

ACT 20

S.B. NO. 1676

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Since 1999, the legislature has supported the use and expansion of telehealth services and technology in Hawaii. In the past, telehealth services were primarily facility-based without a consumer driven component. With internet-based technology revolutionizing the way consumers acquire goods and services today, it is now possible to apply this technology to health care. Hawaii is poised to become the first state in the nation to provide statewide consumer access to local physicians via the Internet and telephone. Individuals will be able to interact with local physicians in a real time, secure, and private online environment.

Supporting this expanded use of technology for telemedicine services will increase access to health care in rural areas of the State. People living in Hawaii's rural areas often find it more difficult to access specialty physician care. The use of new and improved technologies to deliver effective and prompt health care will allow residents to promptly consult with a specialist.

Difficulty or inability to visit a specialist often forces individuals to delay appropriate health care. These delays may ultimately lead to worsened health outcomes which could have been avoided. New technology will provide additional options to access care through discussion with a local physician live via the Internet or telephone twenty-four hours a day, seven days a week.

Expansion of telemedicine services may also assist in containing rising health care costs. The availability of immediate access to physicians may prevent inappropriate and expensive trips to the emergency room. Those without health care coverage who currently access non-emergent care in the emergency room would be able to visit a physician online. As consumers become more comfortable receiving care through telemedicine, hospitals could see a decrease not only in inappropriate emergency room usage, but also a decrease in uncompensated care.

In addition, since rural areas locally and across the nation find it increasingly difficult to attract and retain physicians, particularly specialists, expansion of telemedicine services may attract physicians to practice in these areas. Tele-

medicine will provide physicians with greater flexibility and freedom within their practices wherever they are physically located in Hawaii. The resulting lifestyle improvement without sacrifice of income may prove to be an attractive incentive for physicians to practice in rural areas.

Despite the legislature's clear and consistent support of expanded use of telemedicine to improve access to health care services throughout the State, questions have recently been raised by the Hawaii medical board about the appropriate use of this technology to establish the physician-patient relationship. Therefore, the purpose of this Act is to reinforce the legislature's support of online care services through telemedicine by:

- (1) Clarifying that telemedicine is within a physician's scope of practice and is authorized in Hawaii when practiced by a licensed physician providing services to patients; and
- (2) Further clarifying the current laws regarding telehealth to ensure compliance with changes made to the law regulating the practice of medicine.

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§453- Practice of telemedicine. (a) Nothing in this section shall preclude any physician acting within the scope of the physician's license to practice from practicing telemedicine as defined in this section.

(b) For the purposes of this section, “telemedicine” means the use of telecommunications services, including real-time video or web conferencing communication or secure web-based communication to establish a physician-patient relationship, to evaluate a patient, or to treat a patient. “Telehealth” as used in chapters 431, 432, and 432D, includes “telemedicine” as defined in this section.

(c) Telemedicine services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contra-indications to the treatment recommended or provided.

(d) Treatment recommendations made via telemedicine, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face to face visit but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing a controlled substance, a physician-patient relationship shall be established pursuant to chapter 329.

(e) All medical reports resulting from telemedicine services are part of a patient's health record and shall be made available to the patient. Patient medical records shall be maintained in compliance with all applicable state and federal requirements including privacy requirements.

(f) A physician shall not use telemedicine to establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii. Once a provider-patient relationship is established, a patient or physician licensed in this State may use telemedicine for any purpose, including consultation with a medical provider licensed in another state, authorized by this section, or as otherwise provided by law.”

SECTION 3. Section 431:10A-116.3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding chapter 453 or rules adopted pursuant thereto, ~~[In]~~ in the event that a health care provider-patient relationship does not exist between the patient and the health care provider to be involved in a telehealth interaction between the patient and the health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.”

SECTION 4. Section 432:1-601.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding chapter 453 or rules adopted pursuant thereto, ~~[In]~~ in the event that a health care provider-patient relationship does not exist between the patient and the health care provider to be involved in a telehealth interaction between the patient and health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.”

SECTION 5. Section 432D-23.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding chapter 453 or rules adopted pursuant thereto, ~~[In]~~ in the event that a health care provider-patient relationship does not exist between the patient and the health care provider involved in a telehealth interaction between the patient and the health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Became law on April 28, 2009, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.