

D R A F T
FOR DISCUSSION ONLY

Telehealth Act

Uniform Law Commission

April 30, 2021 Video Committee Meeting

Redline Comparison Draft

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April 26, 2021

TELEHEALTH ACT

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TELEHEALTH ACT

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TELEHEALTH ACT

SECTION 1. DEFINITIONS. In this [act]:

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

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

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

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

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

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

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

Comment

The term “telecommunication technology” is intended to encompass all technology that supports communication through electronic means and is not intended to be limited to regulated technologies or technologies associated with regulated industries.

SECTION 2. ~~STANDARD OF CARE.~~ TELEHEALTH AUTHORIZATION.

(a) A practitioner may provide health care services through telehealth, if to do so is consistent with the applicable standard of care and the practitioner’s scope of practice, under the

law of this state, and is not otherwise prohibited by law.

(b) A practitioner may establish a practitioner-patient relationship 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 standard of care and the practitioner's scope of practice. However, state law may prohibit the provision of particular types of health care services through telehealth. For example, state statutes restricting or prohibiting the prescription of abortion-inducing medications or other controlled substances through telehealth will continue to apply.

SECTION 3. STANDARD OF CARE.

~~(ea) The standard of care for a~~ practitioner who delivers a health care service via telehealth shall do so in a manner consistent with ~~is the same as~~ the standard of care ~~for applicable to~~ a practitioner who provides a comparable health care service in person. Professional practice standards and law applicable to the delivery of health care services, including standards and law related to identity verification, documentation, informed consent, confidentiality and privacy, and security, apply to telehealth ~~in the same manner they apply to the delivery of in-person services.~~

Option 1:

~~(db) A~~ ~~No state~~ board or ~~state~~ agency ~~that regulates practitioners may not~~ may adopt a rules that ~~establishes~~ a separate standard of care for telehealth or limits the form of telecommunication technology that may be used for telehealth, except to the extent authorized by this [act].

Option 2:

~~(d) A state board or agency that regulates practitioners may not adopt rules that require in-person delivery of health care services or limit the form of telecommunication technology that may be used for telehealth, except to the extent authorized by this [act].~~

1 **~~SECTION 3. LIMITS ON THE USE OF TELEHEALTH.~~**

2 *Option 3:*

3 [(ac) A ~~state~~ board ~~or agency that regulates practitioners~~ may adopt a rule that prohibits a
4 practitioner from prescribing, or limits the practitioner's ability to prescribe, a controlled
5 substance ~~for the treatment of [chronic] pain~~ when the practitioner's encounters with a patient
6 have occurred solely or predominantly through telehealth.]

7 *Option 4:*

8 [(a) A practitioner may not prescribe ~~[an opiate] [a scheduled drug] [a controlled substance]~~
9 ~~for the treatment of [chronic] pain [through telehealth] [when the practitioner's encounters with~~
10 ~~the patient have occurred solely through telehealth] [when the practitioner's encounters with the~~
11 ~~patient have occurred solely through asynchronous telecommunication technology], unless:~~

12 (1) ~~the [opiate] [scheduled drug] [controlled substance] is approved by the United States~~
13 ~~Food and Drug Administration for use as part of a medication assisted treatment program for~~
14 ~~opiod use disorder; or~~

15 (2) ~~at the time of the prescription, the patient is receiving inpatient treatment at a licensed~~
16 ~~health care facility, resides in a nursing home, or is receiving hospice services.]~~

17 (db) A practitioner who prescribes a controlled substance is subject to any requirement,
18 limitation, or prohibition in federal or state law relating to the prescription of controlled
19 substances, including any reporting requirements in this state.

20 **~~SECTION 4. REGISTRATION OF OUT-OF-STATE PRACTITIONERS.~~**

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

23 (1) obtains the appropriate license ~~[or certification]~~ in this state or is otherwise authorized

1 to provide care in this state, including through any multistate compact of which this state is a
2 member;

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

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

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

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

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

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

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

15 Comment

16
17 Out-of-state practitioners may provide telehealth services if they are "otherwise authorized to
18 provide care in this state," even if they are not licensed or registered in this state. For example,
19 under the Emergency Management Assistance Compact, under certain circumstances
20 practitioners can provide services in a state without having obtained a license in that state. If a
21 state permits pharmacists employed by a licensed pharmacy to provide health care services in a
22 state without obtaining a professional license in the state, such pharmacists could provide
23 telehealth services to patients in the state without obtaining a license or registration. States may
24 have exempted from licensure requirements students in training programs, certain practitioners
25 providing care at the scene of an emergency, or practitioners providing services for individuals
26 participating in athletic events, among others. If a practitioner providing telehealth services
27 satisfies all requirements for an exemption, the practitioner may provide those services without
28 obtaining a license or registering under this [act].
29

30 SECTION 5. BOARD REGISTRATION OF OUT-OF-STATE PRACTITIONERS.

31 (~~ae~~) A board ~~responsible for licensing [or certifying] practitioners~~ shall register an out-of-

1 state practitioner not licensed~~f~~, certified,~~]~~ or otherwise authorized to provide the practitioner's
2 services in the state if the practitioner:

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

4 (2) is licensed with an active, unencumbered license issued by another state that is
5 substantially similar to a license issued by this state;

6 (3) has not been the subject of disciplinary action relating to the practitioner's license
7 during the 5-year period immediately before the submission of the application;

8 (4) identifies a duly appointed [registered][statutory] agent for service of process in this
9 state ~~as required by the board]~~ in the form ~~required-prescribed~~ by the board];

10 (5) demonstrates to the board that the practitioner has professional liability insurance that
11 includes coverage for telehealth services provided to patients located in this state in an amount
12 equal to or greater than the requirements for a licensed practitioner providing comparable
13 services in the state; and

14 (6) pays the required registration fee.

15 (~~db~~) The board shall make information about each registrant available to the public through a
16 website.

17 (~~ec~~) A registered practitioner:

18 (1) shall notify the appropriate board of any restriction placed on the practitioner's
19 license to practice, or any disciplinary action taken or pending against the practitioner, in any
20 state. The notification must be given within 7 days after the restriction is placed or
21 disciplinary action is initiated or taken.

22 (2) shall maintain professional liability insurance that includes coverage for telehealth
23 services provided to patients located in this state in an amount equal to or greater than the

requirements for a licensed practitioner providing comparable services in the state.

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

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

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

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

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

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

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

(hf) For the purpose of this section, an act that constitutes delivery of health care services is deemed to occur at the patient's location at the time the act is performed or in the patient's county of residence. ~~Venue for a~~A civil ~~or administrative~~ action ~~commenced by~~arising out of a registered practitioner's delivery of telehealth services to a patient located in this state ~~the appropriate board or agency or by a patient who receives telehealth services from a registered practitioner~~ may be ~~located~~ brought in the patient's county of residence in this state or in any other location authorized by law ~~or [any other appropriate location, such as the county in which the state capital is located]~~.

(ig) A board may charge a registration fee that reflects the expected incremental cost of

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

3 **SECTION 6. RULEMAKING AUTHORITY.**

4 ~~(j) A-Except as prohibited under [section 3(b)], a~~ board may adopt rules to administer this
5 ~~section~~ [act].