

1 Introduced by Committee on Health Care

2 Date:

3 Subject: Health; health insurance; Medicaid; telehealth; audio-only telephone

4 Statement of purpose of bill as introduced: This bill proposes to require health
5 insurance plans and the Vermont Medicaid program to provide coverage for
6 health care services delivered by audio-only telephone and to reimburse health
7 care providers the same amount as for in-person services through the end of
8 2024. It would also set certain requirements for health care providers
9 delivering services using audio-only telephone and require data collection and
10 reporting on utilization of services delivered in this manner.

11 An act relating to health care services delivered by audio-only telephone

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

13 Sec. 1. 8 V.S.A. chapter 107, subchapter 14 is amended to read:

14 Subchapter 14. ~~Telemedicine~~ Telehealth

15 * * *

16 § 4100I. COVERAGE OF HEALTH CARE SERVICES DELIVERED BY

17 AUDIO-ONLY TELEPHONE

18 (a) As used in this section:

19 (1) “Health care provider” means a person, partnership, or corporation,

20 other than a facility or institution, that is licensed, certified, or otherwise

1 authorized by law to provide professional health care services in this State to
2 an individual during that individual’s medical care, treatment, or confinement.

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

10 (b)(1) A health insurance plan shall provide coverage for all **medically**
11 **necessary**, clinically appropriate health care services delivered remotely by
12 audio-only telephone to the same extent that the plan would cover the services
13 if they were provided through in-person consultation. Services covered under
14 this subdivision shall include services that are covered when provided in the
15 home by home health agencies.

16 (2)(A) A health insurance plan shall provide the same reimbursement
17 rate for services billed using equivalent procedure codes and modifiers, subject
18 to the terms of the health insurance plan and provider contract, regardless of
19 whether the service was provided through in-person consultation with a health
20 care provider or by audio-only telephone.

1 (a) As used in this section, “health insurance plan” and “health care
2 provider” have the same meaning as in 8 V.S.A. § 4100l and “telemedicine”
3 has the same meaning as in 8 V.S.A. § 4100k.

4 (b)(1) Subject to the limitations of the license under which the individual is
5 practicing **and, for Medicaid patients, to the extent permitted by the**
6 **Centers for Medicare and Medicaid Services,** a health care provider may
7 deliver health care services to a patient using audio-only telephone if the
8 patient elects to receive the services in this manner and it is clinically
9 appropriate to do so. A health care provider shall comply with any training
10 requirements imposed by the provider’s licensing board on the appropriate use
11 of audio-only telephone in health care delivery.

12 (2) A health care provider delivering health care services using audio-
13 only telephone shall include or document in the patient’s medical record:

14 (A) the patient’s informed consent for receiving services using audio-
15 only telephone in accordance with subsection (c) of this section; and

16 (B) the reason or reasons that the provider determined that it was
17 clinically appropriate to deliver health care services to the patient by audio-
18 only telephone.

19 (3)(A) A health care provider shall not require a patient to receive health
20 care services by audio-only telephone if the patient does not wish to receive
21 services in this manner.

1 (B) A health care provider shall deliver care that is timely and
2 complies with contractual requirements and shall not delay care unnecessarily
3 if a patient elects to receive services through an in-person visit or telemedicine
4 instead of by audio-only telephone.

5 (c) A health care provider delivering health care services by audio-only
6 telephone shall obtain and document a patient’s oral or written informed
7 consent for the use of audio-only telephone prior to the appointment or at the
8 start of the appointment but prior to delivering any billable service.

9 (1) The informed consent for audio-only telephone services shall be
10 provided in accordance with Vermont and national policies and guidelines on
11 the appropriate use of telephone services within the provider’s profession and
12 shall include, in language that patients can easily understand:

13 (A) that the patient is entitled to choose to receive services by audio-
14 only telephone, in person, or through telemedicine, to the extent clinically
15 appropriate;

16 (B) that receiving services by audio-only telephone does not preclude
17 the patient from receiving services in person or through telemedicine at a later
18 date;

19 (C) an explanation of the opportunities and limitations of delivering
20 and receiving health care services using audio-only telephone;

1 (D) informing the patient of the presence of any other individual who
2 will be participating in or listening to the patient’s consultation with the
3 provider and obtaining the patient’s permission for the participation or
4 observation; and

5 (E) whether the services will be billed to the patient’s health
6 insurance plan if delivered by audio-only telephone and what this may mean
7 for the patient’s financial responsibility for co-payments, coinsurance, and
8 deductibles.

9 (2) For services delivered by audio-only telephone on an ongoing basis,
10 the health care provider shall be required to obtain consent only at the first
11 episode of care.

12 (3) If the patient provides oral informed consent, the provider shall offer
13 to provide the patient with a written copy of the informed consent.

14 (4) Notwithstanding any provision of this subsection to the contrary, a
15 health care provider shall not be required to obtain a patient’s informed
16 consent for the use of audio-only telephone services in the case of a medical
17 emergency.

18 (5) A health care provider may use a single informed consent form to
19 address all telehealth modalities, including telemedicine, store and forward,
20 and audio-only telephone, as long as the form complies with the provisions of
21 section 9361 of this chapter and this section.

1 (d) Neither a health care provider nor a patient shall create or cause to be
2 created a recording of a provider’s telephone consultation with a patient.

3 (e) Audio-only telephone services shall not be used in the following
4 circumstances:

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

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

10 Sec. 3. AUDIO-ONLY TELEPHONE; MEDICAL BILLING; DATA
11 COLLECTION; REPORT

12 (a)(1) On or before July 1, 2021, the Department of Financial Regulation,
13 in consultation with the Department of Vermont Health Access, the Green
14 Mountain Care Board, representatives of health care providers, health insurers,
15 and other interested stakeholders, shall determine the appropriate codes or
16 modifiers, or both, to be used by providers and insurers, including Vermont
17 Medicaid to the extent permitted by the Centers for Medicare and Medicaid
18 Services, in the billing of and payment for health care services delivered using
19 audio-only telephone in order to allow for consistent data collection by
20 insurers, maintain reimbursement rates equal to those for in-person services,
21 identify appropriate codes for services that do not have in-person equivalents,

1 and minimize the administrative burden on providers. To the extent possible,
2 the use of codes or modifiers, or both, shall be done in a manner that allows
3 data on the use of audio-only telephone services to be identified using the
4 Vermont Healthcare Claims Uniform Reporting and Evaluation System
5 (VHCURES).

6 (2) Not later than January 1, 2022, all Vermont-licensed health care
7 providers and health insurers offering health insurance plans in Vermont shall
8 use the codes and modifiers determined by the Department of Financial
9 Regulation pursuant to subdivision (1) of this subsection when delivering
10 services by audio-only telephone. **Vermont Medicaid shall participate to**
11 **the extent permitted by the Centers for Medicare and Medicaid Services.**

12 (b) On or before December 1, 2023, the Department of Financial
13 Regulation, the Vermont Program for Quality in Health Care, and, to the extent
14 VHCURES data are available, the Green Mountain Care Board shall present
15 information to the House Committee on Health Care and the Senate Committee
16 on Health and Welfare regarding the use of audio-only telephone services in
17 Vermont during calendar year 2022. The Department shall consult with
18 interested stakeholders in order to include in its presentation information on
19 utilization of audio-only telephone services, quality of care, patient satisfaction
20 with receiving health care services by audio-only telephone, and the

1 advantages and disadvantages of reimbursing providers the same amounts for
2 services delivered in person and by audio-only telephone.

3 Sec. 4. TELEPHONE TRIAGE SERVICES; DEPARTMENT OF

4 FINANCIAL REGULATION; EMERGENCY RULEMAKING

5 Notwithstanding any provision of 3 V.S.A. § 844 to the contrary, the
6 Department of Financial Regulation shall consider adopting, and shall have the
7 authority to adopt, emergency rules to address health insurance coverage of
8 and reimbursement for telephone calls used to determine whether an office
9 visit or other service is needed. Emergency rules adopted pursuant to this
10 section shall remain in effect until not later than April 1, 2022.

11 Sec. 5. 8 V.S.A. § 4100k(a)(2) is amended to read:

12 (2)(A) A health insurance plan shall provide the same reimbursement
13 rate for services billed using equivalent procedure codes and modifiers, subject
14 to the terms of the health insurance plan and provider contract, regardless of
15 whether the service was provided through an in-person visit with the health
16 care provider or through telemedicine.

17 (B) The provisions of subdivision (A) of this subdivision (2) shall not
18 apply:

19 (i) to services provided pursuant to the health insurance plan's
20 contract with a third-party telemedicine vendor to provide health care or dental
21 services; or

1 **(ii) in the event that a health insurer and health care provider**
2 **enter into a value-based contract for health care services that include**
3 **telemedicine or by store-and-forward means.**

4 Sec. 6. AUDIO-ONLY TELEPHONE REIMBURSEMENT PARITY;

5 REPEAL

6 8 V.S.A. § 41001(b)(2) (audio-only telephone reimbursement parity) is
7 repealed on January 1, 2025.

8 Sec. 7. EFFECTIVE DATE

9 This act shall take effect on passage.