

D R A F T  
FOR DISCUSSION ONLY

## Telehealth Act

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Uniform Law Commission

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~~September 17~~[November 12](#), 2021

## **Telehealth Act**

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# **Telehealth Act**

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# Telehealth Act

## Prefatory Note

In recent years, improvements in telecommunication technologies have transformed the delivery of health care. Practitioners have increasingly turned to telehealth, the use of synchronous and asynchronous telecommunications technology to provide health care services to a patient at a different physical location. As the provision of telehealth services has increased, states have adopted statutes that define telehealth and impose requirements with respect to its use. These statutes have evolved over time, often becoming less restrictive. The arrival of the Covid-19 pandemic greatly expanded patient demand for telehealth services, accelerating this evolution. To meet patient needs, many states chose to relax licensure and other requirements that served as barriers to the delivery of telehealth services. In the aftermath of the pandemic, many states are re-examining laws related to telehealth, often with an eye toward expanding access to care while maintaining protections for patients.

This Telehealth Act reflects this evolutionary trend. It has two broad goals. The first is to make clear that as a general matter, health care services may be provided through telehealth, if doing so is consistent with the applicable professional practice standard and the practitioner's scope of practice, as defined by the state in which the patient is located. The act emphasizes the parallels between the delivery of telehealth services and the delivery of traditional, in-person services. A physician required to obtain informed consent for in-person care must also obtain informed consent for comparable telehealth care. A practitioner providing telehealth services to a patient located in the state must adhere to the same privacy and confidentiality laws that would apply if the care were provided in person in the state. A professional practice standard that requires that a physician maintain records documenting care applies regardless of whether the care is provided in person or via telehealth. A professional practice standard that requires followup treatment would similarly apply regardless of whether the initial care is provided in person or via telehealth. If state law prohibits the provision of a type of care, that prohibition will apply to both care provided in person and care provided through telehealth.

The Telehealth Act acknowledges that there may be circumstances when provision of telehealth services is not permitted, even if equivalent in-person services are permitted. Section 3(a) makes clear that state law may prohibit the provision of certain services via telehealth. Section 4(c) permits state boards to adopt rules that limit the prescription of controlled substances via telehealth. Ordinarily, however, a practitioner may provide services through telehealth, if doing so is consistent with the applicable professional practice standard.

The Telehealth Act's second goal is to establish a registration system for out-of-state practitioners. This act permits a practitioner licensed elsewhere to provide telehealth services to patients located in the state adopting the act. In many respects, the registration system the act creates resembles a licensure system. The act allows a board to decline to register a practitioner if it would decline to license the practitioner, as a result of a disciplinary action in another state. It ensures that a registered practitioner, like a licensed practitioner, is subject to disciplinary actions within the state. It also extends requirements for insurance coverage applicable to licensed practitioners to registered practitioners.

1           While the act's registration system imposes some obligations on practitioners, its overall  
2 impact is to reduce the burden on practitioners that might otherwise be subject to differing  
3 licensure requirements in multiple states. Registered providers are only subject to licensure-  
4 related requirements in the state or states in which they hold licenses, not in states in which they  
5 are registered. By reducing the licensure-related barriers to providing care across state lines, a  
6 registration system may help to expand state residents' access to health care services.

1 **Telehealth Act**

2 **Section 1. Title**

3 This [act] may be cited as the Telehealth Act.

4 **Section 2. Definitions**

5 In this [act]:

6 (1) “Board” means an entity responsible for licensing, certifying, or disciplining  
7 ~~practitioners~~individuals who provide health care services.

8 (2) “Electronic” means relating to technology having electrical, digital, magnetic,  
9 wireless, optical, electromagnetic, or similar capabilities.

10 (3) ~~“Health care services”~~ means ~~any~~ care, treatments, services, or procedures to  
11 maintain, monitor, diagnose, or otherwise affect an individual's physical or mental illness, injury,  
12 or condition.

13  
14 (4) “Out-of-state practitioner” means an individual licensed, certified, or  
15 otherwise authorized by ~~the~~ law of another state to provide health care services in that state.

16 (5) “Practitioner” means an individual licensed or certified under [cite to  
17 applicable statutes], or otherwise authorized by law ~~in~~of this state, including through the  
18 registration process established under Section 76, to provide health care services in this state.

19 (6) “Registered practitioner” means an out-of-state practitioner registered under  
20 Section 76.

21 (7) “Registering board” means a board that registers practitioners under Section  
22 76.

23 (8) “Scope of practice” means the extent of ~~the authorization~~ a practitioner’s

authority to provide health care services ~~granted to a practitioner~~, including any conditions imposed by the authorizing entity granting authorization board.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(10) “Telecommunication technology” means a technology that supports communication through electronic means. The term is not limited to a regulated technology or a technology associated with a regulated industry.

(11) “Telehealth” means use of synchronous or asynchronous telecommunication technology to provide health care services to a patient at a different physical location than the practitioner.

(12) “Telehealth service” means a health care service provided through telehealth.

**Legislative Note:** *In paragraph (35), a state should cite to the statutes that provide for licensure or certification of the types of providers whose provision of telehealth services will be subject to this act.*

### Comment

The term “telecommunication technology” includes both landline and cellular telephones.

### Section 3. Scope

~~This [act] applies to all health care services except for those regulated by [cite to statutes regulating health care services excluded from the scope of this act.]~~

~~**Legislative Note:** Include this section if a state intends to exclude particular regulated health care services, such as abortion related services, end of life care, or the prescribing of medical marijuana, from the scope of this act.~~

## Section 43. Telehealth Authorization

(a) A practitioner may provide a telehealth service to a patient located in this state if to do so:

(1) is consistent with ~~the applicable professional practice standard in this state and~~ the practitioner's scope of practice in this state, the applicable professional practice standard in this state, and the requirements of federal law and law of this state; and

~~(2) is not otherwise prohibited by federal law or the law of this state.~~ (b) This [act] does not authorize provision of a health care service otherwise prohibited by federal law or the law of this state.

(bc) A practitioner-patient relationship may be established through telehealth.

#### Comment

This Section is intended to make clear that as a general matter, health care services may be provided through telehealth, if doing so is consistent with the applicable professional practice standard and the practitioner's scope of practice. However, state or federal law may limit or prohibit the provision of particular types of telehealth services. For example, if state or federal law restricts the prescription of medical marijuana or the provision of certain types of end-of-life care, these restrictions would apply to those seeking to deliver such services through telehealth, just as they would to those seeking to deliver such services in person. A state statute might also prohibit the delivery of services through telehealth; for example, -statea state might prohibit the statutes restricting or prohibiting the prescription of abortion-inducing medications or other controlled substances through telehealth will continue to apply. In no case can an out-of-state practitioner utilizing use telehealth to provide services that are prohibited to a comparably credentialed in-state practitioner. ~~For example, if nurses are not allowed to prescribe medication in a state, then a nurse in another state may not use telehealth to prescribe in the first state.~~

#### Section 54. Professional Practice Standard

(a) A practitioner ~~who shall~~ provides a telehealth service ~~s shall do so in a manner~~ consistent with the professional practice standard applicable to a practitioner who provides a comparable health care service in person in this state. Professional practice standards and law applicable to the provision of health care services, including standards and law related to identity verification, documentation, informed consent, confidentiality, privacy, and security, apply to the



1 provision of telehealth services.

2 (b) Except as provided in subsection (c), A-a board or other state agency may not adopt a  
3 rule that establishes a separate professional practice standard for telehealth services or limits the  
4 form of telecommunication technology that may be used for telehealth services, ~~except as~~  
5 authorized in subsection (c).

6 (c) A board or other state agency may adopt a rule that prohibits a practitioner from  
7 prescribing, or limits the practitioner's ~~ability~~ authority to prescribe, a [controlled substance]  
8 through telehealth.

9 (d) A practitioner who prescribes a [controlled substance] through telehealth is subject to  
10 a requirement, limitation, or prohibition in federal or state law relating to prescription of a  
11 [controlled substance], including a reporting requirement in this state.

12 ***Legislative Note:*** *A state may use the general term “controlled substance” or replace this term*  
13 *with a reference to a substance identified as a dangerous controlled substance in a state statute.*  
14

#### 15 **Comment**

16  
17 This section applies to all practitioners who provide telehealth services to patients located  
18 in this state, regardless of the location of the practitioner. A practitioner physically located  
19 outside this state who provides telehealth services to a patient in this state is subject to the same  
20 professional practice standard, limitations on prescribing, and limitations on scope of practice as  
21 a practitioner physically located in this state who holds a substantially similar license in this  
22 state. If a professional board adopts a rule limiting the prescription of opioids as permitted by  
23 subsection (c), then those limits are equally applicable to practitioners providing care to patients  
24 located in the state, regardless of where the practitioners are located.  
25

26 Subsection (b) precludes boards from establishing a separate professional practice  
27 standard for telehealth services. Generally applicable professional practice standards would  
28 continue to apply, however, and may have the effect of limiting the circumstances under which  
29 telehealth may be used. For example, if determining appropriateness of a medical treatment  
30 requires obtaining specific information about the condition of an individual, a board could  
31 impose a rule requiring a practitioner to obtain that information before delivering the treatment.  
32 Such a rule would not establish a separate standard for telehealth but could have the effect of  
33 limiting the use of telehealth, if that information could be obtained only through some forms of  
34 telehealth technology, or only through an in-person test or screening.  
35

1           **Section ~~65~~. Out-of-State Practitioner**

2           (a) An out-of-state practitioner may provide a ~~service through~~ telehealth service to a  
3 patient located in this state if the out-of-state practitioner:

4                   (1) holds the appropriate license or certification to provide the service in this state  
5 or is otherwise authorized to provide the service in this state, including through a multistate  
6 compact of which this state is a member;

7                   (2) registers under Section ~~7-6~~ with the board responsible for licensing or  
8 certifying practitioners who provide the type of service the out-of-state practitioner provides;

9                   (3) provides the service in consultation with a practitioner ~~licensed in this state~~  
10 who has established a practitioner-patient relationship with the patient; or

11                   (4) is located outside this state, does not have an office in this state, and:

12                           (A) ~~is providing~~ provides the telehealth service as follow-up care to  
13 treatment provided ~~in person~~ in the state in which the out-of-state practitioner is licensed,  
14 certified, or otherwise authorized by law to provide the treatment; and

15                           (B) the follow-up care is infrequent or episodic and occurs not later than  
16 [one year] after the previously provided in-person treatment.

17           (b) A requirement for licensure ~~applicable as applied~~ to an out-of-state practitioner who  
18 supervises an out-of-state practitioner providing a telehealth service may be satisfied through  
19 registration under Section ~~76~~.

20                   [(c) A requirement for licensure applicable to an out-of-state practitioner who controls or  
21 is otherwise associated with an entity that provides health care services to a patient located in this  
22 state may be satisfied through registration under Section ~~76~~, if the entity does not provide in-  
23 person health care services to a patient located in this state.]

1 **Legislative Note:** *A state that requires an entity that provides health care services to be*  
2 *controlled by or otherwise associated with a licensed practitioner may adopt subsection (c).*

### 4 **Comment**

6 Out-of-state practitioners may provide telehealth services if they are “otherwise  
7 authorized to provide care in this state,” even if they are not licensed or registered in this state.  
8 For example, under the Emergency Management Assistance Compact, under certain  
9 circumstances practitioners can provide services in a state without having obtained a license in  
10 that state. If a state permits pharmacists employed by a licensed pharmacy to provide health care  
11 services in a state without obtaining a professional license in the state, such pharmacists could  
12 provide telehealth services to patients in the state without obtaining a license or registration.  
13 States may have exempted from licensure requirements students in training programs, certain  
14 practitioners providing care at the scene of an emergency, or practitioners providing services for  
15 individuals participating in athletic events, among others. If a practitioner providing telehealth  
16 services satisfies all requirements for an exemption, the practitioner may provide those services  
17 without obtaining a license or registering under this [act].

18  
19 Additionally, registration under ~~this section~~ [Section 6](#) is sufficient to satisfy any  
20 requirement that a practitioner be licensed in order to act as a supervisor of another practitioner  
21 providing telehealth services. Similarly, registration will satisfy any licensure requirement for  
22 serving as a medical director or other controlling person of an entity providing telehealth  
23 services.

### 24 **Section ~~7~~6. Board Registration of Out-of-State Practitioner**

26 (a) A board established under [cite to relevant state statutes] shall register an out-of-state  
27 practitioner not licensed, certified, or otherwise authorized to provide ~~the practitioner's health~~  
28 [care](#) services in this state if the [out-of-state](#) practitioner:

29 (1) completes an application in the form prescribed by the registering board;

30 (2) holds an active, unrestricted license in another state that is substantially

31 similar to a license issued by this state to provide health care services;

32 [\(3\) is not subject to a pending disciplinary investigation or action by a board;](#)

33 [\(34\) has not been the subject of disciplinary action by a board](#) during the [five]-

34 year period immediately before ~~the~~ submission of the application, ~~has not been the subject of~~

35 ~~disciplinary action by a board,~~ other than an action relating to a fee payment or continuing

1 education requirement that ~~subsequently was~~ addressed to the satisfaction of the board that  
2 took the disciplinary action;

3 (45) has never been subject to a disciplinary action that the registering board  
4 determines would be ~~the a~~ basis for denying a license in this state;

5 (56) consents to personal jurisdiction in this state and identifies a duly appointed  
6 [registered][statutory] agent for service of process in this state in the form prescribed by the  
7 registering board;

8 (67) demonstrates to the registering board that the practitioner has professional  
9 liability insurance that includes coverage for telehealth services provided to patients located in  
10 this state in an amount equal to or greater than the requirement for a licensed practitioner  
11 providing the same services in this state; and

12 (78) pays the registration fee.

13 (b) A registering board may charge a registration fee that reflects the expected cost of  
14 maintaining the registry and taking disciplinary action against or conducting other activity ~~with~~  
15 ~~respect~~relating to registered practitioners.

16 (c) ~~The A~~ registering board shall make available to the public information about  
17 registered practitioners in the same manner it makes available to the public information about  
18 ~~licensed practitioners~~ licensed or certified practitioners authorized to provide substantially  
19 similar health care services in the state.

## 20 **Section 87. Disciplinary Action by Registering Board**

21 (a) A registering board may take disciplinary action against a registered practitioner who:

22 (1) fails to provide a notification required by Section 98;

23 (2) holds a license that has been restricted in a state;

(3) has been the subject of disciplinary action by a board in a state, other than an action relating to a fee payment or continuing education requirement that is addressed to the satisfaction of the board that took the disciplinary action;

(4) violates a requirement of this [act]; or

(5) commits an act that is ground for disciplinary action under the rules applicable to a practitioner who is licensed or certified to provide comparable services in this state.

(b) A registering board may take any form of disciplinary action against a registered practitioner that it is authorized to take against a licensed or certified practitioner who provides comparable services in this state. Disciplinary actions may include suspension or revocation of the practitioner's registration.

#### **Section 98. Registered Practitioner**

(a) A registered practitioner:

(1) not later than [seven] days after a board in a state places a restriction on the registered practitioner's license or certification, ~~notifies the practitioner of an investigation~~, or takes a disciplinary action against the registered practitioner, shall notify the registering board of the restriction, investigation, or action;

(2) shall maintain professional liability insurance that includes coverage for telehealth services provided to patients located in this state in an amount equal to or greater than the requirements for a licensed or certified practitioner providing the same services in this state; and

(3) may not open an office in this state or provide in-person health care services to a patient located in this state.

(b) For the purpose of this [act], the provision of health care services occurs ~~where the~~

~~patient is located~~ at the patient's location at the time of provision or in the patient's county of residence. A civil action arising out of a registered practitioner's provision of telehealth services to a patient located in this state may be brought in the patient's county of residence in this state or in another location authorized by law.

#### Comment

Subsection (b) permits a patient to sue a registered practitioner in the patient's county of residence as well as "in another location authorized by law." This subsection makes clear that a venue provision in state law will apply to suits arising out of telehealth services provided to a patient located in the state, just as it would to services delivered in-person in the state.

[Section ~~109~~. See Memo]

[Section ~~11~~10. Rulemaking Authority]

Except as provided in Section ~~54~~(b), a board may adopt rules under [cite to state administrative procedure act] to administer, enforce, implement, or interpret this [act].]

**Legislative Note:** *A state should include this section only if the state's administrative procedure act does not provide adequate rulemaking authority to the board.*

#### Section ~~12~~11. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

#### Section ~~13~~12. Relation to Electronic Signatures in Global and National Commerce

#### Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

**Legislative Note:** *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase " , as*

1 amended". A state in which, in the absence of a legislative declaration, future amendments are  
2 incorporated into state law also should omit the phrase.

3  
4 **[Section 1413. Severability**

5 If a provision of this [act] or its application to a person or circumstance is held invalid,  
6 the invalidity does not affect another provision or application that can be given effect without the  
7 invalid provision.]

8 **Legislative Note:** Include this section only if the state lacks a general severability statute or a  
9 decision by the highest court of the state stating a general rule of severability.

10  
11 **[Section 1514. Repeals; Conforming Amendments**

12 (a) . . .

13 (b) . . .]

14 **Legislative Note:** A state should examine its statutes to determine whether conforming revisions  
15 are required by provisions of this act relating to { }. See Section { }.

16  
17 **Section 1615. Effective Date**

18 This [act] takes effect . . .