

Memorandum

To: Uniform Law Commission

From: Michele Radosevich, Chair, Drafting Committee on Telehealth
Quinn Shean, Vice Chair, Drafting Committee on Telehealth
Kristin Madison, Reporter, Drafting Committee on Telehealth

Date: June 29, 2021

Re: Issues related to the draft Telehealth Act

The draft Telehealth Act is scheduled for a first read on July 14, 2021. This memo provides information on the impetus and the goals of the act, reviews edits made in response to an informal session held on June 17, 2021, and briefly discusses one section of the act under consideration for potential development.

Telehealth Act: Background and Goals

As described in the Prefatory Note to the draft Telehealth Act, practitioners have increasingly turned to telehealth, the use of synchronous and asynchronous telecommunication technology to provide health care services to patients at a different physical location. The arrival of COVID-19 greatly expanded patient demand for telehealth, and many states chose to relax licensure and other requirements that served as barriers to telehealth services. Many states are now re-examining their telehealth laws, often with an eye toward expanding access to care while maintaining patient protections. In fall 2020, the Uniform Law Commission constituted a Drafting Committee on Telehealth to “draft a uniform or model act addressing a variety of legal issues related to telehealth services. Issues to be considered include the definition of telehealth, formation of the doctor-patient relationship via telehealth, creation of a registry for out-of-state physicians, insurance coverage and payment parity, and administrative barriers to entity formation.”

The draft Telehealth Act is intended to assist states in achieving two broad goals. The first is to make clear that services may be provided through telehealth, if doing so is consistent with applicable professional practice standards and the practitioner’s scope of practice, as defined by the state in which the patient is located. The second is to establish a registration system for out-of-state practitioners, which may help to expand state residents’ access to health care services. The Prefatory Note describes the goals and structure of the Telehealth Act in more detail.

Informal Session

The Drafting Committee met several times in spring 2021 to develop a draft act and presented the results of its work in an informal session in June 2021. The Drafting Committee is still in the process of reviewing comments from the informal session, but has already made the following changes to the draft in the aftermath of that session:

- It replaced references to “standard of care” with the term “professional practice standard”;

- It adopted the ULC’s standard definition of “electronic,” a term relevant for the definition of telehealth;
- It added a bracketed scope provision that a state could adopt if it wanted to exclude particular types of regulated services, such as abortion-related services, from the act’s scope; and
- It added the ULC’s standard provision on electronic signatures.

Section Still Under Consideration

As explained more fully in a memo prepared for attendees at the June 2021 informal session, this draft contains a placeholder section for potential provisions related to insurance coverage for telehealth services. Many states have now adopted statutes that address private insurance plans’ practices with respect to telehealth coverage and provider payment for telehealth services. However, these state statutes vary considerably in their scope and approach. As a result, the Drafting Committee is still considering whether to develop a section related to insurance coverage, and, if so, which particular issues should be addressed.