

D R A F T
FOR DISCUSSION ONLY

Telehealth Act

Uniform Law Commission

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April 1, 2022

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.

7
8 The Telehealth Act does not include provisions related to insurance coverage or provider
9 payment, instead leaving these policy choices to the states. Given the implications of coverage
10 and payment policies for access to telehealth services, states may want to re-examine these
11 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) “Registered practitioner” means an out-of-state practitioner registered under
22 Section 6.

23 (7) “Registering board” means a board that registers out-of-state practitioners

under Section 6.

(8) “Scope of practice” means the extent of a practitioner’s authority to provide health care, including a condition imposed by the authorizing 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 by a practitioner to provide health care to a patient at a different physical location than the practitioner.

(12) “Telehealth service” 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.

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(b) This [act] does not authorize provision of health care otherwise prohibited by federal law of this state.

Comment

Section 4. Professional Practice Standard

5

1 services.

2 (b) Except as provided in subsection (c), 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.

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

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

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

14 Comments

15
16 1. This section applies to all practitioners who provide telehealth services to patients located
17 in this state, regardless of the location of the practitioner. A practitioner physically located
18 outside this state who provides telehealth services to a patient in this state is subject to the same
19 professional practice standard, limitations on prescribing, and limitations on scope of practice as
20 a practitioner physically located in this state who holds a substantially similar license in this
21 state. If a professional board adopts a rule limiting the prescription of opioids as permitted by
22 subsection (c), then those limits are equally applicable to practitioners providing care to patients
23 located in the state, regardless of where the practitioners are located.

24
25 2. Section 4(a) makes clear that the regulatory structure applicable to the delivery of in-
26 person health care also applies to the delivery of telehealth services. Standards of practice
27 applicable to health care generally will also apply to health care delivered through electronic
28 means. For example, a requirement that a physician obtain informed consent in an in-person care
29 delivery setting would also apply in the context in telehealth. Similarly, expectations that health
30 care providers verify an individual's identity should apply equally to in-person health care and
31 telehealth services.

32
33 3. Section 4(b) reinforces section 4(a) by prohibiting boards from creating an independent
34 standard applicable only to telehealth services. Because telehealth is a mechanism for delivering
35 health care, practitioners are expected to ensure that any telehealth services they provide meet
36 any standards of practice for health care in general. Unitary standards equally applicable to in-

1 person and remote provision of care do not imply, however, that the process for delivering
2 telehealth services will be identical to the process for delivering in-person health care. In some
3 cases, practitioners will not be able to provide telehealth services because such services would
4 not meet the standard of care. For example, if determining appropriateness of a medical
5 treatment requires obtaining specific information about the condition of an individual, a board
6 could impose a rule requiring a practitioner to obtain that information before delivering the
7 treatment. Such a rule would not establish a separate standard for telehealth but could have the
8 effect of limiting the use of telehealth. If only some telecommunication technologies are capable
9 of providing the required information, then a practitioner would only be able to use telehealth if
10 they and their patients had access to the appropriate technologies. If the information could only
11 be obtained through an in-person test or screening, then a practitioner would not be able to use
12 telehealth services.

13
14 4. A state may adopt statutes imposing a limit or placing a prohibition on the use of
15 telehealth. Such statutory limits are contemplated by section 3(a) of this [act] and
16 notwithstanding section 4(b), boards may adopt regulations implementing or interpreting such
17 statutes to the extent permitted by state law.

18
19 5. Many states currently limit or prohibit practitioners from prescribing certain substances
20 through telehealth. Section 4(c) permits boards to continue to adopt and modify rules
21 establishing requirements, restrictions, or prohibitions with respect to the prescription of
22 controlled substances, notwithstanding the limitations imposed by section 4(b). States should
23 replace the term “controlled substances” with any similar term they use in statutes to identify
24 substances for which special limitations may be warranted.

25
26 6. Section 4(d) makes clear that a law applicable to the prescription of a controlled
27 substance generally will also apply in the context of telehealth.

28 29 **Section 5. Out-of-State Practitioner**

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

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

35 (2) registers under Section 6 with the registering board responsible for licensing
36 or certifying practitioners who provide the type of health care the out-of-state practitioner
37 provides; or

38 (3) provides the telehealth service:

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

3 (B) in the form of a second opinion with respect to a health concern for
4 which the patient has already received an initial opinion from a practitioner or another out-of-
5 state practitioner; or

6 (C) as follow-up to health care provided in the state in which the out-of-
7 state practitioner is licensed, certified, or otherwise authorized by law to provide the health care
8 if the follow-up is infrequent or episodic and occurs not later than [one year] after the previously
9 provided health care.

10 (b) A requirement for licensure or certification of an out-of-state practitioner who
11 supervises an out-of-state practitioner providing a telehealth service 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 an entity that provides health care to a patient located in
15 this state may be satisfied through registration under Section 6 if the entity does not provide in-
16 person health care to a patient located in this state.]

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

19
20 **Comments**

21
22 1. Under Section 5(a)(1), individuals who are licensed to provide health care in another state
23 are authorized to provide telehealth service in this state if they are appropriately licensed or
24 certified in this state or if they are otherwise authorized to provide health care in this state. Many
25 states currently permit out-of-state practitioners to provide health care within the state, even if
26 they do not hold a license in the state. For example, a state may exempt from licensure
27 requirements students in training programs, certain practitioners providing care at the scene of an
28 emergency, or practitioners providing services for individuals participating in athletic events,
29 among others. Under section 5(a)(1), individuals who satisfy the requirements of these
30 exemptions when providing health care through telehealth would be permitted to do so. If a state

1 permits a pharmacist employed by a licensed pharmacy to provide health care in a state without
2 obtaining a professional license in the state, the pharmacist could provide telehealth services to
3 patients in the state without obtaining a license or registration. Under the Emergency
4 Management Assistance Compact, under certain circumstances practitioners can provide services
5 in a state without having obtained a license in that state. In general, if a practitioner providing
6 telehealth services satisfies all requirements for an exemption, the practitioner may provide those
7 services without obtaining a license or registering under this [act].
8

9 2. Under section 5(a)(2), out-of-state practitioners who do not hold a license in the state
10 may register under Section 6. Registration under section 6 authorizes out-of-state practitioners to
11 provide telehealth services to patients located in the state of registration, but does not authorize
12 the provision of in-person health care in the state of registration.
13

14 3. Sections 5(a)(3)(A) and 5(a)(3)(B) permit out-of-state practitioners not holding either a
15 license or registration to provide telehealth services to patients located in this state in certain
16 circumstances in which a patient is already receiving care from another licensed individual.
17 Under section 5(a)(3)(A), an out-of-state practitioner is authorized to consult with a practitioner
18 who has established a practitioner-patient relationship within this state. Under section 5(a)(3)(B),
19 an out-of-state practitioner may provide a second opinion to a patient within this state who has
20 previously sought and received an initial opinion from another appropriately licensed individual.
21

22 4. Section 5(a)(3)(C) permits out-of-state practitioners to provide follow-up health care
23 through telehealth. This provision encompasses the common scenario where a patient who is
24 traveling calls their primary care physician to receive care that the physician would have
25 provided to the patient, if the patient had been at home at the time the need arose. Section
26 5(a)(3)(C) permits the patient's primary care physician, another licensed member of the patient's
27 care team, or any licensed individual that would have provided care within the patient's home
28 state under an arrangement with the patient's care team, to provide the follow-up care. Out-of-
29 state practitioners must be mindful, however, that under section 3(a), any requirements with
30 respect to the delivery of health care within the state of the patient's location will apply,
31 including scope of practice limitations and limitations on the prescription of controlled
32 substances. In addition, under section 4(a), the standards of practice within the state of a patient's
33 location will apply; such standards may have the effect of limiting the types of follow-up care an
34 out-of-state practitioner may provide via telehealth. Finally, because this provision is meant to
35 apply to follow-up care, not ongoing care over a longer term, the state should set a time limit on
36 the receipt of follow-up telehealth services.
37

38 5. Some states require that particular types of practitioners be supervised when delivering
39 specific forms of health care. If the state requires that a practitioner be supervised by an
40 individual holding a license or certification within this state, Section (5)(b) permits the
41 supervisor to meet this requirement for licensure through registration under Section 6.
42

43 6. Some states have enacted corporate practice of medicine laws that require that entities
44 providing health care within the state be controlled by individuals holding licenses within the
45 state and/or have medical directors who are licensed within the state. Just as registration under
46 section 6 would permit out-of-state practitioners to provide health care via telehealth, but not in-

1 person health care within the state, section 5(c) permits registration under section 6 to meet any
2 licensure requirements applicable to those holding the specified roles within the entity, but only
3 if the health care the entity delivers within the state consists only of telehealth services.
4

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

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

9 (1) submits a completed application in the form prescribed by the registering
10 board;

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

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

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

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

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

21 (7) identifies in the form prescribed by the registering board an appointed
22 [registered][statutory] agent for service of process in this state;

23 (8) demonstrates to the registering board that the practitioner has professional
24 liability insurance that includes coverage for telehealth services provided to patients located in
25 this state, in an amount equal to or greater than the requirement for a practitioner providing the

1 same services in this state; and

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

3 (b) A registering board may establish a registration fee that reflects the expected cost of
4 maintaining the registry and taking disciplinary action against or conducting other activity
5 relating to registered practitioners.

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

9 **Comment**

10
11 Section 6 establishes a registration system for individuals who are licensed or certified to
12 provide health care in another state. Section 6 requires that boards licensing or certifying
13 practitioners included within the scope of this [act] under section 2(5) register out-of-state
14 practitioners. The purpose of this registration is to allow these practitioners to provide telehealth
15 services to patients located within the state, as authorized by section 5(a)(2). Under Section 6,
16 boards are generally required to register out-of-state practitioners who submit a complete
17 application, pay the appropriate fee, consent to personal jurisdiction, and hold any required
18 amount of liability insurance. However, boards are not permitted to register an out-of-state
19 practitioner whose license is inactive or restricted, who is subject to a pending investigation or
20 disciplinary action, who has been subject to certain disciplinary actions within the preceding five
21 years, or who has been disciplined for an action that would lead the board to deny an application
22 for a license or certification.

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

24
25 (a) A registering board may take disciplinary action against a registered practitioner who:

26 (1) fails to provide a notification required by Section 8(1) or violates another
27 requirement of this [act];

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

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

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

3 (b) A registering board may take disciplinary action against a registered practitioner it is
4 authorized to take against a licensed or certified practitioner who provides comparable health
5 care in this state. Disciplinary action may include suspension or revocation of the practitioner's
6 registration.

7 **Comment**

8
9 Section 7 extends a board's disciplinary authority with respect to licensed or certified
10 practitioners to practitioners that it registers under Section 6.

11 12 **Section 8. Duties of Registered Practitioner**

13 A registered practitioner:

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

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

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

23 **Section 9. Jurisdiction and Venue**

24 (a) For the purpose of this [act], the provision of a telehealth service occurs at the
25 patient's location at the time the service is provided or in the patient's [county] of residence.

26 (b) A civil action arising out of a registered practitioner's provision of a telehealth service

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

Section 9(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 10. Rulemaking Authority]

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 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 12. 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 13. 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 14. Effective Date**

2 This [act] takes effect . . .