

D R A F T
FOR DISCUSSION ONLY

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.

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

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

15 (5) “Registered practitioner” means an out-of-state practitioner registered under
16 Section 6.

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

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

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

(9) “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.

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

Legislative Note: *In paragraph (3), 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 does not apply to health care services 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, from the scope of this act.*

Section 4. Telehealth Authorization

(a) A practitioner may provide a telehealth service 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; and

(2) is not otherwise prohibited by law.

(b) 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 law may prohibit the provision of particular types of telehealth services. For example, state 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 telehealth 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 5. Professional Practice Standard

(a) A practitioner who provides telehealth services shall do so 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 provision of telehealth services.

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

(c) A board or other state agency may adopt a rule that prohibits a practitioner from prescribing, or limits the practitioner's ability to prescribe, a [controlled substance] if the practitioner's encounters with a patient have occurred solely or predominantly through telehealth.

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

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

Comment

This section applies to all practitioners who provide telehealth services to patients located in this state, regardless of the location of the practitioner. A practitioner physically located outside this state who provides telehealth services to a patient in this state is subject to the same professional practice standard, limitations on prescribing, and limitations on scope of practice as

1 a practitioner physically located in this state who holds a substantially similar license in this
2 state.

3 4 **Section 6. Out-of-State Practitioner**

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

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

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

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

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

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

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

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

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

24 **Legislative Note:** *A state that requires an entity that provides health care services to be*
25 *controlled by or otherwise associated with a licensed practitioner may adopt subsection (c).*
26

1 **Comment**

2
3 Out-of-state practitioners may provide telehealth services if they are “otherwise
4 authorized to provide care in this state,” even if they are not licensed or registered in this state.
5 For example, under the Emergency Management Assistance Compact, under certain
6 circumstances practitioners can provide services in a state without having obtained a license in
7 that state. If a state permits pharmacists employed by a licensed pharmacy to provide health care
8 services in a state without obtaining a professional license in the state, such pharmacists could
9 provide telehealth services to patients in the state without obtaining a license or registration.
10 States may have exempted from licensure requirements students in training programs, certain
11 practitioners providing care at the scene of an emergency, or practitioners providing services for
12 individuals participating in athletic events, among others. If a practitioner providing telehealth
13 services satisfies all requirements for an exemption, the practitioner may provide those services
14 without obtaining a license or registering under this [act].

15 Additionally, registration under this section is sufficient to satisfy any requirement that a
16 practitioner be licensed in order to act as a supervisor of another practitioner providing telehealth
17 services. Similarly, registration will satisfy any licensure requirement for serving as a medical
18 director or other controlling person of an entity providing telehealth services.
19

20 **Section 7. Board Registration of Out-of-State Practitioner**

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

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

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

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

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

33 (5) identifies a duly appointed [registered][statutory] agent for service of process

1 in this state in the form prescribed by the registering board;

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

6 (7) pays the registration fee.

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

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

12 **Section 8. Disciplinary Action by Registering Board**

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

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

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

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

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

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

22 (b) Disciplinary action by a registering board against a registered practitioner may
23 include suspension or revocation of the practitioner's registration or any other action the board

1 may take against a licensed practitioner who provides comparable services in this state.

2 **Section 9. Registered Practitioner**

3 (a) A registered practitioner:

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

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

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

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

18 **Comment**

19
20 Subsection (b) permits a patient to sue a registered practitioner in the patient's county of
21 residence as well as "in another location authorized by law." This subsection makes clear that a
22 venue provision in state law will apply to suits arising out of telehealth services provided to a
23 patient located in the state, just as it would to services delivered in-person in the state.

24
25 **[Section 10. See Memo]**

26 **[Section 11. Rulemaking Authority]**

27 Except as provided in Section 4(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. 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. 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 amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

[Section 14. Severability

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

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

[Section 15. Repeals; Conforming Amendments

(a) . . .

(b) . . .]

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

1 **Section 16. Effective Date**

2 This [act] takes effect . . .