

No. 64. An act relating to insurance coverage for telemedicine services delivered in or outside a health care facility.

(S.50)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE OF HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE SERVICES

(a) All health insurance plans in this State shall provide coverage for ~~telemedicine~~ health care services delivered through telemedicine by a health care provider at a distant site to a patient in a health care facility at an originating site to the same extent that the ~~services would be covered plan would cover the services~~ if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network ~~and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in-person.~~ A health insurance plan shall not impose limitations on the number of telemedicine consultations a covered person may receive that exceed limitations otherwise placed on in-person covered services.

(d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary and are clinically appropriate for delivery through telemedicine, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) In order to facilitate the use of telemedicine in treating substance use disorder, when the originating site is a health care facility, health insurers and the Department of Vermont Health Access shall ensure that ~~both the treating clinician and the hosting facility~~ the health care provider at the distant site and the health care facility at the originating site are both reimbursed for the services rendered, unless the health care providers at both the ~~host and service~~ distant and originating sites are employed by the same entity.

(h) As used in this subchapter:

(1) "Distant site" means the location of the health care provider delivering services through telemedicine at the time the services are provided.

(2) “Health insurance plan” means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

~~(2)~~(3) “Health care facility” shall have the same meaning as in 18 V.S.A. § 9402.

~~(3)~~(4) “Health care provider” means a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care services in this State to an individual during that individual’s medical care, treatment, or confinement.

(5) “Originating site” means the location of the patient, whether or not accompanied by a health care provider, at the time services are provided by a health care provider through telemedicine, including a health care provider’s office, a hospital, or a health care facility, or the patient’s home or another nonmedical environment such as a school-based health center, a university-based health center, or the patient’s workplace.

(6) “Store and forward” means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care

provider at the distant site reviews the medical information without the patient present in real time.

(4)(7) “Telemedicine” means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.

Sec. 2. 18 V.S.A. § 9361 is amended to read:

§ 9361. HEALTH CARE PROVIDERS ~~PROVIDING~~ DELIVERING
HEALTH CARE SERVICES THROUGH TELEMEDICINE OR BY
STORE AND FORWARD SERVICES MEANS

(a) As used in this section, “distant site,” “health care provider,” “originating site,” “store and forward,” and “telemedicine” shall have the same meanings as in 8 V.S.A. § 4100k.

(b) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this ~~state~~ State may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient ~~either~~ in person, through telemedicine, or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment

recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings. ~~For purposes of this subchapter, “telemedicine” shall have the same meaning as in 8 V.S.A. § 4100k.~~

(c)(1) A health care provider delivering health care services through telemedicine shall obtain and document a patient’s oral or written informed consent for the use of telemedicine technology prior to delivering services to the patient.

(A) The informed consent for telemedicine services shall be provided in accordance with Vermont and national policies and guidelines on the appropriate use of telemedicine within the provider’s profession and shall include, in language that patients can easily understand:

(i) an explanation of the opportunities and limitations of delivering health care services through telemedicine;

(ii) informing the patient of the presence of any other individual who will be participating in or observing the patient’s consultation with the provider at the distant site and obtaining the patient’s permission for the participation or observation; and

(iii) assurance that all services the health care provider delivers to the patient through telemedicine will be delivered over a secure connection that

complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(B) For services delivered through telemedicine on an ongoing basis, the health care provider shall be required to obtain consent only at the first episode of care.

(2) The provider shall include the patient's written consent in the patient's medical record or document the patient's oral consent in the patient's medical record.

(3) A health care provider delivering telemedicine services through a contract with a third-party vendor shall comply with the provisions of this subsection (c) to the extent permissible under the terms of the contract. If the contract requires the health care provider to use the vendor's own informed consent provisions instead of those set forth in this subsection (c), the health care provider shall be deemed to be in compliance with the requirements of this subsection (c) if he or she adheres to the terms of the vendor's informed consent policies.

(4) Notwithstanding any provision of this subsection (c) to the contrary, a health care provider shall not be required to obtain a patient's informed consent for the use of telemedicine in the following circumstances:

(A) in the case of a medical emergency;

(B) for the second certification of an emergency examination determining whether an individual is a person in need of treatment pursuant to section 7508 of this title; or

(C) for a psychiatrist's examination to determine whether an individual is in need of inpatient hospitalization pursuant to 13 V.S.A. § 4815(g)(3).

(d) Neither a health care provider nor a patient shall create or cause to be created a recording of a provider's telemedicine consultation with a patient.

~~(b)~~(e) A patient receiving teleophthalmology or teledermatology by store and forward means shall be informed of the right to receive a consultation with the distant site health care provider and shall receive a consultation with the distant site health care provider upon request. If requested, the consultation with the distant site health care provider may occur either at the time of the initial consultation or within a reasonable period of time ~~of~~ following the patient's notification of the results of the initial consultation. Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time telemedicine or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure obtain informed consent from the patient as described in subsection (c) of this section. ~~For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.~~

Sec. 3. REPEAL

33 V.S.A. § 1901i (Medicaid coverage for primary care telemedicine) is repealed.

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 (health insurance coverage) shall take effect on October 1, 2017 and shall apply to Medicaid on that date and to all other health insurance plans on or after October 1, 2017 on the date a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2018.

(b) Secs. 2 (health care providers providing telemedicine), 3 (repeal) and this section shall take effect on October 1, 2017.

Date Governor signed bill: June 7, 2017