

S T A T E O F N E W Y O R K

3793--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. MORELLE, GABRYSZAK, COLTON, SCHIMMINGER, DenDEKKER, GALEF, CYMBROWITZ, MAISEL, BROOK-KRASNY, MILLMAN, BRONSON, LUPARDO, GUNTHER, LIFTON -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to promoting the development, provision and accessibility of telehealth/telemedicine services in New York state; and to amend the state finance law, in relation to establishing a New York state telehealth/telemedicine development and research grant fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "New York
2 state telehealth/telemedicine development act."

3 S 2. The public health law is amended by adding a new article 27-M to
4 read as follows:

5 ARTICLE 27-M

6 NEW YORK STATE TELEHEALTH/TELEMEDICINE DEVELOPMENT PROGRAM

7 SECTION 2799-T. LEGISLATIVE INTENT.

8 2799-U. COORDINATION OF DEPARTMENT RESPONSIBILITIES FOR
9 TELEHEALTH/TELEMEDICINE; ANNUAL PLAN.

10 2799-V. TELEHEALTH/TELEMEDICINE DEVELOPMENT; GRANTS FOR UNDER-
11 SERVED AREAS AND POPULATIONS.

12 2799-W. TELEHEALTH/TELEMEDICINE RESEARCH.

13 S 2799-T. LEGISLATIVE INTENT. THE LEGISLATURE RECOGNIZES THE DEMON-
14 STRATED COST-EFFECTIVENESS, IMPROVEMENTS IN DISEASE MANAGEMENT AND
15 IMPROVED PATIENT OUTCOMES RESULTING FROM THE PROVISION OF
16 TELEHEALTH/TELEMEDICINE SERVICES. TELEHEALTH/TELEMEDICINE SERVICES ARE
17 THOSE SERVICES WHICH UTILIZE ELECTRONIC TECHNOLOGY OVER A GEOGRAPHIC
18 DISTANCE BETWEEN PATIENTS AND HEALTH CARE PROVIDERS FOR THE PURPOSES OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ASSESSMENT, MONITORING, INTERVENTION, CLINICAL MANAGEMENT AND/OR EDUCA-
2 TION WITH PATIENTS. STUDIES HAVE CHRONICLED SIGNIFICANT REDUCTIONS IN
3 HOSPITALIZATIONS AND OTHERWISE NECESSARY MEDICAL CARE AS A RESULT OF
4 TELEHEALTH/TELEMEDICINE INTERVENTION. THE LEGISLATURE FURTHER RECOGNIZES
5 THAT GEOGRAPHY, WEATHER AND OTHER FACTORS CAN CREATE BARRIERS TO ACCESS-
6 ING APPROPRIATE HEALTH AND MENTAL HEALTH CARE IN NEW YORK STATE AND
7 THAT ONE WAY TO PROVIDE, ENSURE OR ENHANCE ACCESS TO CARE GIVEN THESE
8 BARRIERS IS THROUGH THE APPROPRIATE USE OF TECHNOLOGY TO ALLOW HEALTH
9 CARE CONSUMERS ACCESS TO QUALIFIED HEALTH CARE PROVIDERS AND INSTI-
10 TUTIONS. IN ORDER TO PROMOTE THE ROLE AND CAPACITY OF
11 TELEHEALTH/TELEMEDICINE TECHNOLOGY RELATIVE TO THESE PURPOSES, THE
12 LEGISLATURE HEREBY ENACTS THE NEW YORK STATE TELEHEALTH/TELEMEDICINE
13 DEVELOPMENT ACT TO ESTABLISH A TELEHEALTH/TELEMEDICINE DEVELOPMENT
14 PROGRAM TO COORDINATE AND FOCUS STATE ADMINISTRATIVE RESPONSIBILITIES AS
15 WELL AS STATE POLICY AND PROGRAM PLANNING FOR TELEHEALTH/TELEMEDICINE,
16 PROVIDE FOR TELEHEALTH/TELEMEDICINE DEVELOPMENT IN UNDERSERVED GEOGRAPH-
17 IC AREAS AND FOR NEW POPULATIONS, PROMOTE QUALITY AND SAFEGUARDS IN
18 TELEHEALTH/TELEMEDICINE, PROMOTE AND ASSIST TELEHEALTH/TELEMEDICINE
19 RESEARCH AND EVALUATION, ESTABLISH THE TELEHEALTH/TELEMEDICINE RESEARCH
20 AND DEVELOPMENT FUND, AND PROVIDE FOR CAPITAL FINANCING.

21 S 2799-U. COORDINATION OF DEPARTMENT RESPONSIBILITIES FOR
22 TELEHEALTH/TELEMEDICINE; ANNUAL PLAN. 1. THE COMMISSIONER SHALL COORDI-
23 NATE AND FOCUS THE DEPARTMENT'S DEVELOPMENTAL, ADMINISTRATIVE, RESEARCH
24 AND EVALUATION RESPONSIBILITIES FOR TELEHEALTH/TELEMEDICINE SERVICES.

25 2. THE COMMISSIONER, IN CONSULTATION WITH ELIGIBLE PROVIDERS AS SPECI-
26 FIED IN SUBDIVISION TWO OF SECTION TWENTY-SEVEN HUNDRED NINETY-NINE-V OF
27 THIS ARTICLE, SHALL PREPARE AND SUBMIT AN ANNUAL PLAN TO SUPPORT THE
28 PROVISION OF TELEHEALTH/TELEMEDICINE SERVICES PROVIDED PURSUANT TO
29 SUBDIVISION THREE-C OF SECTION THIRTY-SIX HUNDRED FOURTEEN OF THIS CHAP-
30 TER, AS WELL AS OTHER TELEHEALTH/TELEMEDICINE SERVICES FOR WHICH THE
31 DEPARTMENT HAS DEVELOPMENTAL AND ADMINISTRATIVE RESPONSIBILITY. THE
32 ANNUAL PLAN SHALL INCLUDE:

33 (A) ANY NECESSARY RECOMMENDATIONS FOR LEGISLATIVE, ADMINISTRATIVE OR
34 BUDGETARY SUPPORT FOR TELEHEALTH/TELEMEDICINE SERVICES;

35 (B) THE IDENTIFICATION OF BARRIERS TO THE PROVISION OF AND ACCESS TO
36 TELEHEALTH/TELEMEDICINE, INCLUDING EDUCATION AND TRAINING FOR BOTH
37 PROVIDERS AND CONSUMERS, ELECTRONIC RECORDS INTERFACE, AND OTHER, AND
38 THE METHODS BY WHICH THE DEPARTMENT WILL AID IN ADDRESSING SUCH BARRI-
39 ERS; AND

40 (C) AN ABSTRACT OF TELEHEALTH/TELEMEDICINE RESEARCH EITHER BEING OR TO
41 BE CONDUCTED BY THE DEPARTMENT, OR FACILITATED BY THE DEPARTMENT AND
42 BEING OR TO BE CONDUCTED BY PROVIDERS OR OTHER ENTITIES.

43 3. THE COMMISSIONER SHALL PROVIDE COPIES OF THE ANNUAL PLAN TO THE
44 GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE AND
45 THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY.

46 4. (A) THE COMMISSIONER, IN CONSULTATION WITH ELIGIBLE PROVIDERS AS
47 SPECIFIED IN SUBDIVISION TWO OF SECTION TWENTY-SEVEN HUNDRED
48 NINETY-NINE-V OF THIS ARTICLE, SHALL IDENTIFY STANDARDS DETERMINED TO BE
49 NECESSARY FOR TELEHEALTH/TELEMEDICINE SERVICES UNDER THIS ARTICLE. SUCH
50 STANDARDS, INCLUDING STANDARDS FOR THE PROTECTION OF PATIENT INFORMA-
51 TION, SHALL BE IDENTIFIED FROM:

52 (I) THE AMERICAN TELEMEDICINE ASSOCIATION, THE FEDERAL FOOD AND DRUG
53 ADMINISTRATION AND/OR OTHER GENERALLY RECOGNIZED STANDARD-SETTING ORGAN-
54 IZATIONS AS THE COMMISSIONER MAY DETERMINE;

55 (II) TITLE EIGHT OF THE EDUCATION LAW AND REGULATIONS THERETO, THIS
56 CHAPTER AND REGULATIONS THERETO AND, AS APPLICABLE, THE STANDARDS OF

1 RELEVANT PROFESSIONAL OR ACCREDITING BODIES AS THE COMMISSIONER MAY
2 DETERMINE, TO ENSURE THAT TELEHEALTH/TELEMEDICINE MONITORING IS
3 CONDUCTED BY INDIVIDUALS IN ACCORDANCE WITH, AND AS LIMITED BY, THE
4 APPLICABLE SCOPE OF PRACTICE, LICENSURE AND/OR CREDENTIALING PROVISIONS
5 OF SUCH LAWS AND STANDARDS.

6 (B) THE COMMISSIONER MAY INCORPORATE, WITHIN THE ANNUAL PLAN SUBMITTED
7 PURSUANT TO SUBDIVISION TWO OF THIS SECTION, RECOMMENDATIONS FOR ANY
8 ADDITIONAL STANDARDS OR REQUIREMENTS FOR TELEHEALTH/TELEMEDICINE
9 SERVICES AS MAY BE NECESSARY UNDER THIS ARTICLE.

10 S 2799-V. TELEHEALTH/TELEMEDICINE DEVELOPMENT; GRANTS FOR UNDERSERVED
11 AREAS AND POPULATIONS. 1. SUBJECT TO THE AVAILABILITY OF FUNDING FROM
12 SECTION NINETY-NINE-U OF THE STATE FINANCE LAW, FUNDS MADE AVAILABLE IN
13 THE GENERAL FUND OR ANY OTHER FUNDS MADE AVAILABLE THEREFOR, THE DEPART-
14 MENT SHALL PROVIDE GRANTS TO ELIGIBLE PROVIDERS FOR:

15 (A) THE DEVELOPMENT OF TELEHEALTH/TELEMEDICINE SERVICES IN GEOGRAPHIC
16 AREAS OF THE STATE DEEMED BY THE DEPARTMENT TO BE UNDERSERVED ON THE
17 BASIS OF A LACK OF PROVIDERS PURSUANT TO THIS ARTICLE;

18 (B) THE DEVELOPMENT OF TELEHEALTH/TELEMEDICINE SERVICES IN GEOGRAPHIC
19 AREAS OF THE STATE DEEMED BY THE DEPARTMENT TO BE UNDERSERVED ON THE
20 BASIS OF THE LACK OF TELEHEALTH/TELEMEDICINE SERVICES IN THE AREA;

21 (C) THE DEVELOPMENT OF TELEHEALTH/TELEMEDICINE SERVICES FOR NEW POPU-
22 LATIONS, WHERE EVIDENCE SUGGESTS THE PROVISION OF SUCH SERVICES WOULD
23 FACILITATE THE MANAGEMENT OF PATIENT CARE, ACCESS TO CARE AND/OR
24 COST-EFFECTIVENESS OF CARE;

25 (D) THE DEVELOPMENT OF TELEHEALTH/TELEMEDICINE SERVICES FOR NEW CONDI-
26 TIONS, WHERE EVIDENCE SUGGESTS THE PROVISION OF SUCH SERVICES WOULD
27 FACILITATE THE MANAGEMENT OF SUCH CONDITIONS, ACCESS TO CARE AND/OR
28 COST-EFFECTIVENESS OF CARE;

29 (E) THE DEVELOPMENT OF TELEHEALTH/TELEMEDICINE SERVICES TO EVALUATE
30 THE POTENTIAL BENEFITS OF NEW TELEHEALTH/TELEMEDICINE TECHNOLOGY, FOR
31 PATIENT CARE, ACCESS TO CARE AND/OR COST-EFFECTIVENESS OF CARE; OR

32 (F) SUCH OTHER PURPOSES AS THE DEPARTMENT MAY IDENTIFY.

33 2. ELIGIBLE PROVIDERS SHALL INCLUDE THOSE LICENSED, CERTIFIED OR
34 AUTHORIZED UNDER ARTICLE TWENTY-EIGHT, THIRTY-SIX OR FORTY OF THIS CHAP-
35 TER OR UNDER SECTION FORTY-FOUR HUNDRED THREE-F OF THIS CHAPTER OR
36 PHYSICIANS LICENSED UNDER ARTICLE ONE HUNDRED THIRTY-ONE OF TITLE EIGHT
37 OF THE EDUCATION LAW; PROVIDED HOWEVER THAT ELIGIBILITY UNDER THIS
38 SECTION TO PROVIDE TELEHEALTH/TELEMEDICINE SERVICES SHALL BE CONSISTENT
39 WITH THE AUTHORITY FOR THE PROVISION OF CARE OTHERWISE PROVIDED PURSUANT
40 TO ARTICLE TWENTY-EIGHT, THIRTY-SIX OR FORTY OF THIS CHAPTER OR UNDER
41 SECTION FORTY-FOUR HUNDRED THREE-F OF THIS CHAPTER OR TITLE EIGHT OF THE
42 EDUCATION LAW.

43 3. THE DEPARTMENT, IN CONSULTATION WITH ELIGIBLE PROVIDERS AS SPECI-
44 FIED IN SUBDIVISION TWO OF THIS SECTION, SHALL ESTABLISH THE FORMS AND
45 PROCESS FOR THE SUBMISSION AND APPROVAL OF GRANT APPLICATIONS PURSUANT
46 TO THIS SUBDIVISION.

47 S 2799-W. TELEHEALTH/TELEMEDICINE RESEARCH. 1. THE COMMISSIONER SHALL
48 PROMOTE AND SUPPORT CLINICAL AND PROGRAMMATIC RESEARCH BY PROVIDERS AND
49 OTHER ENTITIES TO FURTHER EVALUATE, REFINE AND/OR DEVELOP EFFECTIVE AND
50 EFFICIENT APPLICATION OF TELEHEALTH/TELEMEDICINE METHODS AND TECHNOLOGY
51 TO POPULATIONS, CONDITIONS AND CIRCUMSTANCES. THE COMMISSIONER SHALL
52 MAKE AVAILABLE DATA AND TECHNICAL ASSISTANCE FOR SUCH RESEARCH, PROVIDED
53 THAT ANY DATA MADE AVAILABLE MUST NOT CONTAIN INDIVIDUALLY IDENTIFYING
54 INFORMATION.

55 2. THE COMMISSIONER IS AUTHORIZED TO APPLY FOR SUCH GOVERNMENTAL,
56 PHILANTHROPIC AND OTHER GRANTS THAT MAY BE AVAILABLE FOR SUCH RESEARCH.

1 MONIES FROM SUCH GRANTS SHALL BE DEPOSITED IN THE NEW YORK STATE
2 TELEHEALTH/TELEMEDICINE DEVELOPMENT AND RESEARCH GRANT FUND ESTABLISHED
3 BY SECTION NINETY-NINE-U OF THE STATE FINANCE LAW.

4 3. THE DEPARTMENT SHALL CONSULT WITH ELIGIBLE PROVIDERS, AS SPECIFIED
5 IN SUBDIVISION TWO OF SECTION TWENTY-SEVEN HUNDRED NINETY-NINE-V OF THIS
6 ARTICLE IN THE IMPLEMENTATION OF THIS SECTION.

7 S 3. Section 3614 of the public health law is amended by adding a new
8 subdivision 3-d to read as follows:

9 3-D. CAPITAL REIMBURSEMENT FOR TELEHEALTH/TELEMEDICINE. THE DEPARTMENT
10 SHALL INCLUDE IN THE REIMBURSEMENT RATES ESTABLISHED PURSUANT TO THIS
11 SECTION A COST ALLOWANCE FOR THE REIMBURSEMENT OF CAPITAL COSTS FOR THE
12 DEVELOPMENT, OPERATION AND PROVISION OF TELEHEALTH/TELEMEDICINE
13 SERVICES, INCLUDING THE LINKAGE OF TELEHEALTH/TELEMEDICINE AND ELECTRON-
14 IC MEDICAL RECORDS. THE METHODOLOGY FOR THE INCLUSION OF THE ALLOWANCE
15 SHALL BE DEVELOPED IN CONSULTATION WITH THE ELIGIBLE PROVIDERS FOR
16 TELEHEALTH/TELEMEDICINE PURSUANT TO SECTION TWENTY-SEVEN HUNDRED NINE-
17 TY-NINE-U OF THIS ARTICLE.

18 S 4. The state finance law is amended by adding a new section 99-u to
19 read as follows:

20 S 99-U. NEW YORK STATE TELEHEALTH/TELEMEDICINE DEVELOPMENT AND
21 RESEARCH GRANT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY
22 OF THE STATE COMPTROLLER AND COMMISSIONER OF TAXATION AND FINANCE A
23 SPECIAL FUND TO BE KNOWN AS THE "NEW YORK STATE TELEHEALTH/TELEMEDICINE
24 DEVELOPMENT AND RESEARCH FUND".

25 2. SUCH FUND SHALL CONSIST OF ALL MONIES APPROPRIATED FOR THE PURPOSE
26 OF SUCH FUND AND ANY GRANT, GIFT OR BEQUEST MADE FOR PURPOSES OF DEVEL-
27 OPMENT OR GRANTS FOR TELEHEALTH/TELEMEDICINE SERVICES PURSUANT TO
28 SECTION TWENTY-SEVEN HUNDRED NINETY-NINE-V OF THE PUBLIC HEALTH LAW.

29 3. MONIES OF THE FUND SHALL BE AVAILABLE TO THE COMMISSIONER OF HEALTH
30 FOR THE PURPOSE OF PROVIDING DEVELOPMENT AND RESEARCH GRANTS FOR
31 TELEHEALTH/TELEMEDICINE PURSUANT TO SECTION TWENTY-SEVEN HUNDRED NINE-
32 TY-NINE-V OF THE PUBLIC HEALTH LAW.

33 4. THE MONIES OF THE FUND SHALL BE PAID OUT ON THE AUDIT AND WARRANT
34 OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER
35 OF HEALTH, OR BY AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF HEALTH
36 DESIGNATED BY SUCH COMMISSIONER.

37 S 5. This act shall take effect immediately; provided, that section
38 three of this act shall take effect on the first of April next succeed-
39 ing the date on which this act shall have become law; provided further,
40 however, that the commissioner of health shall be authorized to take all
41 necessary steps to implement this section by such date.