



GOV. MSG. NO. 1389

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith HB1980 HD2 SD2 CD1, without my approval and with the statement of objections relating to the measure.

HB1980 HD2 SD2 CD1

RELATING TO TELEPHONIC SERVICES.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2022

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1980

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 1980, entitled "A Bill for an Act Relating to Telephonic Services."

The purpose of this bill is to permit the State's Medicaid managed care and fee-for-services programs, health insurers, mutual benefit societies, and health maintenance organizations to cover telephonic behavioral health services when: (1) telehealth services are technologically unavailable at the time the patient is scheduled to receive a behavioral health service; (2) the behavioral health service is a medically necessary covered health care service; and (3) the health care provider has provided the patient with an in-person behavioral health service within the twelve months preceding the telephone service. Also, the bill clarifies that telephonic services do not constitute telehealth.

This bill is objectionable because there is a potential for a negative impact on the well-being of individuals who need behavioral health services. Although the bill clarifies when telephonic services may be covered, and provides guidance to health insurance providers, the final bill may be interpreted to strictly limit insurance coverage for telephonic services. Specifically, health insurance providers may use the provision to restrict or exclude coverage of telephonic services unless the service meets the three criteria listed in the bill, whereas the current law does not have a restriction. This bill would then have the unintended consequence of restricting access to necessary behavioral health services, inconsistent with the goal of promoting continued broad access to behavioral health services for individuals in remote areas, or individuals without access to technology. Vetoing this bill will allow for additional discussion and

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1980
Page 2

clarification on a bill in the next session that would align with expanding access to behavioral health services, with a workable framework for health insurance providers.

For the foregoing reasons, I am returning House Bill No. 1980 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, stylized "Y" and a long, sweeping underline.

DAVID Y. IGE
Governor of Hawai'i

ORIGINAL

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2022
STATE OF HAWAII

VETO
H.B. NO. 1980
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO TELEPHONIC SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 346-59.1, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "~~§~~**§346-59.1**~~§~~ **Coverage for telehealth.** (a) The
4 State's medicaid managed care and fee-for-service programs shall
5 not deny coverage for any service provided through telehealth
6 that would be covered if the service were provided through
7 in-person consultation between a patient and a health care
8 provider.
9 (b) Reimbursement for services provided through telehealth
10 shall be equivalent to reimbursement for the same services
11 provided via face-to-face contact between a health care provider
12 and a patient. Nothing in this section shall require a health
13 care provider to be physically present with the patient at an
14 originating site unless a health care provider at the distant
15 site deems it necessary.



1 (c) There shall be no geographic restrictions or
2 requirements for telehealth coverage or reimbursement under this
3 section.

4 (d) There shall be no restrictions on originating site
5 requirements for telehealth coverage or reimbursement under this
6 section.

7 (e) Services provided by telehealth pursuant to this
8 section shall be consistent with all federal and state privacy,
9 security, and confidentiality laws.

10 (f) Notwithstanding any other law to the contrary, the
11 provisions of this section shall comply with the applicable
12 federal requirements related to utilization, coverage, and
13 reimbursement for telehealth services.

14 (g) Telephonic behavioral health services may be covered
15 when:

16 (1) Telehealth services are technologically unavailable at
17 the time the patient is scheduled to receive a
18 behavioral health service;

19 (2) The behavioral health service is a medically
20 necessary, covered health care service; and



1 (3) The health care provider has provided the patient with
2 an in-person behavioral health service within the
3 twelve months preceding the telephonic service;
4 provided that nothing in this section shall be interpreted to
5 require or prohibit coverage for any telephonic service.

6 ~~(g)~~ (h) For the purposes of this section:

7 "Distant site" means the location of the health care
8 provider delivering services through telehealth at the time the
9 services are provided.

10 "Health care provider" means a provider of services, as
11 defined in title 42 United States Code section 1395x(u), a
12 provider of medical and other health services, as defined in
13 title 42 United States Code section 1395x(s), other
14 practitioners licensed by the State and working within their
15 scope of practice, and any other person or organization who
16 furnishes, bills, or is paid for health care in the normal
17 course of business, including but not limited to primary care
18 providers, mental health providers, oral health providers,
19 physicians and osteopathic physicians licensed under chapter
20 453, advanced practice registered nurses licensed under chapter



1 457, psychologists licensed under chapter 465, and dentists
2 licensed under chapter 448.

3 "Originating site" means the location where the patient is
4 located, whether accompanied or not by a health care provider,
5 at the time services are provided by a health care provider
6 through telehealth, including but not limited to a health care
7 provider's office, hospital, critical access hospital, rural
8 health clinic, federally qualified health center, a patient's
9 home, and other non-medical environments such as school-based
10 health centers, university-based health centers, or the work
11 location of a patient.

12 "Telehealth" means the use of telecommunications services,
13 as defined in section 269-1, to encompass four modalities:
14 store and forward technologies, remote monitoring, live
15 consultation, and mobile health; and which shall include but not
16 be limited to real-time video conferencing-based communication,
17 secure interactive and non-interactive web-based communication,
18 and secure asynchronous information exchange, to transmit
19 patient medical information, including diagnostic-quality
20 digital images and laboratory results for medical interpretation
21 and diagnosis, for the purpose of delivering enhanced health



1 care services and information while a patient is at an
2 originating site and the health care provider is at a distant
3 site. Standard telephone contacts, facsimile transmissions, or
4 e-mail text, in combination or by itself, does not constitute a
5 telehealth service for the purposes of this section.

6 "Telephonic service" means the use of two-way, real-time
7 audio-only telephone communication by a health care provider at
8 a distant site, for the purpose of diagnosing, monitoring, or
9 treating a patient. "Telephonic service" does not constitute
10 telehealth."

11 SECTION 2. Section 431:10A-116.3, Hawaii Revised Statutes,
12 is amended to read as follows:

13 **"§431:10A-116.3 Coverage for telehealth.** (a) It is the
14 intent of the legislature to recognize the application of
15 telehealth as a reimbursable service by which an individual
16 shall receive medical services from a health care provider
17 without face-to-face contact with the health care provider.

18 (b) No policy of accident and health or sickness insurance
19 [~~plan~~] that is issued, amended, or renewed shall require face-
20 to-face contact between a health care provider and a patient as
21 a prerequisite for payment for services appropriately provided



1 through telehealth in accordance with generally accepted health
2 care practices and standards prevailing in the applicable
3 professional community at the time the services were provided.
4 The coverage required in this section may be subject to all
5 terms and conditions of the ~~[plan]~~ policy agreed upon among the
6 ~~[enrollee or subscriber,]~~ the insured, the insurer, and the
7 health care provider.

8 (c) Reimbursement for services provided through telehealth
9 shall be equivalent to reimbursement for the same services
10 provided via face-to-face contact between a health care provider
11 and a patient. Nothing in this section shall require a health
12 care provider to be physically present with the patient at an
13 originating site unless a health care provider at the distant
14 site deems it necessary.

15 (d) Notwithstanding chapter 453 or rules adopted pursuant
16 thereto, in the event that a health care provider-patient
17 relationship does not exist between the patient and the health
18 care provider to be involved in a telehealth interaction between
19 the patient and the health care provider, a telehealth mechanism
20 may be used to establish a health care provider-patient
21 relationship.



1 (e) All insurers shall provide current and prospective
2 insureds with written disclosure of coverages and benefits
3 associated with telehealth services, including information on
4 copayments, deductibles, or coinsurance requirements under a
5 policy, contract, plan, or agreement. The information provided
6 shall be current, understandable, and available prior to the
7 issuance of a policy, contract, plan, or agreement, and upon
8 request after the policy, contract, plan, or agreement has been
9 issued.

10 (f) Services provided by telehealth pursuant to this
11 section shall be consistent with all federal and state privacy,
12 security, and confidentiality laws.

13 (g) Telephonic behavioral health services may be covered
14 when:

15 (1) Telehealth services are technologically unavailable at
16 the time the patient is scheduled to receive a
17 behavioral health service;

18 (2) The behavioral health service is a medically
19 necessary, covered health care service; and



1 (3) The health care provider has provided the patient with
2 an in-person behavioral health service within the
3 twelve months preceding the telephonic service;
4 provided that nothing in this section shall be interpreted to
5 require or prohibit coverage for any telephonic service.

6 ~~[(g)]~~ (h) For the purposes of this section:

7 "Distant site" means the location of the health care
8 provider delivering services through telehealth at the time the
9 services are provided.

10 "Health care provider" means a provider of services, as
11 defined in title 42 United States Code section 1395x(u), a
12 provider of medical and other health services, as defined in
13 title 42 United States Code section 1395x(s), other
14 practitioners licensed by the State and working within their
15 scope of practice, and any other person or organization who
16 furnishes, bills, or is paid for health care in the normal
17 course of business, including but not limited to primary care
18 providers, mental health providers, oral health providers,
19 physicians and osteopathic physicians licensed under chapter
20 453, advanced practice registered nurses licensed under chapter



1 457, psychologists licensed under chapter 465, and dentists
2 licensed under chapter 448.

3 "Originating site" means the location where the patient is
4 located, whether accompanied or not by a health care provider,
5 at the time services are provided by a health care provider
6 through telehealth, including but not limited to a health care
7 provider's office, hospital, health care facility, a patient's
8 home, and other nonmedical environments such as school-based
9 health centers, university-based health centers, or the work
10 location of a patient.

11 "Telehealth" means the use of telecommunications services,
12 as defined in section 269-1, to encompass four modalities:
13 store and forward technologies, remote monitoring, live
14 consultation, and mobile health; and which shall include but not
15 be limited to real-time video conferencing-based communication,
16 secure interactive and non-interactive web-based communication,
17 and secure asynchronous information exchange, to transmit
18 patient medical information, including diagnostic-quality
19 digital images and laboratory results for medical interpretation
20 and diagnosis, for the purpose of delivering enhanced health
21 care services and information while a patient is at an



1 originating site and the health care provider is at a distant
2 site. Standard telephone contacts, facsimile transmissions, or
3 e-mail text, in combination or by itself, does not constitute a
4 telehealth service for the purposes of this chapter.

5 "Telephonic service" means the use of two-way, real-time
6 audio-only telephone communication by a health care provider at
7 a distant site, for the purpose of diagnosing, monitoring, or
8 treating a patient. "Telephonic service" does not constitute
9 telehealth."

10 SECTION 3. Section 432:1-601.5, Hawaii Revised Statutes,
11 is amended to read as follows:

12 **"§432:1-601.5 Coverage for telehealth. (a)** It is the
13 intent of the legislature to recognize the application of
14 telehealth as a reimbursable service by which an individual
15 shall receive medical services from a health care provider
16 without face-to-face contact with the health care provider.

17 (b) No [~~mutual benefit society~~] hospital or medical
18 service plan contract that is issued, amended, or renewed shall
19 require face-to-face contact between a health care provider and
20 a patient as a prerequisite for payment for services
21 appropriately provided through telehealth in accordance with



1 generally accepted health care practices and standards
2 prevailing in the applicable professional community at the time
3 the services were provided. The coverage required in this
4 section may be subject to all terms and conditions of the plan
5 contract agreed upon among the [~~enrollee~~] member or subscriber,
6 the mutual benefit society, and the health care provider.

7 (c) Reimbursement for services provided through telehealth
8 shall be equivalent to reimbursement for the same services
9 provided via face-to-face contact between a health care provider
10 and a patient. Nothing in this section shall require a health
11 care provider to be physically present with the patient at an
12 originating site unless a health care provider at the distant
13 site deems it necessary.

14 (d) Notwithstanding chapter 453 or rules adopted pursuant
15 thereto, in the event that a health care provider-patient
16 relationship does not exist between the patient and the health
17 care provider to be involved in a telehealth interaction between
18 the patient and health care provider, a telehealth mechanism may
19 be used to establish a health care provider-patient
20 relationship.



1 (e) All [~~insurers~~] mutual benefit societies shall provide
2 current and prospective [~~enrollees~~] members or subscribers with
3 written disclosure of coverages and benefits associated with
4 telehealth services, including information on copayments,
5 deductibles, or coinsurance requirements under a policy,
6 contract, plan, or agreement. The information provided shall be
7 current, understandable, and available prior to the issuance of
8 a policy, contract, plan, or agreement, and upon request after
9 the policy, contract, plan, or agreement has been issued.

10 (f) Services provided by telehealth pursuant to this
11 section shall be consistent with all federal and state privacy,
12 security, and confidentiality laws.

13 (g) Telephonic behavioral health services may be covered
14 when:

- 15 (1) Telehealth services are technologically unavailable at
16 the time the patient is scheduled to receive a
17 behavioral health service;
18 (2) The behavioral health service is a medically
19 necessary, covered health care service; and



1 (3) The health care provider has provided the patient with
2 an in-person behavioral health service within the
3 twelve months preceding the telephonic service;
4 provided that nothing in this section shall be interpreted to
5 require or prohibit coverage for any telephonic service.

6 ~~[(g)]~~ (h) For the purposes of this section:

7 "Health care provider" means a provider of services, as
8 defined in title 42 United States Code section 1395x(u), a
9 provider of medical and other health services, as defined in
10 title 42 United States Code section 1395x(s), other
11 practitioners licensed by the State and working within their
12 scope of practice, and any other person or organization who
13 furnishes, bills, or is paid for health care in the normal
14 course of business, including but not limited to primary care
15 providers, mental health providers, oral health providers,
16 physicians and osteopathic physicians licensed under chapter
17 453, advanced practice registered nurses licensed under chapter
18 457, psychologists licensed under chapter 465, and dentists
19 licensed under chapter 448.

20 "Originating site" means the location where the patient is
21 located, whether accompanied or not by a health care provider,



1 at the time services are provided by a health care provider
2 through telehealth, including but not limited to a health care
3 provider's office, hospital, health care facility, a patient's
4 home, and other nonmedical environments such as school-based
5 health centers, university-based health centers, or the work
6 location of a patient.

7 "Telehealth" means the use of telecommunications services,
8 as defined in section 269-1, to encompass four modalities:
9 store and forward technologies, remote monitoring, live
10 consultation, and mobile health; and which shall include but not
11 be limited to real-time video conferencing-based communication,
12 secure interactive and non-interactive web-based communication,
13 and secure asynchronous information exchange, to transmit
14 patient medical information, including diagnostic-quality
15 digital images and laboratory results for medical interpretation
16 and diagnosis, for the purpose of delivering enhanced health
17 care services and information while a patient is at an
18 originating site and the health care provider is at a distant
19 site. Standard telephone contacts, facsimile transmissions, or
20 e-mail text, in combination or by itself, does not constitute a
21 telehealth service for the purposes of this chapter.



1 "Telephonic service" means the use of two-way, real-time
2 audio-only telephone communication by a health care provider at
3 a distant site, for the purpose of diagnosing, monitoring, or
4 treating a patient. "Telephonic service" does not constitute
5 telehealth."

6 SECTION 4. Section 432D-23.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§432D-23.5 Coverage for telehealth.** (a) It is the
9 intent of the legislature to recognize the application of
10 telehealth as a reimbursable service by which an individual
11 shall receive medical services from a health care provider
12 without face-to-face contact with the health care provider.
13 (b) No health maintenance organization policy, contract,
14 plan, or agreement that is issued, amended, or renewed shall
15 require face-to-face contact between a health care provider and
16 a patient as a prerequisite for payment for services
17 appropriately provided through telehealth in accordance with
18 generally accepted health care practices and standards
19 prevailing in the applicable professional community at the time
20 the services were provided. The coverage required in this
21 section may be subject to all terms and conditions of the



1 policy, contract, plan, or agreement agreed upon among the
2 enrollee or subscriber, the health maintenance organization, and
3 the health care provider.

4 (c) Reimbursement for services provided through telehealth
5 shall be equivalent to reimbursement for the same services
6 provided via face-to-face contact between a health care provider
7 and a patient. Nothing in this section shall require a health
8 care provider to be physically present with the patient at an
9 originating site unless a health care provider at the distant
10 site deems it necessary.

11 (d) Notwithstanding chapter 453 or rules adopted pursuant
12 thereto, in the event that a health care provider-patient
13 relationship does not exist between the patient and the health
14 care provider involved in a telehealth interaction between the
15 patient and the health care provider, a telehealth mechanism may
16 be used to establish a health care provider-patient
17 relationship.

18 (e) All health maintenance organizations shall provide
19 current and prospective [~~insureds~~] enrollees or subscribers with
20 written disclosure of coverages and benefits associated with
21 telehealth services, including information on copayments,



1 deductibles, or coinsurance requirements under a policy,
2 contract, plan, or agreement. The information provided shall be
3 current, understandable, and available prior to enrollment in a
4 policy, contract, plan, or agreement and upon request after
5 enrollment in the policy, contract, plan, or agreement.

6 (f) Services provided by telehealth pursuant to this
7 section shall be consistent with all federal and state privacy,
8 security, and confidentiality laws.

9 (g) Telephonic behavioral health services may be covered
10 when:

11 (1) Telehealth services are technologically unavailable at
12 the time the patient is scheduled to receive a
13 behavioral health service;

14 (2) The behavioral health service is a medically
15 necessary, covered health care service; and

16 (3) The health care provider has provided the patient with
17 an in-person behavioral health service within the
18 twelve months preceding the telephonic service;

19 provided that nothing in this section shall be interpreted to
20 require or prohibit coverage for any telephonic service.

21 ~~(g)~~ (h) For the purposes of this section:



1 "Distant site" means the location of the health care
2 provider delivering services through telehealth at the time the
3 services are provided.

4 "Health care provider" means a provider of services, as
5 defined in title 42 United States Code section 1395x(u), a
6 provider of medical and other health services, as defined in
7 title 42 United States Code section 1395x(s), other
8 practitioners licensed by the State and working within their
9 scope of practice, and any other person or organization who
10 furnishes, bills, or is paid for health care in the normal
11 course of business, including but not limited to primary care
12 providers, mental health providers, oral health providers,
13 physicians and osteopathic physicians licensed under chapter
14 453, advanced practice registered nurses licensed under chapter
15 457, psychologists licensed under chapter 465, and dentists
16 licensed under chapter 448.

17 "Originating site" means the location where the patient is
18 located, whether accompanied or not by a health care provider,
19 at the time services are provided by a health care provider
20 through telehealth, including but not limited to a health care
21 provider's office, hospital, health care facility, a patient's



1 home, and other nonmedical environments such as school-based
2 health centers, university-based health centers, or the work
3 location of a patient.

4 "Telehealth" means the use of telecommunications services,
5 as defined in section 269-1, to encompass four modalities:
6 store and forward technologies, remote monitoring, live
7 consultation, and mobile health; and which shall include but not
8 be limited to real-time video conferencing-based communication,
9 secure interactive and non-interactive web-based communication,
10 and secure asynchronous information exchange, to transmit
11 patient medical information, including diagnostic-quality
12 digital images and laboratory results for medical interpretation
13 and diagnosis, for the purpose of delivering enhanced health
14 care services and information while a patient is at an
15 originating site and the health care provider is at a distant
16 site. Standard telephone contacts, facsimile transmissions, or
17 e-mail text, in combination or by itself, does not constitute a
18 telehealth service for the purposes of this chapter.

19 "Telephonic service" means the use of two-way, real-time
20 audio-only telephone communication by a health care provider at
21 a distant site, for the purpose of diagnosing, monitoring, or



1 treating a patient. "Telephonic service" does not constitute
2 telehealth."

3 SECTION 5. Section 453-1.3, Hawaii Revised Statutes, is
4 amended by amending subsection (j) to read as follows:

5 "(j) For the purposes of this section:

6 "Distant site" means the location of the physician
7 delivering services through telehealth at the time the services
8 are provided.

9 "Originating site" means the location where the patient is
10 located, whether accompanied or not by a health care provider,
11 at the time services are provided by a physician through
12 telehealth, including but not limited to a physician's office,
13 hospital, health care facility, a patient's home, and other non-
14 medical environments such as school-based health centers,
15 university-based health centers, or the work location of a
16 patient.

17 "Telehealth" means the use of telecommunications as that
18 term is defined in section 269-1, to encompass four modalities:
19 store and forward technologies, remote monitoring, live
20 consultation, and mobile health; and which shall include but not
21 be limited to real-time video conferencing-based communication,



1 secure interactive and non-interactive web-based communication,
2 and secure asynchronous information exchange, to transmit
3 patient medical information, including diagnostic-quality
4 digital images and laboratory results for medical interpretation
5 and diagnosis, for the purposes of: delivering enhanced health
6 care services and information while a patient is at an
7 originating site and the physician is at a distant site;
8 establishing a physician-patient relationship; evaluating a
9 patient; or treating a patient. A telephonic service, as
10 defined in section 431:10A-116.3, does not constitute
11 telehealth."

12 SECTION 6. The department of health, department of human
13 services, and department of commerce and consumer affairs shall
14 adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to
15 effectuate the purposes of this Act.

16 SECTION 7. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 8. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 9. This Act shall take effect on July 1, 2022.



H.B. NO. 1980
H.D. 2
S.D. 2
C.D. 1

APPROVED this day of , 2022

GOVERNOR OF THE STATE OF HAWAII

HB No. 1980, HD 2, SD 2, CD 1

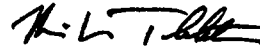
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives

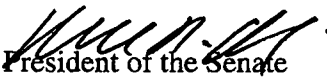



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2022.


President of the Senate


Clerk of the Senate