

D R A F T
FOR DISCUSSION ONLY

Telehealth Act

Uniform Law Commission

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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, increasing access for those in underserved geographic areas of the country as well as others who face barriers in accessing services provided in person. Practitioners have increasingly turned to telehealth, the use of synchronous and asynchronous telecommunication technology to provide health care 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 to address current conditions, needs, opportunities, and technological advances. The arrival of the Covid-19 pandemic greatly expanded patient demand for telehealth services, accelerating this evolution and providing real-world evidence on the effectiveness of telehealth services. To meet patient needs, many states chose to modify 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, and the Uniform Law Commission hopes it will give states the clear guidance and framework they need to facilitate the delivery of telehealth services consistent with the standard of care, as well as open borders for practitioners to provide widespread assistance to patients in a more convenient and cost-effective manner.

The Telehealth Act has two broad goals. The first is to make clear that as a general matter, health care 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 takes an intentionally broad approach to the definition of "telecommunication technology," allowing the practitioner and patient to use the most accessible technology that supports the provision of health care that meets the standard of care applicable to in-person services. This flexibility enhances access by reducing practical barriers to receiving care.

The act emphasizes the parallels between the delivery of telehealth services and the delivery of traditional, in-person services. For example:

1. 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 does not supplant state statutes that impose requirements or limitations on the delivery of health care.
2. A professional practice standard that requires follow-up treatment would similarly apply regardless of whether the initial care is provided in person or via telehealth.
3. A physician required to obtain informed consent for in-person care must also obtain informed consent for comparable telehealth services.
4. 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.

1 5. A professional practice standard that requires that a physician maintain records
2 documenting care applies regardless of whether the care is provided in person or via telehealth
3

4 The Telehealth Act acknowledges that there may be circumstances when provision of
5 telehealth services is not permitted, even if equivalent in-person services are permitted. Section
6 3(a) makes clear that state law may prohibit the provision of certain services via telehealth.
7 Section 4(c) permits state boards to adopt rules that limit the prescription of controlled
8 substances via telehealth. Ordinarily, however, a practitioner may provide services through
9 telehealth, if doing so is consistent with the applicable professional practice standards.
10

11 The Telehealth Act's second goal is to establish a registration system for out-of-state
12 practitioners. This act permits a practitioner licensed elsewhere to provide telehealth services to
13 patients located in the state adopting the act. In many respects, the registration system the act
14 creates resembles a licensure system. The act allows a board to decline to register a practitioner
15 if it would decline to license the practitioner due to disciplinary action in another state. It ensures
16 that a registered practitioner, like a licensed practitioner, is subject to disciplinary actions within
17 the state. It also extends requirements for insurance coverage applicable to licensed practitioners
18 to registered practitioners.
19

20 While the act's registration system imposes some obligations on practitioners, its overall
21 impact is to reduce the burden on practitioners that might otherwise be subject to differing
22 licensure requirements in multiple states. Registered providers are only subject to licensure-
23 related requirements in the state or states in which they hold licenses, not in states in which they
24 are registered. By reducing the licensure-related barriers to providing care across state lines, a
25 registration system may expand state residents' access to health care services.
26

27 The Telehealth Act does not include provisions related to health insurance coverage or
28 provider payment, instead leaving these policy choices to the states. Given the implications of
29 coverage and payment policies for access to telehealth services, states may want to re-examine
30 these provisions at the same time they adopt this act.

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 an individual who provides health care.

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

10 (3) “Health care” means care, treatment, a service, or a procedure to maintain,
11 monitor, diagnose, or otherwise affect an individual’s physical or mental illness, injury, or
12 condition.

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

15 (5) “Practitioner” means an individual:

16 (A) licensed or certified under[: cite to applicable state statutes

17 (i)...

18 (ii) ...]; or

19 (B) otherwise authorized by law of this state, including through the
20 registration process established under Section 6, to provide health care in this state.

21 (6) “Professional practice standard” includes a practice requirement imposed by a
22 board, a standard of care, and a standard of professional ethics.

23 (7) “Registered practitioner” means an out-of-state practitioner registered under

Section 6.

(8) “Registering board” means a board that registers out-of-state practitioners under Section 6.

(9) “Scope of practice” means the extent of a practitioner’s authority to provide health care. The term includes a condition on authority imposed by the practitioner’s board.

(10) “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.

(11) “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.

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

(13) “Telehealth services” means health care provided through telehealth.

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

Comments

1. Improvements in technology have greatly expanded the types of health care that can be delivered to patients at distant locations. As technology continues to evolve, it is important that regulatory structures encompass new technologies and the diverse forms of care that they can help deliver. For this reason, “health care” is defined broadly to include diverse activities practitioners undertake with the goal of improving health. Similarly, the definitions of “telehealth” and “telecommunication technology” do not restrict the forms of technology that practitioners may use to provide health care to patients at distant locations. For example, “telecommunication technology” includes both landline and cellular telephones, in addition to internet-based technology.

2. The definitions in this section apply only to the provisions of this [act], and the terms included may be defined differently elsewhere in state law. For example, states with statutes related to insurance coverage or payment policy for telehealth services may define telehealth differently for the purpose of coverage or payment requirements.

Section 3. Telehealth Authorization

(a) A practitioner may provide telehealth services to a patient located in this state if the services are consistent with the practitioner's scope of practice in this state, the applicable professional practice standards in this state, and the requirements and limitations of federal law and law of this state.

(b) This [act] does not authorize provision of health care otherwise regulated by federal law or law of this state, unless the provision of that health care complies with the requirements, limitations and prohibitions of that federal or state law.

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

Comment

This section is intended to make clear that as a general matter, health care may be provided through telehealth, if doing so is consistent with the applicable professional practice standards 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 provision of a particular type of health 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. Such prohibitions would apply to a practitioner providing health care to patients located in the state, regardless of where the practitioner is located. If state regulations restrict the provision of care to an individual holding a particular type of license, then neither in-state nor out-of-state practitioners holding another type of license would be permitted to provide that care. In no case can an out-of-state practitioner use telehealth to provide services that a comparably credentialed in-state practitioner is prohibited from providing.

Section 4. Professional Practice Standard

(a) A practitioner shall provide telehealth services to a patient located in this state in a manner consistent with the professional practice standards applicable to a practitioner who provides comparable in-person health care in this state. Professional practice standards and law

1 applicable to the provision of health care, including standards and law relating to identity
2 verification, documentation, informed consent, confidentiality, privacy, and security, apply to the
3 provision of telehealth services.

4 (b) Except as provided in subsection (c), a board or other state agency may not adopt a
5 rule that establishes a different professional practice standard for telehealth services or limits the
6 form of telecommunication technology that may be used for telehealth services.

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

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

13 **Legislative Note:** *In subsections (c) and (d) a state may use the general term "controlled*
14 *substance" or replace the term with a reference to a substance identified as a controlled*
15 *substance in a state statute.*

16 17 **Comments** 18

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

27
28 2. Section 4(a) makes clear that the regulatory structure applicable to the delivery of in-
29 person health care also applies to the delivery of telehealth services. Standards of practice
30 applicable to health care generally will also apply to health care delivered through electronic
31 means. For example, a requirement that a physician obtain informed consent in an in-person care
32 delivery setting would also apply in the context in telehealth. Similarly, expectations that health
33 care providers verify an individual's identity should apply equally to in-person health care and
34 telehealth services.

1 3. Section 4(b) reinforces section 4(a) by prohibiting boards from creating an independent
2 standard applicable only to telehealth services. Because telehealth is a mechanism for delivering
3 health care, practitioners are expected to ensure that any telehealth services they provide meet
4 any standards of practice for health care in general. Unitary standards equally applicable to in-
5 person and remote provision of care do not imply, however, that the process for delivering
6 telehealth services will be identical to the process for delivering in-person health care. In some
7 cases, practitioners will not be able to provide telehealth services because such services would
8 not meet the standard of care. For example, if determining appropriateness of a medical
9 treatment requires obtaining specific information about the condition of an individual, a board
10 could impose a rule requiring a practitioner to obtain that information before delivering the
11 treatment. Such a rule would not establish a separate standard for telehealth but could have the
12 effect of limiting the use of telehealth. If only some telecommunication technologies are capable
13 of providing the required information, then a practitioner would only be able to use telehealth if
14 they and their patients had access to the appropriate technologies. If the information could only
15 be obtained through an in-person test or screening, then a practitioner would not be able to use
16 telehealth services.

17
18 4. A state may adopt statutes imposing a limit or placing a prohibition on the use of
19 telehealth. Such statutory limits are contemplated by section 3(a) of this [act] and
20 notwithstanding section 4(b), boards may adopt regulations implementing or interpreting such
21 statutes to the extent permitted by state law.

22
23 5. Many states currently limit or prohibit practitioners from prescribing certain substances
24 through telehealth. Section 4(c) permits boards to continue to adopt and modify rules
25 establishing requirements, restrictions, or prohibitions with respect to the prescription of
26 controlled substances, notwithstanding the limitations imposed by section 4(b). States should
27 replace the term “controlled substances” with any similar term they use in statutes to identify
28 substances for which special limitations may be warranted.

29
30 6. Section 4(d) makes clear that a law applicable to the prescription of a controlled
31 substance generally will also apply in the context of telehealth.

32 33 **Section 5. Out-of-State Practitioner**

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

36 (1) holds a license or certification required to provide the health care in this state
37 or is otherwise authorized to provide the health care in this state, including through a multistate
38 compact of which this state is a member;

39 (2) registers under Section 6 with the registering board responsible for licensing
40 or certifying practitioners who provide the type of health care the out-of-state practitioner

1 provides; or

2 (3) provides the telehealth service:

3 (A) in consultation with a practitioner who has established a practitioner-
4 patient relationship with the patient;

5 (B) in the form of a specialty assessment, diagnosis, or recommendation
6 for treatment; or

7 (C) pursuant to a previously established practitioner-patient relationship [if
8 the telehealth services are provided not later than [one year] after the practitioner with whom the
9 patient has a relationship last provided health care to the patient].

10 (b) A requirement for licensure or certification of an out-of-state practitioner who
11 supervises an out-of-state practitioner providing telehealth services may be satisfied through
12 registration under Section 6.

13 [(c) A requirement for licensure or certification of an out-of-state practitioner who
14 controls or is otherwise associated with a provider of health care to a patient located in this state
15 may be satisfied through registration under Section 6 if the entity does not provide in-person
16 health care to a patient located in this state.]

17 **Legislative Note:** *A state that wishes to limit the length of time for which an out-of-state*
18 *practitioner may provide care, including follow-up care, under the authorization of subsection*
19 *(a)(3)(C) may adopt the bracketed provision. The state should specify the length of time for*
20 *which the authorization is granted.*

21 *A state that requires an entity that provides health care to be controlled by or otherwise*
22 *associated with a licensed or certified practitioner may adopt subsection (c).*

23 24 25 26 27 28 29 30 Comments

1. Under Section 5(a)(1), individuals who are licensed to provide health care in another state are authorized to provide telehealth services in this state if they are appropriately licensed or certified in this state or if they are otherwise authorized to provide health care in this state. Many states currently permit out-of-state practitioners to provide health care within the state, even if they do not hold a license in the state. For example, a state may exempt from licensure

1 requirements students in training programs, certain practitioners providing care at the scene of an
2 emergency, or practitioners providing services for individuals participating in athletic events,
3 among others. Under certain circumstances, the Emergency Management Assistance Compact
4 permits practitioners to provide services in a state without having obtained a license in that state.
5

6 2. Under section 5(a)(2), out-of-state practitioners who do not hold a license in the state
7 may register under Section 6. Registration under section 6 authorizes out-of-state practitioners to
8 provide telehealth services to patients located in the state of registration, but does not authorize
9 the provision of in-person health care in the state of registration.
10

11 3. Under section 5(a)(3)(A), an out-of-state practitioner is authorized to consult with a
12 practitioner who has established a practitioner-patient relationship within this state. Under
13 section 5(a)(3)(B), an out-of-state practitioner may provide a second opinion to a patient within
14 this state who has previously sought and received an initial opinion from another appropriately
15 licensed individual.
16

17 4. Section 5(a)(3)(B) authorizes an out-of-state practitioner, such as an out-of-state
18 practitioner associated with a Center of Excellence, to provide assessments, diagnoses, and
19 recommendations for treatment with respect to a patient who is seeking specialized care. The
20 provision of specialty assessments, diagnoses, and recommendations for treatment using
21 telehealth must be made in accordance with applicable professional practice standards and the
22 law of this state, as required by Sections 3 and 4 of this Act. If the standard of care in this state
23 requires an in-person examination for a specialty assessment, diagnosis, or recommendation for
24 treatment, an out-of-state practitioner is not authorized to provide it via telehealth to a patient
25 located in this state. Section 5(a)(3)(B) does not authorize an out-of-state practitioner to provide
26 treatment via telehealth. To provide treatment via telehealth to a patient located in this state, an
27 out-of-state practitioner would have to obtain a license in this state, register under Section 6, or
28 be authorized to provide treatment under another provision of the law of this state.
29

30 5. Section 5(a)(3)(C) permits an out-of-state practitioner to provide health care pursuant to a
31 previously established practitioner-patient relationship. The relevant relationship could be
32 between the out-of-state practitioner and the patient. Alternatively, the relationship could be
33 between an associate of the out-of-state practitioner and the patient. This provision encompasses
34 the common scenario where a patient who is traveling calls their primary care physician to
35 receive care that the physician would have provided to the patient, if the patient had been at
36 home at the time the need arose. It also permits the patient's primary care physician, another
37 licensed member of the patient's care team, or any licensed individual that would have provided
38 care within the patient's home state under an arrangement with the patient's care team, to
39 provide the follow-up care. Out-of-state practitioners must be mindful, however, that under
40 section 3(a), any requirements with respect to the delivery of health care within the state of the
41 patient's location will apply, including scope of practice limitations and limitations on the
42 prescription of controlled substances. In addition, under section 4(a), the standards of practice
43 within this state will apply; such standards may have the effect of limiting the types of follow-up
44 care an out-of-state practitioner may provide via telehealth. By adopting the bracketed provision,
45 the state may limit the length of time during which an out-of-state practitioner is permitted to
46 provide telehealth services in connection with a previously established practitioner-patient

1 relationship.

2
3 6. Some states require that particular types of practitioners be supervised when delivering
4 specific forms of health care. If the state requires that a practitioner be supervised by an
5 individual holding a license or certification within this state, Section (5)(b) permits the
6 supervisor to meet this requirement for licensure through registration under Section 6.

7
8 7. Some states have enacted corporate practice of medicine laws that require that entities
9 providing health care within the state be controlled by individuals holding licenses within the
10 state and/or have medical directors who are licensed within the state. Just as registration under
11 section 6 would permit out-of-state practitioners to provide health care via telehealth, but not in-
12 person health care within the state, section 5(c) permits registration under section 6 to meet any
13 licensure requirements applicable to those holding the specified roles within the entity, but only
14 if the health care the entity delivers within the state consists only of telehealth services.

15 16 **Section 6. Board Registration of Out-of-State Practitioner**

17 (a) A board established under [cite to relevant state statutes] shall register, for the purpose
18 of providing telehealth services in this state, an out-of-state practitioner not licensed, certified, or
19 otherwise authorized to provide health care in this state, if the practitioner:

20 (1) submits a completed application in the form prescribed by the registering
21 board;

22 (2) holds an active, unrestricted license or certification in another state that is
23 substantially similar to a license or certification issued by the board to provide health care;

24 (3) is not subject to a pending disciplinary investigation or action by a board;

25 (4) has not been the subject of disciplinary action by a board during the [five]-
26 year period immediately before submitting the application, other than an action relating to a fee
27 payment or continuing education requirement addressed to the satisfaction of the board that took
28 the disciplinary action;

29 (5) never has been subject to a disciplinary investigation or action that the
30 registering board determines would be a basis for denying a license or certification in this state;

31 (6) consents to personal jurisdiction in this state;

1 (7) appoints a [registered][statutory] agent for service of process in this state in
2 accordance with other law of this state and identifies the agent in the form prescribed by
3 the registering board;

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

7 (9) pays the registration fee under subsection (b).

8 (b) A registering board may establish a registration fee that reflects the expected cost of
9 registration under this section as well as undertaking investigation, disciplinary action, and other
10 activity with respect to registered practitioners.

11 (c) A registering board shall make available to the public information about registered
12 practitioners in the same manner it makes available to the public information about licensed or
13 certified practitioners authorized to provide comparable health care in this state.

14 ***Legislative Note:*** In subsection (a), a state should specify the boards that will be required to
15 register out-of-state practitioners under this section.

16 17 **Comment** 18

19 Section 6 establishes a registration system for individuals who are licensed or certified to
20 provide health care in another state. Under 6(a), states identify the boards that will be included in
21 the registration system; these boards are then required to register out-of-state practitioners. The
22 purpose of this registration is to allow these practitioners to provide telehealth services to
23 patients located within the state, as authorized by section 5(a)(2). Under Section 6, boards are
24 generally required to register out-of-state practitioners who submit a complete application, pay
25 the appropriate fee, consent to personal jurisdiction, and hold any required amount of liability
26 insurance. However, boards are not permitted to register an out-of-state practitioner whose
27 license is inactive or restricted, who is subject to a pending investigation or disciplinary action,
28 who has been subject to certain disciplinary actions within the preceding five years, or who has
29 been disciplined for an action that would lead the board to deny an application for a license or
30 certification.

31 32 **Section 7. Disciplinary Action by Registering Board**

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

2 (1) violates this [act];

3 (2) holds a license or certification that has been restricted in a state;

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

7 (4) commits an act that is a ground for disciplinary action under the rules
8 applicable to a practitioner licensed or certified to provide comparable health care in this state.

9 (b) A registering board may take disciplinary action against a registered practitioner it is
10 authorized to take against a licensed or certified practitioner who provides comparable health
11 care in this state.

12 (c) Disciplinary action under this section may include suspension or revocation of the
13 registered practitioner's registration in accordance with other law of this state applicable to
14 disciplinary action against a practitioner who provides comparable health care in this state.

15 ***Legislative Note:*** In subsection (c), a state should cite the statutes applicable to suspension or
16 revocation of a license or certification of a practitioner.

17
18 **Comment**

19
20 Section 7 extends a board's disciplinary authority with respect to licensed or certified
21 practitioners to practitioners that it registers under Section 6.

22
23 **Section 8. Duties of Registered Practitioner**

24 A registered practitioner:

25 (1) shall notify the registering board not later than [ten] days after a board in
26 another state notifies the practitioner that it has initiated an investigation, placed a restriction on
27 the registered practitioner's license or certification, or taken a disciplinary action against the

1 registered practitioner;

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

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

8 **Legislative Note:** *In paragraph (1), a state should specify the time required for notification of the*
9 *registering board after having been notified that a board in another state has initiated an*
10 *investigation, placed a restriction on the practitioner's license or certification, or taken a*
11 *disciplinary action with respect to the practitioner.*

12 13 **Section 9. Location of Care; Venue**

14 (a) The provision of a telehealth service under this [act] occurs at the patient's location at
15 the time the service is provided.

16 (b) A civil action arising out of a registered practitioner's provision of a telehealth service
17 to a patient located in this state may be brought in the patient's [county] of residence in this state
18 or in another [county] authorized by law.

19 **Comment**

20
21 Section 9(b) permits a patient to sue a registered practitioner in the patient's county of
22 residence as well as "in another location authorized by law." This subsection makes clear that a
23 venue provision in state law will apply to suits arising out of telehealth services provided to a
24 patient located in the state, just as it would to services delivered in-person in the state.

25 26 **[Section 10. Rulemaking Authority]**

27 A board may adopt rules under [cite to state administrative procedure act] to administer,
28 enforce, implement, or interpret this [act].]

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

1 **Section 11. Uniformity of Application and Construction**

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

4 **[Section 12. 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 13. 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 telehealth services.*

16
17 **Section 14. Effective Date**

18 This [act] takes effect . . .