

CHAPTER 235

HEALTH CARE POLICY AND FINANCING

SENATE BILL 20-212

BY SENATOR(S) Winter and Tate, Crowder, Bridges, Cooke, Coram, Danielson, Donovan, Fenberg, Fields, Gardner, Ginal, Gonzales, Hansen, Hisey, Holbert, Lee, Lundeen, Moreno, Pettersen, Priola, Rankin, Sonnenberg, Story, Todd, Williams A., Woodward, Zenzinger, Garcia;
 also REPRESENTATIVE(S) Lontine and Soper, Landgraf, Will, Arndt, Bird, Bockenfeld, Buckner, Buentello, Caraveo, Carver, Coleman, Cutter, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Kraft-Tharp, McCluskie, McLachlan, Melton, Michaelson Jenet, Mullica, Pelton, Rich, Roberts, Sandridge, Singer, Sirota, Snyder, Sullivan, Titone, Valdez A., Valdez D., Van Winkle, Weissman, Woodrow, Young.

AN ACT

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

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

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

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

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

(c) The expenditures in this bill are considered an allowable use under the federal "CARES Act" and are necessary to respond to the COVID-19 public health emergency; and

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

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

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

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

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

(II) IMPOSE SPECIFIC REQUIREMENTS OR LIMITATIONS ON THE HIPAA-COMPLIANT TECHNOLOGIES THAT A PROVIDER USES TO DELIVER TELEHEALTH SERVICES, INCLUDING LIMITATIONS ON AUDIO OR LIVE VIDEO TECHNOLOGIES;

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

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

(4) As used in this section:

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

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

(e) ~~(f)~~ "Telehealth" means a mode of delivery of health care services through HIPAA-COMPLIANT telecommunications systems, including information, electronic, and communication technologies, REMOTE MONITORING TECHNOLOGIES, AND STORE-AND-FORWARD TRANSFERS, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person's health care while the covered person is located at an originating site and the provider is located at a distant site. ~~The term includes:~~

~~(A) Synchronous interactions;~~

~~(B) Store-and-forward transfers; and~~

~~(C) Services provided through HIPAA-compliant interactive audio-visual communication or the use of a HIPAA-compliant application via a cellular telephone.~~

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

~~(A) Voice-only telephone communication or text messaging;~~

~~(B) Facsimile machine; or~~

~~(C) Electronic mail systems.~~

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

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

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

25-54-102. Statewide system for advance directives created - rules. (2) (a) Upon the request of an individual, or authorized surrogate decision-maker, a qualified provider that has an agreement with the health information organization network as required under the federal "Health Insurance Portability and Accountability Act of 1996", Pub.L. 104-191, as amended, may upload the individual's advance health care directive to the system. The advance health care directive shall only be uploaded to the system by a qualified provider after the individual or authorized surrogate decision-maker has consulted with the qualified provider in person or through telehealth, as defined in ~~section 10-16-123 (4)(e)(f)~~ SECTION 10-16-123 (4)(e). A qualified provider ~~who~~ THAT uploads an advance

health care directive to the system is not subject to civil or criminal liability or regulatory sanction for action taken in accordance with this subsection (2).

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

25.5-5-320. Telemedicine - reimbursement - disclosure statement - definition - repeal. (1) On or after July 1, 2006, in-person contact between a health care or mental health care provider and a patient ~~shall~~ is not ~~be~~ required under the state's medical assistance program for health care or mental health care services delivered through telemedicine that are otherwise eligible for reimbursement under the program. ANY HEALTH CARE OR MENTAL HEALTH CARE SERVICE DELIVERED THROUGH TELEMEDICINE MUST MEET THE SAME STANDARD OF CARE AS AN IN-PERSON VISIT. TELEMEDICINE MAY BE PROVIDED THROUGH INTERACTIVE AUDIO, INTERACTIVE VIDEO, OR INTERACTIVE DATA COMMUNICATION, INCLUDING BUT NOT LIMITED TO TELEPHONE, RELAY CALLS, INTERACTIVE AUDIOVISUAL MODALITIES, AND LIVE CHAT, AS LONG AS THE TECHNOLOGIES ARE COMPLIANT WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" PUB.L. 104-191, AS AMENDED. The health care or mental health care services ~~shall~~ ~~be~~ are subject to reimbursement policies developed pursuant to the medical assistance program. This section also applies to managed care organizations that contract with the state department pursuant to the statewide managed care system only to the extent that:

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

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

(b) A TELEMEDICINE SERVICE MEETS THE DEFINITION OF A FACE-TO-FACE ENCOUNTER FOR A MEDICAL CARE PROGRAM OF THE FEDERAL INDIAN HEALTH SERVICE. THE REIMBURSEMENT RATE FOR A TELEMEDICINE SERVICE PROVIDED BY A MEDICAL CARE PROGRAM OF THE FEDERAL INDIAN HEALTH SERVICE MUST BE SET AT A RATE THAT IS NO LESS THAN THE MEDICAL ASSISTANCE PROGRAM RATE FOR A COMPARABLE FACE-TO-FACE ENCOUNTER OR VISIT.

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

(6) (a) THE STATE DEPARTMENT SHALL POST TELEMEDICINE UTILIZATION DATA

TO THE STATE DEPARTMENT'S WEBSITE NO LATER THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6) AND SHALL UPDATE THE DATA EVERY OTHER MONTH THROUGH STATE FISCAL YEAR 2021-22. FOR STATE FISCAL YEARS 2020-21 AND 2021-22, THE STATE DEPARTMENT SHALL COMPILE, SUMMARIZE, AND REPORT ON THE UTILIZATION DATA TO THE PUBLIC THROUGH THE ANNUAL HEARING, PURSUANT TO THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

(b) THIS SUBSECTION (6) IS REPEALED JULY 1, 2022.

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

SECTION 6. Appropriation. For the period from July 1, 2020, through December 30, 2020, \$5,068,381 is appropriated to the department of health care policy and financing. This appropriation is from the care subfund in the general fund. To implement this act, the department may use this appropriation for telemedicine expansion services. This appropriation must not be used for the state-share of medicaid services.

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

Approved: July 6, 2020