

D R A F T  
FOR DISCUSSION ONLY

## Telehealth Act

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Uniform Law Commission

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June 7, 2021

## Telehealth Act

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# Telehealth Act

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1 **Telehealth Act**

2 **Prefatory Note**

3 In recent years, improvements in telecommunication technologies have transformed the  
4 delivery of health care. Practitioners have increasingly turned to telehealth, the use of  
5 synchronous and asynchronous telecommunications technology to provide health care services to  
6 a patient at a different physical location. As the provision of telehealth services has increased,  
7 states have adopted statutes that define telehealth and impose requirements with respect to its  
8 use. These statutes have evolved over time, often becoming less restrictive. The arrival of the  
9 Covid-19 pandemic greatly expanded patient demand for telehealth services, accelerating this  
10 evolution. To meet patient needs, many states chose to relax licensure and other requirements  
11 that served as barriers to the delivery of telehealth services. In the aftermath of the pandemic,  
12 many states are re-examining laws related to telehealth, often with an eye toward expanding  
13 access to care while maintaining protections for patients.  
14

15 This Telehealth Act reflects this evolutionary trend. It has two broad goals. The first is  
16 to make clear that as a general matter, health care services may be provided through telehealth, if  
17 doing so is consistent with the applicable standard of care and the practitioner’s scope of  
18 practice, as defined by the state in which the patient is located. The act emphasizes the parallels  
19 between the delivery of telehealth services and the delivery of traditional, in-person services. A  
20 physician required to obtain informed consent for in-person care must also obtain informed  
21 consent for comparable telehealth care. A practitioner providing telehealth services to a patient  
22 located in the state must adhere to the same privacy and confidentiality laws that would apply if  
23 the care were provided in person in the state. A professional standard that requires that a  
24 physician maintain records documenting care applies regardless of whether the care is provided  
25 in person or via telehealth. A standard of care that requires follow up treatment would similarly  
26 apply regardless of whether the initial care is provided in person or via telehealth. If state law  
27 prohibits the provision of a type of care, that prohibition will apply to both care provided in  
28 person and care provided through telehealth.  
29

30 The Telehealth Act acknowledges that there may be circumstances when provision of  
31 telehealth services is not permitted, even if equivalent in-person services are permitted. Section  
32 3(a) makes clear that state law may prohibit the provision of certain services via telehealth.  
33 Section 4(c) permits state boards to adopt rules that limit the prescription of controlled  
34 substances via telehealth. Ordinarily, however, a practitioner may provide services through  
35 telehealth, if doing so is consistent with the standard of care.  
36

37 The Telehealth Act’s second goal is to establish a registration system for out-of-state  
38 practitioners. This act permits a practitioner licensed elsewhere to provide telehealth services to  
39 patients located in the state adopting the act. In many respects, the registration system the act  
40 creates resembles a licensure system. The act allows a board to decline to register a practitioner  
41 if it would decline to license the practitioner, as a result of a disciplinary action in another state.  
42 It ensures that a registered practitioner, like a licensed practitioner, is subject to disciplinary  
43 actions within the state. It also extends requirements for insurance coverage applicable to  
44 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.

8 (2) “Out-of-state practitioner” means an individual licensed, certified, or  
9 otherwise authorized by law to provide health care services in another state.

10 (3) “Practitioner” means an individual licensed or certified under [cite to  
11 applicable statutes], or otherwise authorized by law, including through the registration process  
12 established under Section 6, to provide health care services in this state.

13 (4) “Registered practitioner” means an out-of-state practitioner registered under  
14 Section 6.

15 (5) “Registering board” means a board that registers practitioners under Section 6.

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

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

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

1 practitioner.

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

3 *Legislative Note: In paragraph (3), a state should cite to the statutes that provide for licensure*  
4 *or certification of the types of providers whose provision of telehealth services will be subject to*  
5 *this act.*

6

7

### Comment

8

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

10

11

### Section 3. Telehealth Authorization

12

(a) A practitioner may provide a telehealth service if to do so:

13

(1) is consistent with the applicable standard of care in this state and the

14

practitioner’s scope of practice in this state; and

15

(2) is not otherwise prohibited by law.

16

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

17

### Comment

18

This Section is intended to make clear that as a general matter, health care services may  
19 be provided through telehealth, if doing so is consistent with the applicable standard of care and  
20 the practitioner’s scope of practice. However, state law may prohibit the provision of particular  
21 types of telehealth services. For example, state statutes restricting or prohibiting the prescription  
22 of abortion-inducing medications or other controlled substances through telehealth will continue  
23 to apply. In no case can an out-of-state practitioner utilizing telehealth provide services that are  
24 prohibited to a comparably credentialed in-state practitioner. For example, if nurses are not  
25 allowed to prescribe medication in a state, then a nurse in another state may not use telehealth to  
26 prescribe in the first state.

27

28

### Section 4. Standard of Care

29

(a) A practitioner who provides telehealth services shall do so consistent with the

30

standard of care applicable to a practitioner who provides a comparable health care service in

31

person in this state. Professional practice standards and law applicable to the provision of health

32

care services, including standards and law related to identity verification, documentation,

1 informed consent, confidentiality, privacy, and security, apply to the provision of telehealth  
2 services.

3 (b) A board or other state agency may not adopt a rule that establishes a separate standard  
4 of care for telehealth services or limits the form of telecommunication technology that may be  
5 used for telehealth services, except as 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 to prescribe, a [controlled substance] if the  
8 practitioner’s encounters with a patient have occurred solely or predominantly through  
9 telehealth.

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

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

15

16

### Comment

17

18 This section applies to all practitioners who provide telehealth services to patients located  
19 in this state, regardless of the location of the practitioner. A practitioner physically located  
20 outside this state who provides telehealth services to a patient in this state is subject to the same  
21 standard of care, limitations on prescribing, and limitations on scope of practice as a practitioner  
22 physically located in this state who holds a substantially similar license in this state.

23

24

### **Section 5. Out-of-State Practitioner**

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

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



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

3 (3) provides the service in consultation with a practitioner licensed in this state; or

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

5 (A) is providing a telehealth service as follow-up care to treatment  
6 provided in person in the practitioner’s state of licensure; and

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

9 (b) A requirement for licensure applicable to a practitioner who supervises a practitioner  
10 providing a telehealth service may be satisfied through registration under Section 6.

11 [(c) A requirement for licensure applicable to a practitioner who controls or is otherwise  
12 associated with an entity that provides health care services to a patient located in this state may  
13 be satisfied through registration under Section 6, if the entity does not provide in-person health  
14 care services to a patient located in this state.]

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

17  
18 **Comment**  
19

20 Out-of-state practitioners may provide telehealth services if they are “otherwise  
21 authorized to provide care in this state,” even if they are not licensed or registered in this state.  
22 For example, under the Emergency Management Assistance Compact, under certain  
23 circumstances practitioners can provide services in a state without having obtained a license in  
24 that state. If a state permits pharmacists employed by a licensed pharmacy to provide health care  
25 services in a state without obtaining a professional license in the state, such pharmacists could  
26 provide telehealth services to patients in the state without obtaining a license or registration.  
27 States may have exempted from licensure requirements students in training programs, certain  
28 practitioners providing care at the scene of an emergency, or practitioners providing services for  
29 individuals participating in athletic events, among others. If a practitioner providing telehealth  
30 services satisfies all requirements for an exemption, the practitioner may provide those services  
31 without obtaining a license or registering under this [act].  
32

1           Additionally, registration under this section is sufficient to satisfy any requirement that a  
2 practitioner be licensed in order to act as a supervisor of another practitioner providing telehealth  
3 services. Similarly, registration will satisfy any licensure requirement for serving as a medical  
4 director or other controlling person of an entity providing telehealth services.  
5

6           **Section 6. Board Registration of Out-of-State Practitioner**

7           (a) A board established under [cite to relevant state statutes] shall register an out-of-state  
8 practitioner not licensed, certified, or otherwise authorized to provide the practitioner’s services  
9 in this state if the practitioner:

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

11                   (2) holds an active, unrestricted license in another state that is substantially  
12 similar to a license issued by this state to provide health care services;

13                   (3) during the five-year period immediately before the submission of the  
14 application, has not been the subject of disciplinary action by a board , other than an action  
15 relating to a fee payment or continuing education requirement that subsequently was addressed  
16 to the satisfaction of the board that took the disciplinary action;

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

19                   (5) identifies a duly appointed [registered][statutory] agent for service of process  
20 in this state in the form prescribed by the registering board;

21                   (6) demonstrates to the registering board that the practitioner has professional  
22 liability insurance that includes coverage for telehealth services provided to patients located in  
23 this state in an amount equal to or greater than the requirement for a licensed practitioner  
24 providing the same services in this state; and

25                   (7) pays the registration fee.

26           (b) A registering board may charge a registration fee that reflects the expected cost of

1 maintaining the registry and taking disciplinary action against or conducting other activity with  
2 respect to registered practitioners.

3 (c) The registering board shall make available to the public information about registered  
4 practitioners in the same manner it makes available information about licensed practitioners.

5 **Section 7. Disciplinary Action by Registering Board**

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

7 (1) fails to provide a notification required by Section 8;

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

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

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

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

15 (b) Disciplinary action by a registering board against a registered practitioner may  
16 include suspension or revocation of the practitioner's registration or any other action the board  
17 may take against a licensed practitioner who provides comparable services in this state.

18 **Section 8. Registered Practitioner**

19 (a) A registered practitioner:

20 (1) shall, not later than seven days after a board in a state places a restriction on  
21 the practitioner's license, notifies the practitioner of an investigation, or takes a disciplinary  
22 action against the practitioner, notify the registering board of the restriction, investigation, or  
23 action;

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

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

6 (b) For the purpose of this [act], the provision of health care services occurs where the  
7 patient is located at the time of provision or in the patient’s county of residence. A civil action  
8 arising out of a registered practitioner’s provision of telehealth services to a patient located in  
9 this state may be brought in the patient’s county of residence in this state or in another location  
10 authorized by law.

#### 11 **Comment**

12  
13 Subsection (b) permits a patient to sue a registered practitioner in the patient’s county of  
14 residence as well as “in another location authorized by law.” This subsection makes clear that a  
15 venue provision in state law will apply to suits arising out of telehealth services provided to a  
16 patient located in the state, just as it would to services delivered in-person in the state.

17  
18 **[Section 9. See Memo]**

19 **[Section 10. Rulemaking Authority]**

20 Except as provided in Section 4(b), a board may adopt rules under [cite to state  
21 administrative procedure act] to administer, enforce, implement, or interpret this [act].]

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

24  
25 **Section 11. Uniformity of Application and Construction**

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

28 **[Section 12. Severability]**

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

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

6

7           **[Section 13. Repeals; Conforming Amendments**

8           (a) . . .

9           (b) . . .]

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

12

13           **Section 14. Effective Date**

14           This [act] takes effect . . .