

STATE OF NEW YORK

5505

2021-2022 Regular Sessions

IN SENATE

March 9, 2021

Introduced by Sens. RIVERA, HARCKHAM -- 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 the delivery of
health care services via telehealth

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Section 2999-cc of the public health law is amended by
2 adding a new subdivision 8 to read as follows:

3 8. "Health care plan" means an entity (other than a health care
4 provider) that approves, provides, arranges for, or pays for health care
5 services, including but not limited to:

6 (a) a health maintenance organization licensed under article forty-
7 three of the insurance law;

8 (b) a health maintenance organization or other organization certified
9 under article forty-four of this chapter;

10 (c) an insurer or corporation subject to the insurance law; and

11 (d) the medical assistance program under title eleven of article five
12 of the social services law ("medicaid"); the child health plus program
13 under title one-A of article twenty-five of this chapter, and the basic
14 health program under section three hundred sixty-nine-gg of the social
15 services law.

16 § 2. Section 2999-dd of the public health law, as amended by section 4
17 of subpart C of Part S of chapter 57 of the laws of 2018, subdivision 1
18 as amended by chapter 124 of the laws of 2020, subdivisions 3 and 4 as
19 added by chapter 328 of the laws of 2020, is amended to read as follows:

20 § 2999-dd. Telehealth delivery of services. 1. [~~Health care services~~
21 ~~delivered by means of telehealth shall be entitled to reimbursement~~
22 ~~under section three hundred sixty seven u of the social services law,~~
23 ~~provided however, reimbursement for additional modalities, provider~~
24 ~~categories and originating sites specified in accordance with section~~
25 ~~twenty-nine hundred ninety-nine-ee of this article, and audio-only tele-~~

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

LBD09895-01-1

1 ~~phone communication defined in regulations promulgated pursuant to~~
2 ~~subdivision four of section twenty nine hundred ninety nine cc of this~~
3 ~~article, shall be contingent upon federal financial participation.] (a)~~
4 A health care service may be delivered by means of telehealth by a tele-
5 health provider otherwise authorized to perform that service. A health
6 care service delivered by telehealth shall be with the consent of the
7 patient or a person authorized to consent for the patient. The consent
8 shall be documented in the patient's medical record.

9 (b) In-person contact between a telehealth provider and a patient
10 prior to the delivery of health care services via telehealth shall not
11 be required, unless the provider determines it to be clinically neces-
12 sary.

13 2. (a) A health care plan shall cover a service, regardless of whether
14 it is provided by telehealth, if the service would otherwise be covered
15 by the health care plan and the provider is otherwise covered by the
16 health care plan.

17 (b) A health care plan shall reimburse a treating or consulting health
18 care provider for health care services appropriately delivered by tele-
19 health on the same basis, at the same rate, and to the same extent that
20 the health care plan reimburses for the service when provided through
21 in-person diagnosis, consultation, or treatment.

22 (c) A health care plan may subject the coverage of a telehealth
23 service to copayments, coinsurance or deductibles if they are at least
24 as favorable to the enrollee as would apply if the service is not
25 provided by telehealth.

26 (d) This article does not alter any obligation a health care plan may
27 have to ensure that enrollees have access to all covered services
28 through an adequate network of contracted providers.

29 (e) With respect to health care plans under paragraph (d) of subdivi-
30 sion eight of section 2999-cc of this article (medicaid, child health
31 plus, and the basic health plan), this article shall only apply where
32 there is federal financial participation. The commissioner shall make
33 state plan amendments and seek federal waivers as necessary to obtain
34 that federal financial participation.

35 3. The department of health, the office of mental health, the office
36 of [~~alcoholism and substance abuse services~~] addiction services and
37 supports, and the office for people with developmental disabilities
38 shall coordinate on the issuance of a single guidance document, to be
39 updated as appropriate, that shall: (a) identify any differences in
40 regulations or policies issued by the agencies, including with respect
41 to reimbursement [~~pursuant to section three hundred sixty seven u of the~~
42 ~~social services law~~]; and (b) be designed to assist consumers, provid-
43 ers, and health care plans in understanding and facilitating the appro-
44 priate use of telehealth in addressing barriers to care.

45 [~~3.~~] 4. The authority of the department of financial services to
46 establish and enforce minimum standards for accident and health insur-
47 ance under articles thirty-two and forty-three of the insurance law
48 shall include enforcement of telehealth standards set forth in this
49 article.

50 5. (a) Dental telehealth services shall adhere to the standards of
51 appropriate patient care required in other dental health care settings,
52 including but not limited to appropriate patient examination, taking of
53 x-rays, and review of a patient's medical and dental history. All dental
54 telehealth providers shall identify themselves to patients, including
55 providing the professional's New York state license number. No dental
56 telehealth provider shall attempt to waive liability for its telehealth

1 services in advance of delivering such telehealth services and no dental
2 telehealth provider shall attempt to prevent a patient from filing any
3 complaint with any governmental agency or authority.

4 (b) This subdivision shall not be construed to diminish requirements
5 for other telehealth services.

6 [~~4-~~ 6. Nothing in this article shall be deemed to allow any person to
7 provide any service for which a license, registration, certification or
8 other authorization under title eight of the education law is required
9 and which the person does not possess.

10 § 3. If any provision of this act, or any application of any provision
11 of this act, is held to be invalid, or to violate or be inconsistent
12 with any federal law or regulation, that shall not affect the validity
13 or effectiveness of any other provision of this act, or of any other
14 application of any provision of this act, which can be given effect
15 without that provision or application; and to that end, the provisions
16 and applications of this act are severable.

17 § 4. This act shall take effect January 1, 2022 and shall apply to all
18 policies and contracts issued, renewed, modified, altered or amended on
19 or after such date. Effective immediately, the commissioner of health,
20 the superintendent of the department of financial services, the commis-
21 sioner of the office of mental health, the commissioner of the office of
22 addiction services and supports, and the commissioner of the office for
23 people with developmental disabilities shall make regulations and take
24 other actions reasonably necessary to implement this act on that date.