

A Bill for an Act Relating to Telehealth.

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

SECTION 1. The legislature finds that one of the challenges faced by the country's health care system is providing quality care to segments of the population who do not have access to essential services because of geographic limitations. Using telehealth to deliver health care from a distance is an effective way of overcoming certain barriers to accessing care, particularly for communities located in rural and remote areas. This is especially important in Hawaii, where residents on the neighbor islands and in rural areas do not have the same level of access to care as residents in urban areas of Oahu.

The legislature further finds that telehealth services are used extensively across the country with no compromise in quality of care when the services are within the scope of practice of a provider. However, reimbursement policies vary between health plans, leading to confusion among health care providers and restrictions on patient access to quality health care.

The legislature additionally finds that requiring parity for telehealth services will empower consumer choice, reduce disparities in access to care, enhance health care provider availability, and improve quality of care.

The legislature also finds that various sections of the Hawaii Revised Statutes contain different definitions for or references to "telemedicine" and "telehealth" and notes that these definitions and references should be harmonized for consistency.

Accordingly, the purpose of this Act is to:

- (1) Require equivalent insurance reimbursement for services, including behavioral health services, provided by a health care provider to a patient regardless of whether the service is provided through telehealth or via face-to-face contact between health care provider and patient;
- (2) Clarify that health care providers for purposes of telehealth include primary care providers, mental health providers, oral health providers, physicians and osteopathic physicians, advanced practice registered nurses, psychologists, and dentists; and
- (3) Change references to "telemedicine" in the Hawaii Revised Statutes to "telehealth" for consistency.

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended by amending the definition of "medical and health care services" to read as follows:

""Medical and health care services" means medical research, clinical trials, and [telemedicine,] telehealth, but not routine medical treatment or services."

web-based communication [to establish], and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purposes of delivering enhanced health care services and information to parties separated by distance, establishing a physician-patient relationship, [to evaluate] evaluating a patient, or [to treat] treating a patient. [“Telehealth” as used in chapters 431, 432, and 432D, includes “telemedicine” as defined in this section.]

(c) ~~[Telemedicine]~~ Telehealth 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 contraindications to the treatment recommended or provided.

(d) Treatment recommendations made via ~~[telemedicine,]~~ telehealth, 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]~~ telehealth 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]~~ telehealth 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]~~ telehealth for any purpose, including consultation with a medical provider licensed in another state, authorized by this section[-] or as otherwise provided by law.

(g) Reimbursement for behavioral health services provided through telehealth shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient.”

SECTION 8. Section 453-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing herein shall:

- (1) Apply to so-called Christian Scientists; provided that the Christian Scientists practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
- (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) Apply to any commissioned medical officer in the United States armed forces or public health service engaged in the discharge of one's official duty, including a commissioned medical officer employed by the United States Department of Defense, while providing direct ~~[telemedicine]~~ telehealth support or services to neighbor island beneficiaries within a Hawaii National Guard armory on the island of Kauai, Hawaii, Molokai, or Maui; provided that the commissioned medical officer employed by the United States Department of Defense is credentialed by Tripler Army Medical Center;
- (4) Apply to any practitioner of medicine and surgery from another state when in actual consultation, including in-person, mail, elec-

tronic, telephonic, fiber-optic, or other [~~telemedicine~~] telehealth consultation with a licensed physician or osteopathic physician of this State, if the physician or osteopathic physician from another state at the time of consultation is licensed to practice in the state in which the physician or osteopathic physician resides; provided that:

- (A) The physician or osteopathic physician from another state shall not open an office, or appoint a place to meet patients in this State, or receive calls within the limits of the State for the provision of care for a patient who is located in this State;
 - (B) The licensed physician or osteopathic physician of this State retains control and remains responsible for the provision of care for the patient who is located in this State; and
 - (C) The laws and rules relating to contagious diseases are not violated;
- (5) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services, or any physician assistant, when the services are rendered under the direction and control of a physician or osteopathic physician licensed in this State except for final refraction resulting in a prescription for spectacles, contact lenses, or visual training as performed by an oculist or optometrist duly licensed by the State. The direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician or osteopathic physician. Any physician or osteopathic physician who employs or directs a person certified under part II of this chapter to provide emergency medical services, or a physician assistant, shall retain full professional and personal responsibility for any act that constitutes the practice of medicine when performed by the certified person or physician assistant;
- (6) Prohibit automated external defibrillation by:
- (A) Any first responder personnel certified by the department of health to provide automated external defibrillation when it is rendered under the medical oversight of a physician or osteopathic physician licensed in this State; or
 - (B) Any person acting in accordance with section 663-1.5(e); or
- (7) Prohibit a radiologist duly licensed to practice medicine and provide radiology services in another state from using [~~telemedicine~~] telehealth while located in this State to provide radiology services to a patient who is located in the state in which the radiologist is licensed. For the purposes of this paragraph:

“Radiologist” means a doctor of medicine or a doctor of osteopathy certified in radiology by the American Board of Radiology or the American Board of Osteopathy.

[~~“Telemedicine”~~] “Telehealth” means the use of telecommunications [~~services~~], as that term is defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, [~~such as~~] including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, [~~and deliver~~] for the purpose of delivering enhanced health care services and information to parties separated by distance. Standard telephone contacts, facsimile transmissions, or email texts, in

combination or by themselves, do not constitute a telehealth service for the purposes of this paragraph.”

SECTION 9. Section 455-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§455-1.5~~ **Exceptions; scope of chapter.** Nothing in this chapter shall be construed to prohibit or restrict:

- (1) The practice of a profession by individuals who are licensed, certified, or registered under the laws of this State who are performing services within their authorized scope of practice;
- (2) The practice of naturopathic medicine by an individual employed by the government of the United States while the individual is engaged in the performance of duties required of the individual by the laws and regulations of the United States;
- (3) The practice of naturopathic medicine by students enrolled in a school that meets the requirements of section 455-3. The performance of naturopathic medicine by students shall be pursuant to a course of instruction or assignments from an instructor and under the supervision of an instructor who is a naturopathic physician licensed pursuant to this chapter; and
- (4) The practice by a doctor of naturopathic medicine duly registered or licensed in another state, territory, or the District of Columbia who is called into this State for consultation with a licensed naturopathic physician, including in-person, mail, electronic, telephonic, fiber-optic, or other ~~[telemedicine]~~ telehealth consultation; provided that:
 - (A) The naturopathic physician from another state shall not open an office, appoint a place to meet patients, or receive calls within this State for the provision of care for a patient who is located in this State; and
 - (B) The licensed naturopathic physician of this State retains control and remains responsible for the provision of care for the patient who is located in this State.”

SECTION 10. Section 457-2.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Practice as an advanced practice registered nurse means the scope of nursing in a category approved by the board, regardless of compensation or personal profit, and includes the registered nurse scope of practice. The scope of an advanced practice registered nurse includes but is not limited to advanced assessment; telehealth; and the diagnosis, prescription, selection, and administration of therapeutic measures including over the counter drugs, legend drugs, and controlled substances within the advanced practice registered nurse’s role and specialty-appropriate education and certification.”

SECTION 11. Section 466J-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision in this chapter to the contrary notwithstanding, a license shall not be required for:

- (1) A licensed medical practitioner in radiology;
- (2) A licensed practitioner of nuclear medicine;
- (3) A licensed physician assistant;
- (4) A licensed doctor of dentistry;

- (5) A licensed dental technician;
- (6) A licensed dental hygienist;
- (7) A student in an approved school for radiographers, radiation therapists, or nuclear medicine technologists, or in a school of medicine, podiatry, dentistry, or a chiropractic school; provided that the student is operating x-ray machines under the direct supervision of a licensed radiographer, licensed radiation therapist, licensed nuclear medicine technologist, or a qualified person pursuant to this chapter; and
- (8) A radiologist duly licensed to practice medicine and radiology services in another state who uses ~~[telemedicine]~~ telehealth while located in this State to provide radiology services to a patient who is located in the state in which the radiologist is licensed. For the purposes of this paragraph:

“Radiologist” means a doctor of medicine or a doctor of osteopathy certified in radiology by the American Board of Radiology or the American Board of Osteopathy.

~~“Telemedicine”~~ “Telehealth” means the use of telecommunications ~~[services]~~, as that term is defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, ~~[such as]~~ including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, ~~[and deliver]~~ for the purpose of delivering enhanced health care services and information to parties separated by distance. Standard telephone contacts, facsimile transmissions, or email texts, in combination or by themselves, do not constitute a telehealth service for the purposes of this paragraph.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 30, 2014.)