

Vermont statutes relating to telehealth**Health care delivery using telehealth****§ 9361. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE SERVICES THROUGH
TELEMEDICINE OR BY STORE-AND-FORWARD 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 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 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.

(c)(1) A health care provider delivering health care services or dental 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 or dental 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, Pub. L. No. 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, the health care provider shall be deemed to be in compliance with the requirements of this subsection if he or she adheres to the terms of the vendor's informed consent policies.

(4) Notwithstanding any provision of this subsection 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.

(e)(1) A patient receiving health care services or dental services by store-and-forward means shall be informed of the patient's right to refuse to receive services in this manner and to request services in an alternative format, such as through real-time telemedicine services or an in-person visit.

(2) Receipt of services by store-and-forward means shall not preclude a patient from receiving real-time telemedicine services or an in-person visit with the distant site health care provider at a future date.

(3) Originating site health care providers involved in the store-and-forward process shall obtain informed consent from the patient as described in subsection (c) of this section.

§ 9362. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE SERVICES BY AUDIO-ONLY TELEPHONE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) informing the patient that not all audio-only health care services are covered by all health plans.

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

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

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

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

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

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

(1) 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

(2) 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).

Health insurance coverage for telehealth

§ 4100k. COVERAGE OF HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE
AND BY STORE-AND-FORWARD MEANS

(a)(1) All health insurance plans in this State shall provide coverage for health care services and dental services delivered through telemedicine by a health care provider at a distant site to a patient at an originating site to the same extent that the plan would cover the services if they were provided through in-person consultation.

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

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

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

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

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service or dental service provided through telemedicine as 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. 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)(1) A health insurance plan shall reimburse for health care services and dental services delivered by store-and-forward means.

(2) A health insurance plan shall not impose more than one cost-sharing requirement on a patient for receipt of health care services or dental services delivered by store-and-forward means. If the services would require cost sharing under the terms of the patient's health insurance plan, the plan may impose the cost sharing requirement on the services of the originating site health care provider or of the distant site health care provider, but not both.

(f) A health insurer shall not construe a patient's receipt of services delivered through telemedicine or by store-and-forward means as limiting in any way the patient's ability to receive additional covered in-person services from the same or a different health care provider for diagnosis or treatment of the same condition.

(g) 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.

(h) 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 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 distant and originating sites are employed by the same entity.

(i) 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; a stand-alone dental plan or policy or other dental insurance plan offered by a dental insurer; and 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 a specified disease or other limited benefit coverage.

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

(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, including dental 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, such as one or more video clips, audio clips, still images, x-rays, magnetic resonance imaging scans,

electrocardiograms, electroencephalograms, or laboratory results, sent over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty. In store and forward, the health care provider at the distant site reviews the medical information without the patient present in real time and communicates a care plan or treatment recommendation back to the patient or referring provider, or both.

(7) “Telemedicine” means the delivery of health care services, including dental 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, Pub. L. No. 104-191.

§ 4100I. COVERAGE OF HEALTH CARE SERVICES DELIVERED BY AUDIO-ONLY

TELEPHONE

(a) As used in this section:

(1) “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.

(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; Medicaid, to the extent permitted by the Centers for Medicare and Medicaid Services; 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 a specified disease or other limited benefit coverage.

(b)(1) A health insurance plan shall provide coverage for all medically necessary, clinically appropriate health care services delivered remotely by audio-only telephone to the same extent that the

plan would cover the services if they were provided through in-person consultation. Services covered under this subdivision shall include services that are covered when provided in the home by home health agencies.

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

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

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

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