

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

2552--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 16, 2015

Introduced by M. of A. RUSSELL -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the insurance law and the social services law, in relation to the telehealth delivery of services; to amend chapter 550 of the laws of 2014, amending the public health law, the insurance law and the social services law, relating to the telehealth delivery of services, in relation to the effectiveness thereof; and to repeal certain provisions of the public health law and the insurance law relating thereto

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

1 Section 1. Paragraphs (o), (p), (q), (r) and (s) of subdivision 1 of
2 section 2 of the public health law are REPEALED.

3 S 2. The public health law is amended by adding a new article 29-G to
4 read as follows:

ARTICLE 29-G

TELEHEALTH DELIVERY OF SERVICES

7 SECTION 2999-CC. DEFINITIONS.

8 2999-DD. TELEHEALTH DELIVERY OF SERVICES.

9 S 2999-CC. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
10 SHALL HAVE THE FOLLOWING MEANINGS:

11 1. "DISTANT SITE" MEANS A SITE AT WHICH A TELEHEALTH PROVIDER IS
12 LOCATED WHILE DELIVERING HEALTH CARE SERVICES BY MEANS OF TELEHEALTH.

13 2. "TELEHEALTH PROVIDER" MEANS:

14 (A) A PHYSICIAN LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF
15 THE EDUCATION LAW;

16 (B) A PHYSICIAN ASSISTANT LICENSED PURSUANT TO ARTICLE ONE HUNDRED
17 THIRTY-ONE-B OF THE EDUCATION LAW;

18 (C) A DENTIST LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-THREE OF
19 THE EDUCATION LAW;

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

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(D) A NURSE PRACTITIONER LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THE EDUCATION LAW;

(E) A REGISTERED PROFESSIONAL NURSE LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THE EDUCATION LAW ONLY WHEN SUCH NURSE IS RECEIVING PATIENT-SPECIFIC HEALTH INFORMATION OR MEDICAL DATA AT A DISTANT SITE BY MEANS OF REMOTE PATIENT MONITORING;

(F) A PODIATRIST LICENSED PURSUANT TO ARTICLE ONE HUNDRED FORTY-ONE OF THE EDUCATION LAW;

(G) AN OPTOMETRIST LICENSED PURSUANT TO ARTICLE ONE HUNDRED FORTY-THREE OF THE EDUCATION LAW;

(H) A PSYCHOLOGIST LICENSED PURSUANT TO ARTICLE ONE HUNDRED FIFTY-THREE OF THE EDUCATION LAW;

(I) A SOCIAL WORKER LICENSED PURSUANT TO ARTICLE ONE HUNDRED FIFTY-FOUR OF THE EDUCATION LAW;

(J) A SPEECH LANGUAGE PATHOLOGIST OR AUDIOLOGIST LICENSED PURSUANT TO ARTICLE ONE HUNDRED FIFTY-NINE OF THE EDUCATION LAW;

(K) A MIDWIFE LICENSED PURSUANT TO ARTICLE ONE HUNDRED FORTY OF THE EDUCATION LAW;

(L) A PERSON WHO IS CERTIFIED AS A DIABETES EDUCATOR BY THE NATIONAL CERTIFICATION BOARD FOR DIABETES EDUCATORS, OR A SUCCESSOR NATIONAL CERTIFICATION BOARD, OR PROVIDED BY SUCH A PROFESSIONAL WHO IS AFFILIATED WITH A PROGRAM CERTIFIED BY THE AMERICAN DIABETES ASSOCIATION, THE AMERICAN ASSOCIATION OF DIABETES EDUCATORS, THE INDIAN HEALTH SERVICES, OR ANY OTHER NATIONAL ACCREDITATION ORGANIZATION APPROVED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES;

(M) A PERSON WHO IS CERTIFIED AS AN ASTHMA EDUCATOR BY THE NATIONAL ASTHMA EDUCATOR CERTIFICATION BOARD, OR A SUCCESSOR NATIONAL CERTIFICATION BOARD;

(N) A PERSON WHO IS CERTIFIED AS A GENETIC COUNSELOR BY THE AMERICAN BOARD OF GENETIC COUNSELING, OR A SUCCESSOR NATIONAL CERTIFICATION BOARD;

(O) A HOSPITAL AS DEFINED IN ARTICLE TWENTY-EIGHT OF THIS CHAPTER;

(P) A HOME CARE SERVICES AGENCY AS DEFINED IN ARTICLE THIRTY-SIX OF THIS CHAPTER;

(Q) A HOSPICE AS DEFINED IN ARTICLE FORTY OF THIS CHAPTER; AND

(R) ANY OTHER PROVIDER AS DETERMINED BY THE COMMISSIONER PURSUANT TO REGULATION.

3. "ORIGINATING SITE" MEANS A SITE AT WHICH A PATIENT IS LOCATED AT THE TIME HEALTH CARE SERVICES ARE DELIVERED TO HIM OR HER BY MEANS OF TELEHEALTH. ORIGINATING SITES SHALL BE LIMITED TO FACILITIES LICENSED UNDER ARTICLES TWENTY-EIGHT AND FORTY OF THIS CHAPTER, FACILITIES AS DEFINED IN SUBDIVISION SIX OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, PRIVATE PHYSICIAN'S OFFICES LOCATED WITHIN THE STATE OF NEW YORK AND, WHEN A PATIENT IS RECEIVING HEALTH CARE SERVICES BY MEANS OF REMOTE PATIENT MONITORING, THE PATIENT'S PLACE OF RESIDENCE LOCATED WITHIN THE STATE OF NEW YORK OR OTHER TEMPORARY LOCATION LOCATED WITHIN OR OUTSIDE THE STATE OF NEW YORK.

4. "TELEHEALTH" MEANS THE USE OF ELECTRONIC INFORMATION AND COMMUNICATION TECHNOLOGIES BY TELEHEALTH PROVIDERS TO DELIVER HEALTH CARE SERVICES, WHICH SHALL INCLUDE THE ASSESSMENT, DIAGNOSIS, CONSULTATION, TREATMENT, EDUCATION, CARE MANAGEMENT AND/OR SELF-MANAGEMENT OF A PATIENT. TELEHEALTH SHALL NOT INCLUDE DELIVERY OF HEALTH CARE SERVICES BY MEANS OF AUDIO-ONLY TELEPHONE COMMUNICATION, FACSIMILE MACHINES, OR ELECTRONIC MESSAGING ALONE, THOUGH USE OF THESE TECHNOLOGIES IS NOT PRECLUDED IF USED IN CONJUNCTION WITH TELEMEDICINE, STORE AND FORWARD TECHNOLOGY, OR REMOTE PATIENT MONITORING. FOR PURPOSES OF THIS SECTION,

1 TELEHEALTH SHALL BE LIMITED TO TELEMEDICINE, STORE AND FORWARD TECHNOLO-
2 GY, AND REMOTE PATIENT MONITORING. THIS SUBDIVISION SHALL NOT PRECLUDE
3 THE DELIVERY OF HEALTH CARE SERVICES BY MEANS OF "HOME TELEHEALTH" AS
4 USED IN SECTION THIRTY-SIX HUNDRED FOURTEEN OF THIS CHAPTER.

5 5. "TELEMEDICINE" MEANS THE USE OF SYNCHRONOUS, TWO-WAY ELECTRONIC
6 AUDIO VISUAL COMMUNICATIONS TO DELIVER CLINICAL HEALTH CARE SERVICES,
7 WHICH SHALL INCLUDE THE ASSESSMENT, DIAGNOSIS, AND TREATMENT OF A
8 PATIENT, WHILE SUCH PATIENT IS AT THE ORIGINATING SITE AND A TELEHEALTH
9 PROVIDER IS AT A DISTANT SITE.

10 6. "STORE AND FORWARD TECHNOLOGY" MEANS THE ASYNCHRONOUS, ELECTRONIC
11 TRANSMISSION OF A PATIENT'S HEALTH INFORMATION IN THE FORM OF
12 PATIENT-SPECIFIC DIGITAL IMAGES AND/OR PRE-RECORDED VIDEOS FROM A
13 PROVIDER AT AN ORIGINATING SITE TO A TELEHEALTH PROVIDER AT A DISTANT
14 SITE.

15 7. "REMOTE PATIENT MONITORING" MEANS THE USE OF SYNCHRONOUS OR ASYN-
16 CHRONOUS ELECTRONIC INFORMATION AND COMMUNICATION TECHNOLOGIES TO
17 COLLECT PERSONAL HEALTH INFORMATION AND MEDICAL DATA FROM A PATIENT AT
18 AN ORIGINATING SITE THAT IS TRANSMITTED TO A TELEHEALTH PROVIDER AT A
19 DISTANT SITE FOR USE IN THE TREATMENT AND MANAGEMENT OF MEDICAL CONDI-
20 TIONS THAT REQUIRE FREQUENT MONITORING. SUCH CONDITIONS SHALL INCLUDE,
21 BUT NOT BE LIMITED TO, CONGESTIVE HEART FAILURE, DIABETES, CHRONIC
22 OBSTRUCTIVE PULMONARY DISEASE, WOUND CARE, POLYPHARMACY, MENTAL OR
23 BEHAVIORAL PROBLEMS, AND TECHNOLOGY-DEPENDENT CARE SUCH AS CONTINUOUS
24 OXYGEN, VENTILATOR CARE, TOTAL PARENTERAL NUTRITION OR ENTERAL FEEDING.
25 REMOTE PATIENT MONITORING SHALL BE ORDERED BY A PHYSICIAN LICENSED
26 PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THE EDUCATION LAW, A NURSE
27 PRACTITIONER LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THE
28 EDUCATION LAW, OR A MIDWIFE LICENSED PURSUANT TO ARTICLE ONE HUNDRED
29 FORTY OF THE EDUCATION LAW, WITH WHICH THE PATIENT HAS A SUBSTANTIAL AND
30 ONGOING RELATIONSHIP.

31 S 2999-DD. TELEHEALTH DELIVERY OF SERVICES. HEALTH CARE SERVICES
32 DELIVERED BY MEANS OF TELEHEALTH SHALL BE ENTITLED TO REIMBURSEMENT
33 UNDER SECTION THREE HUNDRED SIXTY-SEVEN-U OF THE SOCIAL SERVICES LAW.

34 S 3. Paragraph 30 of subsection (i) of section 3216 of the insurance
35 law, as added by chapter 550 of the laws of 2014, is REPEALED.

36 S 4. The insurance law is amended by adding a new section 3217-h to
37 read as follows:

38 S 3217-H. TELEHEALTH DELIVERY OF SERVICES. (A) AN INSURER SHALL NOT
39 EXCLUDE FROM COVERAGE A SERVICE THAT IS OTHERWISE COVERED UNDER A POLICY
40 THAT PROVIDES COMPREHENSIVE COVERAGE FOR HOSPITAL, MEDICAL OR SURGICAL
41 CARE BECAUSE THE SERVICE IS DELIVERED VIA TELEHEALTH, AS THAT TERM IS
42 DEFINED IN SUBSECTION (B) OF THIS SECTION; PROVIDED, HOWEVER, THAT AN
43 INSURER MAY EXCLUDE FROM COVERAGE A SERVICE BY A HEALTH CARE PROVIDER
44 WHERE THE PROVIDER IS NOT OTHERWISE COVERED UNDER THE POLICY. AN INSURER
45 MAY SUBJECT THE COVERAGE OF A SERVICE DELIVERED VIA TELEHEALTH TO
46 CO-PAYMENTS, COINSURANCE OR DEDUCTIBLES PROVIDED THAT THEY ARE AT LEAST
47 AS FAVORABLE TO THE INSURED AS THOSE ESTABLISHED FOR THE SAME SERVICE
48 WHEN NOT DELIVERED VIA TELEHEALTH. AN INSURER MAY SUBJECT THE COVERAGE
49 OF A SERVICE DELIVERED VIA TELEHEALTH TO REASONABLE UTILIZATION MANAGE-
50 MENT AND QUALITY ASSURANCE REQUIREMENTS THAT ARE CONSISTENT WITH THOSE
51 ESTABLISHED FOR THE SAME SERVICE WHEN NOT DELIVERED VIA TELEHEALTH.

52 (B) FOR PURPOSES OF THIS SECTION, "TELEHEALTH" MEANS THE USE OF ELEC-
53 TRONIC INFORMATION AND COMMUNICATION TECHNOLOGIES BY A HEALTH CARE
54 PROVIDER TO DELIVER HEALTH CARE SERVICES TO AN INSURED INDIVIDUAL WHILE
55 SUCH INDIVIDUAL IS LOCATED AT A SITE THAT IS DIFFERENT FROM THE SITE
56 WHERE THE HEALTH CARE PROVIDER IS LOCATED.

1 S 5. Paragraph 19 of subsection (k) of section 3221 of the insurance
2 law, as added by chapter 550 of the laws of 2014, is REPEALED.

3 S 6. Paragraph 2 of subsection (a) of section 3229 of the insurance
4 law, as amended by chapter 550 of the laws of 2014, is amended to read
5 as follows:

6 (2) a home care benefit with personal care, nursing care, adult day
7 health care[,] AND respite care services, [telemedicine services, as
8 defined in section two of the public health law, provided that such
9 telemedicine services are pursuant to an agreement between a provider
10 participating in the insurer's network and the insurer, and meet the
11 requirements of federal law, rules and regulations for Medicare, or
12 telehealth services, as defined by section two of the public health law,
13 provided that such services are consistent with subdivision three-c of
14 section thirty-six hundred fourteen of the public health law. The
15 provider of such services shall meet the terms and conditions (to the
16 extent not inconsistent with this paragraph) of his or her contract with
17 the insurer,] which shall provide total benefits in an amount determined
18 by regulations of the superintendent;

19 S 7. Subsection (oo) of section 4303 of the insurance law is REPEALED.

20 S 8. The insurance law is amended by adding a new section 4306-g to
21 read as follows:

22 S 4306-G. TELEHEALTH DELIVERY OF SERVICES. (A) A CORPORATION SHALL NOT
23 EXCLUDE FROM COVERAGE A SERVICE THAT IS OTHERWISE COVERED UNDER A
24 CONTRACT THAT PROVIDES COMPREHENSIVE COVERAGE FOR HOSPITAL, MEDICAL OR
25 SURGICAL CARE BECAUSE THE SERVICE IS DELIVERED VIA TELEHEALTH, AS THAT
26 TERM IS DEFINED IN SUBSECTION (B) OF THIS SECTION; PROVIDED, HOWEVER,
27 THAT A CORPORATION MAY EXCLUDE FROM COVERAGE A SERVICE BY A HEALTH CARE
28 PROVIDER WHERE THE PROVIDER IS NOT OTHERWISE COVERED UNDER THE CONTRACT.
29 A CORPORATION MAY SUBJECT THE COVERAGE OF A SERVICE DELIVERED VIA TELE-
30 HEALTH TO CO-PAYMENTS, COINSURANCE OR DEDUCTIBLES PROVIDED THAT THEY ARE
31 AT LEAST AS FAVORABLE TO THE INSURED AS THOSE ESTABLISHED FOR THE SAME
32 SERVICE WHEN NOT DELIVERED VIA TELEHEALTH. A CORPORATION MAY SUBJECT THE
33 COVERAGE OF A SERVICE DELIVERED VIA TELEHEALTH TO REASONABLE UTILIZATION
34 MANAGEMENT AND QUALITY ASSURANCE REQUIREMENTS THAT ARE CONSISTENT WITH
35 THOSE ESTABLISHED FOR THE SAME SERVICE WHEN NOT DELIVERED VIA TELE-
36 HEALTH.

37 (B) FOR PURPOSES OF THIS SECTION, "TELEHEALTH" MEANS THE USE OF ELEC-
38 TRONIC INFORMATION AND COMMUNICATION TECHNOLOGIES BY A HEALTH CARE
39 PROVIDER TO DELIVER HEALTH CARE SERVICES TO AN INSURED INDIVIDUAL WHILE
40 SUCH INDIVIDUAL IS LOCATED AT A SITE THAT IS DIFFERENT FROM THE SITE
41 WHERE THE HEALTH CARE PROVIDER IS LOCATED.

42 S 9. The public health law is amended by adding a new section 4406-g
43 to read as follows:

44 S 4406-G. TELEHEALTH DELIVERY OF SERVICES. 1. A HEALTH MAINTENANCE
45 ORGANIZATION SHALL NOT EXCLUDE FROM COVERAGE A SERVICE THAT IS OTHERWISE
46 COVERED UNDER AN ENROLLEE CONTRACT OF A HEALTH MAINTENANCE ORGANIZATION
47 BECAUSE THE SERVICE IS DELIVERED VIA TELEHEALTH, AS THAT TERM IS DEFINED
48 IN SUBDIVISION TWO OF THIS SECTION; PROVIDED, HOWEVER, THAT A HEALTH
49 MAINTENANCE ORGANIZATION MAY EXCLUDE FROM COVERAGE A SERVICE BY A HEALTH
50 CARE PROVIDER WHERE THE PROVIDER IS NOT OTHERWISE COVERED UNDER THE
51 ENROLLEE CONTRACT. A HEALTH MAINTENANCE ORGANIZATION MAY SUBJECT THE
52 COVERAGE OF A SERVICE DELIVERED VIA TELEHEALTH TO CO-PAYMENTS, COINSU-
53 RANCE OR DEDUCTIBLES PROVIDED THAT THEY ARE AT LEAST AS FAVORABLE TO THE
54 ENROLLEE AS THOSE ESTABLISHED FOR THE SAME SERVICE WHEN NOT DELIVERED
55 VIA TELEHEALTH. A HEALTH MAINTENANCE ORGANIZATION MAY SUBJECT THE COVER-
56 AGE OF A SERVICE DELIVERED VIA TELEHEALTH TO REASONABLE UTILIZATION

1 MANAGEMENT AND QUALITY ASSURANCE REQUIREMENTS THAT ARE CONSISTENT WITH
2 THOSE ESTABLISHED FOR THE SAME SERVICE WHEN NOT DELIVERED VIA TELE-
3 HEALTH.

4 2. FOR PURPOSES OF THIS SECTION, "TELEHEALTH" MEANS THE USE OF ELEC-
5 TRONIC INFORMATION AND COMMUNICATION TECHNOLOGIES BY A HEALTH CARE
6 PROVIDER TO DELIVER HEALTH CARE SERVICES TO AN ENROLLEE WHILE SUCH
7 ENROLLEE IS LOCATED AT A SITE THAT IS DIFFERENT FROM THE SITE WHERE THE
8 HEALTH CARE PROVIDER IS LOCATED.

9 S 10. Subdivision 2 of section 367-u of the social services law, as
10 added by chapter 550 of the laws of 2014, is amended to read as follows:

11 2. Subject to FEDERAL FINANCIAL PARTICIPATION AND the approval of the
12 director of the budget, the commissioner shall not exclude from the
13 payment of medical assistance funds the [provision] DELIVERY of [medical
14 care] HEALTH CARE SERVICES through [telemedicine services] TELEHEALTH,
15 as defined in [section two] SUBDIVISION FOUR OF SECTION TWO THOUSAND
16 NINE HUNDRED NINETY-NINE-CC of the public health law[, provided that
17 such]. SUCH services SHALL meet the requirements of federal law, rules
18 and regulations for the provision of medical assistance pursuant to this
19 title[, and for telehealth services, as defined by section two of the
20 public health law, that are, at a minimum, those required to be provided
21 pursuant to subdivision three-c of section thirty-six hundred fourteen
22 of the public health law].

23 S 11. Section 7 of chapter 550 of the laws of 2014, amending the
24 public health law, the insurance law and the social services law, relat-
25 ing to the telehealth delivery of services, is amended to read as
26 follows:

27 S 7. This act shall take effect January 1, [2015 and shall apply to
28 all policies and contracts issued, renewed, modified, altered or amended
29 on or after such date] 2016.

30 S 12. This act shall take effect immediately, provided that sections
31 one through ten of this act shall take effect on the same date and in
32 the same manner as chapter 550 of the laws of 2014, takes effect,
33 provided, however, that sections four, eight and nine of this act shall
34 apply to all policies and contracts issued, renewed, modified, altered
35 or amended on or after January 1, 2016, and provided further that,
36 effective immediately, the commissioner of health is authorized to
37 issue, amend or repeal any regulations as necessary to implement this
38 act on or before such effective date.