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2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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  
19     ASSESSMENT, MONITORING, INTERVENTION, CLINICAL MANAGEMENT AND/OR EDUCA-  
20     TION WITH PATIENTS. STUDIES HAVE CHRONICLED SIGNIFICANT REDUCTIONS IN  
21     HOSPITALIZATIONS AND OTHERWISE NECESSARY MEDICAL CARE AS A RESULT OF

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

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

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

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

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

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

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

40 3. THE COMMISSIONER SHALL PROVIDE COPIES OF THE ANNUAL PLAN TO THE  
41 GOVERNOR, THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE AND  
42 THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY.

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

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

52 (II) TITLE EIGHT OF THE EDUCATION LAW AND REGULATIONS THERETO, THIS  
53 CHAPTER AND REGULATIONS THERETO AND, AS APPLICABLE, THE STANDARDS OF  
54 RELEVANT PROFESSIONAL OR ACCREDITING BODIES AS THE COMMISSIONER MAY  
55 DETERMINE, TO ENSURE THAT TELEHEALTH/TELEMEDICINE MONITORING IS  
56 CONDUCTED BY INDIVIDUALS IN ACCORDANCE WITH, AND AS LIMITED BY, THE

1 APPLICABLE SCOPE OF PRACTICE, LICENSURE AND/OR CREDENTIALING PROVISIONS  
2 OF SUCH LAWS AND STANDARDS.

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

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

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

15 (B) 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 THE LACK OF TELEHEALTH/TELEMEDICINE SERVICES IN THE AREA;

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

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

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

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

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

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

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

52 2. THE COMMISSIONER IS AUTHORIZED TO APPLY FOR SUCH GOVERNMENTAL,  
53 PHILANTHROPIC AND OTHER GRANTS THAT MAY BE AVAILABLE FOR SUCH RESEARCH.  
54 MONIES FROM SUCH GRANTS SHALL BE DEPOSITED IN THE NEW YORK STATE  
55 TELEHEALTH/TELEMEDICINE DEVELOPMENT AND RESEARCH GRANT FUND ESTABLISHED  
56 BY SECTION NINETY-NINE-T OF THE STATE FINANCE LAW.

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

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

6 3-D. CAPITAL REIMBURSEMENT FOR TELEHEALTH/TELEMEDICINE. THE DEPARTMENT  
7 SHALL INCLUDE IN THE REIMBURSEMENT RATES ESTABLISHED PURSUANT TO THIS  
8 SECTION A COST ALLOWANCE FOR THE REIMBURSEMENT OF CAPITAL COSTS FOR THE  
9 DEVELOPMENT, OPERATION AND PROVISION OF TELEHEALTH/TELEMEDICINE  
10 SERVICES, INCLUDING THE LINKAGE OF TELEHEALTH/TELEMEDICINE AND ELECTRON-  
11 IC MEDICAL RECORDS. THE METHODOLOGY FOR THE INCLUSION OF THE ALLOWANCE  
12 SHALL BE DEVELOPED IN CONSULTATION WITH THE ELIGIBLE PROVIDERS FOR  
13 TELEHEALTH/TELEMEDICINE PURSUANT TO SECTION TWENTY-SEVEN HUNDRED NINE-  
14 TY-NINE-U OF THIS ARTICLE.

15 S 4. The state finance law is amended by adding a new section 99-t to  
16 read as follows:

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

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

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

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

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