

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred Senate Bill No. 50
3 entitled “An act relating to insurance coverage for telemedicine services
4 delivered in or outside a health care facility” respectfully reports that it has
5 considered the same and recommends that the House propose to the Senate that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

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

9 § 4100k. COVERAGE OF HEALTH CARE SERVICES DELIVERED
10 THROUGH TELEMEDICINE SERVICES

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

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

20 (c) A health insurance plan may limit coverage to health care providers in
21 the plan’s network ~~and may require originating site health care providers to~~

1 ~~document the reason the services are being provided by telemedicine rather~~
2 ~~than in person.~~ A health insurance plan shall not impose limitations on the
3 number of telemedicine consultations a covered person may receive that
4 exceed limitations otherwise placed on in-person covered services.

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

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

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

16 (g) In order to facilitate the use of telemedicine in treating substance use
17 disorder, when the originating site is a health care facility, health insurers and
18 the Department of Vermont Health Access shall ensure that ~~both the treating~~
19 ~~clinician and the hosting facility~~ the health care provider at the distant site and
20 the health care facility at the originating site are both reimbursed for the

1 services rendered, unless the health care providers at both the ~~host and service~~
2 distant and originating sites are employed by the same entity.

3 (h) As used in this subchapter:

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

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

12 ~~(2)~~(3) “Health care facility” shall have the same meaning as in
13 18 V.S.A. § 9402.

14 ~~(3)~~(4) “Health care provider” means a person, partnership, or
15 corporation, other than a facility or institution, that is licensed, certified, or
16 otherwise authorized by law to provide professional health care service in this
17 State to an individual during that individual’s medical care, treatment, or
18 confinement.

19 (5) “Originating site” means the location of the patient, whether or not
20 accompanied by a health care provider, at the time services are provided by a
21 health care provider through telemedicine, including a health care provider’s

1 office, a hospital, or a health care facility, or the patient’s home or another
2 nonmedical environment such as a school-based health center, a university-
3 based health center, or the patient’s workplace.

4 (6) “Store and forward” means an asynchronous transmission of medical
5 information to be reviewed at a later date by a health care provider at a distant
6 site who is trained in the relevant specialty and by which the health care
7 provider at the distant site reviews the medical information without the patient
8 present in real time.

9 (4)(7) “Telemedicine” means the delivery of health care services such as
10 diagnosis, consultation, or treatment through the use of live interactive audio
11 and video over a secure connection that complies with the requirements of the
12 Health Insurance Portability and Accountability Act of 1996, Public Law 104-
13 191. Telemedicine does not include the use of audio-only telephone, e-mail, or
14 facsimile.

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

16 § 9361. HEALTH CARE PROVIDERS ~~PROVIDING~~ DELIVERING
17 HEALTH CARE SERVICES THROUGH TELEMEDICINE OR BY
18 STORE AND FORWARD SERVICES MEANS

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

1 **(b)** Subject to the limitations of the license under which the individual is
2 practicing, a health care provider licensed in this state may prescribe, dispense,
3 or administer drugs or medical supplies, or otherwise provide treatment
4 recommendations to a patient after having performed an appropriate
5 examination of the patient ~~either~~ in person, through telemedicine, or by the use
6 of instrumentation and diagnostic equipment through which images and
7 medical records may be transmitted electronically. Treatment
8 recommendations made via electronic means, including issuing a prescription
9 via electronic means, shall be held to the same standards of appropriate
10 practice as those in traditional provider-patient settings. ~~For purposes of this~~
11 ~~subchapter, “telemedicine” shall have the same meaning as in 8 V.S.A.~~
12 ~~§ 4100k.~~

13 (c)(1) A health care provider delivering health care services through
14 telemedicine shall obtain and document a patient’s oral or written informed
15 consent prior to delivering services to the patient. The provider shall include
16 the written consent in the patient’s medical record or document the patient’s
17 oral consent in the patient’s medical record.

18 (2)(A) Informed consent for telemedicine services shall include, in
19 language that patients can easily understand:

20 (i) an explanation of the differences between telemedicine and in-
21 person delivery of health care services, including:

1 (I) that the patient may experience a qualitative difference in
2 care based on potential differences in a patient’s ability to establish a
3 therapeutic rapport with the provider in-person and through telemedicine; and

4 (II) that telemedicine provides different opportunities and
5 challenges for provider-patient interaction than in-person consultation,
6 including the potential for differences in the degree and manner of the
7 provider’s visual observations of the patient;

8 (ii) informing the patient of the patient’s right to exclude any
9 individual from participating in or observing the patient’s consultation with the
10 provider at both the originating site and the distant site;

11 (iii) informing the patient that the patient may stop telemedicine
12 services at any time and may request a referral for in-person services; and

13 (iv) assurance that all services the health care provider delivers to
14 the patient through telemedicine will be delivered over a secure connection that
15 complies with the requirements of the Health Insurance Portability and
16 Accountability Act of 1996, Public Law 104-191.

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

20 **(3) A health care provider delivering telemedicine services through**
21 **a contract with a third-party vendor shall comply with the provisions of**

1 **subdivision (2) of this subsection (c) to the extent permissible under the**
2 **terms of the contract. If the contract requires the health care provider to**
3 **use the vendor's own informed consent provisions instead of those set**
4 **forth in subdivision (2) of this subsection (c), the health care provider shall**
5 **be deemed to be in compliance with the requirements of this subsection (c)**
6 **if he or she adheres to the terms of the vendor's informed consent policies.**

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

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

13 (B) for a psychiatrist's examination to determine whether an
14 individual is in need of inpatient hospitalization pursuant to 13 V.S.A.
15 § 4815(g)(3).

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

19 **(1)(A) In the event that a health care provider and patient mutually**
20 **agree to create a recording of the provider's telemedicine consultation**
21 **with the patient, the provider shall obtain the patient's specific informed**

1 ~~consent to create the recording. The informed consent may be obtained in~~
2 ~~writing, which shall be included in the patient's medical record, or orally~~
3 ~~at the beginning of the recording.~~

4 ~~(B) A health care provider shall obtain a new informed consent~~
5 ~~from a patient prior to each recorded telemedicine consultation.~~

6 ~~(C) A health care provider shall not record a telemedicine~~
7 ~~consultation over a patient's objection or without the patient's consent.~~

8 ~~(2) The informed consent for recording a telemedicine consultation~~
9 ~~shall include:~~

10 ~~(A) the reasons for recording the telemedicine consultation,~~
11 ~~which may be at the patient's request or at the health care provider's~~
12 ~~suggestion with the patient's consent;~~

13 ~~(B) notice that the recording will become part of the patient's~~
14 ~~medical record;~~

15 ~~(C) the method of recording;~~

16 ~~(D) the manner in which the provider will store the recording;~~

17 ~~(E) who will have access to the recording; and~~

18 ~~(F) notice of the patient's right to request a copy of the recording~~
19 ~~at any time.~~

20 (b)(e) A patient receiving teleophthalmology or teledermatology by store
21 and forward means shall be informed of the right to receive a consultation with

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

13 Sec. 3. REPEAL

14 33 V.S.A. § 1901i (Medicaid coverage for primary care telemedicine) is
15 repealed.

16 Sec. 4. EFFECTIVE DATES

17 (a) Secs. 1 (health insurance coverage) and 3 (repeal) shall take effect on
18 October 1, 2017 and shall apply to Medicaid on that date and to all other health
19 insurance plans on or after October 1, 2017 on the date a health insurer issues,
20 offers, or renews the health insurance plan, but in no event later than
21 October 1, 2018.

1 (b) Sec. 2 (health care providers providing telemedicine) and this section
2 shall take effect on passage.

3

4

5 (Committee vote: _____)

6

7

Representative _____

8

FOR THE COMMITTEE

9