

# **Chapter 117, P.L. 2017**

(Approved July 21, 2017)

## **SENATE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR SENATE, Nos. 291 SCS, 652 and 1954**

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# **STATE OF NEW JERSEY**

## **217th LEGISLATURE**

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ADOPTED JUNE 19, 2017

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**SYNOPSIS**

Authorizes health care providers to engage in telemedicine and telehealth.

**(Sponsorship Updated As Of: 6/23/2017)**

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate.



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1 AN ACT authorizing the provision of health care services through  
2 telemedicine and telehealth, and supplementing various parts of  
3 the statutory law.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. As used in P.L. , c. (C. ) (pending before the Legislature  
9 as this bill):

10 “Asynchronous store-and-forward” means the acquisition and  
11 transmission of images, diagnostics, data, and medical information  
12 either to, or from, an originating site or to, or from, the health care  
13 provider at a distant site, which allows for the patient to be evaluated  
14 without being physically present.

15 “Cross-coverage service provider” means a health care provider,  
16 acting within the scope of a valid license or certification issued  
17 pursuant to Title 45 of the Revised Statutes, who engages in a remote  
18 medical evaluation of a patient, without in-person contact, at the  
19 request of another health care provider who has established a proper  
20 provider-patient relationship with the patient.

21 “Distant site” means a site at which a health care provider, acting  
22 within the scope of a valid license or certification issued pursuant to  
23 Title 45 of the Revised Statutes, is located while providing health  
24 care services by means of telemedicine or telehealth.

25 “Health care provider” means an individual who provides a health  
26 care service to a patient, and includes, but is not limited to, a licensed  
27 physician, nurse, nurse practitioner, psychologist, psychiatrist,  
28 psychoanalyst, clinical social worker, physician assistant,  
29 professional counselor, respiratory therapist, speech pathologist,  
30 audiologist, optometrist, or any other health care professional acting  
31 within the scope of a valid license or certification issued pursuant to  
32 Title 45 of the Revised Statutes.

33 “On-call provider” means a licensed or certified health care  
34 provider who is available, where necessary, to physically attend to  
35 the urgent and follow-up needs of a patient for whom the provider  
36 has temporarily assumed responsibility, as designated by the  
37 patient’s primary care provider or other health care provider of  
38 record.

39 “Originating site” means a site at which a patient is located at the  
40 time that health care services are provided to the patient by means of  
41 telemedicine or telehealth.

42 “Telehealth” means the use of information and communications  
43 technologies, including telephones, remote patient monitoring  
44 devices, or other electronic means, to support clinical health care,  
45 provider consultation, patient and professional health-related  
46 education, public health, health administration, and other services in  
47 accordance with the provisions of P.L. , c. (C. ) (pending  
48 before the Legislature as this bill).

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1       “Telemedicine” means the delivery of a health care service using  
2 electronic communications, information technology, or other  
3 electronic or technological means to bridge the gap between a health  
4 care provider who is located at a distant site and a patient who is  
5 located at an originating site, either with or without the assistance of  
6 an intervening health care provider, and in accordance with the  
7 provisions of P.L. , c. (C. ) (pending before the Legislature  
8 as this bill). “Telemedicine” does not include the use, in isolation,  
9 of audio-only telephone conversation, electronic mail, instant  
10 messaging, phone text, or facsimile transmission.

11       “Telemedicine or telehealth organization” means a corporation,  
12 sole proprietorship, partnership, or limited liability company that is  
13 organized for the primary purpose of administering services in the  
14 furtherance of telemedicine or telehealth.

15

16       2. a. Unless specifically prohibited or limited by federal or State  
17 law, a health care provider who establishes a proper provider-patient  
18 relationship with a patient may remotely provide health care services  
19 to a patient through the use of telemedicine. A health care provider  
20 may also engage in telehealth as may be necessary to support and  
21 facilitate the provision of health care services to patients.

22       b. Any health care provider who uses telemedicine or engages in  
23 telehealth while providing health care services to a patient, shall: (1)  
24 be validly licensed, certified, or registered, pursuant to Title 45 of the  
25 Revised Statutes, to provide such services in the State of New Jersey;  
26 (2) remain subject to regulation by the appropriate New Jersey State  
27 licensing board or other New Jersey State professional regulatory  
28 entity; (3) act in compliance with existing requirements regarding the  
29 maintenance of liability insurance; and (4) remain subject to New  
30 Jersey jurisdiction if either the patient or the provider is located in  
31 New Jersey at the time services are provided.

32       c. (1) Telemedicine services shall be provided using  
33 interactive, real-time, two-way communication technologies.

34       (2) A health care provider engaging in telemedicine or telehealth  
35 may use asynchronous store-and-forward technology to allow for the  
36 electronic transmission of images, diagnostics, data, and medical  
37 information; except that the health care provider may use interactive,  
38 real-time, two-way audio in combination with asynchronous store-  
39 and-forward technology, without video capabilities, if, after  
40 accessing and reviewing the patient’s medical records, the provider  
41 determines that the provider is able to meet the same standard of care  
42 as if the health care services were being provided in person.

43       (3) The identity, professional credentials, and contact  
44 information of a health care provider providing telemedicine or  
45 telehealth services shall be made available to the patient during and  
46 after the provision of services. The contact information shall enable  
47 the patient to contact the health care provider, or a substitute health  
48 care provider authorized to act on behalf of the provider who

1 provided services, for at least 72 hours following the provision of  
2 services.

3 (4) A health care provider engaging in telemedicine or telehealth  
4 shall review the medical history and any medical records provided by  
5 the patient. For an initial encounter with the patient, the provider  
6 shall review the patient's medical history and medical records prior  
7 to initiating contact with the patient, as required pursuant to  
8 paragraph (3) of subsection a. of section 3 of P.L. , c. (C. )  
9 (pending before the Legislature as this bill). In the case of a  
10 subsequent telemedicine or telehealth encounter conducted pursuant  
11 to an ongoing provider-patient relationship, the provider may review  
12 the information prior to initiating contact with the patient or  
13 contemporaneously with the telemedicine or telehealth encounter.

14 (5) Following the provision of services using telemedicine or  
15 telehealth, the patient's medical information shall be made available  
16 to the patient upon the patient's request, and, with the patient's  
17 affirmative consent, forwarded directly to the patient's primary care  
18 provider or health care provider of record, or, upon request by the  
19 patient, to other health care providers. For patients without a primary  
20 care provider or other health care provider of record, the health care  
21 provider engaging in telemedicine or telehealth may advise the  
22 patient to contact a primary care provider, and, upon request by the  
23 patient, assist the patient with locating a primary care provider or  
24 other in-person medical assistance that, to the extent possible, is  
25 located within reasonable proximity to the patient. The health care  
26 provider engaging in telemedicine or telehealth shall also refer the  
27 patient to appropriate follow up care where necessary, including  
28 making appropriate referrals for emergency or complimentary care,  
29 if needed. Consent may be oral, written, or digital in nature, provided  
30 that the chosen method of consent is deemed appropriate under the  
31 standard of care.

32 d. (1) Any health care provider providing health care services  
33 using telemedicine or telehealth shall be subject to the same standard  
34 of care or practice standards as are applicable to in-person settings.  
35 If telemedicine or telehealth services would not be consistent with  
36 this standard of care, the health care provider shall direct the patient  
37 to seek in-person care.

38 (2) Diagnosis, treatment, and consultation recommendations,  
39 including discussions regarding the risk and benefits of the patient's  
40 treatment options, which are made through the use of telemedicine or  
41 telehealth, including the issuance of a prescription based on a  
42 telemedicine or telehealth encounter, shall be held to the same  
43 standard of care or practice standards as are applicable to in-person  
44 settings. Unless the provider has established a proper provider-  
45 patient relationship with the patient, a provider shall not issue a  
46 prescription to a patient based solely on the responses provided in an  
47 online questionnaire.

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1 e. The prescription of Schedule II controlled dangerous  
2 substances through the use of telemedicine or telehealth shall be  
3 authorized only after an initial in-person examination of the patient,  
4 as provided by regulation, and a subsequent in-person visit with the  
5 patient shall be required every three months for the duration of time  
6 that the patient is being prescribed the Schedule II controlled  
7 dangerous substance. However, the provisions of this subsection  
8 shall not apply, and the in-person examination or review of a patient  
9 shall not be required, when a health care provider is prescribing a  
10 stimulant which is a Schedule II controlled dangerous substance for  
11 use by a minor patient under the age of 18, provided that the health  
12 care provider is using interactive, real-time, two-way audio and video  
13 technologies when treating the patient and the health care provider  
14 has first obtained written consent for the waiver of these in-person  
15 examination requirements from the minor patient's parent or  
16 guardian.

17 f. A mental health screener, screening service, or screening  
18 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-27.1  
19 et seq.):

20 (1) shall not be required to obtain a separate authorization in  
21 order to engage in telemedicine or telehealth for mental health  
22 screening purposes; and

23 (2) shall not be required to request and obtain a waiver from  
24 existing regulations, prior to engaging in telemedicine or telehealth.

25 g. A health care provider who engages in telemedicine or  
26 telehealth, as authorized by P.L. , c. (C. ) (pending before the  
27 Legislature as this bill), shall maintain a complete record of the  
28 patient's care, and shall comply with all applicable State and federal  
29 statutes and regulations for recordkeeping, confidentiality, and  
30 disclosure of the patient's medical record.

31 h. A health care provider shall not be subject to any professional  
32 disciplinary action under Title 45 of the Revised Statutes solely on  
33 the basis that the provider engaged in telemedicine or telehealth  
34 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
35 this bill).

36 i. (1) In accordance with the "Administrative Procedure Act,"  
37 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other  
38 entities that, pursuant to Title 45 of the Revised Statutes, are  
39 responsible for the licensure, certification, or registration of health  
40 care providers in the State, shall each adopt rules and regulations that  
41 are applicable to the health care providers under their respective  
42 jurisdictions, as may be necessary to implement the provisions of this  
43 section and facilitate the provision of telemedicine and telehealth  
44 services. Such rules and regulations shall, at a minimum:

45 (a) include best practices for the professional engagement in  
46 telemedicine and telehealth;

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1 (b) ensure that the services patients receive using telemedicine or  
2 telehealth are appropriate, medically necessary, and meet current  
3 quality of care standards;

4 (c) include measures to prevent fraud and abuse in connection  
5 with the use of telemedicine and telehealth, including requirements  
6 concerning the filing of claims and maintaining appropriate records  
7 of services provided; and

8 (d) provide substantially similar metrics for evaluating quality of  
9 care and patient outcomes in connection with services provided using  
10 telemedicine and telehealth as currently apply to services provided in  
11 person.

12 (2) In no case shall the rules and regulations adopted pursuant to  
13 paragraph (1) of this subsection require a provider to conduct an  
14 initial in-person visit with the patient as a condition of providing  
15 services using telemedicine or telehealth.

16 (3) The failure of any licensing board to adopt rules and  
17 regulations pursuant to this subsection shall not have the effect of  
18 delaying the implementation of this act, and shall not prevent health  
19 care providers from engaging in telemedicine or telehealth in  
20 accordance with the provisions of this act and the practice act  
21 applicable to the provider's professional licensure, certification, or  
22 registration.

23

24 3. a. Any health care provider who engages in telemedicine or  
25 telehealth shall ensure that a proper provider-patient relationship is  
26 established. The establishment of a proper provider-patient  
27 relationship shall include, but shall not be limited to:

28 (1) properly identifying the patient using, at a minimum, the  
29 patient's name, date of birth, phone number, and address. When  
30 properly identifying the patient, the provider may additionally use  
31 the patient's assigned identification number, social security number,  
32 photo, health insurance policy number, or other appropriate patient  
33 identifier associated directly with the patient;

34 (2) disclosing and validating the provider's identity and  
35 credentials, such as the provider's license, title, and, if applicable,  
36 specialty and board certifications;

37 (3) prior to initiating contact with a patient in an initial encounter  
38 for the purpose of providing services to the patient using  
39 telemedicine or telehealth, reviewing the patient's medical history  
40 and any available medical records; and

41 (4) prior to initiating contact with a patient for the purpose of  
42 providing services to the patient using telemedicine or telehealth,  
43 determining whether the provider will be able to provide the same  
44 standard of care using telemedicine or telehealth as would be  
45 provided if the services were provided in person. The provider shall  
46 make this determination prior to each unique patient encounter.

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- 1       b. Telemedicine or telehealth may be practiced without a proper  
2 provider-patient relationship, as defined in subsection a. of this  
3 section, in the following circumstances:
- 4       (1) during informal consultations performed by a health care  
5 provider outside the context of a contractual relationship, or on an  
6 irregular or infrequent basis, without the expectation or exchange of  
7 direct or indirect compensation;
- 8       (2) during episodic consultations by a medical specialist located  
9 in another jurisdiction who provides consultation services, upon  
10 request, to a properly licensed or certified health care provider in this  
11 State;
- 12       (3) when a health care provider furnishes medical assistance in  
13 response to an emergency or disaster, provided that there is no charge  
14 for the medical assistance; or
- 15       (4) when a substitute health care provider, who is acting on behalf  
16 of an absent health care provider in the same specialty, provides  
17 health care services on an on-call or cross-coverage basis, provided  
18 that the absent health care provider has designated the substitute  
19 provider as an on-call provider or cross-coverage service provider.  
20
- 21       4. a. Each telemedicine or telehealth organization operating in  
22 the State shall annually register with the Department of Health.
- 23       b. Each telemedicine or telehealth organization operating in the  
24 State shall submit an annual report to the Department of Health in a  
25 manner as determined by the commissioner. The annual report shall  
26 include de-identified encounter data including, but not limited to: the  
27 total number of telemedicine and telehealth encounters conducted;  
28 the type of technology utilized to provide services using telemedicine  
29 or telehealth; the category of medical condition for which services  
30 were sought; the geographic region of the patient and the provider;  
31 the patient's age and sex; and any prescriptions issued. The  
32 commissioner may require the reporting of any additional  
33 information as the commissioner deems necessary and appropriate,  
34 subject to all applicable State and federal laws, rules, and regulations  
35 for recordkeeping and privacy. Commencing six months after the  
36 effective date of P.L. , c. (C. ) (pending before the Legislature  
37 as this bill), telemedicine and telehealth organizations shall include  
38 in the annual report, for each telemedicine or telehealth encounter:  
39 the patient's race and ethnicity; the diagnostic codes; the evaluation  
40 management codes; and the source of payment for the encounter.
- 41       c. The Department of Health shall compile the information  
42 provided in the reports submitted by telemedicine and telehealth  
43 organizations pursuant to subsection b. of this section to generate  
44 Statewide data concerning telemedicine and telehealth services  
45 provided in the State. The department shall annually share the  
46 Statewide data with the Department of Human Services, the  
47 Department of Banking and Insurance, the Telemedicine and  
48 Telehealth Review Commission established pursuant to section 5 of



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1 P.L. , c. (C. ) (pending before the Legislature as this bill),  
2 State boards and other entities that, under Title 45 of the Revised  
3 Statutes, are responsible for the professional licensure, certification,  
4 or registration of health care providers in the State who provide  
5 health care services using telemedicine or telehealth pursuant to P.L.  
6 , c. (C. ) (pending before the Legislature as this bill), and the  
7 Legislature pursuant section 2 of P.L.1991, c.164 (C.52:14-19.1).  
8 The department shall also transmit a report to the Legislature and the  
9 Telemedicine and Telehealth Review Commission that includes: an  
10 analysis of each rule and regulation adopted pursuant to subsection i.  
11 of section 2 of P.L. , c. (C. ) (pending before the Legislature  
12 as this bill) by a State board or other entity responsible for the  
13 professional licensure, certification, or registration of health care  
14 providers in the State who provide health care services using  
15 telemedicine or telehealth; and an assessment of the effect that  
16 telemedicine and telehealth is having on health care delivery, health  
17 care outcomes, population health, and in-person health care services  
18 provided in facility-based and office-based settings.

19 d. A telemedicine or telehealth organization that fails to register  
20 with the Department of Health pursuant to subsection a. of this  
21 section or that fails to submit the annual report required pursuant to  
22 subsection b. of this section shall be liable to such disciplinary  
23 actions as the Commissioner of Health may prescribe by regulation.  
24

25 5. a. Six months after the effective date of P.L. , c. (C. )  
26 (pending before the Legislature as this bill), there shall be established  
27 in the Department of Health the Telemedicine and Telehealth Review  
28 Commission, which shall review the information reported by  
29 telemedicine and telehealth organizations pursuant to subsection b.  
30 of section 4 of P.L. , c. (C. ) (pending before the Legislature  
31 as this bill) and make recommendations for such executive,  
32 legislative, regulatory, administrative, and other actions as may be  
33 necessary and appropriate to promote and improve the quality,  
34 efficiency, and effectiveness of telemedicine and telehealth services  
35 provided in this State.

36 b. The commission shall consist of seven members, as follows:  
37 the Commissioner of Health, or a designee, who shall serve ex  
38 officio, and six public members, with two members each to be  
39 appointed by the Governor, the Senate President, and the Speaker of  
40 the General Assembly. The public members shall be health care  
41 professionals with a background in the provision of health care  
42 services using telemedicine and telehealth. The public members shall  
43 serve at the pleasure of the appointing authority, and vacancies in the  
44 membership shall be filled in the same manner as the original  
45 appointments.

46 c. Members of the commission shall serve without  
47 compensation but may be reimbursed for necessary travel expenses

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1 incurred in the performance of their duties within the limits of funds  
2 made available for that purpose.

3 d. The members shall select a chairperson and a vice chairperson  
4 from among the members. The chairperson may appoint a secretary,  
5 who need not be a member of the commission. The Department of  
6 Health shall provide staff and administrative support to the  
7 commission.

8 e. The commission shall meet at least twice a year and at such  
9 other times as the chairperson may require. The commission shall be  
10 entitled to call to its assistance and avail itself of the services of the  
11 employees of any State, county, or municipal department, board,  
12 bureau, commission, or agency as it may require and as may be  
13 available for its purposes.

14 f. The commission shall report its findings and  
15 recommendations to the Governor, the Commissioner of Health, the  
16 State boards or other entities that, pursuant to Title 45 of the Revised  
17 Statutes, are responsible for the licensure, certification, or  
18 registration of health care providers in the State who provide health  
19 care services using telemedicine or telehealth pursuant to P.L. , c.  
20 (C. ) (pending before the Legislature as this bill), and, pursuant  
21 to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature no  
22 later than two years after the date the commission first meets. The  
23 commission shall expire upon submission of its report.

24  
25 6. If any provision of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill) or its application to any person or  
27 circumstance is held to be invalid, the invalidity shall not affect any  
28 other provision or application of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill) which can be given effect without  
30 the invalid provision or application, and, to this end, the provisions  
31 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
32 are severable.

33  
34 7. a. The State Medicaid and NJ FamilyCare programs shall  
35 provide coverage and payment for health care services delivered to a  
36 benefits recipient through telemedicine or telehealth, on the same  
37 basis as, and at a provider reimbursement rate that does not exceed  
38 the provider reimbursement rate that is applicable, when the services  
39 are delivered through in-person contact and consultation in New  
40 Jersey. Reimbursement payments under this section may be provided  
41 either to the individual practitioner who delivered the reimbursable  
42 services, or to the agency, facility, or organization that employs the  
43 individual practitioner who delivered the reimbursable services, as  
44 appropriate.

45 b. The State Medicaid and NJ FamilyCare programs may limit  
46 coverage to services that are delivered by participating health care  
47 providers, but may not charge any deductible, copayment, or  
48 coinsurance for a health care service, delivered through telemedicine

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- 1 or telehealth, in an amount that exceeds the deductible, copayment,  
2 or coinsurance amount that is applicable to an in-person consultation.
- 3 c. Nothing in this section shall be construed to:
- 4 (1) prohibit the State Medicaid or NJ FamilyCare programs from  
5 providing coverage for only those services that are medically  
6 necessary, subject to the terms and conditions of the recipient's  
7 benefits plan; or
- 8 (2) allow the State Medicaid or NJ FamilyCare programs to  
9 require a benefits recipient to use telemedicine or telehealth in lieu  
10 of obtaining an in-person service from a participating health care  
11 provider.
- 12 d. The Commissioner of Human Services, in consultation with  
13 the Commissioner of Children and Families, shall apply for such  
14 State plan amendments or waivers as may be necessary to implement  
15 the provisions of this section and to secure federal financial  
16 participation for State expenditures under the federal Medicaid  
17 program and Children's Health Insurance Program.
- 18 e. As used in this section:
- 19 "Benefits recipient" or "recipient" means a person who is eligible  
20 for, and who is receiving, hospital or medical benefits under the State  
21 Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-  
22 1 et seq.), or under the NJ FamilyCare program established pursuant  
23 to P.L.2005, c.156 (C.30:4J-8 et al.), as appropriate.
- 24 "Participating health care provider" means a licensed or certified  
25 health care provider who is registered to provide health care services  
26 to benefits recipients under the State Medicaid or NJ FamilyCare  
27 programs, as appropriate.
- 28 "Telehealth" means the same as that term is defined by section 1  
29 of P.L. , c. (C. ) (pending before the Legislature as this bill).
- 30 "Telemedicine" means the same as that term is defined by section  
31 1 of P.L. , c. (C. ) (pending before the Legislature as this  
32 bill).
- 33
- 34 8. a. A carrier that offers a health benefits plan in this State shall  
35 provide coverage and payment for health care services delivered to a  
36 covered person through telemedicine or telehealth, on the same basis  
37 as, and at a provider reimbursement rate that does not exceed the  
38 provider reimbursement rate that is applicable, when the services are  
39 delivered through in-person contact and consultation in New Jersey.  
40 Reimbursement payments under this section may be provided either  
41 to the individual practitioner who delivered the reimbursable  
42 services, or to the agency, facility, or organization that employs the  
43 individual practitioner who delivered the reimbursable services, as  
44 appropriate.
- 45 b. A carrier may limit coverage to services that are delivered by  
46 health care providers in the health benefits plan's network, but may  
47 not charge any deductible, copayment, or coinsurance for a health  
48 care service, delivered through telemedicine or telehealth, in an

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- 1 amount that exceeds the deductible, copayment, or coinsurance  
2 amount that is applicable to an in-person consultation.
- 3 c. Nothing in this section shall be construed to:
- 4 (1) prohibit a carrier from providing coverage for only those  
5 services that are medically necessary, subject to the terms and  
6 conditions of the covered person's health benefits plan; or  
7 (2) allow a carrier to require a covered person to use telemedicine  
8 or telehealth in lieu of receiving an in-person service from an in-  
9 network provider.
- 10 d. The Commissioner of Banking and Insurance shall adopt rules  
11 and regulations, pursuant to the "Administrative Procedure Act,"  
12 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of  
13 this section.
- 14 e. As used in this section:
- 15 "Carrier" means the same as that term is defined by section 2 of  
16 P.L.1997, c.192 (C.26:2S-2).
- 17 "Covered person" means the same as that term is defined by  
18 section 2 of P.L.1997, c.192 (C.26:2S-2).
- 19 "Health benefits plan" means the same as that term is defined by  
20 section 2 of P.L.1997, c.192 (C.26:2S-2).
- 21 "Telehealth" means the same as that term is defined by section 1  
22 of P.L. , c. (C. ) (pending before the Legislature as this bill).
- 23 "Telemedicine" means the same as that term is defined by section  
24 1 of P.L. , c. (C. ) (pending before the Legislature as this  
25 bill).
- 26
- 27 9. a. The State Health Benefits Commission shall ensure that  
28 every contract purchased thereby, which provides hospital and  
29 medical expense benefits, additionally provides coverage and  
30 payment for health care services delivered to a covered person  
31 through telemedicine or telehealth, on the same basis as, and at a  
32 provider reimbursement rate that does not exceed the provider  
33 reimbursement rate that is applicable, when the services are delivered  
34 through in-person contact and consultation in New Jersey.  
35 Reimbursement payments under this section may be provided either  
36 to the individual practitioner who delivered the reimbursable  
37 services, or to the agency, facility, or organization that employs the  
38 individual practitioner who delivered the reimbursable services, as  
39 appropriate.
- 40 b. A health benefits contract purchased by the State Health  
41 Benefits Commission may limit coverage to services that are  
42 delivered by health care providers in the health benefits plan's  
43 network, but may not charge any deductible, copayment, or  
44 coinsurance for a health care service, delivered through telemedicine  
45 or telehealth, in an amount that exceeds the deductible, copayment,  
46 or coinsurance amount that is applicable to an in-person consultation.
- 47 c. Nothing in this section shall be construed to:

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- 1 (1) prohibit a health benefits contract from providing coverage  
2 for only those services that are medically necessary, subject to the  
3 terms and conditions of the covered person's health benefits plan; or  
4 (2) allow the State Health Benefits Commission, or a contract  
5 purchased thereby, to require a covered person to use telemedicine or  
6 telehealth in lieu of receiving an in-person service from an in-  
7 network provider.
- 8 d. The State Health Benefits Commission shall adopt rules and  
9 regulations, pursuant to the "Administrative Procedure Act,"  
10 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of  
11 this section.
- 12 e. As used in this section:  
13 "Telehealth" means the same as that term is defined by section 1  
14 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
15 "Telemedicine" means the same as that term is defined by section  
16 1 of P.L. , c. (C. ) (pending before the Legislature as this  
17 bill).  
18
- 19 10. a. The School Employees' Health Benefits Commission shall  
20 ensure that every contract purchased thereby, which provides  
21 hospital and medical expense benefits, additionally provides  
22 coverage and payment for health care services delivered to a covered  
23 person through telemedicine or telehealth, on the same basis as, and  
24 at a provider reimbursement rate that does not exceed the provider  
25 reimbursement rate that is applicable, when the services are delivered  
26 through in-person contact and consultation in New Jersey.  
27 Reimbursement payments under this section may be provided either  
28 to the individual practitioner who delivered the reimbursable  
29 services, or to the agency, facility, or organization that employs the  
30 individual practitioner who delivered the reimbursable services, as  
31 appropriate.
- 32 b. A health benefits contract purchased by the State Health  
33 Benefits Commission may limit coverage to services that are  
34 delivered by health care providers in the health benefits plan's  
35 network, but may not charge any deductible, copayment, or  
36 coinsurance for a health care service, delivered through telemedicine  
37 or telehealth, in an amount that exceeds the deductible, copayment,  
38 or coinsurance amount that is applicable to an in-person consultation.
- 39 c. Nothing in this section shall be construed to:  
40 (1) prohibit a health benefits contract from providing coverage  
41 for only those services that are medically necessary, subject to the  
42 terms and conditions of the covered person's health benefits plan; or  
43 (2) allow the School Employees' Health Benefits Commission, or  
44 a contract purchased thereby, to require a covered person to use  
45 telemedicine or telehealth in lieu of receiving an in-person service  
46 from an in-network provider.
- 47 d. The School Employees' Health Benefits Commission shall  
48 adopt rules and regulations, pursuant to the "Administrative

1 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to implement  
2 the provisions of this section.

3 e. As used in this section:

4 “Telehealth” means the same as that term is defined by section 1  
5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

6 “Telemedicine” means the same as that term is defined by section  
7 1 of P.L. , c. (C. ) (pending before the Legislature as this  
8 bill).

9

10 11. This act shall take effect immediately, and section 5 of this  
11 act shall expire upon submission of the commission’s report.

12

13

14

#### STATEMENT

15

16 This Senate floor substitute authorizes health care providers,  
17 including, but not limited to, licensed physicians, nurses, nurse  
18 practitioners, psychologists, psychiatrists, psychoanalysts, clinical  
19 social workers, physician assistants, professional counselors,  
20 respiratory therapists, speech pathologists, audiologists, and  
21 optometrists, to remotely provide health care services to patients  
22 through the use of telemedicine and telehealth.

23 “Telehealth” is defined to mean the use of information and  
24 communications technologies, including telephones, remote patient  
25 monitoring devices, or other electronic means, to support clinical  
26 health care, provider consultation, patient and professional health-  
27 related education, public health, health administration, and other  
28 services as described in regulation.

29 “Telemedicine” is defined to mean means the delivery of a health  
30 care service using electronic communications, information  
31 technology, or other electronic or technological means to bridge the  
32 gap between a health care provider who is located at a distant site and  
33 a patient who is located at an originating site, either with or without  
34 the assistance of an intervening health care provider. “Telemedicine”  
35 would not include the use, in isolation, of audio-only telephone  
36 conversation, electronic mail, instant messaging, phone text, or  
37 facsimile transmission.

38 Specifically, a health care provider will be permitted to remotely  
39 provide health care services to a patient through the use of  
40 telemedicine, and will be permitted to engage in telehealth as may be  
41 necessary to support and facilitate the provision of health care  
42 services to patients.

43 The substitute bill requires any health care provider who uses  
44 telemedicine or engages in telehealth while providing health care  
45 services to a patient to: (1) be validly licensed, certified, or registered  
46 to provide such services in the State of New Jersey; (2) remain  
47 subject to regulation by the appropriate New Jersey State licensing  
48 board or professional regulatory entity; (3) act in compliance with

1 existing requirements regarding the maintenance of liability  
2 insurance; and (4) remain subject to New Jersey jurisdiction if either  
3 the patient or the provider is located in New Jersey at the time  
4 services are provided.

5 The bill requires telemedicine services to be provided using  
6 interactive, real-time, two-way communication technologies. A  
7 health care provider engaging in telemedicine or telehealth may use  
8 asynchronous store-and-forward technology to allow for the  
9 electronic transmission of images, diagnostics, data, and medical  
10 information; except that the health care provider may use interactive,  
11 real-time, two-way audio in combination with asynchronous store-  
12 and-forward technology, without video capabilities, if, after  
13 accessing and reviewing the patient's medical records, the provider  
14 determines that the provider is able to meet the same standard of care  
15 as if the health care services were being provided in person. The  
16 provider's identity, professional credentials, and contact information  
17 are to be made available to the patient during and after the provision  
18 of services. The substitute bill requires the contact information to  
19 enable the patient to contact the health care provider, or a substitute  
20 health care provider authorized to act on the provider's behalf, for at  
21 least 72 hours following the provision of services.

22 A health care provider engaging in telemedicine or telehealth will  
23 be required to review the medical history and any medical records  
24 provided by the patient. In the case of an initial encounter with the  
25 patient, the provider is to conduct the review before initiating contact  
26 with the patient; in the case of a subsequent encounter pursuant to an  
27 ongoing provider-patient relationship, the provider may conduct the  
28 review prior to initiating contact or contemporaneously with the  
29 telemedicine or telehealth encounter.

30 Health care providers who engage in telemedicine or telehealth  
31 will be required to maintain a complete record of the patient's care  
32 and comply with all applicable State and federal statutes and  
33 regulations for recordkeeping, confidentiality, and disclosure of the  
34 patient's medical record. Health care providers will not be subject to  
35 any professional disciplinary action under Title 45 of the Revised  
36 Statutes solely on the basis that the provider engaged in telemedicine  
37 or telehealth pursuant to the substitute bill.

38 Following the provision of services using telemedicine or  
39 telehealth, the patient's medical information is to be made available  
40 to the patient upon the patient's request, and, with the patient's  
41 affirmative consent, forwarded directly to the patient's primary care  
42 provider or health care provider of record, or, upon request by the  
43 patient, to other health care providers. For patients without a primary  
44 care provider or other health care provider of record, the health care  
45 provider engaging in telemedicine or telehealth may advise the  
46 patient to contact a primary care provider, and, upon request by the  
47 patient, may assist the patient with locating a primary care provider  
48 or other in-person medical assistance that, to the extent possible, is

1 located within reasonable proximity to the patient. The health care  
2 provider engaging in telemedicine or telehealth will also be required  
3 to refer the patient to appropriate follow up care where necessary,  
4 including making appropriate referrals for emergency or  
5 complimentary care, if needed. The patient's consent may be oral,  
6 written, or digital in nature, provided it is appropriate under the  
7 standard of care.

8 Health care providers providing health care services using  
9 telemedicine or telehealth will be subject to the same standard of care  
10 or practice standards as are applicable to in-person settings. If  
11 telemedicine services would not be consistent with this standard of  
12 care, the health care provider is to direct the patient to seek in-person  
13 care. Similarly, diagnosis, treatment, and consultation  
14 recommendations made through the use of telemedicine or telehealth,  
15 including the issuance of a prescription based on a telemedicine  
16 encounter, are to be held to the same standard of care or practice  
17 standards as are applicable to in-person settings. A provider may not  
18 issue a prescription to a patient based solely on the responses  
19 provided in an online questionnaire, unless the provider has  
20 established a proper provider-patient relationship with the patient.

21 Schedule II controlled dangerous substances may be prescribed  
22 through the use of telemedicine only after the provider conducts an  
23 initial in-person examination of the patient. Subsequent in-person  
24 visits with the patient will be required every three months for the  
25 duration of time that the patient is being prescribed the Schedule II  
26 controlled dangerous substance. However, these restrictions do not  
27 apply when a health care provider is prescribing a stimulant which is  
28 a Schedule II controlled dangerous substance for use by a minor  
29 patient under the age of 18, provided that the health care provider is  
30 using interactive, real-time, two-way audio and video technologies  
31 when treating the patient, and the provider has first obtained written  
32 consent for the waiver of these in-person examination requirements  
33 from the minor patient's parent or guardian.

34 The substitute bill provides that mental health screeners, screening  
35 services, and screening psychiatrists subject to the provisions of  
36 P.L.1987, c.116 (C.30:4-27.1 et seq.) will not be required to obtain a  
37 separate authorization in order to engage in telemedicine or telehealth  
38 for mental health screening purposes, and will not be required to  
39 request and obtain a waiver from existing regulations prior to  
40 engaging in telemedicine or telehealth.

41 Professional licensing and certification boards will be required to  
42 adopt rules and regulations, which will be applicable to the health  
43 care providers under their respective jurisdictions, in order to  
44 implement the provisions of the bill and facilitate the provision of  
45 telemedicine and telehealth services. The rules and regulations are  
46 to, at a minimum: include best practices for the professional  
47 engagement in telemedicine and telehealth; ensure that the services  
48 patients receive using telemedicine or telehealth are appropriate,



1 medically necessary, and meet current quality of care standards;  
2 include measures to prevent fraud and abuse in connection with the  
3 use of telemedicine and telehealth, including requirements  
4 concerning the filing of claims and maintaining appropriate records  
5 of services provided; and provide substantially similar metrics for  
6 evaluating quality of care and patient outcomes in connection with  
7 services provided using telemedicine and telehealth as currently  
8 apply to services provided in person. The rules and regulations may  
9 not include any provision requiring an initial in-person visit with a  
10 patient before providing services using telemedicine or telehealth.

11 In order to engage in telemedicine or telehealth, a health care  
12 provider will be required to establish a proper patient-provider  
13 relationship with the patient. Establishing this relationship includes,  
14 but is not be limited to: (1) properly identifying the patient using  
15 certain patient identifiers, including, at a minimum, the patient's  
16 name, date of birth, phone number, address, and social security  
17 number, whenever possible; (2) disclosing and validating the  
18 provider's identity and credentials; (3) prior to initiating contact with  
19 a patient during an initial encounter, reviewing the patient's medical  
20 history and any available medical records; and (4) prior to initiating  
21 contact with the patient, determining whether the provider will be  
22 able to provide the appropriate standard of care using telemedicine  
23 and telehealth as would be provided in an inpatient setting.

24 Telemedicine may be practiced without establishing a proper  
25 provider-patient relationship during informal consultations without  
26 compensation; during episodic consultations by a medical specialist  
27 located in another jurisdiction; when a health care provider furnishes  
28 medical assistance in response to an emergency or disaster, provided  
29 that there is no charge for the medical assistance; and when a  
30 substitute health care provider acting on behalf of an absent health  
31 care provider in the same specialty provides health care services on  
32 an on-call or cross-coverage basis, provided that the absent health  
33 care provider has designated the substitute provider as an on-call  
34 provider or cross-coverage service provider.

35 The substitute bill requires each telemedicine or telehealth  
36 organization operating in the State to annually register with the  
37 Department of Health (DOH) and to submit an annual report to DOH  
38 in a manner as determined by the commissioner. A telemedicine or  
39 telehealth organization that fails to register or that fails to submit the  
40 annual report will be subject to disciplinary action.

41 The annual report submitted by each telemedicine and telehealth  
42 organization is to include de-identified encounter data setting forth  
43 the total number of telemedicine encounters conducted; the type of  
44 technology utilized to provide services using telemedicine or  
45 telehealth; the category of medical condition for which services were  
46 sought; the geographic region of the patient and the provider; the  
47 patient's age and sex; and any prescriptions issued. The  
48 commissioner may require the reporting of any additional

1 information as the commissioner deems necessary and appropriate,  
2 subject to all applicable State and federal laws, rules, and regulations  
3 for recordkeeping and privacy. Commencing six months after the  
4 effective date of the bill, the annual report submitted by telemedicine  
5 and telehealth organizations is to additionally, include, for each  
6 telemedicine or telehealth encounter: the patient's race and ethnicity;  
7 the diagnostic code; the encounter management code; and the source  
8 of payment for the encounter. DOH will be required to share the  
9 reported information with the Legislature, the Department of Human  
10 Services, the Department of Banking and Insurance, the  
11 Telemedicine and Telehealth Review Commission established under  
12 the bill, and the appropriate boards and entities that license or certify  
13 professionals who provide health care services in the State using  
14 telemedicine or telehealth.

15 Additionally, DOH will be required to compile the reported  
16 information to generate Statewide data concerning telemedicine and  
17 telehealth services provided in New Jersey, and report the Statewide  
18 data to the Legislature and the Telemedicine and Telehealth Review  
19 Commission on an annual basis. The report is to include an analysis  
20 of each rule and regulation adopted by State boards and entities  
21 responsible for the licensure or certification of health care providers  
22 using telemedicine and telehealth, and an assessment of the effect  
23 that the provision of health care services using telemedicine and  
24 telehealth is having in New Jersey on health care delivery, health care  
25 outcomes, population health, and in-person health care services  
26 provided in facility-based and office-based settings.

27 Six months after the effective date of the substitute bill, the  
28 Telemedicine and Telehealth Review Commission will be  
29 established in DOH. The commission will be required to review the  
30 information reported by telemedicine and telehealth organizations  
31 and make recommendations for such executive, legislative,  
32 regulatory, administrative, and other actions as may be necessary and  
33 appropriate to promote and improve the quality, efficiency, and  
34 effectiveness of telemedicine and telehealth services provided in  
35 New Jersey. The commission will consist of seven members: the  
36 Commissioner of Health, or a designee, who will serve ex officio,  
37 and six public members, with two members each to be appointed by  
38 the Governor, the Senate President, and the Speaker of the General  
39 Assembly. The public members are to be health care professionals  
40 with a background in the provision of health care services using  
41 telemedicine and telehealth. The public members will serve at the  
42 pleasure of the appointing authority, and vacancies in the  
43 membership shall be filled in the same manner as the original  
44 appointments. Members of the commission will serve without  
45 compensation but may be reimbursed for necessary travel expenses  
46 incurred in the performance of their duties within the limits of funds  
47 made available for that purpose. The commission will meet at least  
48 twice a year and at such other times as the chairperson may require.

1 The commission will be entitled to call to its assistance and avail  
2 itself of the services of the employees of any State, county, or  
3 municipal department, board, bureau, commission, or agency as it  
4 may require and as may be available for its purposes. The  
5 commission will be required to report its findings and  
6 recommendations to the Governor, the Commissioner of Health, the  
7 State boards or other entities which are responsible for the licensure,  
8 certification, or registration of health care providers in the State who  
9 provide health care services using telemedicine or telehealth, and the  
10 Legislature no later than two years after the date the commission first  
11 meets, and will expire upon submission of the report.

12 The substitute bill specifies that Medicaid, NJ FamilyCare, and  
13 certain health insurance providers, including the carriers of health  
14 benefits plans, the State Health Benefits Commission, and the School  
15 Employees' Health Benefits Commission, are each to provide  
16 coverage and payment for services provided through telemedicine  
17 and telehealth on the same basis as, and at a provider reimbursement  
18 rate that does not exceed the provider reimbursement rate that is  
19 applicable, when the services are delivered in-person in New Jersey.  
20 Reimbursement payments may be made to the individual practitioner  
21 who delivered the reimbursable services, or to the telemedicine or  
22 telehealth organization that employs the practitioner.

23 Each such carrier or insurance provider will be authorized to  
24 charge a deductible, copayment, or coinsurance for a health care  
25 service delivered through telemedicine or telehealth, provided that  
26 the amount charged does not exceed the charge for an in-person  
27 consultation. Where applicable, each carrier or insurance provider  
28 will be limited in its ability to impose annual or lifetime dollar  
29 maximum amounts on the coverage of services provided through  
30 telemedicine. Nothing in the substitute bill will prohibit a carrier or  
31 other insurance provider from providing coverage only for services  
32 deemed to be medically necessary, and nothing will allow a carrier  
33 or other insurance provider to coerce a covered person to use  
34 telehealth or telemedicine in lieu of receiving an in-person service.