

D R A F T
FOR DISCUSSION ONLY

Telehealth Act

Uniform Law Commission

April 30, 2021 Video Committee Meeting

Clean Draft



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April 26, 2021

Telehealth Act

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1 **Telehealth Act**

2 **Section 1. Definitions**

3 In this [act]:

4 (1) “Telehealth” means use of synchronous or asynchronous telecommunication
5 technology to deliver health care services to a patient at a different physical location than the
6 health care practitioner.

7 (2) “Practitioner” means an individual licensed, certified, or otherwise authorized
8 by law, including through the registration process established by this [act], to provide health care
9 services in this state.

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

12 (4) “Registered practitioner” means an out-of-state practitioner registered under
13 this [act].

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

17 (6) “Board” means an entity responsible for licensing or certifying practitioners in
18 this state.

19 **Legislative Note:** *To clarify the scope of this [act], a state may wish to reference existing statutes*
20 *establishing boards, commissions, or any other entity responsible for licensing or certifying*
21 *practitioners in this state.*

22
23 **Comment**

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25 The term “telecommunication technology” is intended to encompass all technology that
26 supports communication through electronic means and is not intended to be limited to regulated
27 technologies or technologies associated with regulated industries.
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substances, including any reporting requirements in this state.

Section 4. Out-Of-State Practitioners

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

(1) obtains the appropriate license or certification in this state or is otherwise authorized to provide care in this state, including through any multistate compact of which this state is a member;

(2) registers under this [act] with the board responsible for licensing or certifying practitioners who provide the type of services the out-of-state practitioner provides;

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

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

(A) has a previously established practitioner-patient relationship with the patient;

(B) is providing telehealth services as follow-up care to treatment previously provided in-person in the practitioner's state of licensure; and

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

(b) An out-of-state practitioner may not apply to register under this [act] if the practitioner's license to provide health care services is subject to a pending disciplinary investigation or action or has been revoked in any state.

Comment

Out-of-state practitioners may provide telehealth services if they are "otherwise authorized to provide care in this state," even if they are not licensed or registered in this state. For example, under the Emergency Management Assistance Compact, under certain circumstances practitioners can provide services in a state without having obtained a license in

1 that state. If a state permits pharmacists employed by a licensed pharmacy to provide health care
2 services in a state without obtaining a professional license in the state, such pharmacists could
3 provide telehealth services to patients in the state without obtaining a license or registration.
4 States may have exempted from licensure requirements students in training programs, certain
5 practitioners providing care at the scene of an emergency, or practitioners providing services for
6 individuals participating in athletic events, among others. If a practitioner providing telehealth
7 services satisfies all requirements for an exemption, the practitioner may provide those services
8 without obtaining a license or registering under this [act].
9

10 **Section 5. Board Registration of Out-of-State Practitioners**

11 (a) A board shall register an out-of-state practitioner not licensed, certified, or otherwise
12 authorized to provide the practitioner's services in the state if the practitioner:

- 13 (1) completes an application in the form prescribed by the board;
- 14 (2) is licensed with an active, unencumbered license issued by another state that is
15 substantially similar to a license issued by this state;
- 16 (3) has not been the subject of disciplinary action relating to the practitioner's
17 license during the 5-year period immediately before the submission of the application;
- 18 (4) identifies a duly appointed [registered][statutory] agent for service of process
19 in this state in the form prescribed by the board;
- 20 (5) demonstrates to the board that the practitioner has professional liability
21 insurance that includes coverage for telehealth services provided to patients located in this state
22 in an amount equal to or greater than the requirements for a licensed practitioner providing
23 comparable services in the state; and
- 24 (6) pays the required registration fee.

25 (b) The board shall make information about each registrant available to the public
26 through a website.

27 (c) A registered practitioner:

- 28 (1) shall notify the appropriate board of any restriction placed on the practitioner's

1 license to practice, or any disciplinary action taken or pending against the practitioner, in any
2 state. The notification must be given within 7 days after the restriction is placed or disciplinary
3 action is initiated or taken.

4 (2) shall maintain professional liability insurance that includes coverage for
5 telehealth services provided to patients located in this state in an amount equal to or greater than
6 the requirements for a licensed practitioner providing comparable services in the state.

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

9 (d) The board may take disciplinary action against a registered practitioner who:

10 (1) fails to notify the applicable board of an adverse action taken against the
11 practitioner's license to the extent required under subsection (c)(1).

12 (2) has a restriction placed on or disciplinary action taken against the
13 practitioner's license in any state.

14 (3) violates a requirement of this [act].

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

17 (e) Disciplinary action by a board against a registered practitioner may include
18 suspension or revocation of the practitioner's registration or any other action the board might
19 take against a licensed practitioner who provides comparable services within this state.

20 (f) For the purpose of this section, an act that constitutes delivery of health care services
21 is deemed to occur at the patient's location at the time the act is performed or in the patient's
22 county of residence. A civil action arising out of a registered practitioner's delivery of telehealth
23 services to a patient located in this state may be brought in the patient's county of residence in

1 this state or in any other location authorized by law.

2 (g) A board may charge a registration fee that reflects the expected incremental cost of
3 maintaining the registry and taking disciplinary action against or conducting other activity with
4 respect to registered practitioners.

5 **Section 6. Rulemaking Authority**

6 Except as prohibited under [section 3(b)], a board may adopt rules to administer this
7 [act].