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

- 179 (1) "Board" means the Online Prescribing, Dispensing, and Facilitation Licensing
- 180 Board created in Section [58-83-201](#).
- 181 (2) "Branching questionnaire" means an adaptive and progressive assessment tool
- 182 approved by the board.

183 (3) "Delivery of online pharmaceutical services" means the process in which a
 184 prescribing practitioner diagnoses a patient and prescribes one or more of the drugs authorized
 185 by Section [58-83-306](#), using:

186 (a) a branching questionnaire or other assessment tool approved by the division for the
 187 purpose of diagnosing and assessing a patient's health status;

188 (b) an Internet contract pharmacy to:

189 (i) dispense the prescribed drug; or

190 (ii) transfer the prescription to another pharmacy; and

191 (c) an Internet facilitator to facilitate the practices described in Subsections (3)(a) and
 192 (b).

193 [~~(4) "Division" means the Utah Division of Occupational and Professional Licensing.~~]

194 [~~(5)~~ (4) "Internet facilitator" means a licensed provider of a web-based system for
 195 electronic communication between and among an online prescriber, the online prescriber's
 196 patient, and the online contract pharmacy.

197 [~~(6)~~ (5) "Online contract pharmacy" means a pharmacy licensed and in good standing
 198 under Chapter 17b, Pharmacy Practice Act, as either a Class A Retail Pharmacy or a Class B
 199 Closed Door Pharmacy and licensed under this chapter to fulfill prescriptions issued by an
 200 online prescriber through a specific Internet facilitator.

201 [~~(7)~~ (6) "Online prescriber" means a person:

202 (a) licensed under another chapter of this title;

203 (b) whose license under another chapter of this title includes assessing, diagnosing, and
 204 prescribing authority for humans; and

205 (c) who has obtained a license under this chapter to engage in online prescribing.

206 [~~(8)~~ (7) "Unlawful conduct" [~~is as defined in Sections [58-1-501](#) and [58-83-501](#)~~] means
 207 conduct that is defined as unlawful conduct under Section [58-1-501](#) or [58-83-501](#).

208 [~~(9)~~ (8) "Unprofessional conduct" [~~is as defined in Sections [58-1-203](#) and [58-83-502](#),~~
 209 ~~and as further defined~~] means conduct that is defined as unprofessional conduct under Section

210 [58-1-501](#), [58-83-502](#), or by the division by rule made in accordance with Title 63G, Chapter 3,
 211 Utah Administrative Rulemaking Act.

212 Section 4. Section **58-83-301** is amended to read:

213 **58-83-301. Licensure required -- Issuance of licenses.**

214 (1) Beginning July 1, 2010, and except as provided in Section [58-1-307](#) and Subsection
215 [26-60-102\(6\)](#):

216 (a) a physician licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68,
217 Utah Osteopathic Medical Practice Act, shall be licensed under this chapter to engage in the
218 delivery of online pharmaceutical services;

219 (b) an online contract pharmacy shall be licensed under this chapter to engage in the
220 delivery of online pharmaceutical services; and

221 (c) an Internet facilitator shall be licensed under this chapter to engage in the delivery
222 of online pharmaceutical services.

223 (2) The division shall issue[;] to any person who applies and qualifies for licensure
224 under this chapter[;] a license:

225 (a) to prescribe online;

226 (b) to operate as an online contract pharmacy; or

227 (c) to operate as an Internet facilitator.

228 [~~(3)(a) A license under this chapter is not required to engage in electronic prescribing~~
229 ~~under Chapter 82, Electronic Prescribing Act; and]~~

230 [~~(b) nothing~~]

231 (3) Nothing in this chapter shall prohibit a physician licensed under Chapter 67, Utah
232 Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act, from [~~electronic~~
233 ~~prescribing or Internet~~] prescribing as permitted by:

234 (a) Chapter 67, Utah Medical Practice Act[; or];

235 (b) Chapter 68, Utah Osteopathic Medical Practice Act[; or];

236 (c) Title 26, Chapter 60, Telehealth Act; or

237 (d) other law.

238 Section 5. **Repealer.**

239 This bill repeals:

240 Section [26-60-105](#), **Study by Public Utilities, Energy, and Technology Interim**
241 **Committee and Health Reform Task Force.**