

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 20-1260.01 Shelby Ross x4510

SENATE BILL 20-212

SENATE SPONSORSHIP

Winter and Tate, Crowder, Bridges, Cooke, Coram, Donovan, Fenberg, Fields, Garcia, Gardner, Ginal, Gonzales, Hansen, Hisey, Holbert, Lee, Lundeen, Moreno, Pettersen, Priola, Rankin, Sonnenberg, Story, Todd, Williams A., Woodward, Zenzinger

HOUSE SPONSORSHIP

Lontine and Soper, Landgraf, Will

Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING REIMBURSEMENT FOR HEALTH CARE SERVICES**
102 **PROVIDED THROUGH TELEHEALTH, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits a health insurance carrier from:

- ! Imposing specific requirements or limitations on the technologies used to deliver telehealth services;
- ! Requiring a covered person to have a previously established patient-provider relationship with a specific

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
June 9, 2020

SENATE
Amended 2nd Reading
June 8, 2020

provider in order to receive medically necessary telehealth services from the provider; or

- ! Imposing additional certification, location, or training requirements as a condition of reimbursement for telehealth services.

The bill specifies that, to the extent the state board of health adopts rules addressing supervision requirements for home care agencies, the rules must allow for supervision in person or by telemedicine or telehealth.

For purposes of the medicaid program, the bill:

- ! Clarifies the methods of communication that may be used for telemedicine;
- ! Requires the department of health care policy and financing to reimburse rural health clinics, the federal Indian health service, and federally qualified health centers for telemedicine services provided to medicaid recipients and to do so at the same rate as the department reimburses those services when provided in person; and
- ! Specifies that health care and mental health care services include physical therapy, occupational therapy, hospice care, home health care, and pediatric behavioral health care.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) On March 27, 2020, the federal government enacted the
5 "Coronavirus Aid, Relief, and Economic Security Act" ("CARES Act"),
6 Pub.L. 116-136, Stat. 281 (2020), pursuant to which Colorado received
7 approximately \$1,674,000,000 from the federal coronavirus relief fund
8 to use for necessary expenditures incurred due to the current COVID-19
9 public health emergency;

10 (b) On May 18, 2020, the Colorado governor issued Executive
11 Order 2020 D 070, transferring \$70,000,000 from the state "CARES Act"
12 fund to the state general fund for eligible expenditures;

13 (c) The expenditures in this bill are considered an allowable use

1 under the federal "CARES Act" and are necessary to respond to the
2 COVID-19 public health emergency; and

3 (d) The expenditures in this bill were not accounted for in the
4 Colorado state budget most recently approved as of March 27, 2020, and
5 all of the expenses will be incurred on or before December 30, 2020.

6 (2) The general assembly further finds and declares that:

7 (a) The expenditures in this bill will be used to protect the health
8 and safety of both caregivers and patients by ensuring that access to
9 telehealth services are available to all Coloradans;

10 (b) Due to the unanticipated effects of COVID-19, many patients
11 have been unable or unwilling to seek out care through in-person settings;

12 (c) The need to access health care services is compounded by the
13 challenges associated with COVID-19, as Coloradans are experiencing
14 the negative effects the pandemic has on physical, mental, and emotional
15 health that will extend into future years; and

16 (d) Access to telehealth is vital to ensuring the continuity of
17 physical, mental, and behavioral health care for Coloradans during the
18 COVID-19 pandemic and responding to any future outbreaks of the virus.

19 **SECTION 2.** In Colorado Revised Statutes, 10-16-123, **amend**
20 (2)(e) and (4)(e); **repeal** ___ (4)(d); and **add** (4)(b.5) as follows:

21 **10-16-123. Telehealth - definitions.** (2) (e) A carrier shall not:

22 (I) Impose an annual dollar maximum on coverage for health care
23 services covered under the health benefit plan that are delivered through
24 telehealth, other than an annual dollar maximum that applies to the same
25 services when performed by the same provider through in-person care;

26 (II) IMPOSE SPECIFIC REQUIREMENTS OR LIMITATIONS ON THE
27 HIPAA-COMPLIANT TECHNOLOGIES THAT A PROVIDER USES TO DELIVER

1 TELEHEALTH SERVICES, INCLUDING LIMITATIONS ON AUDIO OR LIVE VIDEO
2 TECHNOLOGIES;

3 (III) REQUIRE A COVERED PERSON TO HAVE A PREVIOUSLY
4 ESTABLISHED PATIENT-PROVIDER RELATIONSHIP WITH A SPECIFIC
5 PROVIDER IN ORDER FOR THE COVERED PERSON TO RECEIVE MEDICALLY
6 NECESSARY TELEHEALTH SERVICES FROM THE PROVIDER; OR

7 (IV) IMPOSE ADDITIONAL CERTIFICATION, LOCATION, OR TRAINING
8 REQUIREMENTS ON A PROVIDER AS A CONDITION OF REIMBURSING THE
9 PROVIDER FOR PROVIDING HEALTH CARE SERVICES THROUGH TELEHEALTH.

10 (4) As used in this section:

11 (b.5) "REMOTE MONITORING" MEANS THE USE OF SYNCHRONOUS
12 OR ASYNCHRONOUS TECHNOLOGIES TO COLLECT OR MONITOR MEDICAL
13 AND OTHER FORMS OF HEALTH DATA FOR INDIVIDUALS AT AN ORIGINATING
14 SITE AND ELECTRONICALLY TRANSMIT THAT INFORMATION TO PROVIDERS
15 AT A DISTANT SITE SO PROVIDERS CAN ASSESS, DIAGNOSE, CONSULT,
16 TREAT, EDUCATE, PROVIDE CARE MANAGEMENT, SUGGEST
17 SELF-MANAGEMENT, OR MAKE RECOMMENDATIONS REGARDING A
18 COVERED PERSON'S HEALTH CARE.

19

20 (d) ~~"Synchronous interaction" means a real-time interaction~~
21 ~~between a patient located at the originating site and a provider located at~~
22 ~~a distant site.~~

23 (e) (f) "Telehealth" means a mode of delivery of health care
24 services through HIPAA-COMPLIANT telecommunications systems,
25 including information, electronic, and communication technologies,
26 REMOTE MONITORING TECHNOLOGIES, AND STORE-AND-FORWARD
27 TRANSFERS, to facilitate the assessment, diagnosis, consultation,

1 treatment, education, care management, or self-management of a covered
2 person's health care while the covered person is located at an originating
3 site and the provider is located at a distant site. The term includes:

- 4 ~~(A) Synchronous interactions;~~
- 5 ~~(B) Store-and-forward transfers; and~~
- 6 ~~(C) Services provided through HIPAA-compliant interactive~~
7 ~~audio-visual communication or the use of a HIPAA-compliant application~~
8 ~~via a cellular telephone.~~

9 ~~(H) "Telehealth" does not include the delivery of health care~~
10 ~~services via:~~

- 11 ~~(A) Voice-only telephone communication or text messaging;~~
- 12 ~~(B) Facsimile machine; or~~
- 13 ~~(C) Electronic mail systems.~~

14 **SECTION 3.** In Colorado Revised Statutes, 25-27.5-104, **add**
15 (1.5) as follows:

16 **25-27.5-104. Minimum standards for home care agencies and**
17 **home care placement agencies - rules - advisory committee.** (1.5) TO
18 THE EXTENT THE STATE BOARD RULES ADOPTED PURSUANT TO
19 SUBSECTION (1) OF THIS SECTION ADDRESS SUPERVISION REQUIREMENTS
20 FOR HOME CARE AGENCIES, THE RULES MUST ALLOW FOR SUPERVISION IN
21 PERSON OR BY TELEMEDICINE OR TELEHEALTH. ANY RULES ADOPTED BY
22 THE STATE BOARD PURSUANT TO THIS SUBSECTION (1.5) SHALL BE IN
23 CONFORMITY WITH APPLICABLE FEDERAL LAW AND MUST TAKE INTO
24 CONSIDERATION THE APPROPRIATENESS, SUITABILITY, AND NECESSITY OF
25 THE METHOD OF SUPERVISION PERMITTED.

26 **SECTION 4.** In Colorado Revised Statutes, 25-54-102, **amend**
27 (2)(a) as follows:

1 **25-54-102. Statewide system for advance directives created -**
2 **rules.** (2) (a) Upon the request of an individual, or authorized surrogate
3 decision-maker, a qualified provider that has an agreement with the health
4 information organization network as required under the federal "Health
5 Insurance Portability and Accountability Act of 1996", Pub.L. 104-191,
6 as amended, may upload the individual's advance health care directive to
7 the system. The advance health care directive shall only be uploaded to
8 the system by a qualified provider after the individual or authorized
9 surrogate decision-maker has consulted with the qualified provider in
10 person or through telehealth, as defined in ~~section 10-16-123 (4)(e)(f)~~
11 SECTION 10-16-123 (4)(e). A qualified provider ~~who~~ THAT uploads an
12 advance health care directive to the system is not subject to civil or
13 criminal liability or regulatory sanction for action taken in accordance
14 with this subsection (2).

15 **SECTION 5.** In Colorado Revised Statutes, 25.5-5-320, **amend**
16 (1) introductory portion; and **add** (2.1), (2.5), (6), and (7) as follows:

17 **25.5-5-320. Telemedicine - reimbursement - disclosure**
18 **statement - definition - repeal.** (1) On or after July 1, 2006, in-person
19 contact between a health care or mental health care provider and a patient
20 ~~shall~~ IS not ~~be~~ required under the state's medical assistance program for
21 health care or mental health care services delivered through telemedicine
22 that are otherwise eligible for reimbursement under the program.
23 TELEMEDICINE MAY BE PROVIDED THROUGH INTERACTIVE AUDIO,
24 INTERACTIVE VIDEO, OR INTERACTIVE DATA COMMUNICATION, INCLUDING
25 BUT NOT LIMITED TO TELEPHONE, RELAY CALLS, INTERACTIVE
26 AUDIOVISUAL MODALITIES, AND LIVE CHAT, AS LONG AS THE
27 TECHNOLOGIES ARE COMPLIANT WITH THE FEDERAL "HEALTH INSURANCE

1 PORTABILITY AND ACCOUNTABILITY ACT OF 1996" PUB.L. 104-191, AS
2 AMENDED. The HEALTH CARE OR MENTAL HEALTH CARE services shall be
3 ARE subject to reimbursement policies developed pursuant to the medical
4 assistance program. This section also applies to managed care
5 organizations that contract with the state department pursuant to the
6 statewide managed care system only to the extent that:

7 (2.1) (a) FOR THE PURPOSES OF REIMBURSEMENT FOR SERVICES
8 PROVIDED BY HOME CARE AGENCIES, AS DEFINED IN SECTION 25-27.5-102
9 (3), THE SERVICES MAY BE SUPERVISED THROUGH TELEMEDICINE OR
10 TELEHEALTH.

11 (b) (I) THE STATE DEPARTMENT SHALL NOT SEEK FEDERAL
12 REIMBURSEMENT FOR THE SERVICES PROVIDED PURSUANT TO SUBSECTION
13 (2.1)(a) OF THIS SECTION FROM JULY 1, 2020, THROUGH DECEMBER 30,
14 2020.

15 (II) THIS SUBSECTION (2.1)(b) IS REPEALED, EFFECTIVE JANUARY
16 1, 2021.

17 (2.5) (a) (I) A TELEMEDICINE SERVICE MEETS THE DEFINITION OF
18 A FACE-TO-FACE ENCOUNTER FOR A RURAL HEALTH CLINIC, AS DEFINED IN
19 THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1395x (aa)(2). THE
20 REIMBURSEMENT RATE FOR A TELEMEDICINE SERVICE PROVIDED BY A
21 RURAL HEALTH CLINIC MUST BE SET AT A RATE THAT IS NO LESS THAN THE
22 MEDICAL ASSISTANCE PROGRAM RATE FOR A COMPARABLE FACE-TO-FACE
23 ENCOUNTER OR VISIT.

24 (II) A TELEMEDICINE SERVICE MEETS THE DEFINITION OF A
25 FACE-TO-FACE ENCOUNTER FOR A MEDICAL CARE PROGRAM OF THE
26 FEDERAL INDIAN HEALTH SERVICE. THE REIMBURSEMENT RATE FOR A
27 TELEMEDICINE SERVICE PROVIDED BY A MEDICAL CARE PROGRAM OF THE

1 FEDERAL INDIAN HEALTH SERVICE MUST BE SET AT A RATE THAT IS NO
2 LESS THAN THE MEDICAL ASSISTANCE PROGRAM RATE FOR A COMPARABLE
3 FACE-TO-FACE ENCOUNTER OR VISIT.

4 (III) A TELEMEDICINE SERVICE MEETS THE DEFINITION OF A
5 FACE-TO-FACE ENCOUNTER FOR A FEDERALLY QUALIFIED HEALTH CENTER,
6 AS DEFINED IN THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC.
7 1395x (aa)(4). THE REIMBURSEMENT RATE FOR A TELEMEDICINE SERVICE
8 PROVIDED BY A FEDERALLY QUALIFIED HEALTH CENTER MUST BE SET AT
9 A RATE THAT IS NO LESS THAN THE MEDICAL ASSISTANCE PROGRAM RATE
10 FOR A COMPARABLE FACE-TO-FACE ENCOUNTER OR VISIT.

11 (b) (I) THE STATE DEPARTMENT SHALL NOT SEEK FEDERAL
12 REIMBURSEMENT FOR THE SERVICES PROVIDED PURSUANT TO SUBSECTION
13 (2.5)(a) OF THIS SECTION FROM JULY 1, 2020, THROUGH DECEMBER 30,
14 2020.

15 (II) THIS SUBSECTION (2.5)(b) IS REPEALED, EFFECTIVE JANUARY
16 1, 2021.

17 (6) (a) THE STATE DEPARTMENT SHALL POST TELEMEDICINE
18 UTILIZATION DATA TO THE STATE DEPARTMENT'S WEBSITE NO LATER THAN
19 THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6) AND
20 SHALL UPDATE THE DATA EVERY OTHER MONTH THROUGH STATE FISCAL
21 YEAR 2020-21.

22 (b) THIS SUBSECTION (6) IS REPEALED JULY 1, 2021.

23 (7) (a) AS USED IN THIS SECTION, "HEALTH CARE OR MENTAL
24 HEALTH CARE SERVICES" INCLUDES SPEECH THERAPY, PHYSICAL THERAPY,
25 OCCUPATIONAL THERAPY, HOSPICE CARE, HOME HEALTH CARE, AND
26 PEDIATRIC BEHAVIORAL HEALTH CARE.

27 (b) (I) THE STATE DEPARTMENT SHALL NOT SEEK FEDERAL

1 REIMBURSEMENT FOR THE EXPANSION OF SERVICES LISTED IN SUBSECTION
2 (6)(a) OF THIS SECTION FROM JULY 1, 2020, THROUGH DECEMBER 30,
3 2020.

4 (II) THIS SUBSECTION (6)(b) IS REPEALED, EFFECTIVE JANUARY 1,
5 2021.

6 **SECTION 6. Appropriation.** For the period from July 1, 2020,
7 through December 30, 2020, \$5,068,381 is appropriated to the department
8 of health care policy and financing. This appropriation is from the care
9 subfund in the general fund. To implement this act, the department may
10 use this appropriation for telemedicine expansion services.

11 **SECTION 7. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, or safety.