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DENTAL EDUCATION

# Compilation of State Laws and Regulations Addressing Teledentistry or Telehealth Conducted by Oral Health Practitioners

## States O-W

This document is a compilation of state statutes and regulations that address teledentistry or telehealth conducted by oral health practitioners. Each state’s laws and regulations may be divided into three parts: requirements and permissible practices, Medicaid reimbursement and private payer reimbursement. Some states do not address all three of these topic areas and, as a result, a state may have fewer sections.

Because this analysis only focuses on laws as they apply to oral health care providers, it may not include telehealth policies that apply to other groups of health care practitioners.

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# Ohio

## Requirements and Permissible Practices

### Ohio Revised Code

#### Title 47 Occupations-Professions

#### Chapter 4715 Dentists; Dental Hygienists

#### [Section 4715.43 | Teledentistry; definitions; permit.](#)

- (A) As used in this section and in sections [4715.431](#) to [4715.437](#) of the Revised Code:
- (1) "Authorizing dentist" means the holder of a current, valid teledentistry permit issued under this section who authorizes a dental hygienist or expanded function dental auxiliary to perform services under section [4715.431](#) of the Revised Code.
  - (2) "Dental hygiene services" means the prophylactic, preventive, and other procedures that dentists are authorized by this chapter and rules of the state dental board to assign to dental hygienists, except for procedures while a patient is anesthetized, definitive root planing, definitive subgingival curettage, the administration of local anesthesia, and the procedures specified in rules adopted by the board as described in division (C)(3) of section [4715.22](#) of the Revised Code.
  - (3) "Interim therapeutic restoration" means a direct provisional restoration placed to stabilize a tooth until a licensed dentist can assess the need for further treatment. "Interim therapeutic restoration" includes the removal of debris, other than carious or noncarious tooth structure, from the carious lesion using air or water irrigation.
  - (4) "Synchronous, real-time communication" means a live, two-way interaction between a patient and a dentist conducted through audiovisual technology.
  - (5) "Teledentistry" means the delivery of dental services through the use of synchronous, real-time communication and the delivery of services of a dental hygienist or expanded function dental auxiliary pursuant to a dentist's authorization.
- (B) A dentist who desires to provide dental services through teledentistry shall apply to the state dental board for a teledentistry permit. The application must be made under oath on a form prescribed by the board and be accompanied by a twenty-dollar application fee. To be eligible for the permit, the dentist must meet the requirements established by the board in rules adopted under section [4715.436](#) of the Revised Code.

The state dental board shall issue a teledentistry permit to a dentist who is in good standing with the board and satisfies all of the requirements of this section.

### Ohio Revised Code

#### Title 47 Occupations-Professions

#### Chapter 4715 Dentists; Dental Hygienists

#### [Section 4715.431 | Scope of permit.](#)

- (A) If all of the conditions in division (B) of this section are met, an authorizing dentist may do either of the following under a teledentistry permit without examining a patient in person:
- (1) Authorize a dental hygienist or expanded function dental auxiliary to perform services as set forth in division (E) or (F) of this section, as applicable, at a location where no dentist is physically present;
  - (2) Prescribe a drug that is not a controlled substance for a patient who is at a location where no dentist is physically present.

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- (B) The conditions that must be met under division (A) of this section are the following:
- (1) The authorizing dentist must prepare a written authorization that includes all of the following:
    - (a) The authorizing dentist's name and permit number;
    - (b) The name of the dental hygienist or expanded function dental auxiliary;
    - (c) The patient's name;
    - (d) The name and address of the location where the services are to be provided;
    - (e) The date of the authorization;
    - (f) A statement signed by the dental hygienist or expanded function dental auxiliary agreeing to comply with the written protocols or written standing orders the authorizing dentist establishes, including those for dealing with emergencies;
    - (g) Any other information the dentist considers appropriate.
  - (2) Before any dental services are provided all of the following must occur:
    - (a) The patient is notified that an authorizing dentist will perform a clinical evaluation through teledentistry.
    - (b) The patient is given an explanation of alternatives to, and the capabilities and limitations of, teledentistry.
    - (c)(i) Subject to division (B)(2)(c)(ii) of this section, the patient consents to the provision of services through teledentistry and the consent is documented in the patient's record.
      - (ii) If the services to be provided are the placement of interim therapeutic restorations or the application of silver diamine fluoride, the requirements for informed consent in rules adopted under division (C) of section [4715.436](#) of the Revised Code have been met.
  - (3) The authorizing dentist establishes the patient's identity and physical location through synchronous, real-time communication.
  - (4) The authorizing dentist provides dental services through teledentistry only as is appropriate for the patient and in accordance with appropriate standards of care.
  - (5) The authorizing dentist establishes a diagnosis and treatment plan and documents it in the patient's record.
  - (6) The authorizing dentist specifies the services the dental hygienist or expanded function dental auxiliary is authorized to provide to the patient.
  - (7) The dental hygienist or expanded function dental auxiliary is employed by, or under contract with, one of the following:
    - (a) The authorizing dentist;
    - (b) A dentist who is any of the following:
      - (i) The authorizing dentist's employer;
      - (ii) A shareholder in a professional association formed under Chapter 1785. of the Revised Code of which the authorizing dentist is a shareholder;
      - (iii) A member or manager of a limited liability company formed under Chapter 1705. or 1706. of the Revised Code of which the authorizing dentist is a member or manager;
      - (iv) A shareholder in a corporation formed under division (B) of section [1701.03](#) of the Revised Code of which the authorizing dentist is a shareholder;
      - (v) A partner or employee of a partnership, formed under Chapter 1775. of the Revised Code, of which the authorizing dentist is a partner or employee;
      - (vi) A partner or employee of a limited liability partnership, formed under Chapter 1775. of the Revised Code, of which the authorizing dentist is a partner or employee.
- (C) A dentist retains responsibility for ensuring the safety and quality of services provided to patients through teledentistry. Services delivered through teledentistry must be consistent with

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in-person services. Persons involved with providing services through teledentistry must abide by laws addressing the privacy and security of the patient's dental and medical information.

(D) An authorizing dentist may not have more than a total of three dental hygienists and expanded function dental auxiliaries working under the dentist's authorization pursuant to this section at any time.

(E)(1) If authorized to do so by an authorizing dentist in accordance with this section, a dental hygienist may provide dental hygiene services at a location where no dentist is physically present if all of the following requirements are met:

(a) The dental hygienist has at least one year and a minimum of one thousand five hundred hours of experience in the practice of dental hygiene.

(b) The dental hygienist has completed a course described in division (C)(2) of section [4715.22](#) of the Revised Code on the identification and prevention of potential medical emergencies.

(c) The authorizing dentist has evaluated the dental hygienist's skills.

(d) The dental hygienist complies with written protocols or written standing orders established by the authorizing dentist, including written protocols established for emergencies.

(2) If authorized to do so by an authorizing dentist in accordance with this section, a dental hygienist may place interim therapeutic restorations when a dentist is not physically present at the location where the dental hygienist is practicing if the requirements of division (E)(1) of this section are met and the dental hygienist has successfully completed a state dental board-approved course in the proper placement of interim therapeutic restorations.

(3) If authorized to do so by an authorizing dentist in accordance with this section, a dental hygienist may apply silver diamine fluoride when a dentist is not physically present at the location where the dental hygienist is practicing if the requirements of division (E)(1) of this section are met and the dental hygienist has successfully completed a state dental board-approved course in the application of silver diamine fluoride.

(F)(1) If authorized to do so by an authorizing dentist in accordance with this section, an expanded function dental auxiliary may provide the services listed in divisions (A)(2) to (10) of section [4715.64](#) of the Revised Code, and any additional procedures authorized pursuant to division (A)(11) of that section, when a dentist is not physically present at the location where the expanded function dental auxiliary is practicing if all of the following requirements are met:

(a) The expanded function dental auxiliary has at least one year and a minimum of one thousand five hundred hours of experience practicing as an expanded function dental auxiliary.

(b) The expanded function dental auxiliary has completed a course described in division (C)(2) of section [4715.64](#) of the Revised Code on the identification and prevention of potential medical emergencies.

(c) The authorizing dentist has evaluated the expanded function dental auxiliary's skills.

(d) The expanded function dental auxiliary complies with written protocols or written standing orders established by the authorizing dentist, including written protocols for emergencies.

(2) If authorized to do so by an authorizing dentist in accordance with this section, an expanded function dental auxiliary who meets the requirements of division (F)(1) of this section and has successfully completed a state dental board-approved course in the proper placement of interim therapeutic restorations may place interim therapeutic restorations when a dentist is not physically present at the location where the expanded function dental auxiliary is practicing.

(3) If authorized to do so by an authorizing dentist in accordance with this section, an expanded function dental auxiliary who meets the requirements of division (F)(1) of this section and has successfully completed a state dental board-approved course in the application of silver diamine fluoride may apply silver diamine fluoride when a dentist is not physically present at the location where the expanded function dental auxiliary is practicing.

(4) If authorized to do so by an authorizing dentist in accordance with this section, an expanded function dental auxiliary who meets the requirements of division (F)(1) of this section and holds a current, valid dental x-ray machine operator certificate issued by the board pursuant to section [4715.53](#) of the Revised Code may perform, for the purpose of contributing to the provision of dental care to a dental patient, standard, diagnostic radiologic procedures when a dentist is not physically present at the location where the expanded function dental auxiliary is practicing.

### Ohio Revised Code

#### Title 47 Occupations-Professions

#### Chapter 4715 Dentists; Dental Hygienists

#### [Section 4715.432 | Expiration; renewal.](#)

A teledentistry permit issued under section [4715.43](#) of the Revised Code expires on the thirty-first day of December of the first odd-numbered year occurring after the permit's issuance. A dentist who desires to renew a permit shall apply, under oath, to the state dental board on a form prescribed by the board and pay a renewal fee of twenty dollars.

The board shall renew a teledentistry permit for a two- year period if the dentist is in good standing with the board and meets all of the following conditions:

(A) Submits a complete application;

(B) Pays the renewal fee;

(C) Verifies with the board the locations where dental hygienists and expanded function dental auxiliaries have provided services pursuant to the dentist's authorization since the teledentistry permit was most recently issued or renewed.

### Ohio Revised Code

#### Title 47 Occupations-Professions

#### Chapter 4715 Dentists; Dental Hygienists

#### [Section 4715.433 | Suspension or revocation.](#)

The state dental board may, in accordance with Chapter 119. of the Revised Code, suspend or revoke a permit issued under section [4715.43](#) of the Revised Code if the permit holder fails to comply with sections [4715.431](#) to [4715.437](#) of the Revised Code, including any rules adopted by the board under section [4715.346](#) of the Revised Code.

### Ohio Revised Code

#### Title 47 Occupations-Professions

#### Chapter 4715 Dentists; Dental Hygienists

#### [Section 4715.434 | List of locations.](#)

At the request of the state dental board, an authorizing dentist, or a dental hygienist or expanded function dental auxiliary who has been authorized to perform services in accordance with section [4715.431](#) of the Revised Code, shall make available to the board a list of all locations where the dental hygienist or expanded function dental auxiliary provided services,

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the locations where the hygienist or auxiliary is expected to provide services in the future, or both, as specified in the board's request.

#### Ohio Revised Code

##### Title 47 Occupations-Professions

##### Chapter 4715 Dentists; Dental Hygienists

##### [Section 4715.435 | Authorized persons.](#)

(A) No person shall provide services under section [4715.431](#) of the Revised Code unless one of the following applies:

(1) The person is a dentist who holds a current, valid teledentistry permit issued under section [4715.43](#) of the Revised Code.

(2) The person is providing services in accordance with section [4715.431](#) of the Revised Code and is either a dental hygienist or an expanded function dental auxiliary.

(B) No person shall authorize a dental hygienist or expanded function dental auxiliary to provide services under section [4715.431](#) of the Revised Code unless the person is a dentist who holds a current, valid teledentistry permit issued under section [4715.43](#) of the Revised Code and the dental hygienist or expanded function dental hygienist will provide the services in accordance with division (E) or (F) of section [4715.431](#) of the Revised Code, as appropriate.

(C) No authorizing dentist shall authorize a dental hygienist or expanded function dental auxiliary to diagnose a patient's oral health care status.

No dental hygienist or expanded function dental auxiliary shall diagnose a patient's oral health care status as part of services provided under section [4715.431](#) of the Revised Code.

#### Ohio Revised Code

##### Title 47 Occupations-Professions

##### Chapter 4715 Dentists; Dental Hygienists

##### [Section 4715.436 | Rules.](#)

The state dental board shall adopt rules in accordance with Chapter 119. of the Revised Code as it considers necessary to implement sections [4715.43](#) to [4715.435](#) of the Revised Code. The rules shall include all of the following:

(A) Requirements that must be met for issuance of a teledentistry permit under section [4715.43](#) of the Revised Code;

(B) Approval of courses on the proper placement of interim therapeutic restorations and the application of silver diamine fluoride, as authorized under section [4715.431](#) of the Revised Code.

(C) Requirements for obtaining informed consent for the placement of interim therapeutic restorations or the application of silver diamine fluoride when the patient is not examined in person by a dentist and the services are provided under a teledentistry permit, as described in section [4715.431](#) of the Revised Code.

The rules may specify procedures a dental hygienist is not permitted to perform when practicing in the absence of the authorizing dentist pursuant to section [4715.431](#) of the Revised Code.

#### Ohio Revised Code

##### Title 47 Occupations-Professions

##### Chapter 4715 Dentists; Dental Hygienists

##### [Section 4715.437 | Construction of teledentistry provisions.](#)

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Nothing in sections [4715.43](#) to [4715.436](#) of the Revised Code authorizes any activity prohibited by division (F) of section [4715.22](#) of the Revised Code, prohibited or not authorized by section [4715.23](#) of the Revised Code, or prohibited by this chapter or a rule adopted by the state dental board under this chapter.

**Ohio Administrative Code**  
**Chapter 4715-23 | Teledentistry**

[Rule 4715-23-01 | Requirements for teledentistry permit.](#)

(A) Each applicant for a teledentistry permit shall submit the statutory fee and an application to the board.

(1) On this application, the dentist applicant for a teledentistry permit shall state under oath whether:

(a) The applicant has read all laws and rules governing teledentistry in the state of Ohio, including but not limited to sections [4715.43](#) to [4715.437](#) of the Revised Code and this chapter of the Administrative Code.

(b) The applicant has the necessary equipment required to safely and securely deliver dental services through teledentistry, specifically regarding synchronous, real-time communication.

(c) The applicant has established all necessary policies, protocols, and orders to safely deliver dental services through teledentistry at all locations where dental services will be provided through teledentistry.

(d) The applicant's Ohio license to practice dentistry is in good standing.

(e) The license or registration of dental hygienists and expanded function dental auxiliaries who will provide dental services through teledentistry for the applicant are in good standing.

(f) Any dental hygienist or expanded function dental auxiliary who provides placement of interim therapeutic restorations and application of silver diamine fluoride, has completed the appropriate course prescribed by the board.

(g) The applicant understands that:

(i) The applicant retains responsibility for ensuring the safety and quality of services provided to patients through teledentistry,

(ii) Dental services delivered through teledentistry must conform to accepted standards for the profession, and

(iii) Persons involved with providing services through teledentistry must abide by laws addressing the privacy and security of the patient's dental and medical information as well as other information required to be kept confidential as required by law.

(2) The applicant shall provide on the application form the following information:

(a) Address where dental services will be provided through teledentistry.

(b) Name and license or registration number of each dental hygienist or expanded function dental auxiliary who will perform dental services through teledentistry when the dentist is not physically present and the location where they will provide these services.

(c) A description of all equipment used to establish and maintain synchronous, real-time communication during the provision of dental services through teledentistry. Any description must include manufacturer name and model number.

(B) Each holder of a teledentistry permit shall:

Before providing dental services through teledentistry, notify the Board via e-mail or regular U.S. mail within seven calendar days of:

- (1) The address where dental services will be provided through teledentistry, if not included on permit application.
- (2) Name and license or registration number of each dental hygienist and expanded function dental auxiliary who will perform dental services through teledentistry when the dentist is not physically present and the location where they will provide these services, if not included on permit application.

[Rule 4715-23-02 | Courses on proper placement of interim therapeutic restorations and application of silver diamine fluoride.](#)

(A) Any course that meets the following criteria shall satisfy the requirements of section [4715.431](#) of the Revised Code for a board-approved course on either placement of interim therapeutic restorations or application of silver diamine fluoride.

(1) Each course must be:

- (a) A two-hour continuing education course with at least one continuing education hour of didactic education and at least one continuing education hour of clinical hands-on training.
- (b) Provided by a board-approved sponsor of continuing education under Chapter 4715-8 of the Administrative Code, and
- (c) Dedicated solely to the proper placement of interim therapeutic restorations or application of silver diamine fluoride.

(2) For a course on the proper placement of interim therapeutic restorations, course content shall include:

- (a) Biological background information, including, but not limited to, materials used in and the scientific basis for the proper placement of interim therapeutic restorations.
- (b) Proper isolation and placement technique, including, but not limited to, the use of cotton rolls and iso-vac.
- (c) Knowledge of poor seal with interim restorations, including, but not limited to, the consequences of a poor seal, leakage, and re-cavitation.
- (d) Detection of arresting dental caries and the use of a periodontal probe.
- (e) Replacement of treatment, including, but not limited to, the necessity of a new diagnosis by a dentist before reapplication.

(3) For a course on the application of silver diamine fluoride, course content shall include:

- (a) Biological background information, including, but not limited to, materials used in and the scientific basis for the application of silver diamine fluoride.
- (b) Proper isolation and placement technique, including, but not limited to, the use of cotton rolls and iso-vac.
- (c) Knowledge of potential problems associated with silver diamine fluoride, including, but not limited to, staining, need for treatment, and failure to arrest caries.
- (d) Detection of arresting dental caries and the use of periodontal probe.
- (e) Reapplication of treatment, including, but not limited to, the necessity of a new diagnosis by a dentist before reapplication.

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- (B) To meet the course requirements for both proper placement of interim therapeutic restoration and application of silver diamine fluoride, a dental hygienist or expanded function dental auxiliary must complete both courses dedicated to each respective subject.
- (C) No course shall instruct that the use of a dental explorer or sickle probe is appropriate during the application of silver diamine fluoride or placement of interim therapeutic restorations.

[Rule 4715-23-03 | Requirements for obtaining informed consent.](#)

- (A) When services are provided under a teledentistry permit and the patient is not examined in person by the authorizing dentist, informed consent must be obtained before the placement of interim therapeutic restorations or the application of silver diamine fluoride.
- (B) To obtain informed consent, the authorizing dentist must:
- (1) Determine that the patient is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence,
  - (2) Inform the patient that the authorizing dentist will perform a clinical evaluation and diagnosis of caries through teledentistry,
  - (3) For the application of silver diamine fluoride,
    - (a) Inform the patient of the potential for staining teeth by providing color photos of the result of application,
    - (b) Inform the patient that application is permanent and may only be reversed through loss or restoration of the tooth,
    - (c) Inquire whether the patient has an allergy to silver, and
    - (d) Inform the patient that the treatment will require active monitoring and possible reapplication.
  - (4) Explain alternatives to, and the capabilities and limitations of, teledentistry,
  - (5) Explain that the patient may decline to receive services through teledentistry,
  - (6) Document in the patient record any discussion with the patient about teledentistry and whether informed consent was obtained, and
  - (7) Comply with the requirements set forth in division (B) of section [4715.431](#) of the Revised Code.

- (C) If the patient is less than eighteen years of age, a parent or legal guardian must provide informed consent for the patient and meet the same requirements as provided in paragraph (B) of this rule.

[Rule 4715-23-04 | Procedures not permitted.](#)

No authorizing dentist shall authorize a dental hygienist or expanded function dental auxiliary to provide a dental service or any other function prohibited by law or rule, including section [4715.435](#) of the Revised Code.

[Rule 4715-23-05 | Equipment requirements for teledentistry.](#)

- (A) All equipment used to provide dental services through teledentistry must comply with the Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), as well as all state and federal laws and regulations.
- (B) Authorizing dentists providing dental services through teledentistry

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- (1) Are solely responsible for securing and protecting all patient records and data related to the provision of dental services through teledentistry, and
  - (2) Must take reasonable steps to prevent the compromise, breach, or theft of patient records or data related to the provision of dental services through teledentistry.
- (C) Contingency plan - Authorizing dentists providing dental services through teledentistry must have a contingency plan established to:
- (1) Refer patients to a local healthcare provider in the event of a dental emergency;
  - (2) Manage an interruption in connection or communication while providing dental services through teledentistry.
- (D) Dedicated space - All equipment used for providing dental services through teledentistry must be utilized in a space dedicated to providing dental services through teledentistry. This space may also function as a space in which dental services are provided when the dentist is physically present.
- (E) Encryption - Authorizing dentists must ensure that all data connections and storage (including cloud storage) used in the provision of dental services through teledentistry are encrypted.
- (F) High definition intraoral camera High definition intraoral cameras must be used to provide dental services through teledentistry.
- (G) Microphone - A microphone must be utilized to allow verbal communication between the dentist, patient, and staff during the provision of dental services through teledentistry.
- (H) Digital x-ray machine - A digital x-ray machine capable of producing high definition images that can be immediately transmitted to the authorizing dentist during the patients appointment must be available while providing dental and diagnostic services through teledentistry.
- (I) Patient records - All patient records must be transmitted, transported, handled, stored, protected, and secured in compliance with HIPAA, HITECH, as well as all state and federal laws and regulations.

#### [Rule 4715-23-06 | Authorization.](#)

- (A) An authorizing dentist who is providing dental services through teledentistry may not at any time have more than a total of three dental hygienists and expanded function dental auxiliaries working under the dentists authorization pursuant to section [4715.431](#) of the Revised Code. Because teledentistry requires synchronous, real-time communication, an authorizing dentist must remain attentive and available to attend to the health and safety of all patients regardless of whether the dentist is physically present or not physically present with the patient. If an authorizing dentist supervises any dental hygienist or expanded function dental auxiliary on the same day as the authorizing dentist authorizes any dental hygienist or expanded function dental auxiliary to provide dental services through teledentistry, the authorizing dentist should not have more than a total of:
- (1) Four dental hygienists practicing clinical hygiene under the supervision of the authorizing dentist pursuant to section [4715.23](#) of the Revised Code or three dental hygienists providing dental services through teledentistry pursuant to section [4715.431](#) of the Revised Code.
  - (2) two expanded function dental auxiliaries practicing as expanded function dental auxiliaries under the supervision of the authorizing dentist pursuant to section [4715.64](#) of the Revised Code or three expanded function dental auxiliaries providing dental services through teledentistry pursuant to section [4715.431](#) of the Revised Code, except that the total number practicing under the supervision of the authorizing dentist pursuant to section [4715.64](#) of the Revised Code shall not exceed two.

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(B) Nothing in this rule shall prohibit:

- (1) Any dental hygienist to practice as a dental hygienist when the authorizing dentist is not physically present at the location where the dental hygienist is practicing, under section [4715.22](#) of the Revised Code,
- (2) Any expanded function dental auxiliary to practice as an expanded function dental auxiliary when the authorizing dentist is not physically present at the location where the expanded function dental auxiliary is practicing, under section [4715.64](#) of the Revised Code,
- (3) Any dental assistant or qualified personnel to practice as a dental assistant or qualified personnel when the authorizing dentist is not physically present at the location where the dental assistant or qualified personnel is practicing, under section [4715.39](#) of the Revised Code,
- (4) Any dental x-ray machine operator to practice as a dental x-ray machine operator when the authorizing dentist is not physically present at the location where the dental x-ray machine operator is practicing, under section [4715.56](#) of the Revised Code, or
- (5) Any dental hygienists to practice in accordance with a permit issued pursuant to section [4715.363](#) of the Revised Code authorizing practice under the oral health access supervision of a dentist.

## Medicaid Reimbursement

Ohio Administrative Code  
Chapter 5160-1 | General Provisions  
[Rule 5160-1-18 | Telehealth.](#)

(A) For the purposes of this rule, the following definitions apply:

- (1) "Patient site" is the physical location of the patient at the time a health care service is provided through the use of telehealth.
- (2) "Practitioner site" is the physical location of the treating practitioner at the time a health care service is provided through the use of telehealth.
- (3) "Telehealth" is the direct delivery of health care services to a patient related to diagnosis, treatment, and management of a condition.
  - (a) Telehealth is the interaction with a patient via synchronous, interactive, real-time electronic communication comprising both audio and video elements; or
  - (b) The following activities that are asynchronous or do not have both audio and video elements:
    - (i) Telephone calls;
    - (ii) Remote patient monitoring; and
    - (iii) Communication with a patient through secure electronic mail or a secure patient portal.
  - ...
  - (d) Conversations or electronic communication between practitioners regarding a patient without the patient present is not considered telehealth unless the service would allow billing for practitioner to practitioner communication in a non-telehealth setting.

(B) Eligible providers.

- (1) The following practitioners are eligible to render services through the use of telehealth:  
...

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- (l) Dentists as defined in Chapter 4715. of the Revised Code.
  - (q) Other practitioners if specifically authorized in rule promulgated under agency 5160 of the Administrative Code.
- (2) The following provider types are eligible to bill for services rendered through the use of telehealth.
- (a) Any practitioner identified in paragraph (B)(1) of this rule, except for the following dependent practitioners:
    - (i) Supervised practitioners, trainees, residents, and interns as defined in rules [5160-4-05](#) and [5160-8-05](#) of the Administrative Code;
    - (ii) Occupational therapist assistant as defined in section [4755.04](#) of the Revised Code;
    - (iii) Physical therapist assistant as defined in section [4755.40](#) of the Revised Code;
    - (iv) Speech-language pathology aides, audiology aides, and individuals holding a conditional license as defined in section 4753. of the Revised Code.
  - (b) A professional medical group.
  - (c) A professional dental group.
  - (d) A federally qualified health center (FQHC) or rural health clinic (RHC) as defined in Chapter 5160-28 of the Administrative Code.
  - (e) Ambulatory health care clinics (AHCC) as defined in Chapter 5160-13 of the Administrative Code.
  - (f) Outpatient hospitals on behalf of licensed psychologists and independent practitioners not eligible to separately bill when practicing in an outpatient hospital setting.
  - (g) Medicaid school program (MSP) providers as defined in Chapter 5160-35 of the Administrative Code.
  - (h) Private duty nurses.
  - (i) Home health and hospice agencies.
  - (j) Behavioral health providers as defined in paragraphs (A)(1) and (A)(2) of rule [5160-27-01](#) of the Administrative Code.
  - (k) Hospitals operating an outpatient hospital behavioral health program in accordance with rule [5160-2-76](#) of the Administrative Code.
- (C) Provider responsibilities when providing services through telehealth.
- (1) It is the responsibility of the practitioner to deliver telehealth services in accordance with all state and federal laws including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any HIPAA related directives from the office for civil rights (OCR) at the department of health and human services (HHS) issued during COVID-19 national emergency and 42 C.F.R. part 2 (January 1, 2020).
  - (2) It is the responsibility of the practitioner to deliver telehealth services in accordance with rules set forth by their respective licensing board and accepted standards of clinical practice.
  - (3) The practitioner site is responsible for maintaining documentation in accordance with paragraph (C)(1) of this rule for the health care service delivered through the use of telehealth and to document the specific telehealth modality used.
  - (4) For practitioners who render services to an individual through telehealth for a period longer than twelve consecutive months, the telehealth practice or practitioner is expected to conduct at least one in-person annual visit or refer the individual to a practitioner or their usual source of clinical care that is not an emergency department for an in-person annual visit.

(D) Payment may be made only for the following medically necessary health care services identified in appendix A to this rule when delivered through the use of telehealth from the practitioner site:

- (1) When provided by a patient centered medical home as defined in rule [5160-19-01](#) of the Administrative Code or behavioral health provider as defined in rule [5160-27-01](#) of the Administrative Code, evaluation and management of a new patient described as "office or other outpatient visit" with medical decision making not to exceed moderate complexity.
  - (2) Evaluation and management of an established patient described as "office or other outpatient visit" with medical decision making not to exceed moderate complexity.
  - (3) Inpatient or office consultation for a new or established patient when providing the same quality and timeliness of care to the patient other than by telehealth is not possible, as documented in the medical record.
  - (4) Mental health or substance use disorder services described as "psychiatric diagnostic evaluation" or "psychotherapy."
  - (5) Remote evaluation of recorded video or images submitted by an established patient.
  - (6) Virtual check-in by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient.
  - (7) Online digital evaluation and management service for an established patient.
  - (8) Remote patient monitoring.
  - (9) Audiology, speech-language pathology, physical therapy, and occupational therapy services, including services provided in the home health setting.
  - (10) Medical nutrition services.
  - (11) Lactation counseling provided by dietitians.
  - (12) Psychological and neuropsychological testing.
  - (13) Smoking and tobacco use cessation counseling.
  - (14) Developmental test administration.
  - (15) Limited or periodic oral evaluation.
  - (16) Hospice services.
  - (17) Private duty nursing services.
  - (18) State plan home health services.
  - (19) Dialysis related services.
  - (20) Services under the specialized recovery services (SRS) program as defined in rule [5160-43-01](#) of the Administrative Code.
  - (21) Notwithstanding paragraph (D)(2) of this rule, behavioral health services covered under Chapter 5160-27 of the Administrative Code.
  - (22) Optometry services.
- (E) Submission and payment of telehealth claims.
- (1) The practitioner site may submit either a professional or institutional claim for health care services delivered through the use of telehealth.
  - (2) An institutional (facility) claim may be submitted by an outpatient hospital for telehealth services provided by licensed psychologists and independent practitioners not eligible to separately bill when practicing in an outpatient hospital setting. Other telehealth services provided in a hospital setting may be billed in accordance with rule [5160-2-02](#) of the Administrative Code.
  - (3) Medicaid-covered services may be provided through telehealth, as appropriate, if otherwise payable under the Medicaid school program as defined in Chapter 5160-35 of the Administrative Code.
  - (4) Except for services billed by behavioral health providers as defined in paragraphs (A)(1) and (A)(2) of rule [5160-27-01](#) of the Administrative Code and FQHC and RHC services

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defined in rules [5160-28-03.1](#) and 5160-28-03.3 of the Administrative Code, the payment amount for a health care service delivered through the use of telehealth is the lesser of the submitted charge or the maximum amount shown in appendix DD to rule [5160-1-60](#) of the Administrative Code for the date of service.

(5) For a covered telehealth service that is also an FQHC or RHC service, the face-to-face requirement is waived and payment is made in accordance with Chapter 5160-28 of the Administrative Code.

(6) Individuals who meet the definition of inmate in a penal facility or a public institution as defined in rule [5160:1-1-03](#) of the Administrative Code are not eligible for telehealth services under this rule.

(7) For any professional claim submitted for health care services utilizing telehealth to be paid, it is the responsibility of the provider to follow ODM billing guidelines found on the ODM website, [www.medicare.ohio.gov](http://www.medicare.ohio.gov).

(8) For telehealth services billed by behavioral health providers as defined in paragraphs (A)(1) and (A)(2) of rule [5160-27-01](#) of the Administrative Code, payment is made in accordance with Chapter 5160-27 of the Administrative Code.

(9) Unless stated otherwise in the billing guidelines, professional claims submitted for health care services utilizing telehealth must include:

(a) A "GT" modifier;

(b) A place of service code that reflects the physical location of the treating practitioner at the time a health care service is provided through the use of telehealth.

(c) A modifier as identified in appendix B to this rule if the physical location of the patient is one of the following locations:

(i) The patient's home (including homeless shelter, assisted living facility, group home, and temporary lodging);

(ii) School;

(iii) Inpatient hospital;

(iv) Outpatient hospital;

(v) Nursing facility;

(vi) Intermediate care facility for individuals with an intellectual disability.

(10) Procedure codes for eligible telehealth services are listed in appendix A to this rule. To qualify for payment, a service should:

(a) Be clinically appropriate;

(b) Meet professional standards of care;

(c) Be rendered in accordance with the scope of licensure; and

(d) Be rendered in accordance with the standards of practice for the provider's respective licensure.

**Ohio Administrative Code**  
**Chapter 5160-5 | Dental Program**  
[Rule 5160-5-01 | Dental services.](#)

(A) This rule sets forth provisions governing payment for professional, non-institutional dental services. Provisions governing payment for dental services performed as the following service types are set forth in:

...

(6) Telehealth services, rule [5160-1-18](#) of the Administrative Code.

(B) Definitions.

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- (1) "Metropolitan statistical area (MSA)" has the same meaning as in 40 C.F.R. 58.1 (October 1, 2020).
  - (2) "Non-rural county" is a county to which the definition of rural county does not apply.
  - (3) "Rural county" is a county for which either of the following criteria is satisfied:
    - (a) The county is not located within a MSA; or
    - (b) At least seventy-five per cent of the population of the county lives outside the urban areas within the county.
- (C) Providers of dental services.
- (1) Rendering providers. The following eligible medicaid providers may render a dental service:
    - (a) A dentist practicing in Ohio;
    - (b) A dental resident acting within their licensure and scope of practice; or
    - (c) A dentist practicing in a state other than Ohio who meets the requirements established by the dental examining board in that state.
  - (2) Billing providers. The following eligible Medicaid providers may receive Medicaid payment for submitting a claim for a dental service:
    - (a) A dentist;
    - (b) A professional dental group; or
    - (c) A fee-for-service clinic.
- (D) Coverage policies for dental services are set forth in appendix A to this rule.
- (E) Other conditions.
- (1) Dental services are subject to a copayment of three dollars per date of service per provider unless the patient is excluded from the copayment requirement pursuant to rule [5160-1-09](#) of the Administrative Code.
  - (2) For an item that requires multiple fittings and special construction (e.g., dentures), the first visit date is the date of service for purposes of prior authorization or claim submission. Payment for the item will not be made, however, until it has been delivered to the patient.
  - (3) Additional documentation requirements apply to dental services rendered to an individual living in a supervised residence such as a long-term care facility (LTCF).
    - (a) Whenever a provider updates an individual's medical or dental history, diagnosis, prognosis, or treatment plan, the provider is to keep a copy on file and send a copy of the information to the staff of the residence for inclusion in the individual's file.
    - (b) After a request for treatment has been signed by the individual, the individual's authorized representative, or the individual's attending physician, the provider is to keep a copy on file and send a copy to the staff of the residence.
    - (c) For services that require prior authorization (PA), a copy of the signed request for treatment is to be submitted with the PA request along with any other required documentation.
    - (d) A prior authorization request submitted for complete or partial dentures for a resident of a long-term care facility is to be accompanied by the following documents:
      - (i) A copy of the resident's most recent nursing care plan;
      - (ii) A copy of a consent form signed by the resident or the resident's authorized representative; and
      - (iii) A dentist's signed statement describing the oral examination and assessing the resident's ability to wear dentures.
- (F) Payment of claims.
- (1) For a covered dental service that is identified by a current dental terminology (CDT) code, the following payment amounts apply:

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(a) For a service rendered by a provider whose office address (specified in the provider agreement) is in a non-rural Ohio county or a county outside Ohio, payment is the lesser of the submitted charge or the amount listed in appendix DD to rule [5160-1-60](#) of the Administrative Code.

(b) For a service rendered by a provider whose office address is in a rural Ohio county, payment is the lesser of the submitted charge or one hundred five per cent of the amount listed in appendix DD to rule [5160-1-60](#) of the Administrative Code.

(2) For a covered dental service that is identified by a current procedural terminology (CPT) code, such as oral surgery, payment is the lesser of the submitted charge or the amount listed in appendix DD to rule [5160-1-60](#) of the Administrative Code, regardless of whether the service is provided in a rural or non-rural county.

## Ohio Revised Code

### Title 51 Public Welfare

#### Chapter 5164 Medicaid State Plan Services

#### [Section 5164.95 | Standards for payments for telehealth services.](#)

(A) As used in this section, “telehealth service” means a health care service delivered to a patient through the use of interactive audio, video, or other telecommunications or electronic technology from a site other than the site where the patient is located.

(B) The department of Medicaid shall establish standards for Medicaid payments for health care services the department determines are appropriate to be covered by the Medicaid program when provided as telehealth services. The standards shall be established in rules adopted under section [5164.02](#) of the Revised Code.

## Ohio Revised Code

### Title 51 Public Welfare

#### Chapter 5164 Medicaid State Plan Services

#### [Section 5164.951 | Standards for medicaid payments for services provided through teledentistry.](#)

As used in this section, “teledentistry” has the same meaning as in section [4715.43](#) of the Revised Code.

The department of Medicaid shall establish standards for Medicaid payments for services provided through teledentistry. The standards shall provide coverage for services to the same extent that those services would be covered by the Medicaid program if the services were provided without the use of teledentistry.

## Private Payer

### R.C. § 1751.90

#### 1751.90 Prohibition against denial of coverage for teledentistry

(A) As used in this section, “teledentistry” has the same meaning as in section 4715.43 of the Revised Code.

(B) No individual or group health insuring corporation policy, contract, or agreement shall deny coverage for the costs of any services provided to an insured through teledentistry if those services would be covered if the services were delivered other than through teledentistry.

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(C) The coverage that may not be excluded under division (B) of this section is subject to all terms, conditions, restrictions, exclusions, and limitations that apply to other coverage for services performed by participating and nonparticipating providers.

**R.C. § 3923.90**

**3923.90 Prohibition against denial of coverage for teledentistry**

**Effective: March 20, 2019**

(A) As used in this section, "teledentistry" has the same meaning as in section 4715.43 of the Revised Code.

(B) No individual or group policy of sickness and accident insurance or public employee benefit plan shall deny coverage for the costs of any services provided to an insured through teledentistry if those services would be covered if the services were delivered other than through teledentistry.

(C) The coverage that may not be excluded under division (B) of this section is subject to all terms, conditions, restrictions, exclusions, and limitations that apply to any other coverage for services performed by participating and nonparticipating providers.

# Oklahoma

## Requirements and Permissible Practices

### [59 Okl.St. Ann. § 328.3](#) [§ 328.3. Definitions](#)

As used in the State Dental Act, the following words, phrases, or terms, unless the context otherwise indicates, shall have the following meanings:

...

34. "Teledentistry" means the remote delivery of dental patient care via telecommunications and other technology for the exchange of clinical information and images for dental consultation, preliminary treatment planning and patient monitoring; and

...

### [59 Okl.St. Ann. § 328.54](#) [§ 328.54. Dental practice--Diagnosis via the Internet](#)

A. Any person conducting a diagnosis for the purpose of prescribing medication or treatment or any other action determined to be a dental practice as defined by the State Dental Act, via the Internet or other telecommunications device on any patient that is physically located in this state shall hold a valid Oklahoma state dental license.

B. A dentist holding a valid dental license in Oklahoma may consult, diagnose and treat a patient of record via synchronous or asynchronous telecommunication between the patient and dentist. The dentist must record all activities relating to teledentistry in the patient record and must have an office location in Oklahoma available for follow-up treatment and maintenance of records.

## Medicaid Reimbursement

New law created by [SB 131](#)

...

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4002.4 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Health Care Authority shall develop network adequacy standards for all managed care organizations and dental benefit managers that, at a minimum, meet the requirements of 42 C.F.R., Sections 438.14 and 438.68. Network adequacy standards established under this subsection shall be designed to ensure enrollees covered by the managed care organizations and dental benefit managers who reside in health professional shortage areas (HPSAs) designated under Section 332(a)(1) of the Public Health Service Act (42 U.S.C., Section 254e(a)(1)) have access to in-person health care and telehealth services with providers, especially adult and pediatric primary care practitioners.

...

**Oklahoma Administrative Code**  
**Title 317 – Oklahoma Health Care Authority**  
**Chapter 30 – Medical Providers-Fee for Service**  
**Subchapter 3 – General Provider Policies**

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## Part 1 – GENERAL SCOPE AND ADMINISTRATION

### 317:30-3-27. Telemedicine

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **“Remote patient monitoring”** means the use of digital technologies to collect medical and other forms of health data (e.g. vital signs, weight, blood pressure, blood sugar) from individuals in one (1) location and electronically transmit that information securely to health care providers in a different location for assessment and recommendations.

(2) **“School-based services”** means medically necessary health-related and rehabilitative services that are provided by a qualified school provider to a student under the age of twenty-one (21), pursuant to an Individualized Education Program (IEP), in accordance with the Individuals with Disabilities Education Act. See Oklahoma Administrative Code (OAC) 317:30-5-1020.

(3) **“Store and forward technologies”** means the transmission of a patient’s medical information from an originating site to the health care provider at the distant site; provided, photographs visualized by a telecommunications system shall be specific to the patient’s medical condition and adequate for furnishing or confirming a diagnosis or treatment plan. Store and forward technologies shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission.

(4) **“Telehealth”** means the practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information by means of a two-way, real-time interactive communication, not to exclude store and forward technologies, between a patient and a health care provider with access to and reviewing the patient’s relevant clinical information prior to the telemedicine visit. Telehealth shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission.

(5) **“Telehealth medical service”** means, for the purpose of the notification requirements of OAC 317:30-3-27(d)(2), telehealth services that expressly do not include physical therapy, occupational therapy, and/or speech and hearing services.

(b) **Applicability and scope.** The purpose of this Section is to implement telehealth policy that improves access to health care services, while complying with all applicable state and federal laws and regulations. Telehealth services are not an expansion of SoonerCare-covered services, but an option for the delivery of certain covered services. However, if there are technological difficulties in performing an objective, thorough medical assessment, or problems in the member’s understanding of telehealth, hands-on-assessment and/or in-person care must be provided for the member. Any service delivered using telehealth technology must be appropriate for telehealth delivery and be of the same quality and otherwise on par with the same service delivered in person. A telehealth encounter must maintain the confidentiality and security of protected health information in accordance with applicable state and federal law, including, but not limited to, 42 Code of Federal Regulations (CFR) Part 2, 45 CFR Parts 160 and 164, and 43A Oklahoma Statutes (O.S.) ’ 1-109. For purposes of SoonerCare reimbursement, telehealth is the use of interactive audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment that occurs in real-time and when the member is actively participating during the transmission.

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- (c) **Requirements.** The following requirements apply to all services rendered via telehealth.
- (1) Interactive audio and video telecommunications must be used, permitting encrypted, real-time communication between the physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telehealth information transmitted. As a condition of payment the member must actively participate in the telehealth visit.
  - (2) The telehealth equipment and transmission speed and image must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telehealth visit need to be trained in the use of the telehealth equipment and competent in its operation.
  - (3) The medical or behavioral health related service must be provided at an appropriate site for the delivery of telehealth services. An appropriate telehealth site is one that has the proper security measures in place; the appropriate administrative, physical, and technical safeguards should be in place that ensures the confidentiality, integrity, and security of electronic protected health information. The location of the room for the encounter at both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, and the placement and selection of the rooms should consider this. Appropriate telehealth equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telehealth services outside of Oklahoma when medically necessary; however, prior authorization may be required, per OAC 317:30-3-89 through 317:30-3-91.
  - (4) The provider must be contracted with SoonerCare and appropriately licensed or certified, in good standing. Services that are provided must be within the scope of the practitioner's license or certification. If the provider is outside of Oklahoma, the provider must comply with all laws and regulations of the provider's location, including health care and telehealth requirements.
  - (5) If the member is a minor, the provider must obtain the prior written consent of the member's parent or legal guardian to provide services via telehealth, that includes, at a minimum, the name of the provider; the provider's permanent business office address and telephone number; an explanation of the services to be provided, including the type, frequency, and duration of services. Written consent must be obtained annually, or whenever there is a change in the information in the written consent form, as set forth above. The parent or legal guardian need not attend the telehealth session unless attendance is therapeutically appropriate. The requirements of subsection OAC 317:30-3-27©(5), however, do not apply to telehealth services provided in a primary or secondary school setting.
  - (6) If the member is a minor, the telehealth provider shall notify the parent or legal guardian that a telehealth service was performed on the minor through electronic communication whether a text message or email.
  - (7) The member retains the right to withdraw at any time.
  - (8) All telehealth activities must comply with Oklahoma Health Care Authority (OHCA) policy, and all other applicable State and Federal laws and regulations, including, but not limited to, 59 O.S. ' 478.1.
  - (9) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.
  - (10) There will be no dissemination of any member images or information to other entities without written consent from the member or member's parent or legal guardian, if the member is a minor.

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(11) A telehealth service is subject to the same SoonerCare program restrictions, limitations, and coverage which exist for the service when not provided through telehealth; provided, however, that only certain telehealth codes are reimbursable by SoonerCare. For a list of the SoonerCare-reimbursable telehealth codes, refer to the OHCA's Behavioral Health Telehealth Services and Medical Telehealth Services, available on OHCA's website, [www.okhca.org](http://www.okhca.org).

(12) Where there are established service limitations, the use of telehealth to deliver those services will count towards meeting those noted limitations. Service limitations may be set forth by Medicaid and/or other third party payers.

(d) **Additional requirements specific to telehealth services in a school setting.** In order for OHCA to reimburse medically necessary telehealth services provided to SoonerCare members in a primary or secondary school setting, all of the requirements in (c) above must be met, with the exception of ©(5), as well as all of the requirements shown below, as applicable.

(1) **Consent requirements.** Advance parent or legal guardian consent for telehealth services must be obtained for minors, in accordance with 25 O.S. " 2004 through 2005. Additional consent requirements shall apply to school-based services provided pursuant to an IEP, per OAC 317:30-5-1020.

(2) **Notification requirements.** For telehealth medical services provided in a primary or secondary school setting, the telehealth practitioner must provide a summary of the service, including, but not limited to, information regarding the exam findings, prescribed or administered medications, and patient instructions, to:

(A) The SoonerCare member, if he or she is an adult, or the member's parent or legal guardian, if the member is a minor; or

(B) The SoonerCare member's primary care provider, if requested by the member or the member's parent or legal guardian.

...

(c) **Reimbursement.**

(1) Health care services delivered by telehealth such as Remote Patient Monitoring, Store and Forward, or any other telehealth technology, must be compensable by OHCA in order to be reimbursed.

(2) Services provided by telehealth must be billed with the appropriate modifier.

(3) If the technical component of an X-ray, ultrasound or electrocardiogram is performed during a telehealth transmission, the technical component can be billed by the provider that provided that service. The professional component of the procedure and the appropriate visit code should be billed by the provider that rendered that service.

(4) The cost of telehealth equipment and transmission is not reimbursable by SoonerCare.

(f) **Documentation.**

(1) Documentation must be maintained by the rendering provider to substantiate the services rendered.

(2) Documentation must indicate the services were rendered via telehealth, and the location of the services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via telehealth. Examples include but are not limited to:

(A) Chart notes;

(B) Start and stop times;

(C) Service provider's credentials; and

(D) Provider's signature.

(g) **Final authority.** The OHCA has discretion and the final authority to approve or deny any telehealth services based on agency and/or SoonerCare members' needs.

## Private Payer Reimbursement

### Oklahoma Statutes Citationized

#### Title 36. Insurance

#### Chapter 2 - Miscellaneous Provisions

#### Oklahoma Telemedicine Act

#### [Section 6801 - Short Title](#)

This act shall be known and may be cited as the "Oklahoma Telemedicine Act".

#### Section 6802 - Definition of "Telemedicine" as amended by [SB 673](#) and [SB 674](#)

As used in the Oklahoma Telemedicine Act:

1. "Distant site" means a site at which a health care professional licensed to practice in this state is located while providing health care services by means of telemedicine;
2. a. "Health benefit plan" means any plan or arrangement that:
  - (1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident or illness, and
  - (2) is offered by any insurance company, group hospital service corporation or health maintenance organization that delivers or issues for delivery an individual, group, blanket or franchise insurance policy or insurance agreement, a group hospital service contract or an evidence of coverage, or, to the extent permitted by the Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1001 et seq., by a multiple employer welfare arrangement as defined in Section 3 of the Employee Retirement Income Security Act of 1974, or any other analogous benefit arrangement, whether the payment is fixed or by indemnity,
- b. Health benefit plan shall not include:
  - (1) a plan that provides coverage:
    - (a) only for a specified disease or diseases or under an individual limited benefit policy,
    - (b) only for accidental death or dismemberment,
    - (c) only for dental or vision care,
    - (d) for a hospital confinement indemnity policy,
    - (e) for disability income insurance or a combination of accident-only and disability income insurance, or
    - (f) as a supplement to liability insurance,
  - (2) a Medicare supplemental policy as defined by Section 1882(g)(1) of the Social Security Act (42 U.S.C., Section 1395ss),
  - (3) workers' compensation insurance coverage,
  - (4) medical payment insurance issued as part of a motor vehicle insurance policy,
  - (5) a long-term care policy including a nursing home fixed indemnity policy, unless a determination is made that the policy provides benefit coverage so comprehensive that the policy meets the definition of a health benefit plan,
  - (6) short-term health insurance issued on a nonrenewable basis with a duration of six (6) months or less, or

- (7) a plan offered by the Employees Group Insurance Division of the Office of Management and Enterprise Services;
3. "Health care professional" means a physician or other health care practitioner licensed, accredited or certified to perform specified health care services consistent with state law;
  4. "Insurer" means any entity providing an accident and health insurance policy in this state including, but not limited to, a licensed insurance company, a not-for-profit hospital service and medical indemnity corporation, a fraternal benefit society, a multiple employer welfare arrangement or any other entity subject to regulation by the Insurance Commissioner;
  5. "mHealth", also referred to as "mobile health", means patient medical and health information and includes the use of the Internet and wireless devices by patients to obtain or create specialized health information and online discussion groups to provide peer-to-peer support;
  6. "Originating site" means a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine, which may include, but shall not be restricted to, a patient's home, workplace or school;
  7. "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose and other condition-specific data, medication adherence monitoring and interactive video conferencing with or without digital image upload;
  8. "Store and forward transfer" means the transmission of a patient's medical information either to or from an originating site or to or from the health care professional at the distant site, but does not require the patient being present nor must it be in real time;
  9. "Telemedicine" or "telehealth" means technology-enabled health and care management and delivery systems that extend capacity and access, which includes:
    - a. synchronous mechanisms, which may include live audiovisual interaction between a patient and a health care professional or real-time provider-to-provider consultation through live interactive audiovisual means,
    - b. asynchronous mechanisms, which include store and forward transfers, online exchange of health information between a patient and a health care professional and online exchange of health information between health care professionals, but shall not include the use of automated text messages or automated mobile applications that serve as the sole interaction between a patient and a health care professional,
    - c. remote patient monitoring, d. mHealth, and e. other electronic means that support clinical health care, professional consultation, patient and professional health-related education, public health and health administration.
    - d. other electronic means that support clinical health care, professional consultation, patient and professional health-related education, public health and health administration.

### Section 6803 - Telemedicine Services as amended by [SB 674](#)

- A. For services that a health care professional determines to be appropriately provided by means of telemedicine, health care service plans, disability insurer programs, workers' compensation programs, or state Medicaid managed care program contracts issued, amended, or renewed on or after January 1, 1998, shall not require person-to-person contact between a health care professional and a patient.
- B. Subsection A of this section shall apply to health care service plan contracts with the state Medicaid managed care program only to the extent that both of the following apply:

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1. Telemedicine services are covered by, and reimbursed under, the fee-for-service provisions of the state Medicaid managed care program; and
  2. State Medicaid managed care program contracts with health care service plans are amended to add coverage of telemedicine services and make any appropriate capitation rate adjustments.
- C. Any health benefit plan that is offered, issued or renewed in this state by an insurer on or after the effective date of this act shall provide coverage of health care services provided through telemedicine, as provided in this section.
- D. An insurer shall not exclude a service for coverage solely because the service is provided through telemedicine and is not provided through in-person consultation or contact between a health care professional and a patient when such services are appropriately provided through telemedicine. An insurer may limit coverage of services provided by telehealth consistent with coding and clinical standards recognized by the American Medical Association or the Centers for Medicare and Medicaid Services as covered if delivered by telehealth or telemedicine, except as agreed to by the insurer and provider.
- E. An insurer shall reimburse the treating health care professional or the consulting health care professional for the diagnosis, consultation or treatment of the patient delivered through telemedicine services on the same basis and at least at the rate of reimbursement that the insurer is responsible for coverage for the provision of the same, or substantially similar, services through in-person consultation or contact.
- F. An insurer shall not apply any deductible to telemedicine services that accumulates separately from the deductible that applies in the aggregate to all items and services covered under the health benefit plan.
- G. Any copayment or coinsurance applied to telemedicine benefits by an insurer shall not exceed the copayment or coinsurance applied to such benefits when provided through in-person consultation or contact. H. An insurer shall not impose any annual or lifetime durational limits or annual or lifetime dollar maximums for benefits or services provided through telemedicine that are not equally imposed upon all terms and services covered under the health benefit plan.
- I. An insurer shall not impose any type of utilization review on benefits provided through telemedicine unless such type of utilization review is imposed when such benefits are provided through in-person consultation or contact. Any type of utilization review that is imposed on benefits provided through telemedicine shall not occur with greater frequency or more stringent application than such form of utilization review is imposed on such benefits provided through in-person consultation or contact.
- J. An insurer shall not restrict coverage of telemedicine benefits or services to benefits or services provided by a particular vendor, or other third party, or benefits or services provided through a particular electronic communications technology platform; provided, that nothing shall require an insurer to cover any electronic communications technology platform that does not comply with applicable state and federal privacy laws.
- K. An insurer shall not place any restrictions on prescribing medications through telemedicine that are more restrictive than what is required under applicable state and federal law.
- L. No later than January 1, 2023, the State Department of Health shall request a report from the Statewide Health Information Exchange that will provide the following data:
1. The number of providers using telehealth, including the location, frequency and specific services for which telehealth is utilized; and
  2. The overall cost and cost savings associated with the utilization of telehealth services.

# Oregon

## Requirements and Permissible Practices

### O.R.S. § 679.543

#### [679.543. Use of telehealth by dental care provider](#)

(1) As used in this section, “telehealth” means a variety of methods, through the use of electronic and telecommunications technologies, for the distance delivery of health care services, including dental care services, and clinical information designed to improve a patient’s health status and to enhance delivery of the health care services and clinical information.

(2) A dental care provider authorized by the Oregon Board of Dentistry to practice dental care services may use telehealth if:

(a) In the professional judgment of the dental care provider, the use of telehealth is an appropriate manner in which to provide a dental care service; and

(b) The dental care provider is providing a dental care service that is within the scope of practice of the dental care provider.

(3) The use of telehealth as described in subsection (2) of this section is not an expansion of the scope of practice of a dental care provider.

(4) The board shall treat a dental care service that is delivered by a dental care provider through telehealth as described in subsection (2) of this section the same as the board treats the dental care service when delivered in person. The board shall apply identical quality and practice standards to a particular dental care service regardless of the method of delivery of the dental care service.

#### [OAR 818-001-0002. Definitions](#)

...

(17) “Teledentistry” is defined as the use of information technology and telecommunications to facilitate the providing of dental primary care, consultation, education, and public awareness in the same manner as telehealth and telemedicine.

...

## Medicaid Reimbursement

### [House Bill 2508](#)

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 414.

SECTION 2. (1) As used in this section:

(a)(A) “Audio only” means the use of audio telephone technology, permitting real-time communication between a health care provider and a patient for the purpose of diagnosis, consultation or treatment.

(B) “Audio only” does not include: (i) The use of facsimile, electronic mail or text messages. (ii) The delivery of health services that are customarily delivered by audio telephone technology and customarily not billed as separate services by a health care provider, such as the sharing of laboratory results.

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- (b) "Telemedicine" means the mode of delivering health services using information and telecommunication technologies to provide consultation and education or to facilitate diagnosis, treatment, care management or self-management of a patient's health care.
- (2) To encourage the efficient use of resources and to promote cost-effective procedures in accordance with ORS 413.011 (1)(L), the Oregon Health Authority shall reimburse the cost of health services delivered using telemedicine, including but not limited to:
- (a) Health services transmitted via landlines, wireless communications, the Internet and telephone networks;
  - (b) Synchronous or asynchronous transmissions using audio only, video only, audio and video and transmission of data from remote monitoring devices; and
  - (c) Communications between providers or between one or more providers and one or more patients, family members, caregivers or guardians.
- (3)(a) The authority shall pay the same reimbursement for a health service regardless of whether the service is provided in person or using any permissible telemedicine application or technology.
- (b) Paragraph (a) of this subsection does not prohibit the use of value-based payment methods, including global budgets or capitated, bundled, risk-based or other value-based payment methods, and does not require that any value-based payment method reimburse telemedicine health services based on an equivalent fee-for-service rate.
- (4) The authority shall include the costs of telemedicine services in its rate assumptions for payments made to clinics or other providers on a prepaid capitated basis.
- (5) This section does not require the authority or a coordinated care organization to pay a provider for a service that is not included within the Healthcare Procedure Coding System or the American Medical Association's Current Procedural Terminology codes.
- (6) The authority shall adopt rules to ensure that coordinated care organizations reimburse the cost of health services delivered using telemedicine, consistent with subsections (2) and (3) of this section.

#### [Division 120](#)

#### [MEDICAL ASSISTANCE PROGRAMS](#)

#### **410-120-1180**

#### **Medical Assistance Benefits: Out-of-State Services**

(1) A provider located in a state other than Oregon whose services are rendered in that state shall be licensed and otherwise certified by the proper agencies in the state of residence as qualified to render the services. Certain cities within 75 miles of the Oregon border may be closer for Oregon residents than major cities in Oregon, and therefore, these areas are considered contiguous areas, and providers are treated as providing in-state services.

#### [Health Systems Division: Medical Assistance Programs - Chapter 410](#)

#### [Division 120](#)

#### [MEDICAL ASSISTANCE PROGRAMS](#)

#### **410-120-1990**

#### **Telehealth**

(1) For the purpose of this general rule, the Authority defines telehealth as the use of electronic information and telecommunications technologies to support and promote long-distance clinical healthcare, patient and professional health-related education, public health and health administration.

- (a) Information related to telehealth services may be transmitted via landlines and wireless communications, including the Internet and telephone networks;

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(b) Services can be synchronous (using audio and video, video only or audio-only) or asynchronous (using audio and video, audio, or text-based media) and may include transmission of data from remote monitoring devices. Communications may be between providers, or between one or more providers and one or more patients, family members/caregivers /guardians.

(2) Telehealth encompasses different types of programs, services and delivery mechanisms for medically appropriate services for covered physical, behavioral and oral health conditions within the patient's defined benefit package. This overarching fee for service rule applies to all program-specific rules or as set forth in the individual program provider rules. Providers are prohibited from excluding or otherwise limiting OHP members to using exclusively telehealth services, except where Authority has implemented section (7) of this rule.

(3) Patient choice and accommodation for telehealth shall encompass the following standards and services:

(a) Providers shall provide meaningful access to telehealth services by assessing patients' capacities to use specific approved methods of telehealth delivery that comply with accessibility standards including alternate formats, and provides the optimal quality of care for the patient given their capacity;

(b) Pursuant to Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act and the corresponding Code of Federal Regulation (CFR) at 45 CFR Part 92 (Section 1557) and The Americans with Disabilities Act and Amendments Act of 2008 (ADA), providers' telehealth services shall accommodate the needs of individuals who have difficulty communicating due to a medical condition, who need accommodation due to a disability, advanced age or who have limited English proficiency (LEP) and including providing access to auxiliary aids and services as defined in Code of Federal Regulation (CFR) at 45 CFR Part 92 (Section 1557);

(c) Providers shall provide meaningful access to health care services for LEP and Deaf and hard of hearing patients and their families by working with qualified and certified health care interpreters, to provide language access services as described in OAR 333-002-0040;

(d) Providers' telehealth services shall be culturally and linguistically appropriate as described in the relevant standards:

(A) National Culturally and Linguistically Appropriate Services (CLAS) Standards:  
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

(B) Tribal based practice standards:  
<https://www.oregon.gov/OHA/HSD/AMH/Pages/EBP.aspx>.

(C) Services shall be provided using a trauma informed approach. "Trauma Informed Approach" means approach undertaken by providers and healthcare or human services programs, organizations, or systems in providing mental health and substance use disorders treatment wherein there is a recognition and understanding of the signs and symptoms of trauma in, and the intensity of such trauma on, individuals, families, and others involved within a program, organization, or system. It then considers those signs, symptoms, and their intensity and fully integrates that knowledge when implementing and providing potential paths for recovery from mental health or substance use disorders. The Trauma Informed Approach also means that providers and healthcare or human services programs, organizations, or systems can actively resist re-traumatization of the individuals being served within their respective entities.

(4) Privacy and security standards for telehealth services shall be met by satisfying the following:

(a) Prior to the delivery of services via a telehealth modality, a patient oral, recorded, or written consent to receive services using a telehealth delivery method in the language that the patient understands must be obtained and documented by Providers annually. Consent

must be updated at least annually thereafter. For LEP and Deaf and hard of hearing patients and their families, providers must use qualified and certified health care interpreters when obtaining patient consent.

(b) Consistent with ORS 109.640, provision of birth control information and services shall be provided to any person regardless of age without consent of parent or legal guardian.

(c) Consistent with ORS 109.640, provision of any other medical or dental diagnosis and treatment shall be provided to any person 15 years of age or older without consent of parent or legal guardian.

(d) Services provided using a telehealth platform shall comply with Health Insurance Portability and Accountability Act (HIPAA), <https://aspe.hhs.gov/report/health-insurance-portability-and-accountability-act-1996>, and with the Authority's Privacy and Confidentiality Rules (Chapter 943 Division 14) except as noted in section (7) below.

(e) The patient may be located in the community, or in a health care setting.

(f) OHP enrolled providers may be located in any location where patient privacy and confidentiality can be ensured.

(g) Persons providing interpretive services and supports shall be in a location where patient privacy and confidentiality can be ensured.

(5) Telehealth providers shall meet the following requirements:

(a) Shall be enrolled with the Authority as an Oregon Health Plan (OHP) provider, per 410-120-1260.

(b) Shall provide services via telehealth that are within their respective certification or licensing board's scope of practice and comply with telehealth requirements including, but not limited to:

(A) Documenting patient and provider agreement of consent to receive services;

(B) Allowed physical location of provider and patient;

(C) Establishing or maintaining an appropriate provider-patient relationship.

(c) Providers billing for covered telehealth services are responsible for:

(A) Complying with HIPAA and the Authority's Privacy and Confidentiality Rules and security protections for the patient in connection with the telehealth communication and related records requirements (OAR chapter 943 division 14 and 120, OAR 410-120-1360 and 1380, 42 CFR Part 2, if applicable, and ORS 646A.600 to 646A.628 (Oregon Consumer Identity Theft Protection Act) except as noted in section (7) below;

(B) Obtaining and maintaining technology used in telehealth communication that is compliant with privacy and security standards in HIPAA and the Authority's Privacy and Confidentiality Rules described in subsection (A) except as noted in section (7) below;

(C) Developing and maintaining policies and procedures to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized persons and timely breach reporting;

(D) Maintaining clinical and financial documentation related to telehealth services as required in OAR 410-120-1360 and any program specific rules in OAR Ch 309 and Ch 410;

(E) Complying with all federal and state statutes as required in OAR 410-120-1380.

(6) Authority will only pay for telehealth services meeting all of the following requirements:

(a) Services provided shall be medically and clinically appropriate for covered conditions within the Health Evidence Review Commission's (HERC) prioritized list and in compliance with relevant guideline notes;

(b) The Authority shall provide reimbursement for telehealth services at the same reimbursement rate as if it were provided in person. As a condition of reimbursement, providers shall agree to reimburse Certified and Qualified Health Care Interpreters (HCIs)

for interpretation services provided via telehealth at the same rate as if interpretation services were provided in-person, per OARs 410-141-3515(12) and 410-141-3860(12);  
(c) When allowed by individual certification or licensing boards' scope of practice standards, telehealth delivered services for covered conditions are covered:

(A) When an established relationship exists between a provider and patient as defined by a patient who has received in-person professional services from the physician or other qualified health care professional within the same practice within the past three years; and

(B) For establishing a patient-provider relationship.

(d) All physical, behavioral and oral telehealth services except School Based Health Services (SBHS) shall include Place of Service code 02;

(e) All claim types except Dental services, shall use modifiers GT or 95 when the telehealth delivered service utilizes a synchronous audio and video modality. When provision of the same service via synchronous audio and video is not available or feasible (e.g. the patient declines to enable video, or necessary consents cannot reasonably be obtained with appropriate documentation in patient's medical record) the claim should not include any modifiers but should continue billing Place of Service as 02.

(7) In the event of a declared emergency or changes in federal requirements, the Authority may adopt flexibilities to remove administrative barriers and support telehealth delivered services:

(a) The Authority will follow guidance from the US Department of Health and Human Services (HHS) Office for Civil Rights (OCR) which may allow enforcement discretion related to privacy or security requirements;

(b) The Authority may expand network capacity through remote care and telehealth services provided across state lines;

(c) The Authority may expand access to telehealth services for new patients.

## Oregon Administrative Rules

### Health Systems Division: Medical Assistance Programs - Chapter 410

#### Division 123

#### DENTAL/DENTURIST SERVICES

#### [OAR 410-123-1060. Definition of Terms](#)

...

(45) "Teledentistry" means the modalities specified in OAR 410-123-1265, using electronic and telecommunications technologies, for the distance delivery of dental care services and clinical information designed to improve a patient's health status and to enhance delivery of the health care services and clinical information.

...

#### [OAR 410-123-1265 Teledentistry](#)

(1) Teledentistry can take multiple forms, both synchronous and asynchronous, including but not limited to:

(a) Live video, a two-way interaction between a patient and dentist using audiovisual technology;

(b) Store and forward, an asynchronous transmission of recorded health information such as radiographs, photographs, video, digital impressions, or photomicrographs transmitted through a secure electronic communication system to a dentist, and it is reviewed at a later

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- point in time by a dentist. The dentist at a distant site reviews the information without the patient being present in real time;
- (c) Remote patient monitoring, where personal health and dental information is collected by dental care providers in one location then transmitted electronically to a dentist in a distant site location for use in care; and
  - (d) Mobile communication devices such as cell phones, tablet computers, or personal digital assistants may support mobile dentistry, health care, public health practices, and education.
- (2) All billing requirements stated in this rule apply to all delivery modalities referenced in section (5) of this rule.
- (3) Billing Provider Requirements, as referenced in OAR 410-120-1990:
- (a) Dentists providing Medicaid services must be licensed to practice dentistry within the State of Oregon or within the contiguous area of Oregon and must be enrolled as a Health Systems Division (Division) provider;
  - (b) Providers billing for covered teledentistry/telehealth services are responsible for the following:
    - (A) Complying with Health Insurance Portability and Accountability Act (HIPAA) and Oregon Health Authority (Authority) Confidentiality and Privacy Rules and security protections for the patient in connection with the telemedicine communication and related records. See OAR 410-120-1990.
    - (B) Obtaining and maintaining technology used in the telehealth communication that is compliant with privacy and security standards in HIPAA and Department Privacy and Confidentiality Rules described in subsection (5)(b)(A);
    - (C) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized individuals;
    - (D) Maintaining clinical and financial documentation related to telehealth services as required in OARs 410-120-1360 and 410-120-1990.
  - (c) A patient receiving services through teledentistry shall be notified of the right to receive interactive communication with the distant dentist and shall receive an interactive communication with the distant dentist upon request;
  - (d) The patient's chart documentation shall reflect notification of the right to interactive communication with the distant site dentist;
  - (e) A patient may request to have real time communication with the distant dentist at the time of the visit or within 30 days of the original visit.
- (4) General Billing Requirements:
- (a) Unless authorized in OAR 410-120-1200 Exclusions or OAR 410-120-1990, other types of telecommunications such as telephone calls, images transmitted via facsimile machines, and electronic mail are not covered:
    - (A) When those types are not being used in lieu of teledentistry, due to limited teledentistry equipment access; or
    - (B) When those types and specific services are not specifically allowed in this rule per the Oregon Health Evidence Review Commission's Prioritized List of Health Services.
  - (b) The dentist may bill for teledentistry on the same type of claim form as other types of procedures unless in conflict with the Dental Services rules;
  - (c) All Dental Services rules, criteria, and limits apply to teledentistry services in the same manner as other services;
  - (d) As stated in ORS 679.543 and this rule, payment for dental services may not distinguish between services performed using teledentistry, real time, or store-and-forward and services performed in-person.

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- (5) Teledentistry billing requirements:
  - (a) The dentist who completes diagnosis and treatment planning and the oral evaluation also documents these services using the traditional CDT codes. This provider also reports the teledentistry event using D9995 or D9996 as appropriate. See the Dental Billing Instructions for details at: [www.oregon.gov/oha/HSD/OHP/Pages/Policy-Dental.aspx](http://www.oregon.gov/oha/HSD/OHP/Pages/Policy-Dental.aspx);
  - (b) The originating site may bill a CDT code only if a separately identifiable service is performed within the scope of practice of the practitioner providing the service. The service must meet all criteria of the CDT code billed.
- (6) An assessment-D0191 is a limited inspection performed to identify possible signs of oral or systemic disease, malformation or injury, and the potential need for referral for diagnosis and treatment. This code may be billed using the modality of teledentistry:
  - (a) When D0191 is reported in conjunction with an oral evaluation (D0120-D0180) using teledentistry, D0191 shall be disallowed even if done by a different provider;
  - (b) The assessment and evaluation may not be billed or covered by both the originating site dental care provider and a distant site dentist using the modality of teledentistry, even if due to store-and-forward review, if the dates of services are on different days.

## Oregon Administrative Rules

### Health Systems Division: Medical Assistance Programs - Chapter 410

#### Division 141 OREGON HEALTH PLAN

#### [410-141-3566 Telehealth Service and Reimbursement Requirements](#)

- (1) For the purpose of this rule, the Authority defines telehealth as the use of electronic information and telecommunications technologies to support and promote long-distance clinical health care, patient and professional health-related education, public health and health administration.
  - (a) Information related to telehealth services may be transmitted via landlines, and wireless communications, including the Internet and telephone networks;
  - (b) Services can be synchronous (using audio and video, video only or audio only) or asynchronous (using audio and video, audio, or text-based media) and may include transmission of data from remote monitoring devices. Communications may be between providers, or be between one or more providers and one or more patients, family members /caregivers /guardians).
- (2) Telehealth encompasses different types of programs, services and delivery mechanisms for medically appropriate services for covered physical, behavioral and oral health conditions within the patient's defined benefit package.
- (3) CCOs shall provide reimbursement for telehealth services and reimburse Certified and Qualified Health Care Interpreters (HCIs) for interpretation services provided via telemedicine at the same reimbursement rate as if it were provided in person. This requirement does not supersede the CCOs direct agreement(s) with providers, including but not limited to, alternative payment methodologies, quality and performance measures or Value Based Payment methods described in the CCO contract. However, nothing either in this requirement or within CCO direct agreement(s) with providers referenced herein supersedes any federal or state requirements with regard to the provision and coverage of health care interpreter services.
- (4) Providers are prohibited from excluding or otherwise limiting OHP members to using exclusively telehealth services, except where Authority has implemented section (9) of this rule.
- (5) CCOs shall ensure patient choice and accommodation encompass the following standards and services:
  - (a) Consistent with Care Coordination requirements in OAR 410-141- 3865, CCOs shall work with their contracted providers to ensure meaningful access to services by assessing

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members' capacities to use specific approved methods of telehealth delivery that comply with accessibility standards including alternate formats, and provides the optimal quality of care for the patient given their capacity;

(b) Pursuant to Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act and the corresponding Code of Federal Regulation (CFR) at 45 CFR Part 92 (Section 1557) and The Americans with Disabilities Act and Amendments Act of 2008 (ADA), CCOs shall provide access to auxiliary aids and services to ensure that telehealth services accommodate the needs of individuals who have difficulty communicating due to a medical condition, who need accommodation due to a disability, advanced age or who have limited English proficiency (LEP);

(c) CCOs shall ensure access to health care services for LEP and Deaf and hard of hearing patients and their families through the use of qualified and certified health care interpreters, embedded or third-party interpretive services to provide meaningful language access services as described in OAR 333-002-0040;

(d) CCOs shall ensure that telehealth services provided are culturally and linguistically appropriate as described in the relevant standards:

(A) National Culturally and Linguistically Appropriate Services (CLAS) Standards,

<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>;

(B) Tribal based practice standards,

<https://www.oregon.gov/OHA/HSD/AMH/Pages/EBP.aspx>;

(C) Trauma-informed approach to care as defined in 410-141-3500.

(6) Consistent with OAR 410-120-1990 privacy and security standards must be met by satisfying the following:

(a) Prior to the delivery of services via a telehealth modality, a patient oral, recorded, or written consent to receive services using a telehealth delivery method shall be obtained and documented annually. Consent must be updated at least annually thereafter. For LEP and Deaf and hard of hearing patients and their families, providers must use qualified and certified health care interpreters, when obtaining patient consent.

(b) Consistent with ORS 109.640, provision of birth control information and services shall be provided to any person regardless of age without consent of parent or legal guardian.

(c) Consistent with ORS 109.640, provision of any other medical or dental diagnosis and treatment shall be provided to any person 15 years of age or older without consent of parent or legal guardian.

(d) Services provided using a telehealth platform shall comply with Health Insurance Portability and Accountability Act (HIPAA, <https://aspe.hhs.gov/report/health-insurance-portability-and-accountability-act-1996>) and with the Authority's Privacy and Confidentiality Rules (Chapter 943 Division 14) except as noted in section (9) below.

(e) The patient may be located in the community or in a health care setting.

(f) Providers may be located in any location where privacy can be ensured.

(g) Persons providing interpretive services and supports shall be in any location where patient privacy and confidentiality can be ensured.

(7) CCOs shall ensure their network providers offer telehealth services that meet the following requirements:

(a) Provide services via telehealth that are within their respective certification or licensing board's scope of practice and comply with telehealth requirements including but not limited to:

(A) Documenting patient and provider agreement of consent to receive services;

(B) Allowed physical location of provider and patient;

(C) Establishing or maintaining an appropriate provider-patient relationship.

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- (b) Complying with HIPAA and the Authority's Privacy and Confidentiality Rules and security protections for the patient in connection with the telehealth communication and related records requirements (OAR chapter 943 division 14 and 120, OAR 410-120-1360 and 1380, 42 CFR Part 2, if applicable, and ORS 646A.600 to 646A.628 (Oregon Consumer Identity Theft Protection Act)) except as noted in section (9) below;
  - (c) Obtaining and maintaining technology used in telehealth communication that is compliant with privacy and security standards in HIPAA and the Authority's Privacy and Confidentiality Rules described in subsection (A) except as noted in section (9) below;
  - (d) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized persons;
  - (e) Maintaining clinical and financial documentation related to telehealth services as required in OAR 410-120-1360;
  - (f) Complying with all federal and state statutes as required in OAR 410-120-1380.
- (8) CCO reimbursement to network providers offering telehealth services shall meet the following requirements:
- (a) Services provided shall be medically and clinically appropriate for covered conditions within the Health Evidence Review Commission's (HERC) prioritized list and in compliance with relevant guideline notes;
  - (b) Dependent on individual certification or licensing board's scope of practice standards, telehealth delivered services for covered conditions are covered when an established relationship exists between a provider and patient as defined by a patient who has received in person professional services from the physician or other qualified health care professional within the same practice within the past three years, and for establishing a patient-provider relationship;
  - (c) For all claim types except dental, CCOs shall ensure that encounter submissions for services covered using synchronous audio and video include modifiers GT or 95, and can be billed with either telephone codes (e.g. 99441) or regular in-person codes. For all telehealth services including dental, CCOs shall ensure that encounter submissions include Place of Service code 02;
  - (d) All physical, behavioral and oral telehealth services except School Based Health Services (SBHS) shall include Place of Service code 02;
  - (e) When provision of the same service via synchronous audio and video is not available or feasible, e.g. the patient declines to enable video, or necessary consents cannot reasonably be obtained with appropriate documentation in patient's medical record, then encounter submissions should not include any modifiers but should continue billing Place of Service as 02.
- (9) In the event of a declared emergency or changes in federal requirements, the Authority may adopt flexibilities to remove administrative barriers and support telehealth delivered services:
- (a) The Authority will follow guidance from the US Department of Health and Human Services (HHS) Office for Civil Rights (OCR) which may allow enforcement discretion related to privacy or security requirements;
  - (b) The Authority may expand network capacity through remote care and telehealth services provided across state lines;
  - (c) The Authority may expand access to telehealth services for new patients;
  - (d) Should the Authority exercise options in this section (9), all CCO obligations for Network Adequacy requirements as described in OAR 410-141-3515 remain in full effect.

## Private Payer Reimbursement

### 743A.058 Telemedical services, as amended by [HB 2508](#)

ORS 743A.058 is amended to read: 743A.058.

(1) As used in this section:

(a)(A) "Audio only" means the use of audio telephone technology, permitting real-time communication between a health care provider and a patient for the purpose of diagnosis, consultation or treatment.

(B) "Audio only" does not include: (i) The use of facsimile, electronic mail or text messages. (ii) The delivery of health services that are customarily delivered by audio telephone technology and customarily not billed as separate services by a health care provider, such as the sharing of laboratory results.

(b) "Health benefit plan" has the meaning given that term in ORS 743B.005.(c) "Health professional" means a person licensed, certified or registered in this state to provide health care services or supplies.

(d) "Health service" means physical, oral and behavioral health treatment or service provided by a health professional.

(e) "Originating site" means the physical location of the patient.

(f) "State of emergency" includes: (A) A state of emergency declared by the Governor under ORS 401.165; or

(B) A state of public health emergency declared by the Governor under ORS 433.441.

(g) "Telemedicine" means the mode of delivering health services using information and telecommunication technologies to provide consultation and education or to facilitate diagnosis, treatment, care management or self-management of a patient's health care.

(2) A health benefit plan and a dental-only plan must provide coverage of a health service that is provided using [synchronous two-way interactive video conferencing] telemedicine if:

(a) The plan provides coverage of the health service when provided in person by a health professional;

(b) The health service is medically necessary;

(c) The health service is determined to be safely and effectively provided [using synchronous two-way interactive video conferencing] using telemedicine according to generally accepted health care practices and standards; and

(d) The application and technology used to provide the health service meet all standards required by state and federal laws governing the privacy and security of protected health information.

(3) Except as provided in subsection

(4) of this section, permissible telemedicine applications and technologies include:

(a) Landlines, wireless communications, the Internet and telephone networks; and

(b) Synchronous or asynchronous transmissions using audio only, video only, audio and video and transmission of data from remote monitoring devices.

(4) During a state of emergency, a health benefit plan or dental-only plan shall provide coverage of a telemedicine service delivered to an enrollee residing in the geographic area specified in the declaration of the state of emergency, if the telemedicine service is delivered using any commonly available technology, regardless of whether the technology meets all standards required by state and federal laws governing the privacy and security of protected health information.

(5) A health benefit plan and a dental-only plan may not:

(a) Distinguish between rural and urban originating sites in providing coverage under subsection (2) of this section or restrict originating sites that qualify for reimbursement.

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- (b) Restrict a health care provider to delivering services only in person or only via telemedicine.
  - (c) Use telemedicine health care providers to meet network adequacy standards under ORS 743B.505.
  - (d) Require an enrollee to have an established patient-provider relationship with a provider to receive telemedicine health services from the provider or require an enrollee to consent to telemedicine services in person.
  - (e) Impose additional certification, location or training requirements for telemedicine providers or restrict the scope of services that may be provided using telemedicine to less than a provider's permissible scope of practice.
  - (f) Impose more restrictive requirements for telemedicine applications and technologies than those specified in subsection (3) of this section.
  - (g) Impose on telemedicine health services different annual dollar maximums or prior authorization requirements than the annual dollar maximums and prior authorization requirements imposed on the services if provided in person.
  - (h) Require a medical assistant or other health professional to be present with an enrollee at the originating site.
  - (i) Deny an enrollee the choice to receive a health service in person or via telemedicine.
  - (j) Reimburse an out-of-network provider at a rate for telemedicine health services that is different than the reimbursement paid to the out-of-network provider for health services delivered in person.
  - (k) Restrict a provider from providing telemedicine services across state lines if the services are within the provider's scope of practice and:
    - (A) The provider has an established practice within this state;
    - (B) The provider's employer operates health clinics or licensed health care facilities in this state;
    - (C) The provider has an established relationship with the patient; or
    - (D) The patient was referred to the provider by the patient's primary care or specialty provider located in this state.
    - (L) Prevent a provider from prescribing, dispensing or administering drugs or medical supplies or otherwise providing treatment recommendations to an enrollee after having performed an appropriate examination of the enrollee in person, through telemedicine or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.
  - (m) Establish standards for determining medical necessity for services delivered using telemedicine that are higher than standards for determining medical necessity for services delivered in person.
- (6) A health benefit plan and a dental-only plan shall:
- (a) Work with contracted providers to ensure meaningful access to telemedicine services by assessing an enrollee's capacity to use telemedicine technologies that comply with accessibility standards, including alternate formats, and providing the optimal quality of care for the enrollee given the enrollee's capacity;
  - (b) Ensure access to auxiliary aids and services to ensure that telemedicine services accommodate the needs of enrollees who have difficulty communicating due to a medical condition, who need an accommodation due to disability or advanced age or who have limited English proficiency;
  - (c) Ensure access to telemedicine services for enrollees who have limited English proficiency or who are deaf or hard-of-hearing by providing interpreter services reimbursed at the same rate as interpreter services provided in person; and

- (d) Ensure that telemedicine services are culturally and linguistically appropriate and trauma-informed.
- (7) The coverage under subsection (2) of this section is subject to:
  - (a) The terms and conditions of the health benefit plan or dental-only plan; and
  - (b) Subject to subsection (8) of this section, the reimbursement specified in the contract between the plan and the health professional.
- (8)(a) A health benefit plan and dental-only plan must pay the same reimbursement for a health service regardless of whether the service is provided in person or using any permissible telemedicine application or technology.
  - (b) Paragraph (a) of this subsection does not prohibit the use of value-based payment methods, including capitated, bundled, risk-based or other value-based payment methods, and does not require that any value-based payment method reimburse telemedicine health services based on an equivalent fee-for-service rate.
- (9) This section does not require a health benefit plan or dental-only plan to reimburse a health professional:
  - (a) For a health service that is not a covered benefit under the plan; [or]
  - (b) Who has not contracted with the plan; or
  - (c) For a service that is not included within the Healthcare Procedure Coding System or the American Medical Association's Current Procedural Terminology codes or related modifier codes.
- (10) This section is exempt from ORS 743A.001

## Pennsylvania

Pennsylvania statutes and regulations do not address teledentistry or telehealth conducted by oral health professionals. The [Center for Connected Health Policy](#) has assembled an overview of telehealth laws in the state.

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## Rhode Island

### Requirements and Permissible Practices

#### § 5-31.1-1. Definitions as amended by SB 4

As used in this chapter:

...

(18) “Telemedicine” has the same meaning as provided in § 27-81-3.

#### 5-31.1-40. Telemedicine in the practice of dentistry. As amended by SB 4

(a) Professionals licensed under this chapter utilizing telemedicine in the practice of dentistry are subject to the same standard of care that would apply to the provision of the same dental care service or procedure in an in-person setting.

### Private Payer

#### CHAPTER 27-81

#### The Telemedicine Coverage Act

#### § 27-81-1. Title.

This act shall be known as, and may be cited as, the “Telemedicine Coverage Act.”

#### § 27-81-2. Purpose.

The general assembly hereby finds and declares that:

(1) The advancements and continued development of medical and communications technology have had a profound impact on the practice of medicine and offer opportunities for improving the delivery, cost, and accessibility of health care, particularly in the area of telemedicine.

(2) Geography, weather, availability of specialists, transportation, and other factors can create barriers to accessing the appropriate health care, including behavioral health care, and one way to provide, ensure, or enhance access to health care given these barriers is through the appropriate use of technology to allow healthcare consumers access to qualified healthcare providers.

(3) There is a need in this state to embrace efforts that will encourage health insurers and healthcare providers to support the use of telemedicine, and that will also encourage all state agencies to evaluate and amend their policies and rules to remove any regulatory barriers prohibiting the use of telemedicine services.

#### § 27-81-3. Definitions.

As used in this chapter:

(1) “Distant site” means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

(2) “Healthcare facility” means an institution providing healthcare services or a healthcare setting, including, but not limited to: hospitals and other licensed, inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory and imaging centers; and rehabilitation and other therapeutic-health settings.

(3) “Healthcare professional” means a physician or other healthcare practitioner licensed, accredited, or certified to perform specified healthcare services consistent with state law.

(4) “Healthcare provider” means a healthcare professional or a healthcare facility.

(5) “Healthcare services” means any services included in the furnishing to any individual of medical, podiatric, or dental care, or hospitalization, or incident to the furnishing of that care or

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hospitalization, and the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

(6) "Health insurer" means any person, firm, or corporation offering and/or insuring healthcare services on a prepaid basis, including, but not limited to, a nonprofit service corporation, a health maintenance organization, or an entity offering a policy of accident and sickness insurance.

(7) "Health maintenance organization" means a health maintenance organization as defined in chapter 41 of this title.

(8) "Nonprofit service corporation" means a nonprofit hospital-service corporation as defined in chapter 19 of this title, or a nonprofit medical-service corporation as defined in chapter 20 of this title.

(9) "Originating site" means a site at which a patient is located at the time healthcare services are provided to them by means of telemedicine, which can be a patient's home where medically appropriate; provided, however, notwithstanding any other provision of law, health insurers and healthcare providers may agree to alternative siting arrangements deemed appropriate by the parties.

(10) "Policy of accident and sickness insurance" means a policy of accident and sickness insurance as defined in chapter 18 of this title.

(11) "Store-and-forward technology" means the technology used to enable the transmission of a patient's medical information from an originating site to the healthcare provider at the distant site without the patient being present.

(12) "Telemedicine" means the delivery of clinical healthcare services by means of real time, two-way electronic audiovisual communications, including the application of secure video conferencing or store-and-forward technology to provide or support healthcare delivery, which facilitate the assessment, diagnosis, treatment, and care management of a patient's health care while such patient is at an originating site and the healthcare provider is at a distant site, consistent with applicable federal laws and regulations. Telemedicine does not include an audio-only telephone conversation, email message, or facsimile transmission between the provider and patient, or an automated computer program used to diagnose and/or treat ocular or refractive conditions.

#### **§ 27-81-4. Coverage of telemedicine services.**

(a) Each health insurer that issues individual or group accident and sickness insurance policies for healthcare services and/or provides a healthcare plan for healthcare services shall provide coverage for the cost of such covered healthcare services provided through telemedicine services, as provided in this section.

(b) A health insurer shall not exclude a healthcare service for coverage solely because the healthcare service is provided through telemedicine and is not provided through in-person consultation or contact, so long as such healthcare services are medically appropriate to be provided through telemedicine services and, as such, may be subject to the terms and conditions of a telemedicine agreement between the insurer and the participating healthcare provider or provider group.

(c) Benefit plans offered by a health insurer may impose a deductible, copayment, or coinsurance requirement for a healthcare service provided through telemedicine.

(d) The requirements of this section shall apply to all policies and health plans issued, reissued, or delivered in the state of Rhode Island on and after January 1, 2018.

(e) This chapter shall not apply to: short-term travel, accident-only, limited or specified disease; or individual conversion policies or health plans; nor to policies or health plans designed for

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issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare; or any other similar coverage under state or federal governmental plans.

**§ 27-81-5. Severability.**

If any provision of this chapter or of any rule or regulation made under this chapter, or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, or regulation and the application of the provision to other persons or circumstances shall not be affected by this invalidity. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of the chapter.

## South Carolina

South Carolina statutes and regulations do not address teledentistry or telehealth conducted by oral health professionals. The [Center for Connected Health Policy](#) has assembled an overview of telehealth laws in the state.

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# South Dakota

## Requirements and Permissible Practices

### South Dakota Codified Laws

#### Chapter [34-52](#)

#### Telehealth Utilization by Health Care Professionals

##### [SDCL § 34-52-1. Definitions](#) as amended by [SB 96](#)

Terms used in this chapter mean:

- (1) "Health care professional," as defined in § 58-17F-1;
- (2) "Health care facility," any office or institution where health services are provided, including any hospital, clinic, ambulatory surgery center, outpatient care facility, nursing home, assisted living facility, laboratory, or office of a health care professional;
- (3) "Originating site," a site where a patient is located at the time health care services are delivered to the patient via telehealth;
- (4) "Store-and-forward technology," secure electronic information, imaging, or data, including audio, video, and data communication that is transferred or recorded or otherwise stored for asynchronous delivery of health care services to a patient; and
- (5) "Telehealth," the use of secure electronic information, imaging, and communication technologies by a health care professional to deliver health care services to a patient, including interactive audio-video, interactive audio with store and forward, store-and-forward technology, and remote patient monitoring. Telehealth does not include the delivery of health care services through electronic means under the provisions of chapter 27A-10.

##### [SDCL § 34-52-2. Treatment of patients through telehealth--Requirements.](#)

Any health care professional treating a patient in the state through telehealth shall be:

- (1) Fully licensed to practice in the state or employed by a licensed health care facility, an accredited prevention or treatment facility, a community support provider, a nonprofit mental health center, or a licensed child welfare agency under § [36-32-76](#); and
- (2) Subject to any rule adopted by the applicable South Dakota licensing body.

Consultation between a resident health care professional and a nonresident health care professional under this chapter is governed by § [36-2-9](#).

##### [SDCL § 34-52-3. Provider-patient relationship required—Exceptions](#) as amended by [SB 96](#)

Any health care professional who utilizes telehealth shall ensure that a proper health provider-patient relationship is established and includes:

- (1) Verifying and authenticating the location and, to the extent reasonable, identifying the requesting patient;
- (2) Disclosing and validating the health care professional's identity and applicable credentials, as appropriate;
- (3) Obtaining appropriate consent for treatment from a requesting patient after disclosure regarding the delivery models and treatment methods or limitations;
- (4) Establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing;
- (5) Discussing with the patient the diagnosis and its evidentiary basis and the risks and benefits of various treatment options;
- (6) Ensuring appropriate follow-up care for the patient;

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- (7) Providing a visit summary to the patient or consult note; and
- (8) Utilizing technology sufficient to evaluate or diagnose and appropriately treat a patient for the condition as presented in accordance with the applicable standard of care. Exceptions to the requirements of this section include on-call, cross coverage situations, and consultation with another health care professional who has an ongoing health care provider relationship with the patient and agrees to supervise the patient's care and emergency treatment.

**[SDCL § 34-52-4. Treatment and consultation recommendations.](#)**

Treatment and consultation recommendations made through telehealth via a health care professional shall be appropriately provided and within the health care professional's scope of practice, training, and experience.

**[SDCL § 34-52-5. Face-to-face examination using real-time audio and visual technology.](#)**

A health care professional using telehealth to provide medical care to any patient located in the state shall provide an appropriate face-to-face examination using real-time audio and visual technology prior to diagnosis and treatment of the patient, if a face-to-face encounter would otherwise be required in the provision of the same service not delivered via telehealth.

**[SDCL § 34-52-6. Prescribing drugs.](#)**

Without a proper provider-patient relationship, a health care professional using telehealth may not prescribe a controlled drug or substance, as defined by § [34-20B-3](#), solely in response to an internet questionnaire or consult, including any encounter via telephone.

**[SDCL § 34-52-7. Informed consent.](#)**

A health care professional using telehealth shall follow any applicable state or federal statute or rule for informed consent.

**[SDCL § 34-52-8. Medical records.](#)**

A health care professional or the originating site treating a patient through telehealth shall:

- (1) Maintain a complete record of the patient's care;
- (2) Disclose the record to the patient consistent with state and federal laws; and
- (3) Follow applicable state and federal statutes and regulations for medical record retention and confidentiality.

**[SDCL § 36-6A-1. Definitions](#)**

Terms used in this chapter mean:

...

- (31) "Teledentistry," the practice of dentistry where the patient and the dentist are not in the same physical location, and which utilizes the exchange of clinical information and images over remote distances.

**[SDCL § 36-6A-14. Powers and duties of board](#)**

The board may:

...

- (18) Establish standards for teledentistry;

...

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[SDCL § 36-6A-49.3. Teledentistry services to patient located in state is practice of dentistry in state](#)

Any person who, while located outside this state, practices dentistry through teledentistry and provides the dental services to a patient located in this state, is engaged in the practice of dentistry in this state.

[SDCL § 36-6A-49.4. Teledentistry services to comply with chapter as if services provided in person](#)

Any services provided by a licensee or registrant through teledentistry or electronic means shall comply with the provisions of this chapter as if the services were provided in person by a licensee or registrant.

[SDCL § 58-17F-1. Definitions.](#)

...

(8) "Health care professional," a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law;

...

**Private Payer**

[SDCL § 58-17-167. Definitions pertaining to telehealth coverage.](#)

Terms used in §§ [58-17-167](#) to [58-17-170](#), inclusive, mean:

- (1) "Health care professional," as defined in § [58-17F-1](#);
- (2) "Health care services," as defined in § [58-17F-1](#);
- (3) "Health insurer," as defined in § [58-17-100](#);
- (4) "Telehealth," the delivery of health care services through the use of HIPAA-compliant interactive audio-video. The term does not include the delivery of health care services through audio-only telephone, electronic mail message, text message, mail service, facsimile transmission, or any combination thereof.

[SDCL § 58-17-168. Coverage for health care services provided through telehealth.](#)

No health insurer may exclude a service for coverage solely because the service is provided through telehealth and not provided through in-person consultation or contact between a health care professional and a patient. Health care services delivered by telehealth must be appropriate and delivered in accordance with applicable law and generally accepted health care practices and standards prevailing at the time the health care services are provided, including rules adopted by the appropriate professional licensing board having oversight of the health care professional providing the health care services. Health insurers are not required to provide coverage for health care services that are not medically necessary.

This section does not:

- (1) Prohibit a health insurer from establishing criteria that a health care professional must meet to demonstrate the safety and efficacy of delivering a particular health care service via telehealth that the health insurer does not already reimburse other health care professionals for delivering via telehealth so long as the criteria are not unduly burdensome or unreasonable for the particular services;
- (2) Prevent a health insurer from requiring a health care professional to agree to certain documentation or billing practices designed to protect the health insurer or patients from

fraudulent claims so long as the practices are not unduly burdensome or unreasonable for the particular services; or

(3) Prevent a health insurer from including a deductible, copayment, or coinsurance requirement for a health care service provided via telehealth, if the deductible, copayment, or coinsurance is not in addition to and does not exceed the deductible, copayment, or coinsurance applicable if the same services were provided through in-person contact.

[SDCL § 58-17-169. Discrimination between coverage for services provided in person and through telehealth prohibited.](#)

A health insurance policy, contract, or plan providing for third-party payment may not discriminate between coverage benefits for health care services that are provided in person and the same health care services that are delivered through telehealth as long as the services are appropriate to be provided through telehealth. Nothing in §§ [58-17-167](#) to [58-17-170](#), inclusive, prohibits a health insurer and a health care professional from entering into a contract for telehealth with terms subject to negotiation.

[SDCL § 58-17-170. Application of telehealth coverage requirements.](#)

The requirements of §§ [58-17-168](#) and [58-17-169](#) apply to any health insurer offering any individual or group health insurance policy, contract, certificate, or plan delivered, issued for delivery, or renewed in South Dakota on or after January 1, 2020. The requirements of §§ [58-17-168](#) and [58-17-169](#) do not apply to any plan, policy, or contract providing coverage only for:

- (1) Specified disease;
- (2) Hospital indemnity;
- (3) Fixed indemnity;
- (4) Accident-only;
- (5) Credit accident and health insurance;
- (6) Vision;
- (7) Prescription drug;
- (8) Medicare supplement;
- (9) Long-term care;
- (10) Disability income insurance;
- (11) Coverage issued as a supplement to liability insurance;
- (12) Workers' compensation or similar insurance;
- (13) Automobile medical payment insurance; or
- (14) Individual health benefit plans of six-months or less duration that are not renewable.

The requirements of §§ [58-17-168](#) and [58-17-169](#) do not apply to services offered that are not part of the policy, contract, certificate, or plan offered and for which there is no premium charged.

# Tennessee

## Requirements and Permissible Practices

Tenn. Code Ann. § 63-1-155 as amended by [HB 552](#), [SB 929](#) and [SB 1265](#)

(a) For the purposes of this section:

(1) "Healthcare provider" means:

- (A) An individual acting within the scope of a valid license issued pursuant to this title;
- (B) A state-contracted crisis service provider that is employed by a facility licensed under title 33;
- (C) An alcohol and drug abuse counselor licensed under title 68, chapter 24, part 6; or
- (D) A graduate who has completed, or a student actively enrolled in, a professional training program the educational standards of which meet the training requirements for a license under this title or title 68, chapter 24, part 6, as long as the graduate or student:
  - (i) Is providing telehealth services for the purpose of obtaining hours required for licensure or of otherwise fulfilling the educational requirements to apply for licensure; and
  - (ii) Is, at all times, supervised by an individual who is licensed under this title or title 68, chapter 24, part 6, with an unencumbered license;

(2) "Store-and-forward telemedicine services" means the use of asynchronous computer-based communications between a healthcare provider and patient for the purpose of diagnosis, consultation, or treatment of the patient at a distant site where there may be no in-person exchange between the healthcare provider and the patient; and

(3) "Telehealth," "telemedicine," and "provider-based telemedicine" mean:

- (A) The use of real time audio, video, or other electronic media and telecommunication technology that enables interaction between a healthcare provider and a patient for the purpose of diagnosis, consultation, or treatment of a patient at a distant site where there may be no in-person exchange between a healthcare provider and a patient; or
- (B) Store-and-forward telemedicine services.

(b) For the purposes of this section, a healthcare provider-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the provider. The consent by the patient may be expressed or implied consent; however, the provider-patient relationship is not created simply by the receipt of patient health information by a provider unless a prior provider-patient relationship exists. The duties and obligations created by the relationship do not arise until the healthcare provider:

- (1) Affirmatively undertakes to diagnose or treat the patient; or
- (2) Affirmatively participates in the diagnosis or treatment.

(c)

(1)

(A) A healthcare provider who delivers services through the use of telehealth is held to the same standard of professional practice as a similar licensee of the same practice area or specialty that is providing the same healthcare services through in-person encounters, and nothing in this section is intended to create any new standards of care.

(B) Notwithstanding subdivision (c)(1)(A), telehealth services must be provided in compliance with the guidelines created pursuant to part 4 of this chapter.

(2) The board or licensing entity governing any healthcare provider covered by this section shall not establish a more restrictive standard of professional practice for the practice of

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telehealth than that specifically authorized by the provider's practice act or other specifically applicable statute, including this chapter or title 53, chapter 10 or 11.

(3) This section does not apply to pain management clinics, as defined in § 63-1-301, chronic nonmalignant pain treatment, or those individuals licensed pursuant to chapter 12 of this title.

(d) Sections 63-6-231 and 63-6-214(b)(21) do not apply to the practice of telemedicine under this section.

(e) This section does not apply to or restrict the requirements of § 63-6-241.

(f) Section 63-6-204(a) also applies to telemedicine.

(g)

(1) Except as provided in subdivision (g)(2) and (3), to practice under this section a healthcare provider must be licensed to practice in this state or be a graduate or student meeting the requirements of subdivision (a)(1)(D).

(2) A physician must be licensed to practice under chapter 6 or 9 of this title in order to practice telemedicine pursuant to § 63-6-209(b), except as otherwise authorized by law or rule.

(3) An individual licensed in another state who would, if licensed in this state, qualify as a healthcare provider under subsection (a) may practice telehealth under this section while providing healthcare services on a volunteer basis through a free clinic pursuant to title 63, chapter 6, part 7.

(h)

(1) Notwithstanding subsection (a), for the purposes of this section "healthcare provider" means:

(A) Any provider licensed under this title;

(B) Any state-contracted crisis service provider that is employed by a facility licensed under title 33; or

(C) Any alcohol and drug abuse counselor licensed under title 68, chapter 24, part 6.

(2) This subsection (h) is repealed on April 1, 2022.

Tenn. Code Ann. § 63-5-108

(a) Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment, by nonsurgical, surgical or related procedures, of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body, provided by a dentist within the scope of such dentist's education, training, and experience, in accordance with the ethics of the profession and applicable law.

(b) Any person is deemed to be practicing dentistry who, either gratuitously or for a salary, fee, money or other remuneration, paid or to be paid, directly to the operator or to any person or agency:

...

(16) Authorizes the practice of "teledentistry" which, as used in this section, means the delivery of dental health care and patient consultation through the use of telehealth systems and technologies, including live, two-way interactions between a patient and a dentist licensed in this state using audiovisual telecommunications technology, or the secure transmission of electronic health records and medical data to a dentist licensed in this state to facilitate evaluation and treatment of the patient outside of a real-time or in-person interaction. Dentists who are licensed in this state and who deliver services using teledentistry shall establish protocols for the practice that should include proper methods of keeping the patient fully informed; proper safeguards ensuring that all state and federal laws and regulations relative to the privacy of health information are followed; proper

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documentation of all services or treatment rendered via teledentistry; proper procedures to ensure the referral of those patients requiring treatment beyond what can be provided via teledentistry to a dentist licensed in this state; and any such requirements as prescribed by the board of dentistry. Any and all services provided via teledentistry shall be consistent with the in-person provision of those services. Any and all services provided via teledentistry shall comply with this chapter and shall be provided in accordance with the rules of the board of dentistry.

...

### **Tenn. Code Ann. § 63-5-115. Dental hygienists; authorized practice**

(a) A duly licensed and registered dentist may employ licensed and registered dental hygienists, registered dental assistants and practical dental assistants. Such licensed and registered dental hygienists may practice as authorized in this section or § 63-5-108 only in the office of and under the direct and/or general supervision of a licensed and registered dentist, in authorized public health programs or at other locations otherwise authorized by this chapter. Such registered and/or practical dental assistants may practice as authorized in this section or § 63-5-108 only in the office of and under the direct supervision of a licensed and registered dentist except in authorized public health programs. No provisions in this chapter shall be construed as authorizing any licensed and registered dental hygienists, registered dental assistants or practical dental assistants to practice as such except as provided in this section.

(b) Definitions.

(1) DIRECT SUPERVISION. As used in this chapter regarding supervision of licensed and registered dental hygienists or registered dental assistants, "direct supervision" means the continuous presence of a supervising dentist within the physical confines of the dental office when licensed and registered dental hygienists or registered dental assistants perform lawfully assigned duties and functions;

(2) GENERAL SUPERVISION. As used in this chapter, "general supervision" is defined as those instances when the dentist is not present in the dental office or treatment facility while procedures are being performed by the dental hygienist, but the dentist has personally diagnosed the condition to be treated, has personally authorized the procedures being performed and will evaluate the performance of the dental hygienist.

(c) Licensed and registered dental hygienists and registered dental assistants are specifically permitted to participate unsupervised in educational functions involving organized groups or health care institutions regarding preventive oral health care. Dental hygienists are permitted to participate in health screenings and similar activities; provided, that no remuneration is given by the organized group to any hygienist or the hygienist's employer for participating in these activities.

(d)(1) Settings in which licensed and registered hygienists may engage in the provision of preventive dental care under the general supervision of a dentist through written protocol include nursing homes, skilled care facilities, nonprofit clinics and public health programs. Dental hygienists licensed and registered pursuant to this chapter are specifically permitted to render such preventive services as authorized in § 63-5-108 or by regulation of the board, as prescribed by the supervising dentist under a written protocol. Dental hygienists rendering such services shall be under the general supervision of a licensed dentist as specified in a written protocol between the supervising dentist and the hygienist which must be submitted in advance to the board. No dentist may enter into a written protocol with more than three (3) dental hygienists at any one time nor may any hygienist be engaged in a written protocol with more than three (3) dentists at any one time. The supervising dentist must process all patient billings. Each written protocol will be valid for a period of two (2) years at which time it must be

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renewed through resubmission to the board. Should a dentist cease to be the employer/supervisor of a dental hygienist where a written protocol is in force and on file with the board, the dentist must notify the board within ten (10) working days by certified mail, return receipt requested or electronic mail that the written protocol is no longer in force.

(2) Licensed and registered dental hygienists working under written protocol, in addition to those requirements enumerated under the general supervision as authorized by § 63-5-108(c)(5), must have actively practiced as a licensed dental hygienist for at least five (5) years and have practiced two thousand (2,000) hours in the preceding five (5) years or taught dental hygiene courses for two (2) of the preceding three (3) years in a dental hygiene program accredited by the American Dental Association's Commission on Dental Accreditation and completed six (6) hours of public health continuing education within the past two (2) years; provided, that, after satisfying the requirement of this subsection (d), in subsequent years the hygienist may work on a part-time basis.

(3) Each written protocol, required for off-site practice under general supervision, shall be submitted to the board by certified mail, return receipt requested and shall include at a minimum:

(A) The name, address, telephone number and license number of the employer (supervising) dentist;

(B) The name, address, telephone number and license number of the dental hygienist;

(C) The name, address, telephone number and other pertinent identification from all locations where the dental hygiene services are to be performed; and

(D) A statement signed by the dentist that the dentist and the dental hygienist that meets all minimum standards for general supervision as well as those required for practice under a written protocol as stipulated in this section and § 63-5-108.

(4) The board will receive each written protocol submitted and keep those on file which meet the minimum requirements enumerated in subdivision (d)(3). Those received by the board and determined not to be complete shall be returned to the submitting dentist within thirty (30) days of receipt with a request for the additional information required. The dentist may then resubmit an amended written protocol to the board.

(e) Teledentistry shall not alter or amend the supervision requirements or procedures authorized for licensed and registered dental hygienists or registered dental assistants. Any licensed and registered dental hygienist who, under the supervision of a dentist, assists the dentist in providing dental health services or care using teledentistry is only authorized to perform those services that the dental hygienist is authorized to perform during an in-person patient encounter under general supervision. Services provided by registered dental hygienists through teledentistry should be provided under written protocol in accordance with subsection (d).

### [TN ADC 0460-1-.19 TELEDENTISTRY.](#)

No person shall engage in the practice of dentistry, either in person or remotely using information transmitted electronically or through other means, on a patient within the state of Tennessee unless duly licensed by the Board in accordance with the provisions of the current statutes and rules. Teledentistry shall not alter or amend the supervision requirements or procedures that are authorized for licensed dental hygienists or registered dental assistants as stated by T.C.A § 63-5-115, 0460-03-.09 and 0460-04-.08.

(1) Treatment and the Practice of Teledentistry

(a) A teledentistry encounter entails the rendering of a documented dental opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the dentist is

physically present in the same room or in a remote location within the state or across state lines.

(b) Teledentistry as practiced under T.C.A § 63-5-108(b)(16) is not an audio only telephone conversation, email/instant messaging conversation or fax. At a minimum it shall include the application of secure video conferencing or store-and-forward technology to provide or support dental care delivery by replicating the interaction of a traditional encounter between a provider and a patient.

(c) If the information transmitted through electronic or other means as part of a patient's encounter is not of sufficient quality or does not contain adequate information for the dentist to form an opinion, the dentist must declare they cannot form an opinion to make an adequate diagnosis and must request direct referral for inspection and actual physical examination, request additional data or recommend the patient be evaluated by the patient's primary dentist or other local oral health care provider.

(d) No patient seeking care via teledentistry who is under the age of eighteen (18) years of age can be treated unless there is a parent or guardian present, except as otherwise authorized by law.

(2) Dental Records and Informed Consent when Practicing Teledentistry

(a) For patient encounters conducted by teledentistry, the dentist shall have appropriate patient records or be able to obtain the patient's prior treatment information during the teledentistry encounter.

(b) Secure electronic records of the patient are to be kept at all locations where the patient is seen physically and at the location where the dentist is if the dentist is not present at the time of the visit. Dental records established for the purposes of teledentistry must contain the same information as required by Rule 0460-02-.12.

(c) Store-and-forward technology as used in (1)(b) above is the use of asynchronous electronic communications between a patient and dentist at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients, including the transferring of dental data from one site to another through the use of a device that records or stores images that are sent or forwarded via electronic communication to another site for consultation.

(d) The dentist engaging in teledentistry is responsible for ensuring that the dental record contains all pertinent data and information gleaned from the encounter. Any dentist conducting a patient encounter via teledentistry must so document by an informed consent form which shall be added in the patient record and must state the technology used.

(e) Informed consent forms shall be signed by the patient or parent/guardian describing the information to be transmitted and/or shared with a dentist who is at a different geographical location.

(f) A dentist who provides information regarding healthcare services on an internet website that is directly controlled or administered by the dentist or the dentist's agent, shall prominently display on the internet website the dentist full name and type of license.

(3) Supervision

(a) Patient encounter with hygienist - Any licensed dental hygienist who assists the dentist in providing dental health services or care using teledentistry is only authorized to perform those services that the dental hygienist is authorized to perform during an in-person patient encounter under general supervision as defined by T.C.A § 63-5-108 (c)(5).

## Medicaid and Private Payer Reimbursement

### Tenn. Code Ann. § 56-7-109

...

(4) "Health insurance entity" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide health insurance coverage, including, but not limited to, an insurance company, a health maintenance organization and a nonprofit hospital and medical service corporation;

...

### Tenn. Code Ann. § 56-61-102

...

(20) "Healthcare services" means services for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease;

...

### Tenn. Code Ann. § 56-7-1002 as amended by HB 620

(a) As used in this section:

- (1) "Health insurance entity" has the same meaning as defined in § 56-7-109 and includes managed care organizations participating in the medical assistance program under title 71, chapter 5;
- (2) "Healthcare services" has the same meaning as defined in § 56-61-102;
- (3) "Healthcare services provider" means an individual acting within the scope of a valid license issued pursuant to title 63 or any state-contracted crisis service provider employed by a facility licensed under title 33;
- (4) "Originating site" means the location where a patient is located pursuant to subdivision (a)(7)(A) and that originates a telehealth service to another qualified site;
- (5) "Qualified site":
  - (A) Means the office of a healthcare services provider, a hospital licensed under title 68, a facility recognized as a rural health clinic under federal Medicare regulations, a federally qualified health center, a facility licensed under title 33, or another location deemed acceptable by the health insurance entity; and
  - (B) Includes, for the provision of behavioral health services provided via telehealth, the patient's home or a remote location chosen by the patient;
- (6) "Store-and-forward telemedicine services":
  - (A) Means the use of asynchronous computer-based communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients; and
  - (B) Includes the transferring of medical data from one (1) site to another through the use of a camera or similar device that records or stores an image that is sent or forwarded via telecommunication to another site for consultation;
- (7) "Telehealth":
  - (A) Means the use of real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services by a healthcare services provider to deliver healthcare services to a patient within the scope of practice of the healthcare services provider when:
    - (i) Such provider is at a qualified site other than the site where the patient is located; and
    - (ii) The patient is at a qualified site, at a school clinic staffed by a healthcare services provider and equipped to engage in the telecommunications described in this section, or at a public elementary or secondary school staffed by a healthcare

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- services provider and equipped to engage in the telecommunications described in this section; and
- (B) Does not include:
- (i) An audio-only conversation;
  - (ii) An electronic mail message; or
  - (iii) A facsimile transmission; and
- (C) Notwithstanding subdivisions (a)(7)(A) and (B), for the provision of behavioral health services when the means described in subdivision (a)(7)(A) are unavailable, includes audio-only conversation;
- (8) "Telehealth provider" means a healthcare services provider engaged in the delivery of healthcare services through telehealth.
- (b) Healthcare services provided through a telehealth encounter shall comply with state licensure requirements promulgated by the appropriate licensure boards. Telehealth providers shall be held to the same standard of care as healthcare services providers providing the same healthcare service through in-person encounters.
- (c) A telehealth provider who seeks to contract with or who has contracted with a health insurance entity to participate in the health insurance entity's network shall be subject to the same requirements and contractual terms as a healthcare services provider in the health insurance entity's network.
- (d) Subject to subsection (c), a health insurance entity:
- (1) Shall provide coverage under a health insurance policy or contract for covered healthcare services delivered through telehealth;
  - (2) Shall reimburse a healthcare services provider for the diagnosis, consultation, and treatment of an insured patient for a healthcare service covered under a health insurance policy or contract that is provided through telehealth without any distinction or consideration of the geographic location or any federal, state, or local designation, or classification of the geographic area where the patient is located;
  - (3) Shall not exclude from coverage a healthcare service solely because it is provided through telehealth and is not provided through an in-person encounter between a healthcare services provider and a patient; and
  - (4) Shall reimburse healthcare services providers who are out-of-network for telehealth care services under the same reimbursement policies applicable to other out-of-network healthcare services providers.
- (e) A health insurance entity shall provide coverage for healthcare services provided during a telehealth encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare services provided during a telehealth encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.
- (f) [Deleted by 2020 (2nd Ex. Se<sup>ss</sup>.) amendment.]
- (g) Any provisions not stipulated by this section shall be governed by the terms and conditions of the health insurance contract.
- (h) Telehealth is subject to utilization review under the Health Care Service Utilization Review Act, compiled in chapter 6, part 7 of this title.
- (i)
- (1) This section does not apply to accident-only, specified disease, hospital indemnity, plans described in § 1251 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended and § 2301 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as amended (both in 42 U.S.C. § 18011), plans governed by the Employee

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Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), Medicare supplement, disability income, long-term care, or other limited benefit hospital insurance policies.

(2) This section does apply to the basic health plans authorized under title 8, chapter 27, parts 1, 2, 3, and 7.

(j) A health insurance entity shall reimburse an originating site hosting a patient as part of a telehealth encounter an originating site fee in accordance with the federal centers for Medicare and Medicaid services telehealth services rule 42 C.F.R. § 410.78 and at an amount established prior to August 20, 2020, by the federal centers for Medicare and Medicaid services.

(k)

(1) This section does not require a health insurance entity to provide coverage for healthcare services that are not medically necessary, unless the terms and conditions of an applicable health insurance policy provide that coverage.

(2) As used in subdivision (k)(1):

(A) For a healthcare service for which coverage or reimbursement is provided under the Medical Assistance Act of 1968, compiled in title 71, chapter 5, part 1, or provided under title 71, chapter 3, part 11, "medically necessary" means a healthcare service that is determined by the bureau of TennCare to satisfy the medical necessity standard set forth in 71-5-144; and

(B) For all other healthcare services, "medically necessary" means healthcare services that a healthcare services provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease, and that are:

(i) In accordance with generally accepted standards of medical practice;

(ii) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; and

(iii) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury, or disease excluding any costs paid pursuant to subsection (j).

(3) This section does not require a health insurance entity to provide coverage for healthcare services delivered by means of telehealth if the applicable health insurance policy would not provide coverage for the same healthcare services if delivered by in-person means.

(4) This section does not require a health insurance entity to reimburse a healthcare services provider for healthcare services delivered by means of telehealth if the applicable health insurance policy would not reimburse that healthcare services provider if the same healthcare services had been delivered by in-person means.

## Private Payer Reimbursement

### Tenn. Code Ann. § 56-7-1003

(a) As used in this section:

(1) "Health insurance entity" has the same meaning as defined in § 56-7-109 and includes managed care organizations participating in the medical assistance program under title 71, chapter 5;

(2) "Healthcare services" has the same meaning as defined in § 56-61-102;

(3) "Healthcare services provider" means an individual acting within the scope of a valid license issued pursuant to title 63 or title 68, chapter 24, part 6, or any state-contracted crisis service provider employed by a facility licensed under title 33;

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(4) "Healthcare system" means two (2) or more healthcare organizations as defined in § 63-1-150, that are affiliated through shared ownership or pursuant to a contractual relationship that controls payment terms and service delivery;

(5) "Practice group" means two (2) or more healthcare services providers that share a common employer for the purposes of the healthcare services providers' clinical practice;

(6) "Provider-based telemedicine":

(A) Means the use of Health Insurance Portability and Accessibility Act (HIPAA) (42 U.S.C. § 1320d et seq.) compliant real-time, interactive audio, video telecommunications, or electronic technology, or store-and-forward telemedicine services, used over the course of an interactive visit by a healthcare services provider to deliver healthcare services to a patient within the scope of practice of the healthcare services provider when:

(i) The healthcare services provider is at a qualified site other than the site where the patient is located and has access to the relevant medical record for that patient;

(ii) The patient is located at a location the patient deems appropriate to receive the healthcare service that is equipped to engage in the telecommunication described in this section; and

(iii) The healthcare services provider makes use of HIPAA compliant real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services to deliver healthcare services to a patient within the scope of practice of the healthcare services provider as long as the healthcare services provider, the healthcare services provider's practice group, or the healthcare system has established a provider-patient relationship by submitting to a health insurance entity evidence of an in-person encounter between the healthcare service provider, the healthcare services provider's practice group, or the healthcare system and the patient within sixteen (16) months prior to the interactive visit; and

(B) Does not include:

(i) An audio-only conversation;

(ii) An electronic mail message or phone text message;

(iii) A facsimile transmission;

(iv) Remote patient monitoring; or

(v) Healthcare services provided pursuant to a contractual relationship between a health insurance entity and an entity that facilitates the delivery of provider-based telemedicine as the substantial portion of the entity's business;

(7) "Qualified site" means the primary or satellite office of a healthcare services provider, a hospital licensed under title 68, a facility recognized as a rural health clinic under federal medicare regulations, a federally qualified health center, a facility licensed under title 33, or any other location deemed acceptable by the health insurance entity; and

(8) "Store-and-forward telemedicine services":

(A) Means the use of asynchronous computer-based communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients; and

(B) Includes the transferring of medical data from one (1) site to another through the use of a camera or similar device that records or stores an image that is sent or forwarded via telecommunication to another site for consultation.

(b) Healthcare services provided through a provider-based telemedicine encounter must comply with state licensure requirements promulgated by the appropriate licensure boards. Provider-based telemedicine providers are held to the same standard of care as healthcare services providers providing the same healthcare services through in-person encounters.

(c) A provider-based telemedicine provider who seeks to contract with or who has contracted with a health insurance entity to participate in the health insurance entity's network is subject to the same requirements and contractual terms as any other healthcare services provider in the health insurance entity's network.

(d) A health insurance entity:

(1) Shall provide coverage under a health insurance policy or contract for covered healthcare services delivered through provider-based telemedicine;

(2) Shall reimburse a healthcare services provider for a healthcare service covered under an insured patient's health insurance policy or contract that is provided through provider-based telemedicine without any distinction or consideration of the geographic location or any federal, state, or local designation, or classification of the geographic area where the patient is located;

(3) Shall not exclude from coverage a healthcare service solely because it is provided through provider-based telemedicine and is not provided through an in-person encounter between a healthcare services provider and a patient; and

(4) Shall reimburse healthcare services providers who are out-of-network for provider-based telemedicine care services under the same reimbursement policies applicable to other out-of-network healthcare services providers.

(e) A health insurance entity shall provide coverage for healthcare services provided during a provider-based telemedicine encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare services provided during a provider-based telemedicine encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.

(f) This section does not require a health insurance entity to pay total reimbursement for a provider-based telemedicine encounter in an amount that exceeds the amount that would be paid for the same service provided by a healthcare services provider for an in-person encounter.

(g)

(1) This section does not require a health insurance entity to provide coverage for healthcare services that are not medically necessary, unless the terms and conditions of an applicable health insurance policy provide that coverage.

(2) As used in subdivision (g)(1):

(A) For a healthcare service for which coverage or reimbursement is provided under the Medical Assistance Act of 1968, compiled in title 71, chapter 5, part 1, or provided under title 71, chapter 3, part 11, "medically necessary" means a healthcare service that is determined by the bureau of TennCare to satisfy the medical necessity standard set forth in 71-5-144; and

(B) For all other healthcare services, "medically necessary" means healthcare services that a healthcare services provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease, and that are:

(i) In accordance with generally accepted standards of medical practice;

(ii) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; and

(iii) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury, or disease.

(3) This section does not require a health insurance entity to provide coverage for healthcare services delivered by means of provider-based telemedicine if the applicable health

insurance policy would not provide coverage for the same healthcare services if delivered by in-person means.

(4) This section does not require a health insurance entity to reimburse a healthcare services provider for healthcare services delivered by means of provider-based telemedicine if the applicable health insurance policy would not reimburse that healthcare services provider if the same healthcare services had been delivered by in-person means.

(h) Any provisions not required by this section are governed by the terms and conditions of the health insurance policy or contract.

(i) Provider-based telemedicine is subject to utilization review under the Health Care Service Utilization Review Act, compiled in chapter 6, part 7 of this title.

(j)

(1) This section does not apply to accident-only, specified disease, hospital indemnity, plans described in § 1251 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended and § 2301 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as amended (both in 42 U.S.C. § 18011), plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), Medicare supplement, disability income, long-term care, or other limited benefit hospital insurance policies.

(2) This section does apply to the basic health plans authorized under title 8, chapter 27, parts 1, 2, 3, and 7.

#### **Tenn. Code Ann. § 56-7-1011**

(a) As used in this section, “remote patient monitoring services” means using digital technologies to collect medical and other forms of health data from a patient and then electronically transmitting that information securely to healthcare providers in a different location for interpretation and recommendation.

(b) A health insurance entity may consider any remote patient monitoring service a covered medical service if the same service is covered by medicare. The appropriate parties may negotiate the rate for these services in the manner in which is deemed appropriate by the parties.

(c) Reimbursement of expenses for covered remote patient monitoring services must be established through negotiations conducted by the health insurance entity with the healthcare services provider, healthcare system, or practice group in the same manner as the health insurance entity establishes reimbursement of expenses for covered healthcare services that are delivered by in-person means.

(d) Remote patient monitoring services are subject to utilization review under the Health Care Service Utilization Review Act, compiled in chapter 6, part 7 of this title.

(e) This section does not apply to a health incentive program operated by a health insurance entity that utilized an electronic device for physiological monitoring.

# Texas

## Requirements and Permissible Practices

[2021 HB 2056](#) updated state telehealth laws to include teledentistry. This bill was signed into law in 2021.

SECTION 1. The heading to Chapter 111, Occupations Code, is amended to read as follows:  
CHAPTER 111. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

SECTION 2. Section 111.001, Occupations Code, is amended by amending Subdivisions (1) and (3) and adding Subdivision (2-a) to read as follows:

(1) "Dentist," "health [Health] professional," and "physician" have the meanings assigned by Section 1455.001, Insurance Code.

(2-a) "Teledentistry dental service" means a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

(3) "Telehealth service" means a health service, other than a telemedicine medical service or a teledentistry dental service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.

SECTION 3. Section 111.002, Occupations Code, is amended to read as follows:

Sec. 111.002. INFORMED CONSENT. (a) A treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services, teledentistry dental services, or telehealth services are provided.

(b) A dentist who delegates a teledentistry dental service shall ensure that the informed consent of the patient includes disclosure to the patient that the dentist has delegated the service.

SECTION 4. Section 111.003, Occupations Code, is amended to read as follows:

Sec. 111.003. CONFIDENTIALITY. A treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services shall ensure that the confidentiality of the patient's clinical [medical] information is maintained as required by Chapter 159, by Subchapter C, Chapter 258, or by other applicable law.

SECTION 5. Section 111.004, Occupations Code, is amended to read as follows:

Sec. 111.004. RULES.

....

(b) The State Board of Dental Examiners, in consultation with the commissioner of insurance, as appropriate, may adopt rules necessary to:

(1) ensure that patients using teledentistry dental services receive appropriate, quality care;

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- (2) prevent abuse and fraud in the use of teledentistry dental services, including rules relating to the filing of claims and records required to be maintained in connection with teledentistry dental services;
- (3) ensure adequate supervision of health professionals who are not dentists and who provide teledentistry dental services under the delegation and supervision of a dentist; and
- (4) authorize a dentist to simultaneously delegate to and supervise through a teledentistry dental service not more than five health professionals who are not dentists.

SECTION 6. The heading to Section 111.005, Occupations Code, is amended to read as follows:

Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR TELEMEDICINE MEDICAL SERVICES OR TELEDENTISTRY DENTAL SERVICES.

SECTION 7. Section 111.005(a), Occupations Code, is amended to read as follows:

(a) For purposes of Section 562.056, a valid practitioner-patient relationship is present between a practitioner providing a telemedicine medical service or a teledentistry dental service and a patient receiving the [telemedicine medical] service as long as the practitioner complies with the standard of care described in Section 111.007 and the practitioner:

- (1) has a preexisting practitioner-patient relationship with the patient established in accordance with rules adopted under Section 111.006;
- (2) communicates, regardless of the method of communication, with the patient pursuant to a call coverage agreement established in accordance with:
  - (A) Texas Medical Board rules with a physician requesting coverage of medical care for the patient; or
  - (B) State Board of Dental Examiners rules with a dentist requesting coverage of dental care for the patient; or
- (3) provides the telemedicine medical services or teledentistry dental services through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in Subsection (b), and the method allows the practitioner to have access to, and the practitioner uses, the relevant clinical information that would be required in accordance with the standard of care described in Section 111.007:
  - (A) synchronous audiovisual interaction between the practitioner and the patient in another location;
  - (B) asynchronous store and forward technology, including asynchronous store and forward technology in conjunction with synchronous audio interaction between the practitioner and the patient in another location, as long as the practitioner uses clinical information from:
    - (i) clinically relevant photographic or video images, including diagnostic images; or
    - (ii) the patient's relevant clinical [medical] records, such as the relevant medical or dental history, laboratory and pathology results, and prescriptive histories; or
  - (C) another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care described in Section 111.007.

SECTION 8. Section 111.006, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The State Board of Dental Examiners and the Texas State Board of Pharmacy shall jointly adopt rules that establish the determination of a valid prescription in accordance with Section 111.005. Rules adopted under this subsection must allow for the establishment of a practitioner-patient relationship by a teledentistry dental service provided by a dentist to a

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patient in a manner that complies with Section 111.005(a)(3) and must be substantially similar to the rules adopted under Subsection (a) of this section. The State Board of Dental Examiners and the Texas State Board of Pharmacy shall jointly develop and publish on each respective board's Internet website responses to frequently asked questions relating to the determination of a valid prescription issued in the course of the provision of teledentistry dental services.

SECTION 9. Section 111.007, Occupations Code, is amended to read as follows:

Sec. 111.007. STANDARD OF CARE FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) A health professional providing a health care service or procedure as a telemedicine medical service, a teledentistry dental service, or a telehealth service is subject to the standard of care that would apply to the provision of the same health care service or procedure in an in-person setting.  
(b) An agency with regulatory authority over a health professional may not adopt rules pertaining to telemedicine medical services, teledentistry dental services, or telehealth services that would impose a higher standard of care than the standard described in Subsection (a).

SECTION 10. Chapter 111, Occupations Code, is amended by adding Section 111.0075 to read as follows:

Sec. 111.0075. LICENSING FOR TELEDENTISTRY DENTAL SERVICES. A health professional providing a health care service or procedure as a teledentistry dental service is subject to the licensing requirements that would apply to the provision of the same health care service or procedure in an in-person setting.

SECTION 11. Chapter 111, Occupations Code, is amended by adding Section 111.009 to read as follows:

Sec. 111.009. LIMITATION ON CERTAIN PRESCRIPTIONS. (a) In this section:  
(1) "Controlled substance," "opiate," and "prescribe" have the meanings assigned by Section 481.002, Health and Safety Code.  
(2) "National holiday" means a day described by Section 662.003(a), Government Code.  
(b) The State Board of Dental Examiners by rule shall establish limits on the quantity of a controlled substance, including an opiate, that a dentist may prescribe to a patient as a teledentistry dental service. Except as provided by Subsection (c), the rules may not authorize a dentist to prescribe more than is necessary to supply a patient for:  
(1) if the prescription is for an opiate, a two-day period; or  
(2) if the prescription is for a controlled substance other than an opiate, a five-day period.  
(c) For each day in a period described by Subsection (b)(1) or (2) that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday.  
(d) Rules adopted under this section must comply with applicable federal laws and rules.

SECTION 12. Section 251.003, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of this subtitle, a person located in another state practices dentistry in this state and is required to hold a license to practice dentistry in this state if the person through the use of any medium, including an electronic medium, performs an act that constitutes the practice of dentistry on a patient in this state.

SECTION 13. Chapter 254, Occupations Code, is amended by adding Section 254.0035 to read as follows:

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Sec. 254.0035. RULES REGARDING CALL COVERAGE AGREEMENTS. The board shall adopt rules governing a call coverage agreement between dentists.

SECTION 14. Section 258.001, Occupations Code, is amended to read as follows:

Sec. 258.001. IMPERMISSIBLE DELEGATIONS. A dentist may not delegate:

...

- (4) the authority to an individual to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent, including as a teledentistry dental service as that term is defined by Section 111.001, if the individual is not licensed as:
  - (A) a dentist with a permit issued by the board for the procedure being performed, if a permit is required;
  - (B) a certified registered nurse anesthetist licensed by the Texas Board of Nursing, only if the delegating dentist holds a permit issued by the board for the procedure being performed, if a permit is required; or
  - (C) a physician anesthesiologist licensed by the Texas Medical Board.

SECTION 15. Section 262.152, Occupations Code, is amended to read as follows:

Sec. 262.152. PERFORMANCE OF DELEGATED DUTIES. (a) Except as provided by Section 262.1515, a dental hygienist shall practice dental hygiene:

- (1) in the dental office of a supervising dentist licensed by the board; or
- (2) in an alternate setting, including a nursing home, the patient's home, a school, a hospital, a state institution, a public health clinic, or another institution, under the supervision of a supervising dentist.

(b) For purposes of this section, a dental hygienist who practices dental hygiene as a teledentistry dental service, as defined by Section 111.001, is practicing in an alternate setting in compliance with Subsection (a)(2).

SECTION 16. Section 562.056(c), Occupations Code, is amended to read as follows:

(c) For purposes of this section and Section 562.112, a valid practitioner-patient relationship is present between a practitioner providing telemedicine medical services or teledentistry dental services and the patient receiving the [telemedicine medical] services if the practitioner has complied with the requirements for establishing such a relationship in accordance with Section 111.005.

SECTION 17. Section 531.001, Government Code, is amended by amending Subdivision (4-d) and adding Subdivision (6-a) to read as follows:

(4-d) "Platform" means the technology, system, software, application, modality, or other method through which a health professional remotely interfaces with a patient when providing a health care service or procedure as a telemedicine medical service, teledentistry dental service, or telehealth service.

(6-a) "Teledentistry dental service" has the meaning assigned by Section 111.001, Occupations Code.

## Medicaid Reimbursement

### 2021 HB 2056

SECTION 18. Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS, TELEDENTISTRY DENTAL SERVICE PROVIDERS, AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) The executive commissioner by rule shall develop and implement a system to reimburse providers of services under Medicaid for services

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performed using telemedicine medical services, teledentistry dental services, or telehealth services.

(c) The commission shall encourage health care providers and health care facilities to provide telemedicine medical services, teledentistry dental services, and telehealth services in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services, teledentistry dental services, or telehealth services.

(c-1) The commission shall explore opportunities to increase STAR Health program providers' use of telemedicine medical services in medically underserved areas of this state.

(d) Subject to Sections 111.004 and [Section] 153.004, Occupations Code, the executive commissioner may adopt rules as necessary to implement this section. In the rules adopted under this section, the executive commissioner shall:

- (1) refer to the site where the patient is physically located as the patient site; and
- (2) refer to the site where the physician, dentist, or health professional providing the telemedicine medical service, teledentistry dental service, or telehealth service is physically located as the distant site.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, teledentistry dental services, telehealth services, and home telemonitoring services on Medicaid in the state, including the number of physicians, dentists, health professionals, and licensed health care facilities using telemedicine medical services, teledentistry dental services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians, dentists, and health professionals, the number of patients receiving telemedicine medical services, teledentistry dental services, telehealth services, and home telemonitoring services, the types of services being provided, the cost of utilization, and the cost savings of telemedicine medical services, teledentistry dental services, telehealth services, and home telemonitoring services to Medicaid.

(g) The commission shall ensure that a Medicaid managed care organization:

- (1) does not deny reimbursement for a covered health care service or procedure delivered by a health care provider with whom the managed care organization contracts to a Medicaid recipient as a telemedicine medical service, a teledentistry dental service, or a telehealth service solely because the covered service or procedure is not provided through an in-person consultation;
- (2) does not limit, deny, or reduce reimbursement for a covered health care service or procedure delivered by a health care provider with whom the managed care organization contracts to a Medicaid recipient as a telemedicine medical service, a teledentistry dental service, or a telehealth service based on the health care provider's choice of platform for providing the health care service or procedure; and
- (3) ensures that the use of telemedicine medical services, teledentistry dental services, or telehealth services promotes and supports patient-centered medical homes by allowing a Medicaid recipient to receive a telemedicine medical service, teledentistry dental service, or telehealth service from a provider other than the recipient's primary care physician or provider, except as provided by Section 531.0217(c-4), only if:
  - (A) the telemedicine medical service, teledentistry dental service, or telehealth service is provided in accordance with the law and contract requirements applicable to the provision of the same health care service in an in-person setting, including requirements regarding care coordination; and
  - (B) the provider of the telemedicine medical service, teledentistry dental service, or telehealth service gives notice to the Medicaid recipient's primary care physician or

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provider regarding the [telemedicine medical service or telehealth] service, including a summary of the service, exam findings, a list of prescribed or administered medications, and patient instructions, for the purpose of sharing medical information, provided that the recipient has a primary care physician or provider and the recipient or, if appropriate, the recipient's parent or legal guardian, consents to the notice.

(h) The commission shall develop, document, and implement a monitoring process to ensure that a Medicaid managed care organization ensures that the use of telemedicine medical services, teledentistry dental services, or telehealth services promotes and supports patient-centered medical homes and care coordination in accordance with Subsection (g)(3). The process must include monitoring of the rate at which a telemedicine medical service, teledentistry dental service, or telehealth service provider gives notice in accordance with Subsection (g)(3)(B).

(i) The executive commissioner by rule shall ensure that a federally-qualified [federally qualified] health center as defined by 42 U.S.C. Section 1396d(l)(2)(B) may be reimbursed for the originating site facility fee or the distant site practitioner fee or both, as appropriate, for a covered telemedicine medical service, teledentistry dental service, or telehealth service delivered by a health care provider to a Medicaid recipient. The commission is required to implement this subsection only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement this subsection using other money available to the commission for that purpose.

(j) In complying with state and federal requirements to provide access to medically necessary services under the Medicaid managed care program, a Medicaid managed care organization determining whether reimbursement for a telemedicine medical service, teledentistry dental service, or telehealth service is appropriate shall continue to consider other factors, including whether reimbursement is cost-effective and whether the provision of the service is clinically effective.

SECTION 19. The heading to Section 531.02162, Government Code, is amended to read as follows:

Sec. 531.02162. MEDICAID SERVICES PROVIDED THROUGH TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES TO CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

SECTION 20. Sections 531.02162(b) and (c), Government Code, are amended to read as follows:

(b) The executive commissioner by rule shall establish policies that permit reimbursement under Medicaid and the child health plan program for services provided through telemedicine medical services, teledentistry dental services, and telehealth services to children with special health care needs.

(c) The policies required under this section must:

(1) be designed to:

(A) prevent unnecessary travel and encourage efficient use of telemedicine medical services, teledentistry dental services, and telehealth services for children with special health care needs in all suitable circumstances; and

(B) ensure in a cost-effective manner the availability to a child with special health care needs of services appropriately performed using telemedicine medical services, teledentistry dental services, and telehealth services that are comparable to the same

- types of services available to that child without the use of telemedicine medical services, teledentistry dental services, and telehealth services; and
- (2) provide for reimbursement of multiple providers of different services who participate in a single session of telemedicine medical services, teledentistry dental services, [and] telehealth services, or any combination of those services, [session] for a child with special health care needs, if the commission determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, and telehealth services, including the costs of transportation and lodging and other direct costs.

SECTION 21. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02172 to read as follows:

- Sec. 531.02172. REIMBURSEMENT FOR TELEDENTISTRY DENTAL SERVICES. (a) The commission by rule shall require each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for teledentistry dental services provided by a dentist licensed to practice dentistry in this state.
- (b) The commission shall require reimbursement for a teledentistry dental service at the same rate as the Medicaid program reimburses for the same in-person dental service. A request for reimbursement may not be denied solely because an in-person dental service between a dentist and a patient did not occur. The commission may not limit a dentist's choice of platform for providing a teledentistry dental service by requiring that the dentist use a particular platform to receive reimbursement for the service.
- (c) The State Board of Dental Examiners, in consultation with the commission and the commission's office of inspector general, as appropriate, may adopt rules as necessary to:
- (1) ensure that appropriate care, including quality of care, is provided to patients who receive teledentistry dental services; and
  - (2) prevent abuse and fraud through the use of teledentistry dental services, including rules relating to filing claims and the records required to be maintained in connection with teledentistry dental services.

SECTION 22. The heading to Section 62.157, Health and Safety Code, is amended to read as follows:

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

SECTION 23. Sections 62.157(a) and (b), Health and Safety Code, are amended to read as follows:

- (a) In providing covered benefits to a child with special health care needs, a health plan provider must permit benefits to be provided through telemedicine medical services, teledentistry dental services, and telehealth services in accordance with policies developed by the commission.
- (b) The policies must provide for:
- (1) the availability of covered benefits appropriately provided through telemedicine medical services, teledentistry dental services, and telehealth services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services, teledentistry dental services, and telehealth services; and
  - (2) the availability of covered benefits for different services performed by multiple health care providers during a single [telemedicine medical services and telehealth services]

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session of telemedicine medical services, teledentistry dental services, telehealth services, or any combination of those services, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, and telehealth services, including the costs of transportation and lodging and other direct costs.

SECTION 24. Section 62.1571, Health and Safety Code, is amended to read as follows:

Sec. 62.1571. **TELEMEDICINE MEDICAL SERVICES AND TELEDENTISTRY DENTAL SERVICES.**

(a) In providing covered benefits to a child, a health plan provider must permit benefits to be provided through telemedicine medical services and teledentistry dental services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services and teledentistry dental services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services and teledentistry dental services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, teledentistry dental services, or both services, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services or teledentistry dental services, including the costs of transportation and lodging and other direct costs.

(c) [(d)] In this section, "teledentistry dental service" and "telemedicine medical service" have [has] the meanings [meaning] assigned by Section 531.001, Government Code.

## Private Payer Reimbursement

### 2021 HB 2056

SECTION 25. The heading to Chapter 1455, Insurance Code, is amended to read as follows:

CHAPTER 1455. **TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH**

SECTION 26. Section 1455.001, Insurance Code, is amended by amending Subdivisions (1) and (3) and adding Subdivision (1-a) to read as follows:

(1) "Dentist" means a person licensed to practice dentistry in this state under Subtitle D, Title 3, Occupations Code.

(1-a) "Health professional" means:

(A) a physician;

(B) an individual who is:

(i) licensed or certified in this state to perform health care services; and

(ii) authorized to assist:

(a) a physician in providing telemedicine medical services that are delegated and supervised by the physician; or

(b) a dentist in providing teledentistry dental services that are delegated and supervised by the dentist;

(c) a licensed or certified health professional acting within the scope of the license or certification who does not perform a telemedicine medical service or a teledentistry dental service; or

(d) a dentist.

(3) "Teledentistry dental service," "telehealth ["Telehealth] service," and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

SECTION 27. Section 1455.004, Insurance Code, is amended to read as follows:

Sec. 1455.004. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) A health benefit plan:

(1) must provide coverage for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service, teledentistry dental service, or telehealth service on the same basis and to the same extent that the plan provides coverage for the service or procedure in an in-person setting; and

(2) may not:

(A) exclude from coverage a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service, a teledentistry dental service, or a telehealth service solely because the covered health care service or procedure is not provided through an in-person consultation; and

(B) subject to Subsection (c), limit, deny, or reduce coverage for a covered health care service or procedure delivered as a telemedicine medical service, teledentistry dental service, or telehealth service based on the health professional's choice of platform for delivering the service or procedure.

(b) A health benefit plan may require a deductible, a copayment, or coinsurance for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service, a teledentistry dental service, or a telehealth service. The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for the covered health care service or procedure provided through an in-person consultation.

(b-1) Subsection (b) does not authorize a health benefit plan to charge a separate deductible that applies only to a covered health care service or procedure delivered as a telemedicine medical service, teledentistry dental service, or telehealth service.

(c) Notwithstanding Subsection (a), a health benefit plan is not required to provide coverage for a telemedicine medical service, a teledentistry dental service, or a telehealth service provided by only synchronous or asynchronous audio interaction, including:

(1) an audio-only telephone consultation;

(2) a text-only e-mail message; or

(3) a facsimile transmission.

(d) A health benefit plan may not impose an annual or lifetime maximum on coverage for covered health care services or procedures delivered as telemedicine medical services, teledentistry dental services, or telehealth services other than the annual or lifetime maximum, if any, that applies in the aggregate to all items and services and procedures covered under the plan.

SECTION 28. Section 1455.006, Insurance Code, is amended to read as follows:

Sec. 1455.006. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES STATEMENT. (a) Each issuer of a health benefit plan shall adopt and display in a conspicuous manner on the health benefit plan issuer's Internet website the issuer's policies and payment practices for telemedicine medical services, teledentistry dental services, and telehealth services.

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(b) This section does not require an issuer of a health benefit plan to display negotiated contract payment rates for health professionals who contract with the issuer to provide telemedicine medical services, teledentistry dental services, or telehealth services.

SECTION 29. Not later than March 1, 2022:

(1) the State Board of Dental Examiners and the Texas State Board of Pharmacy shall jointly adopt rules as required by Section 111.006(c), Occupations Code, as added by this Act;

(2) the State Board of Dental Examiners shall adopt:

(A) rules necessary to implement Chapter 111, Occupations Code, as amended by this Act; and

(B) rules as required by Section 254.0035, Occupations Code, as added by this Act; and

(3) the Health and Human Services Commission shall adopt rules as required by Section 531.02172, Government Code, as added by this Act.

SECTION 30. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 31. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2021.

(b) Sections 1455.004 and 1455.006, Insurance Code, as amended by this Act, take effect January 1, 2022.

# Utah

## Requirements and Permissible Practices

### Utah Code

#### [58-69-102. Definitions.](#)

In addition to the definitions in Section [58-1-102](#), as used in this chapter:

- (1) "Asynchronous technology" means store-and-forward technology that allows a licensed dental professional to transmit a patient's health information to a dentist for viewing at a later time.
- ...
- (8) "Practice of dentistry" means the following, regarding humans:
  - (a) to offer, undertake, or represent that a person will undertake by any means or method, including teledentistry, to:
    - (i) examine, evaluate, diagnose, treat, operate, or prescribe therapy for any disease, pain, injury, deficiency, deformity, or any other condition of the human teeth, alveolar process, gums, jaws, or adjacent hard and soft tissues and structures in the maxillofacial region;
    - (ii) take an appropriate history and physical consistent with the level of professional service to be provided and the available resources in the facility in which the service is to be provided;
    - (iii) take impressions or registrations;
    - (iv) supply artificial teeth as substitutes for natural teeth;
    - (v) remove deposits, accumulations, calculus, and concretions from the surfaces of teeth; and
    - (vi) correct or attempt to correct malposition of teeth;
  - (b) to administer anesthetics necessary or proper in the practice of dentistry only as allowed by an anesthesia permit obtained from the division;
  - (c) to administer and prescribe drugs related to and appropriate in the practice of dentistry;
  - (d) to supervise the practice of a dental hygienist or dental assistant as established by division rule made in collaboration with the board; or
  - (e) to represent oneself by any title, degree, or in any other way that one is a dentist.
- (11) "Synchronous technology" means two-way audiovisual technology that allows a licensed dental professional to see and communicate in real time with a patient who is located in a different physical location.
- (12) "Teledentistry" means the practice of dentistry using synchronous or asynchronous technology.

...

### Utah Code

#### [58-69-301. License required -- License classifications -- Anesthesia and analgesia permits.](#)

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Utah, continued

- (1) A license is required to engage in the practice of dentistry, including teledentistry, or dental hygiene except as specifically provided in Section [58-69-306](#) or [58-1-307](#).

**Utah Code**

**[58-69-802. Practice within limits of law, education, training, experience, and competency -- Standard of care.](#)**

- (1) Each individual licensed under this chapter shall confine his practice to those acts or practices:
  - (a) permitted by law; and
  - (b) in which the individual is competent by education, training, and experience.
- (2) (a) The standard of dental care a licensed dental professional provides through teledentistry is the same as the standard of dental care a licensed dental professional provides in a traditional physical setting.
  - (b) (i) A treating dentist may use teledentistry to collaborate with a dental hygienist within the relevant applicable scopes of practice and under the appropriate level of dentist supervision, in accordance with existing supervision laws.
    - (ii) A dental hygienist, other dental auxiliary, or any other teledentistry provider may not carry out any duties through teledentistry that require the in-person supervision of a dentist licensed under this chapter.
  - (c) A dentist may not conduct a dental examination using teledentistry if the standard of care necessitates a traditional physical dental examination.

**Utah Code**

**[58-69-807. Use of teledentistry -- Informed consent -- Rulemaking.](#)**

- (1) A dentist may provide dental services using teledentistry, including the following:
  - (a) collaborating with a licensed dental professional in the completion of the following at a public health setting, generally with a written collaborative agreement, directly, or indirectly, in accordance with this chapter:
    - (i) gathering diagnostic information to be used by the dentist at a remote location to form a tentative basic treatment plan and provide appropriate preventive or urgent prescriptions;
    - (ii) perform preventive dental procedures;
    - (iii) provide oral health education; and
    - (iv) perform any palliative or interim treatment or caries arresting treatment outlined in the dentist's treatment plan and authorized by the dentist, in accordance with this chapter and rules made in accordance with this chapter; and
  - (b) at a remote location, using records and diagnostic information that a dental hygienist provides to form a tentative treatment plan for basic dental procedures.

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- (2) A licensed dental professional or any entity employing a licensed dental professional may not require a patient to sign an agreement that limits the patient's ability to file a complaint with the division.
- (3) When a licensed dental professional uses teledentistry, the licensed dental professional shall ensure informed consent covers the following additional information:
  - (a) a description of the types of dental care services provided through teledentistry, including limitations on services;
  - (b) the name, contact information, licensure, credentials, and qualifications of all dentists and dental hygienists involved in the patient's dental care; and
  - (c) precautions and protocols for technological failures or emergency situations.
- (4) The division shall make rules, in accordance with [Title 63G, Chapter 3, Utah Administrative Rulemaking Act](#), to establish requirements and parameters regarding teledentistry to ensure the safe use of teledentistry, including additional provisions for:
  - (a) transparency, disclosure, and informed consent;
  - (b) standard of care;
  - (c) proper documentation;
  - (d) supervision and scope of practice;
  - (e) patient complaints; and
  - (f) protocols for referrals.

### **Chapter 60 Telehealth Act** **[26-60-102. Definitions.](#)**

As used in this chapter:

- (1) "Asynchronous store and forward transfer" means the transmission of a patient's health care information from an originating site to a provider at a distant site.
- (2) "Distant site" means the physical location of a provider delivering telemedicine services.
- (3) "Originating site" means the physical location of a patient receiving telemedicine services.
- (4) "Patient" means an individual seeking telemedicine services.
- (5) (a) "Patient-generated medical history" means medical data about a patient that the patient creates, records, or gathers.  
(b) "Patient-generated medical history" does not include a patient's medical record that a healthcare professional creates and the patient personally delivers to a different healthcare professional.
- (6) "Provider" means an individual who is:
  - (a) licensed under [Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act](#);
  - (b) licensed under [Title 58, Occupations and Professions](#), to provide health care; or
  - (c) licensed under [Title 62A, Chapter 2, Licensure of Programs and Facilities](#).
- (7) "Synchronous interaction" means real-time communication through interactive technology that enables a provider at a distant site and a patient at an originating site to interact simultaneously through two-way audio and video transmission.

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- (8) "Telehealth services" means the transmission of health-related services or information through the use of electronic communication or information technology.
- (9) "Telemedicine services" means telehealth services:
- (a) including:
    - (i) clinical care;
    - (ii) health education;
    - (iii) health administration;
    - (iv) home health;
    - (v) facilitation of self-managed care and caregiver support; or
    - (vi) remote patient monitoring occurring incidentally to general supervision; and
  - (b) provided by a provider to a patient through a method of communication that:
    - (i) (A) uses asynchronous store and forward transfer; or  
(B) uses synchronous interaction; and
    - (ii) meets industry security and privacy standards, including compliance with:
      - (A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended; and
      - (B) the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

**26-60-103. Scope of telehealth practice.**

- (1) A provider offering telehealth services shall:
- (a) at all times:
    - (i) act within the scope of the provider's license under [Title 58, Occupations and Professions](#), in accordance with the provisions of this chapter and all other applicable laws and rules; and
    - (ii) be held to the same standards of practice as those applicable in traditional health care settings;
  - (b) if the provider does not already have a provider-patient relationship with the patient, establish a provider-patient relationship during the patient encounter in a manner consistent with the standards of practice, determined by the Division of Professional Licensing in rule made in accordance with [Title 63G, Chapter 3, Utah Administrative Rulemaking Act](#), including providing the provider's licensure and credentials to the patient;
  - (c) before providing treatment or prescribing a prescription drug, establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment after:
    - (i) obtaining from the patient or another provider the patient's relevant clinical history; and
    - (ii) documenting the patient's relevant clinical history and current symptoms;

- (d) be available to a patient who receives telehealth services from the provider for subsequent care related to the initial telemedicine services, in accordance with community standards of practice;
- (e) be familiar with available medical resources, including emergency resources near the originating site, in order to make appropriate patient referrals when medically indicated;
- (f) in accordance with any applicable state and federal laws, rules, and regulations, generate, maintain, and make available to each patient receiving telehealth services the patient's medical records; and
- (g) if the patient has a designated health care provider who is not the telemedicine provider:
  - (i) consult with the patient regarding whether to provide the patient's designated health care provider a medical record or other report containing an explanation of the treatment provided to the patient and the telemedicine provider's evaluation, analysis, or diagnosis of the patient's condition;
  - (ii) collect from the patient the contact information of the patient's designated health care provider; and
  - (iii) within two weeks after the day on which the telemedicine provider provides services to the patient, and to the extent allowed under HIPAA as that term is defined in Section [26-18-17](#), provide the medical record or report to the patient's designated health care provider, unless the patient indicates that the patient does not want the telemedicine provider to send the medical record or report to the patient's designated health care provider.

...

- (3) Except as specifically provided in [Title 58, Chapter 83, Online Prescribing, Dispensing, and Facilitation Licensing Act](#), and unless a provider has established a provider-patient relationship with a patient, a provider offering telemedicine services may not diagnose a patient, provide treatment, or prescribe a prescription drug based solely on one of the following:
  - (a) an online questionnaire;
  - (b) an email message; or
  - (c) a patient-generated medical history.
- (4) A provider may not offer telehealth services if:
  - (a) the provider is not in compliance with applicable laws, rules, and regulations regarding the provider's licensed practice; or
  - (b) the provider's license under [Title 58, Occupations and Professions](#), is not active and in good standing.

#### [26-60-104. Enforcement.](#)

- (1) The Division of Occupational and Professional Licensing created in Section [58-1-103](#) is authorized to enforce the provisions of Section [26-60-103](#) as it relates to providers licensed under [Title 58, Occupations and Professions](#).

...

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## Medicaid Reimbursement

### 26-18-13. Telemedicine -- Reimbursement -- Rulemaking.

- (1) (a) As used in this section, communication by telemedicine is considered face-to-face contact between a health care provider and a patient under the state's medical assistance program if:
  - (i) the communication by telemedicine meets the requirements of administrative rules adopted in accordance with Subsection [\(3\)](#); and
  - (ii) the health care services are eligible for reimbursement under the state's medical assistance program.
- (b) This Subsection [\(1\)](#) applies to any managed care organization that contracts with the state's medical assistance program.
- (2) The reimbursement rate for telemedicine services approved under this section:
  - (a) shall be subject to reimbursement policies set by the state plan; and
  - (b) may be based on:
    - (i) a monthly reimbursement rate;
    - (ii) a daily reimbursement rate; or
    - (iii) an encounter rate.
- (3) The department shall adopt administrative rules in accordance with [Title 63G, Chapter 3, Utah Administrative Rulemaking Act](#), which establish:
  - (a) the particular telemedicine services that are considered face-to-face encounters for reimbursement purposes under the state's medical assistance program; and
  - (b) the reimbursement methodology for the telemedicine services designated under Subsection [\(3\)\(a\)](#).

### 26-18-13.5. Telehealth services -- Reimbursement -- Reporting -- Telepsychiatric consultations.

- (1) As used in this section:
  - (a) "Telehealth services" means the same as that term is defined in Section [26-60-102](#).
  - (b) "Telemedicine services" means the same as that term is defined in Section [26-60-102](#).

...
- (2) This section applies to:
  - (a) a managed care organization that contracts with the Medicaid program; and
  - (b) a provider who is reimbursed for health care services under the Medicaid program.
- (3) The Medicaid program shall reimburse for telemedicine services at the same rate that the Medicaid program reimburses for other health care services.

...

#### **U.A.C. R414-42-2**

#### **Formerly cited as UT ADC R414-42**

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[R414-42-2. Definitions.](#)

...

(2) "Teledentistry" means the use of information technology and telecommunications for dental care, consultation, and education.

...

U.A.C. R414-42-3

Formerly cited as UT ADC R414-42

[R414-42-3. Covered Services.](#)

A licensed provider may deliver services via synchronous telehealth, as clinically appropriate. Services include consultation services, evaluation and management services, teledentistry services, mental health services, substance use disorder services, and telepsychiatric consultations.

### Private Payer Reimbursement

[31A-22-649.5. Insurance parity for telemedicine services -- Method of technology used.](#)

(1) As used in this section:

...

(b) "Telemedicine services" means the same as that term is defined in Section [26-60-102](#).

(2) Notwithstanding the provisions of Section [31A-22-618.5](#), a health benefit plan offered in the individual market, the small group market, or the large group market shall:

(a) provide coverage for:

(i) telemedicine services that are covered by Medicare; and

...

(b) reimburse a network provider that provides the telemedicine services described in Subsection [\(2\)\(a\)](#) at a negotiated commercially reasonable rate.

(3) (a) Notwithstanding Section [31A-45-303](#), a health benefit plan providing coverage under Subsection [\(2\)\(a\)](#) may not impose originating site restrictions, geographic restrictions, or distance-based restrictions.

(b) A network provider that provides the telemedicine services described in Subsection [\(2\)\(a\)](#) may utilize any synchronous audiovisual technology for the telemedicine services that is compliant with the federal Health Insurance Portability and Accountability Act of 1996.

## Vermont

### Requirements and Permissible Practices

#### 18 V.S.A. § 9361

##### **§ 9361. Health care providers delivering health care services through telemedicine or by store-and-forward means**

(a) As used in this section, “distant site,” “health care provider,” “originating site,” “store and forward,” and “telemedicine” shall have the same meanings as in 8 V.S.A. § 4100k.

(b) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this State may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient in person, through telemedicine, or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings.

(c)(1) A health care provider delivering health care services or dental services through telemedicine shall obtain and document a patient’s oral or written informed consent for the use of telemedicine technology prior to delivering services to the patient.

(A) The informed consent for telemedicine services shall be provided in accordance with Vermont and national policies and guidelines on the appropriate use of telemedicine within the provider’s profession and shall include, in language that patients can easily understand:

(i) an explanation of the opportunities and limitations of delivering health care services or dental services through telemedicine;

(ii) informing the patient of the presence of any other individual who will be participating in or observing the patient’s consultation with the provider at the distant site and obtaining the patient’s permission for the participation or observation; and

(iii) assurance that all services the health care provider delivers to the patient through telemedicine will be delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(B) For services delivered through telemedicine on an ongoing basis, the health care provider shall be required to obtain consent only at the first episode of care.

(2) The provider shall include the patient’s written consent in the patient’s medical record or document the patient’s oral consent in the patient’s medical record.

(3) A health care provider delivering telemedicine services through a contract with a third-party vendor shall comply with the provisions of this subsection (c) to the extent permissible under the terms of the contract. If the contract requires the health care provider to use the vendor’s own informed consent provisions instead of those set forth in this subsection, the health care provider shall be deemed to be in compliance with the requirements of this subsection if he or she adheres to the terms of the vendor’s informed consent policies.

(4) Notwithstanding any provision of this subsection to the contrary, a health care provider shall not be required to obtain a patient’s informed consent for the use of telemedicine in the following circumstances:

(A) in the case of a medical emergency;

- (B) for the second certification of an emergency examination determining whether an individual is a person in need of treatment pursuant to section 7508 of this title; or
  - (C) for a psychiatrist's examination to determine whether an individual is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).
- (d) Neither a health care provider nor a patient shall create or cause to be created a recording of a provider's telemedicine consultation with a patient.
- (e)(1) A patient receiving health care services or dental services by store-and-forward means shall be informed of the patient's right to refuse to receive services in this manner and to request services in an alternative format, such as through real-time telemedicine services or an in-person visit.
- (2) Receipt of services by store-and-forward means shall not preclude a patient from receiving real-time telemedicine services or an in-person visit with the distant site health care provider at a future date.
  - (3) Originating site health care providers involved in the store-and-forward process shall obtain informed consent from the patient as described in subsection (c) of this section.

### Medicaid and Third-Party Payer

#### 8 V.S.A. § 4100k

**§ 4100k. Coverage of health care services delivered through telemedicine and by store-and-forward means**

- (a)(1) All health insurance plans in this State shall provide coverage for health care services and dental services delivered through telemedicine by a health care provider at a distant site to a patient at an originating site to the same extent that the plan would cover the services if they were provided through in-person consultation.
- ...
- (2)(A) A health insurance plan shall provide the same reimbursement rate for services billed using equivalent procedure codes and modifiers, subject to the terms of the health insurance plan and provider contract, regardless of whether the service was provided through an in-person visit with the health care provider or through telemedicine.
- (B) The provisions of subdivision (A) of this subdivision (2) shall not apply to services provided pursuant to the health insurance plan's contract with a third-party telemedicine vendor to provide health care or dental services.
- (b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service or dental service provided through telemedicine as long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.
- (c) A health insurance plan may limit coverage to health care providers in the plan's network. A health insurance plan shall not impose limitations on the number of telemedicine consultations a covered person may receive that exceed limitations otherwise placed on in-person covered services.
- (d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary and are clinically appropriate for delivery through telemedicine, subject to the terms and conditions of the covered person's policy.
- (e)(1) A health insurance plan shall reimburse for health care services and dental services delivered by store-and-forward means.
- (2) A health insurance plan shall not impose more than one cost-sharing requirement on a patient for receipt of health care services or dental services delivered by store-and-forward means. If the services would require cost-sharing under the terms of the patient's health

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- insurance plan, the plan may impose the cost-sharing requirement on the services of the originating site health care provider or of the distant site health care provider, but not both.
- (f) A health insurer shall not construe a patient's receipt of services delivered through telemedicine or by store-and-forward means as limiting in any way the patient's ability to receive additional covered in-person services from the same or a different health care provider for diagnosis or treatment of the same condition.
- (g) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.
- (h) In order to facilitate the use of telemedicine in treating substance use disorder, when the originating site is a health care facility, health insurers and the Department of Vermont Health Access shall ensure that the health care provider at the distant site and the health care facility at the originating site are both reimbursed for the services rendered, unless the health care providers at both the distant and originating sites are employed by the same entity.
- (i) As used in this subchapter:
- (1) "Distant site" means the location of the health care provider delivering services through telemedicine at the time the services are provided.
  - (2) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402; a stand-alone dental plan or policy or other dental insurance plan offered by a dental insurer; and Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.
  - (3) "Health care facility" shall have the same meaning as in 18 V.S.A. § 9402.
  - (4) "Health care provider" means a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care services, including dental services, in this State to an individual during that individual's medical care, treatment, or confinement.
  - (5) "Originating site" means the location of the patient, whether or not accompanied by a health care provider, at the time services are provided by a health care provider through telemedicine, including a health care provider's office, a hospital, or a health care facility, or the patient's home or another nonmedical environment such as a school-based health center, a university-based health center, or the patient's workplace.
  - (6) "Store and forward" means an asynchronous transmission of medical information, such as one or more video clips, audio clips, still images, x-rays, magnetic resonance imaging scans, electrocardiograms, electroencephalograms, or laboratory results, sent over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty. In store and forward, the health care provider at the distant site reviews the medical information without the patient present in real time and communicates a care plan or treatment recommendation back to the patient or referring provider, or both.
  - (7) "Telemedicine" means the delivery of health care services, including dental services, such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

**18 V.S.A. chapter 219 as created by [S. 117](#)**

**§ 9362. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE SERVICES BY AUDIO-ONLY TELEPHONE**

(a) As used in this section, “health insurance plan” and “health care provider” have the same meaning as in 8 V.S.A. § 4100l and “telemedicine” has the same meaning as in 8 V.S.A. § 4100k.

(b)(1) Subject to the limitations of the license under which the individual is practicing and, for Medicaid patients, to the extent permitted by the Centers for Medicare and Medicaid Services, a health care provider may deliver health care services to a patient using audio-only telephone if the patient elects to receive the services in this manner and it is clinically appropriate to do so. A health care provider shall comply with any training requirements imposed by the provider’s licensing board on the appropriate use of audio-only telephone in health care delivery.

(2) A health care provider delivering health care services using audio only telephone shall include or document in the patient’s medical record:

(A) the patient’s informed consent for receiving services using audio only telephone in accordance with subsection (c) of this section; and

(B) the reason or reasons that the provider determined that it was clinically appropriate to deliver health care services to the patient by audio only telephone.

(3)(A) A health care provider shall not require a patient to receive health care services by audio-only telephone if the patient does not wish to receive services in this manner.

(B) A health care provider shall deliver care that is timely and complies with contractual requirements and shall not delay care unnecessarily if a patient elects to receive services through an in-person visit or telemedicine instead of by audio-only telephone.

(c) A health care provider delivering health care services by audio-only telephone shall obtain and document a patient’s oral or written informed consent for the use of audio-only telephone prior to the appointment or at the start of the appointment but prior to delivering any billable service.

(1) The informed consent for audio-only telephone services shall be provided in accordance with Vermont and national policies and guidelines on the appropriate use of telephone services within the provider’s profession and shall include, in language that patients can easily understand:

(A) that the patient is entitled to choose to receive services by audio only telephone, in person, or through telemedicine, to the extent clinically appropriate;

(B) that receiving services by audio-only telephone does not preclude the patient from receiving services in person or through telemedicine at a later date;

(C) an explanation of the opportunities and limitations of delivering and receiving health care services using audio-only telephone;

(D) informing the patient of the presence of any other individual who will be participating in or listening to the patient’s consultation with the provider and obtaining the patient’s permission for the participation or observation;

(E) whether the services will be billed to the patient’s health insurance plan if delivered by audio-only telephone and what this may mean for the patient’s financial responsibility for co-payments, coinsurance, and deductibles; and

(F) informing the patient that not all audio-only health care services are covered by all health plans.

(2) For services delivered by audio-only telephone on an ongoing basis, the health care provider shall be required to obtain consent only at the first episode of care.

(3) If the patient provides oral informed consent, the provider shall offer to provide the patient with a written copy of the informed consent.

(4) Notwithstanding any provision of this subsection to the contrary, a health care provider shall not be required to obtain a patient's informed consent for the use of audio-only telephone services in the case of a medical emergency.

(5) A health care provider may use a single informed consent form to address all telehealth modalities, including telemedicine, store and forward, and audio-only telephone, as long as the form complies with the provisions of section 9361 of this chapter and this section.

(d) Neither a health care provider nor a patient shall create or cause to be created a recording of a provider's telephone consultation with a patient.

(e) Audio-only telephone services shall not be used in the following circumstances:

(1) for the second certification of an emergency examination determining whether an individual is a person in need of treatment pursuant to section 7508 of this title; or

(2) for a psychiatrist's examination to determine whether an individual is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).

#### Sec. 6. AUDIO-ONLY TELEPHONE; MEDICAL BILLING; DATA COLLECTION; REPORT

(a)(1) On or before July 1, 2021, the Department of Financial Regulation, in consultation with the Department of Vermont Health Access, the Green Mountain Care Board, representatives of health care providers, health insurers, and other interested stakeholders, shall determine the appropriate codes or modifiers, or both, to be used by providers and insurers, including Vermont Medicaid to the extent permitted by the Centers for Medicare and Medicaid Services, in the billing of and payment for health care services delivered using audio-only telephone in order to allow for consistent data collection, identify appropriate codes for services that do not have in-person equivalents, and minimize the administrative burden on providers. To the extent possible, the use of codes or modifiers, or both, shall be done in a manner that allows data on the use of audio-only telephone services to be identified using the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES).

(2) Not later than January 1, 2022, all Vermont-licensed health care providers and health insurers offering major medical health insurance plans in Vermont shall use the codes and modifiers determined by the Department of Financial Regulation pursuant to subdivision (1) of this subsection when delivering services by audio-only telephone. Vermont Medicaid shall participate to the extent permitted by the Centers for Medicare and Medicaid Services.

(b) On or before December 1, 2023, the Department of Financial Regulation, the Vermont Program for Quality in Health Care, and, to the extent VHCURES data are available, the Green Mountain Care Board shall present information to the House Committee on Health Care and the Senate Committee on Health and Welfare regarding the use of audio-only telephone services in Vermont during calendar year 2022. The Department shall consult with interested stakeholders in order to include in its presentation information on utilization of audio-only telephone services, quality of care, patient satisfaction with receiving health care services by audio-only telephone, the impacts of coverage of audio-only telephone services on health care costs and on access to health care services, and how best to incorporate audio-only telephone services into value-based payments.

#### Sec. 7. AUDIO-ONLY TELEPHONE REIMBURSEMENT AMOUNTS FOR PLAN YEARS 2022, 2023, AND 2024

The Department of Financial Regulation, in consultation with the Department of Vermont Health Access, the Green Mountain Care Board, representatives of health care providers, health insurers, and other interested stakeholders, shall determine the amounts that health insurance plans shall reimburse health care providers for delivering health care services by audio only telephone during plan years 2022, 2023, and 2024. In determining the reimbursement amounts, the Department shall seek to find a reasonable balance between the

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costs to patients and the health care system and reimbursement amounts that do not discourage health care providers from delivering medically necessary, clinically appropriate health care services by audio-only telephone. The Department may determine different reimbursement amounts for different types of services and may modify the rates that will apply in different plan years as appropriate but shall finalize its determinations not later than April 1 for plan years after 2022.

# Virginia

## Requirements and Permissible Practices

### § 54.1-2700. Definitions.

As used in this chapter, unless the context requires a different meaning:

“Appliance” means a permanent or removable device used in a plan of dental care, including crowns, fillings, bridges, braces, dentures, orthodontic aligners, and sleep apnea devices.

“Board” means the Board of Dentistry.

“Dental hygiene” means duties related to patient assessment and the rendering of educational, preventive, and therapeutic dental services specified in regulations of the Board and not otherwise restricted to the practice of dentistry.

“Dental hygienist” means a person who is licensed by the Board to practice dental hygiene.

“Dentist” means a person who has been awarded a degree in and is licensed by the Board to practice dentistry.

“Dentistry” means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical, or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body.

“Digital scan” means digital technology that creates a computer-generated replica of the hard and soft tissues of the oral cavity using enhanced digital photography.

“Digital scan technician” means a person who has completed a training program approved by the Board to take digital scans of intraoral and extraoral hard and soft tissues for use in teledentistry.

“Digital work order” means the digital equivalent of a written dental laboratory work order used in the construction or repair of an appliance.

“License” means the document issued to an applicant upon completion of requirements for admission to practice dentistry or dental hygiene in the Commonwealth or upon registration for renewal of license to continue the practice of dentistry or dental hygiene in the Commonwealth.

“License to practice dentistry” means any license to practice dentistry issued by the Board.

...

“Store-and-forward technologies” means the technologies that allow for the electronic transmission of dental and health information, including images, photographs, documents, and health histories, through a secure communication system.

“Teledentistry” means the delivery of dentistry between a patient and a dentist who holds a license to practice dentistry issued by the Board through the use of telehealth systems and electronic technologies or media, including interactive, two-way audio or video.

### § 54.1-2708.5. Digital scans for use in the practice of dentistry; practice of digital scan technicians.

A. No person other than a dentist, dental hygienist, dental assistant I, dental assistant II, digital scan technician, or other person under the direction of a dentist shall obtain dental scans for use in the practice of dentistry.

B. A digital scan technician who obtains dental scans for use in the practice of teledentistry shall work under the direction of a dentist who is (i) licensed by the Board to practice dentistry in the Commonwealth, (ii) accessible and available for communication and consultation with the digital scan technician at all times during the patient interaction, and (iii) responsible for ensuring that the digital scan technician has a program of training approved by the Board for such purpose. All protocols and procedures for the performance of digital scans by digital scan

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technicians and evidence that a digital scan technician has complied with the training requirements of the Board shall be made available to the Board upon request.

[§ 54.1-2708.6. Practice of teledentistry; report.](#)

The Board shall review all applications for renewal of a license to identify those applicants who are engaged in the practice of teledentistry and shall report such information annually, by October 1, to the Chairmen of the House Committee on Health, Welfare and Institutions, the Senate Committee on Education and Health, and the Joint Commission on Health Care.

[§ 54.1-2711. Practice of dentistry.](#)

A. Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises, or permits to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents, or contiguous structures; or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes or causes to be taken digital scans or impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes. Taking impressions for mouth guards that may be self-fabricated or obtained over-the-counter does not constitute the practice of dentistry.

B. No person shall practice dentistry unless a bona fide dentist-patient relationship is established in person or through teledentistry. A bona fide dentist-patient relationship shall exist if the dentist has (i) obtained or caused to be obtained a health and dental history of the patient; (ii) performed or caused to be performed an appropriate examination of the patient, either physically, through use of instrumentation and diagnostic equipment through which digital scans, photographs, images, and dental records are able to be transmitted electronically, or through use of face-to-face interactive two-way real-time communications services or store-and-forward technologies; (iii) provided information to the patient about the services to be performed; and (iv) initiated additional diagnostic tests or referrals as needed. In cases in which a dentist is providing teledentistry, the examination required by clause (ii) shall not be required if the patient has been examined in person by a dentist licensed by the Board within the six months prior to the initiation of teledentistry and the patient's dental records of such examination have been reviewed by the dentist providing teledentistry.

C. No person shall deliver dental services through teledentistry unless he holds a license to practice dentistry in the Commonwealth issued by the Board and has established written or electronic protocols for the practice of teledentistry that include (i) methods to ensure that patients are fully informed about services provided through the use of teledentistry, including obtaining informed consent; (ii) safeguards to ensure compliance with all state and federal laws and regulations related to the privacy of health information; (iii) documentation of all dental services provided to a patient through teledentistry, including the full name, address, telephone number, and Virginia license number of the dentist providing such dental services; (iv) procedures for providing in-person services or for the referral of patients requiring dental services that cannot be provided by teledentistry to another dentist licensed to practice dentistry in the Commonwealth who actually practices dentistry in an area of the Commonwealth the patient can readily access; (v) provisions for the use of appropriate encryption when transmitting patient health information via teledentistry; and (vi) any other provisions required by the Board. A dentist who delivers dental services using teledentistry shall, upon request of the patient, provide health records to the patient or a dentist of record in

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a timely manner in accordance with § [32.1-127.1:03](#) and any other applicable federal or state laws or regulations. All patients receiving dental services through teledentistry shall have the right to speak or communicate with the dentist providing such services upon request.

D. Dental services delivered through use of teledentistry shall (i) be consistent with the standard of care as set forth in § [8.01-581.20](#), including when the standard of care requires the use of diagnostic testing or performance of a physical examination, and (ii) comply with the requirements of this chapter and the regulations of the Board.

E. In cases in which teledentistry is provided to a patient who has a dentist of record but has not had a dental wellness examination in the six months prior to the initiation of teledentistry, the dentist providing teledentistry shall recommend that the patient schedule a dental wellness examination. If a patient to whom teledentistry is provided does not have a dentist of record, the dentist shall provide or cause to be provided to the patient options for referrals for obtaining a dental wellness examination.

F. No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

#### [§ 54.1-2719. Persons engaged in construction and repair of appliances.](#)

A. Licensed dentists may employ or engage the services of any person, firm, or corporation to construct or repair an appliance, extraorally, in accordance with a written or digital work order. Any appliance constructed or repaired by a person, firm, or corporation pursuant to this section shall be evaluated and reviewed by the licensed dentist who submitted the written or digital work order, or a licensed dentist in the same dental practice. A person, firm, or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm, or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written or digital work order.

B. Any licensed dentist who employs the services of any person, firm, or corporation not working in a dental office under the dentist's direct supervision to construct or repair an appliance extraorally shall furnish such person, firm, or corporation with a written or digital work order on forms prescribed by the Board, which shall, at minimum, contain (i) the name and address of the person, firm, or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v) specification of the type and quality of materials to be used; and (vi) the signature and address of the dentist.

The person, firm, or corporation shall retain the original written work order or an electronic copy of a digital work order, and the dentist shall retain a duplicate of the written work order or an electronic copy of a digital work order, for three years.

C. If the person, firm, or corporation receives a written or digital work order from a licensed dentist, a written disclosure and subwork order shall be furnished to the dentist on forms prescribed by the Board, which shall, at minimum, contain (i) the name and address of the person, firm, or corporation and subcontractor; (ii) a number identifying the subwork order with the original work order; (iii) the date any subwork order was written; (iv) a description of the work to be done and the work to be done by the subcontractor, including diagrams or digital files, if necessary; (v) a specification of the type and quality of materials to be used; and (vi) the signature of the person issuing the disclosure and subwork order.

The subcontractor shall retain the subwork order, and the issuer shall retain a duplicate of the subwork order, which shall be attached to the work order received from the licensed dentist, for three years.

D. No person, firm, or corporation engaged in the construction or repair of appliances shall refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

## Medicaid Reimbursement

### 12VAC30-121-70. Covered services.

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7. Participating plans shall be permitted to use and reimburse telehealth for Medicare and Medicaid services as an innovative, cost effective means to decrease hospital admissions, reduce emergency department visits, address disparities in care, increase access, and increase timely interventions. Participating plans shall also encourage the use of telehealth to promote community living and improve access to behavioral health services. Participating plans shall be permitted to use telehealth in rural and urban settings and reimburse for store-and-forward applications. Participating plans shall also have the ability to cover remote patient monitoring. All telehealth and remote patient monitoring activities shall be compliant with Health Insurance Portability and Accountability Act requirements and as further set out in the three-way contract. For the purposes of this section:

- a. "Store-and-forward" means when prerecorded images, such as x-rays, video clips, and photographs, are captured and then forwarded to and retrieved, viewed, and assessed by a provider at a later time. Some common applications include (i) teledermatology, where digital pictures of a skin problem are transmitted and assessed by a dermatologist; (ii) teleradiology, where x-ray images are sent to and read by a radiologist; and (iii) teleretinal imaging, where images are sent to and evaluated by an ophthalmologist to assess for diabetic retinopathy; and
- b. "Telehealth" means the real time or near real time two-way transfer of data and information using an interactive audio and video connection for the purposes of medical diagnosis and treatment.

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## Private Payer

### § 38.2-3418.16. Coverage for telemedicine services.

A. Notwithstanding the provisions of § [38.2-3419](#), each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telemedicine services, as provided in this section.

B. As used in this section:

"Originating site" means the location where the patient is located at the time services are provided by a health care provider through telemedicine services.

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

"Telemedicine services" as it pertains to the delivery of health care services, means the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient, providing remote patient monitoring services, or consulting

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with other health care providers regarding a patient's diagnosis or treatment, regardless of the originating site and whether the patient is accompanied by a health care provider at the time such services are provided. "Telemedicine services" does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire. Nothing in this section shall preclude coverage for a service that is not a telemedicine service, including services delivered through real-time audio-only telephone.

C. An insurer, corporation, or health maintenance organization shall not exclude a service for coverage solely because the service is provided through telemedicine services and is not provided through face-to-face consultation or contact between a health care provider and a patient for services appropriately provided through telemedicine services.

D. An insurer, corporation, or health maintenance organization shall not be required to reimburse the treating provider or the consulting provider for technical fees or costs for the provision of telemedicine services; however, such insurer, corporation, or health maintenance organization shall reimburse the treating provider or the consulting provider for the diagnosis, consultation, or treatment of the insured delivered through telemedicine services on the same basis that the insurer, corporation, or health maintenance organization is responsible for coverage for the provision of the same service through face-to-face consultation or contact. No insurer, corporation, or health maintenance organization shall require a provider to use proprietary technology or applications in order to be reimbursed for providing telemedicine services.

E. Nothing shall preclude the insurer, corporation, or health maintenance organization from undertaking utilization review to determine the appropriateness of telemedicine services, provided that such appropriateness is made in the same manner as those determinations are made for the treatment of any other illness, condition, or disorder covered by such policy, contract, or plan. Any such utilization review shall not require pre-authorization of emergent telemedicine services.

F. An insurer, corporation, or health maintenance organization may offer a health plan containing a deductible, copayment, or coinsurance requirement for a health care service provided through telemedicine services, provided that the deductible, copayment, or coinsurance does not exceed the deductible, copayment, or coinsurance applicable if the same services were provided through face-to-face diagnosis, consultation, or treatment.

G. No insurer, corporation, or health maintenance organization shall impose any annual or lifetime dollar maximum on coverage for telemedicine services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

H. The requirements of this section shall apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended in the Commonwealth on and after January 1, 2021, or at any time thereafter when any term of the policy, contract, or plan is changed or any premium adjustment is made.

I. This section shall not apply to short-term travel, accident-only, or limited or specified disease policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under federal governmental plans.

J. The coverage required by this section shall include the use of telemedicine technologies as it pertains to medically necessary remote patient monitoring services to the full extent that these services are available.

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*Virginia, continued*

K. Prescribing of controlled substances via telemedicine shall comply with the requirements of § [54.1-3303](#) and all applicable federal law.

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# Washington

## Requirements and Permissible Practices

### RCW [43.70.495](#)

#### Telemedicine training for health care professionals.

(1) The legislature finds that a large segment of Washington residents do not have access to critical health care services. Telemedicine is a way to increase access to health care services to those who would otherwise not have reasonable access. The legislature therefore intends to ensure that health care professionals who provide services through telemedicine, as defined in RCW [70.41.020](#), in cities and rural areas alike, have current information available, making it possible for them to provide telemedicine services to the entire state of Washington.

(2) Except as permitted under subsection (3) of this section, beginning January 1, 2021, a health care professional who provides clinical services through telemedicine, other than a physician licensed under chapter [18.71](#) RCW or an osteopathic physician licensed under chapter [18.57](#) RCW, shall complete a telemedicine training. By January 1, 2020, the telemedicine collaborative shall make a telemedicine training available on its web site for use by health care professionals who use telemedicine technology. If a health care professional completes the training, the health care professional shall sign and retain an attestation. The training:

(a) Must include information on current state and federal law, liability, informed consent, and other criteria established by the collaborative for the advancement of telemedicine, in collaboration with the department and the Washington state medical quality assurance commission;

(b) Must include a question and answer methodology to demonstrate accrual of knowledge; and

(c) May be made available in electronic format and completed over the internet.

(3) A health care professional is deemed to have met the requirements of subsection (2) of this section if the health care professional:

(a) Completes an alternative telemedicine training; and

(b) Signs and retains an attestation that he or she completed the alternative telemedicine training.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alternative telemedicine training" means training that includes components that are substantively similar to the telemedicine training developed by the telemedicine collaborative under subsection (2) of this section. "Alternative telemedicine training" may include, but is not limited to:

(i) Training offered by hospitals and other health care facilities to employees of the facility;

(ii) Continuing education courses; and

(iii) Trainings developed by a health care professional board or commission.

(b) "Health care professional" means a person licensed, registered, or certified to provide health services.

## Medicaid Reimbursement

### RCW [48.43.005](#)

#### Definitions.

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

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(26) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter [70.127](#) RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(27) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

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Amended by [HB 1196](#)

#### Reimbursement of a health care service provided through telemedicine or store and forward technology—Report to the legislature.

Sec. 5. RCW [74.09.325](#) and 2020 c 92 s 3 are each amended to read as follows:

(1)(a) Upon initiation or renewal of a contract with the Washington state health care authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(i) The medicaid managed care plan in which the covered person is enrolled provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, upon initiation or renewal of a contract with the Washington state health care authority to administer a Medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine the same amount of compensation the managed health care system would pay the provider if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate an amount of compensation for telemedicine services that differs from the amount of compensation for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

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- (iv) A rural health clinic shall be reimbursed for audio-only telemedicine at the rural health clinic encounter rate.
- (2) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the managed health care system and health care provider.
- (3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:
- (a) Hospital;
  - (b) Rural health clinic;
  - (c) Federally qualified health center;
  - (d) Physician's or other health care provider's office;
  - (e) Licensed or certified behavioral health agency;
  - (f) Skilled nursing facility;
  - (g) Home or any location determined by the individual receiving the service; or
  - (h) Renal dialysis center, except an independent renal dialysis center.
- (4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the managed health care system. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.
- (5) A managed health care system may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.
- (6) A managed health care system may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.
- (7) This section does not require a managed health care system to reimburse:
- (a) An originating site for professional fees;
  - (b) A provider for a health care service that is not a covered benefit under the plan; or
  - (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.
- (8)(a) If a provider intends to bill a patient or a managed health care system for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered. The authority may submit information on any potential violations of this subsection to the appropriate disciplining authority, as defined in RCW [18.130.020](#).
- (b) If the health care authority has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the health care authority may submit information to the appropriate disciplining authority for action. Prior to submitting information to the appropriate disciplining authority, the health care authority may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).
- (c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the health care authority or initiated directly by an enrollee, the disciplining authority shall notify the health care authority of the results

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of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(9) For purposes of this section:

(a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(ii) For purposes of this section only, "audio-only telemedicine" does not include:

(A) The use of facsimile or email; or

(B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

(b) "Disciplining authority" has the same meaning as in RCW 18.130.020;

(c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(d) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or with a provider employed at the same clinic as the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

(e) "Health care service" has the same meaning as in RCW [48.43.005](#);

(f) "Hospital" means a facility licensed under chapter [70.41](#), 71.12, or [72.23](#) RCW;

(g) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(h) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(i) "Provider" has the same meaning as in RCW [48.43.005](#);

(j) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(k) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

(9) To measure the impact on access to care for underserved communities and costs to the state and the medicaid managed health care system for reimbursement of telemedicine services, the Washington state health care authority, using existing data and resources, shall provide a report to the appropriate policy and fiscal committees of the legislature no later than December 31, 2018.)

**NEW SECTION. Sec. 6.** A new section is added to chapter [74.09](#) RCW to read as follows:

- (1) The authority shall adopt rules regarding medicaid fee-for-service reimbursement for services delivered through audio-only telemedicine. Except as provided in subsection (2) of this section, the rules must establish a manner of reimbursement for audio-only telemedicine that is consistent with RCW [74.09.325](#).
- (2) The rules shall require rural health clinics to be reimbursed for audio-only telemedicine at the rural health clinic encounter rate.
- (3)(a) For purposes of this section, “audio-only telemedicine” means the delivery of health care services through the use of audio-only technology, permitting real-time communication between a patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.
  - (b) For purposes of this section only, “audio-only telemedicine” does not include:
    - (i) The use of facsimile or email; or
    - (ii) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

**NEW SECTION. Sec. 8.** (1) The insurance commissioner, in collaboration with the Washington state telehealth collaborative and the health care authority, shall study and make recommendations regarding:

- (a) Preliminary utilization trends for audio-only telemedicine;
  - (b) Qualitative data from health carriers, including Medicaid managed care organizations, on the burden of compliance and enforcement requirements for audio-only telemedicine;
  - (c) Preliminary information regarding whether requiring reimbursement for audio-only telemedicine has affected the incidence of fraud;
  - (d) Proposed methods to measure the impact of audio-only telemedicine on access to health care services for historically underserved communities and geographic areas;
  - (e) An evaluation of the relative costs to providers and facilities of providing audio-only telemedicine services as compared to audio-video telemedicine services and in-person services; and
  - (f) Any other issues the insurance commissioner deems appropriate.
- (2) The insurance commissioner must report his or her findings and recommendations to the appropriate committees of the legislature by November 15, 2023.
- (3) This section expires January 1, 2024.

## Washington Administrative Code

### [WAC 182-531-0100](#)

Scope of coverage for physician-related and health care professional services—General and administrative.

- (1) The Medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:
  - (a) Within the scope of an eligible client’s Washington apple health program. Refer to WAC [182-501-0060](#) and [182-501-0065](#); and
  - (b) Medically necessary as defined in WAC [182-500-0070](#).
- (2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC [182-501-0165](#).

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC [182-501-0169](#).

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

...

(y) Telemedicine (refer to WAC [182-531-1730](#));

...

#### [WAC 182-531-1730](#)

##### **Telemedicine.**

(1) Telemedicine is when a health care practitioner uses HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store and forward technology to deliver covered services that are within his or her scope of practice to a client at a site other than the site where the provider is located. If the service is provided through store and forward technology, there must be an associated office visit between the client and the referring health care provider.

(2) The Medicaid agency does not cover the following services as telemedicine:

- (a) Email, audio only telephone, and facsimile transmissions;
- (b) Installation or maintenance of any telecommunication devices or systems; and
- (c) Purchase, rental, or repair of telemedicine equipment.

(3) **Originating site.** An originating site is the physical location of the client at the time the health care service is provided. Approved originating sites are:

- (a) Clinics;
- (b) Community mental health/chemical dependency settings;
- (c) Dental offices;
- (d) Federally qualified health centers;
- (e) Home or any location determined appropriate by the individual receiving the service;
- (f) Hospitals - Inpatient and outpatient;
- (g) Neurodevelopmental centers;
- (h) Physician or other health professional's office;
- (i) Renal dialysis centers, except an independent renal dialysis center;
- (j) Rural health clinics;
- (k) Schools; and
- (l) Skilled nursing facilities.

(4) **Distant site.** A distant site is the physical location of the health care professional providing the health care service.

(5) The agency pays an additional facility fee per completed transmission to either the originating site or the distant site, as specified in the agency's program-specific billing instructions.

(6) If a health care professional performs a separately identifiable service for the client on the same day as the telemedicine service, documentation for both services must be clearly and separately identified in the client's medical record.

(7) Billing procedures for telemedicine can be found in the agency's program-specific billing instructions.

#### **WAC 182-535-1050**

##### **182-535-1050. Definitions.**

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**“Distant site (location of dental provider)”** means the physical location of the dentist or authorized dental provider providing the dental service to a client through teledentistry.

...

**“Originating site (location of client)”** means the physical location of the medicaid client as it relates to teledentistry.

...

**“Teledentistry”** means the variety of technologies and tactics used to deliver HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store-and-forward technology to deliver covered services within the dental care provider’s scope of practice to a client at a site other than the site where the provider is located.

...

#### **WAC 182-535-1098**

#### **182-535-1098. Covered--Adjunctive general services.**

Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

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#### **(5) Nonclinical procedures.**

(a) The agency covers teledentistry according to the department of health, health systems quality assurance office of health professions, current guidelines, appropriate use of teledentistry, and as follows (see WAC 182-531-1730 for coverage limitations not listed in this section):

- (i) Synchronous teledentistry at the distant site for clients of all ages; and
- (ii) Asynchronous teledentistry at the distant site for clients of all ages.

(b) The client’s record must include the following supporting documentation regarding teledentistry:

- (i) Service provided via teledentistry;
- (ii) Location of the client;
- (iii) Location of the provider; and
- (iv) Names and credentials of all persons involved in the teledentistry visit and their role in providing the service at both the originating and distant sites.

### **Private Payer Reimbursement**

#### **Revised Code of Washington**

**Reimbursement of health care services provided through telemedicine or store and forward technology.**

#### **RCW [41.05.700](#)**

**Sec. 1.** RCW [41.05.700](#) and 2020 c 92 s 2 are each amended to read as follows:

(1)(a) A health plan offered to employees, school employees, and their covered dependents under this chapter issued or renewed on or after January 1, 2017, shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

- (i) The plan provides coverage of the health care service when provided in person by the provider;
- (ii) The health care service is medically necessary;

- (iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;
  - (iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and
  - (v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.
- (b)(i) Except as provided in (b)(ii) of this subsection, a health plan offered to employees, school employees, and their covered dependents under this chapter issued or renewed on or after January 1, 2021, shall reimburse a provider for a health care service provided to a covered person through telemedicine the same amount of compensation the carrier would pay the provider if the health care service was provided in person by the provider.
- (ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate an amount of compensation for telemedicine services that differs from the amount of compensation for in-person services.
  - (iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.
- (2) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health plan and health care provider.
- (3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:
- (a) Hospital;
  - (b) Rural health clinic;
  - (c) Federally qualified health center;
  - (d) Physician's or other health care provider's office;
  - (e) Licensed or certified behavioral health agency;
  - (f) Skilled nursing facility;
  - (g) Home or any location determined by the individual receiving the service; or
  - (h) Renal dialysis center, except an independent renal dialysis center.
- (4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health plan. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.
- (5) The plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.
- (6) The plan may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.
- (7) This section does not require the plan to reimburse:
- (a) An originating site for professional fees;

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- (b) A provider for a health care service that is not a covered benefit under the plan; or
- (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8)(a) If a provider intends to bill a patient or the patient's health plan for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered. The authority may submit information on any potential violations of this subsection to the appropriate disciplining authority, as defined in RCW [18.130.020](#).

(b) If the health care authority has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the health care authority may submit information to the appropriate disciplining authority for action. Prior to submitting information to the appropriate disciplining authority, the health care authority may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).

(c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the health care authority or initiated directly by an enrollee, the disciplining authority shall notify the health care authority of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(9) For purposes of this section:

(a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(ii) For purposes of this section only, "audio-only telemedicine" does not include:

(A) The use of facsimile or email; or

(B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

(b) "Disciplining authority" has the same meaning as in RCW [18.130.020](#);

(c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(d) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or with a provider employed at the same clinic as the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.

(e) "Health care service" has the same meaning as in RCW [48.43.005](#);

(f) "Hospital" means a facility licensed under chapter [70.41](#), 71.12, or [72.23](#) RCW;

(g) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(h) "Provider" has the same meaning as in RCW [48.43.005](#);

(i) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant

site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and  
(j) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

**RCW [48.43.735](#)**

**Reimbursement of health care services provided through telemedicine or store and forward technology.**

**Sec. 2.** RCW [48.43.735](#) and 2020 c 92 s 1 are each amended to read as follows:

(1)(a) For health plans issued or renewed on or after January 1, 2017, a health carrier shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

- (i) The plan provides coverage of the health care service when provided in person by the provider;
- (ii) The health care service is medically necessary;
- (iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;
- (iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and
- (v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, for health plans issued or renewed on or after January 1, 2021, a health carrier shall reimburse a provider for a health care service provided to a covered person through telemedicine the same amount of compensation the carrier would pay the provider if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate an amount of compensation for telemedicine services that differs from the amount of compensation for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(2) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health carrier and the health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

- (a) Hospital;
- (b) Rural health clinic;
- (c) Federally qualified health center;
- (d) Physician's or other health care provider's office;
- (e) Licensed or certified behavioral health agency;

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- (f) Skilled nursing facility;
  - (g) Home or any location determined by the individual receiving the service; or
  - (h) Renal dialysis center, except an independent renal dialysis center.
- (4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health carrier. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.
- (5) A health carrier may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.
- (6) A health carrier may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.
- (7) This section does not require a health carrier to reimburse:
- (a) An originating site for professional fees;
  - (b) A provider for a health care service that is not a covered benefit under the plan; or
  - (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.
- (8)(a) If a provider intends to bill a patient or the patient's health plan for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered. The insurance commissioner may submit information on any potential violations of this subsection to the appropriate disciplining authority, as defined in [RCW 18.130.020](#).
- (b) If the commissioner has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the commissioner may submit information to the appropriate disciplining authority for action. Prior to submitting information to the appropriate disciplining authority, the commissioner may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).
  - (c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the commissioner or initiated directly by an enrollee, the disciplining authority shall notify the commissioner of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.
- (9) For purposes of this section:
- (a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.
  - (ii) For purposes of this section only, "audio-only telemedicine" does not include:
    - (A) The use of facsimile or email; or
    - (B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

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- (b) "Disciplining authority" has the same meaning as in RCW [18.130.020](#);
  - (c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;
  - (d) "Established relationship" means the covered person has had at least one in-person appointment within the past year with the provider providing audio-only telemedicine or with a provider employed at the same clinic as the provider providing audio-only telemedicine or the covered person was referred to the provider providing audio-only telemedicine by another provider who has had at least one in-person appointment with the covered person within the past year and has provided relevant medical information to the provider providing audio-only telemedicine.
  - (e) "Health care service" has the same meaning as in RCW [48.43.005](#);
  - (f) "Hospital" means a facility licensed under chapter [70.41](#), 71.12, or [72.23](#) RCW;
  - (g) "Originating site" means the physical location of a patient receiving health care services through telemedicine;
  - (h) "Provider" has the same meaning as in RCW [48.43.005](#);
  - (i) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and
  - (j) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.
- (9) The commissioner may adopt any rules necessary to implement this section

# West Virginia

## Requirements and Permissible Practices

**Editorial Note:** The West Virginia Dental Practice Act is §30-4-1 *et seq.* Oral health professionals are authorized to practice under this act, and are included in the definition of “health care provider” in WV ST §30-1-26 listed below.

### WV ST §30-1-26. Telehealth practice.

(a) For the purposes of this section:

‘Established patient’ means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

“Health care practitioner” means a person authorized to practice under §30-3-1 *et seq.*, §30-3E-1 *et seq.*, §30-4-1 *et seq.*, §30-5-1 *et seq.*, §30-7-1 *et seq.*, §30-7A-1 *et seq.*, §30-8-1 *et seq.*, §30-10-1 *et seq.*, §30-14-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-20A-1 *et seq.*, §30-21-1 *et seq.*, §30-23-1 *et seq.*, §30-26-1 *et seq.*, §30-28-1 *et seq.*, §30-30-1 *et seq.*, §30-31-1 *et seq.*, §30-32-1 *et seq.*, §30-34-1 *et seq.*, §30-35-1 *et seq.*, §30-36-1 *et seq.*, §30-37-1 *et seq.* and any other person licensed under this chapter that provides health care services.

“Interstate telehealth services” means the provision of telehealth services to a patient located in West Virginia by a health care practitioner located in any other state or commonwealth of the United States.

“Registration” means an authorization to practice a health profession regulated by §30-1-1 *et seq.* of this code for the limited purpose of providing interstate telehealth services within the registrant’s scope of practice.

“Telehealth services” means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include internet questionnaires, e-mail messages, or facsimile transmissions.

(b) Unless provided for by statute or legislative rule, a health care board, referred to in §30-1-1 *et seq.* of this code, shall propose an emergency rule for legislative approval in accordance with the provisions of §29A-3-15 *et seq.* of this code to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following:

- (1) The practice of the health care service occurs where the patient is located at the time the telehealth services are provided;
- (2) The health care practitioner who practices telehealth shall be:
  - (A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and
  - (B) Registered as an interstate telehealth practitioner with the appropriate board in West Virginia;
- (3) When the health care practitioner-patient relationship is established.
- (4) The standard of care for the provision of telehealth services. The standard of care shall require that with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care

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practitioner, on a case-by-case basis, and it does not to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care.

(5) A prohibition of prescribing any controlled substance listed in Schedule II of the Uniform Controlled Substance Act, unless authorized by another section: *Provided*, That the prescribing limitations contained in this section do not apply to a physician or a member of the same group practice with an established patient.

(6) Establish the conduct of a registrant for which discipline may be imposed by the board of registration.

(7) Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the interstate telehealth practitioner registered in the state.

(8) A reference to the Board's discipline process.

(c) A registration issued pursuant to the provisions of or the requirements of this section does not authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure.

(d) By registering to provide interstate telehealth services to patients in this state, a health care practitioner is subject to:

(1) The laws regarding the profession in this state, including the state judicial system and all professional conduct rules and standards incorporated into the health care practitioner's practice act and the legislative rules of registering board; and

(2) The jurisdiction of the board with which he or she registers to provide interstate telehealth services, including such board's complaint, investigation, and hearing process.

(e) A health care professional who registers to provide interstate telehealth services pursuant to the provisions of or the requirements of this section shall immediately notify the board where he or she is registered in West Virginia and of any restrictions placed on the individual's license to practice in any state or jurisdiction.

(f) A person currently licensed in this state is not subject to registration but shall practice telehealth in accordance with the provisions of this section and the rules promulgated thereunder.

## Medicaid Reimbursement

### WV ST § 9-5-28. Requirement for telehealth rates.

The Medicaid plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters.

The Medicaid plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

## Private Payer Reimbursement

### WV ST § 5-16-7b. Coverage for telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

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(2) "Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

(3) "Health care practitioner" means a person licensed under §30-1-1 et seq. of this code who provides health care services.

(4) "Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

(5) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(6) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages, or facsimile transmissions.

(7) "Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

(b) After July 1, 2020, the plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) After July 1, 2020, the plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) The plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for virtual telehealth encounters. The plan, which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

(e) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge the plan a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

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WV ST §33-57-1. Coverage of telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

(2) "Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

(3) "Health care practitioner" means a person licensed under §30-1-1 et seq. of this code who provides health care services.

(4) "Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

(5) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(6) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

(7) "Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

(b) Notwithstanding the provisions of §33-1-1 et seq. of this code, an insurer subject to §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 et seq. of this code which issues or renews a health insurance policy on or after July 1, 2020, shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) An insurer subject to §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 et seq. of this code which issues or renews a health insurance policy on or after July 1, 2020, may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) An insurer subject to §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 et seq. of this code which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company for the virtual telehealth encounter. An insurer subject to §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 et seq. of this code which issues, renews, amends, or adjusts a plan, policy, contract, or agreement on or after July 1, 2021, shall provide reimbursement for a telehealth service for an established patient, or care rendered on a consulting basis to a patient located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement, or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

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(e) An insurer subject to §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 et seq. of this code may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to the provisions of or the requirements of this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge an insurer subject to §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 et seq. of this code a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

# Wisconsin

## Requirements and Permissible Practices

### W.S.A. 440.094

#### **440.094. Practice by health care providers from other states.**

(a) Notwithstanding ss. [441.06 \(4\)](#), [441.15 \(2\)](#), [441.16](#), [446.02 \(1\)](#), [447.03 \(1\)](#) and [\(2\)](#), [448.03 \(1\) \(a\)](#), [\(b\)](#), and [\(c\)](#) and [\(1m\)](#), [448.51 \(1\)](#), [448.61](#), [448.76](#), [448.961 \(1\)](#) and [\(2\)](#), [449.02 \(1\)](#), [450.03 \(1\)](#), [451.04 \(1\)](#), [455.02 \(1m\)](#), [457.04 \(4\)](#), [\(5\)](#), [\(6\)](#), and [\(7\)](#), [459.02 \(1\)](#), [459.24 \(1\)](#), and [460.02](#), a health care provider may provide services within the scope of the credential that the health care provider holds and the department shall grant the health care provider a temporary credential to practice under this section if all of the following apply:

1. The health care provider applies to the department for a temporary credential under this section within 30 days of beginning to provide health care services for a health care employer. The health care provider shall include in the application an attestation of all of the following:

- a. The date on which the health care provider first provided health care services in this state under this section.
- b. That the health care provider holds a valid, unexpired credential granted in another state.
- c. The health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.
- d. The health care provider has applied for a permanent credential granted by the department or an examining board, as applicable, under chs. 440 to 480. This subd. 1. D. does not apply to a health care provider who provides health care services only during the period covered by a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends.

2. If the health care provider provides services other than services provided through telehealth as described in sub. (3), the health care employer of the health care provider attests all of the following to the department within 10 days of the date on which the health care provider begins providing health care services in this state under this section:

- a. The health care employer has confirmed that the health care provider holds a valid, unexpired credential granted by another state.
- b. To the best of the health care employer's knowledge and with a reasonable degree of certainty, the health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.

(b) A health care provider who practices within the scope of a temporary credential granted under this section has all rights and is subject to all responsibilities, malpractice insurance requirements, limitations on scope of practice, and other provisions that apply under chs. 440 to 480 to the practice of the health care provider.

(c) 1. A temporary credential granted under this section becomes effective on the date identified in the attestation under par. (a)1. A. that the health care provider first provided health care services in this state under this section.

2. a. Except as provided in subd. 2. B., a temporary credential granted under this section expires on the date that the department, or an examining board in the department, as

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applicable, grants or denies the application under par. (a)1. D. for a permanent credential submitted by the health care provider.

b. If a health care provider provides health care services only during the period covered by a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends, a temporary credential granted under this section to the health care provider expires 30 days after the national emergency ends.

(3) Telehealth. A health care provider who practices within the scope of a temporary credential granted under this section may provide services through telehealth to a patient located in this state.

## Medicaid Reimbursement

### W.S.A. 49.45

#### 49.45. Medical assistance; administration

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(61) SERVICES PROVIDED THROUGH TELEHEALTH AND COMMUNICATIONS TECHNOLOGY.

(a) In this subsection:

1. "Asynchronous telehealth service" is telehealth that is used to transmit medical data about a patient to a provider when the transmission is not a 2-way, real-time, interactive communication.
2. "Interactive telehealth" means telehealth delivered using multimedia communication technology that permits 2-way, real-time, interactive communications between a certified provider of Medical Assistance at a distant site and the Medical Assistance recipient or the recipient's provider.
3. "Remote patient monitoring" is telehealth in which a patient's medical data is transmitted to a provider for monitoring and response if necessary.
4. "Telehealth" means a practice of health care delivery, diagnosis, consultation, treatment, or transfer of medically relevant data by means of audio, video, or data communications that are used either during a patient visit or a consultation or are used to transfer medically relevant data about a patient. "Telehealth" does not include communications delivered solely by audio-only telephone, facsimile machine, or electronic mail unless the department specifies otherwise by rule.

(b) Subject to par. (e), the department shall provide reimbursement under the Medical Assistance program for any benefit that is a covered benefit under s. 49.46 (2) and that is delivered by a certified provider for Medical Assistance through interactive telehealth.

(c) Subject to par. (e), the department shall provide reimbursement under the Medical Assistance program for all of the following:

1. Except as provided by the department by rule, a consultation pertaining to a Medical Assistance recipient conducted through interactive telehealth between a certified provider of Medical Assistance and the Medical Assistance recipient's treating provider that is certified under Medical Assistance.
2. Except as provided by the department by rule, remote patient monitoring of a Medical Assistance recipient and asynchronous telehealth service in which the medical data pertains to a Medical Assistance recipient.
3. Except as provided by the department by rule and subject to par. (e) 4., services that are covered under the Medicare program under 42 USC 1395 et seq. for which the federal department of health and human services provides Medical Assistance federal financial participation and that are any of the following:

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- a. Telehealth services, as defined under [42 USC 1395m](#) (m) (4) (F).
  - b. Remote physiologic monitoring.
  - c. Remote evaluation of prerecorded patient information.
  - d. Brief communication technology-based services.
  - e. Care management services delivered through telehealth.
  - f. Any other telehealth or communication technology-based services.
4. Any service that is not specified in subds. [1.](#) to [3.](#) or par. [\(b\)](#) that is provided through telehealth and that the department specifies by rule under par. [\(d\)](#) is a covered and reimbursable service under the Medical Assistance program.
- (d) The department shall promulgate rules specifying any services under par. [\(c\) 4.](#) that are reimbursable under Medical Assistance. The department may promulgate rules excluding services under par. [\(c\) 1.](#) to [3.](#) from reimbursement under Medical Assistance. The department may promulgate rules specifying any telehealth service under par. [\(b\)](#) or [\(c\) 1.](#) or [2.](#) that is provided solely by audio-only telephone, facsimile machine, or electronic mail as reimbursable under Medical Assistance.
- (e)
2. The department may not require a certified provider of Medical Assistance that provides a reimbursable service under par. [\(b\)](#) or [\(c\)](#) to obtain an additional certification or meet additional requirements solely because the service was delivered through telehealth, except that the department may require, by rule, that the transmission of information through telehealth be of sufficient quality to be functionally equivalent to face-to-face contact. The department may apply any requirement that is applicable to a covered service that is not provided through telehealth to any service provided under par. [\(b\)](#) or [\(c\)](#).
  3. The department may not limit coverage or reimbursement of a service provided under par. [\(b\)](#) or [\(c\)](#) based on the location of the Medical Assistance recipient when the service is provided.
  4. The department may not cover or provide reimbursement under Medical Assistance for a service described under par. [\(c\) 3.](#) that is first covered under the Medicare program under [42 USC 1395](#) et seq. after July 1, 2019, until the date that is one year after the date the service is covered under the Medicare program or the date the secretary explicitly approves the service as a Medical Assistance covered service, whichever is earlier.

#### [W.S.A. 49.46](#)

#### **49.46. Medical assistance; recipients of social security aids**

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#### (2) Benefits.

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(b) Except as provided in pars. [\(be\)](#) and [\(dc\)](#), the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following services:

1. Dentists' services, limited to basic services within each of the following categories:

- a. Diagnostic services.
  - b. Preventive services.
  - c. Restorative services.
  - d. Endodontic services.
  - e. Periodontic services.
  - f. Oral and maxillofacial surgery services.
  - g. Emergency treatment of dental pain.
- hm. Removable prosthodontic services.

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im. Fixed prosthodontic services.

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(1) Definitions. In this section:

(a) "Credential" means a license, permit, certificate, or registration.

(b) "Health care employer" means a system, care clinic, care provider, long-term care facility, or any entity whose employed, contracted, or affiliated staff provide health care service to individuals in this state.

(c) "Health care provider" means an individual who holds a valid, unexpired credential granted by another state or territory that authorizes or qualifies the individual to perform acts that are substantially the same as the acts that any of the following are licensed or certified to perform:

1. A registered nurse, licensed practical nurse, or nurse midwife licensed under ch. 441, or advanced practice nurse prescriber certified under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.
5. A physical therapist or physical therapist assistant licensed under subch. III of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.
6. A podiatrist licensed under subch. IV of ch. 448.
7. A dietitian certified under subch. V of ch. 448.
8. An athletic trainer licensed under subch. VI of ch. 448.
9. An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
10. An optometrist licensed under ch. 449.
11. A pharmacist licensed under ch. 450.
12. An acupuncturist certified under ch. 451.
13. A psychologist licensed under ch. 455.
14. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457 or a clinical substance abuse counselor certified under s. 440.88.
15. A speech-language pathologist or audiologist licensed under subch. II of ch. 459.
16. A massage therapist or bodywork therapist licensed under ch. 460.

# Wyoming

## Requirements and Permissible Practices

### WV ST 33-1-303. Powers of licensure boards.

(a) Except as otherwise specifically provided by statute, a board authorized to establish examination, inspection, permit or license fees for any profession or occupation regulated under this title or under W.S. 11-25-201, 21-2-802 or 23-2-414 may:

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(iv) Adopt rules and regulations allowing the practice of telemedicine/telehealth and the use of telemedicine/telehealth technologies within an applicable profession or occupation consistent with the profession's or occupation's duties and obligations. For purposes of this paragraph, telemedicine/telehealth shall be defined within each promulgated rule in a manner applicable to the individual profession or occupation and in a manner which facilitates the development and promotion of uniform, system wide standards for the practice of telemedicine/telehealth and the use of telemedicine/telehealth technologies. Any board promulgating rules under this paragraph shall first confer with the office of rural health for the purpose of promoting the goals established by W.S. 9-2-117(a)(vi) through (viii).