

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

3198--B

2009-2010 Regular Sessions

I N S E N A T E

March 12, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- 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

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

LBD04178-09-0

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

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

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

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

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

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

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

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

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

(II) TITLE EIGHT OF THE EDUCATION LAW AND REGULATIONS THERETO, THIS CHAPTER AND REGULATIONS THERETO AND, AS APPLICABLE, THE STANDARDS OF RELEVANT PROFESSIONAL OR ACCREDITING BODIES AS THE COMMISSIONER MAY DETERMINE, TO ENSURE THAT TELEHEALTH/TELEMEDICINE MONITORING IS CONDUCTED BY INDIVIDUALS IN ACCORDANCE WITH, AND AS LIMITED BY, THE APPLICABLE SCOPE OF PRACTICE, LICENSURE AND/OR CREDENTIALING PROVISIONS OF SUCH LAWS AND STANDARDS.

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

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

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

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

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

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

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

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

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

3. THE DEPARTMENT, IN CONSULTATION WITH ELIGIBLE PROVIDERS AS SPECIFIED IN SUBDIVISION TWO OF THIS SECTION, SHALL ESTABLISH THE FORMS AND PROCESS FOR THE SUBMISSION AND APPROVAL OF GRANT APPLICATIONS PURSUANT TO THIS SUBDIVISION.

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

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

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

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

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

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

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

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

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

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

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