

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 redesignated and amended to  
14 read:

15 Subchapter 14. ~~Telemedicine~~ Telehealth

16 \* \* \*

17 § 4100l. COVERAGE OF HEALTH CARE SERVICES DELIVERED BY

18 AUDIO-ONLY TELEPHONE

19 (a) As used in this section:

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

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

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

18           (2)(A) A health insurance plan shall provide the same reimbursement  
19           rate for services billed using equivalent procedure codes and modifiers, subject  
20           to the terms of the health insurance plan and provider contract, regardless of

1 whether the service was provided through in-person consultation with a health  
2 care provider or by audio-only telephone.

3 **(B) The provisions of subdivision (A) of this subdivision (2) shall**  
4 **not apply in the event that a health insurer and health care provider enter**  
5 **into a value-based contract for health care services that include audio-only**  
6 **telephone services.**

7 (3) A health insurance plan may charge an otherwise permissible  
8 deductible, co-payment, or coinsurance for a health care service delivered by  
9 audio-only telephone provided that it does not exceed the deductible, co-  
10 payment, or coinsurance applicable to an in-person consultation.

11 (4) A health insurance plan shall not require a health care provider to  
12 have an existing relationship with a patient in order to be reimbursed for health  
13 care services delivered by audio-only telephone.

14 Sec. 2. 18 V.S.A. chapter 219 is redesignated and amended to read:

15 CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND

16 ~~TELEMEDICINE~~ TELEHEALTH

17 \* \* \*

18 Subchapter 2. ~~Telemedicine~~ Telehealth

19 \* \* \*

20 § 9362. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE

21 SERVICES 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.