

INTRODUCED BILL A4200 (HAS SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Health Appropriations

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes 6/21/2021

LEGISLATIVE FISCAL ESTIMATE: Yes 6/29/2021

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NEWSPAPER ARTICLES: No

RWH/JA

§§7,8,11
T & E
§9
T & E and
Approp.
§10
Repealer

P.L. 2021, CHAPTER 310, *approved December 21, 2021*
Senate, No. 2559 (*Fifth Reprint*)

1 AN ACT concerning telemedicine and telehealth ¹**[and]** ¹ amending
2 P.L.2017, c.117 ³, repealing P.L.2020, c.3 and P.L.2020, c.7³ ¹,
3 and making an appropriation¹ .
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to
9 read as follows:

10 8. a. ⁵**[³(1)³]⁵ A carrier that offers a health benefits plan in
11 this State shall provide coverage and payment for ²**[¹all forms of]²
12 ⁵**[physical and behavioral]⁵ health care services delivered to a
13 covered person through telemedicine or telehealth, on the same
14 basis as, and at a provider reimbursement rate that **[does not**
15 **exceed]** ⁵**[equals]** does not exceed⁵ the provider reimbursement
16 rate that is applicable, when the services are delivered through in-
17 person contact and consultation in New Jersey ², provided the
18 services are otherwise covered under the plan when delivered
19 through in-person contact and consultation in New Jersey² .
20 Reimbursement payments under this section may be provided either
21 to the individual practitioner who delivered the reimbursable
22 services, or to the agency, facility, or organization that employs the
23 individual practitioner who delivered the reimbursable services, as
24 appropriate ³**[²;** provided that, if a telemedicine or telehealth
25 organization does not provide a given service on an in-person basis
26 in New Jersey, the telemedicine or telehealth organization shall not
27 be subject to this requirement²] ⁵**[.********

28 (2) The requirements of paragraph (1) of this subsection shall
29 not apply to:

30 (a) a health care service provided by a telemedicine or telehealth
31 organization that does not provide the health care service on an in-
32 person basis in New Jersey; or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted January 14, 2021.

²Senate SBA committee amendments adopted March 22, 2021.

³Assembly AAP committee amendments adopted June 16, 2021.

⁴Assembly floor amendments adopted June 21, 2021.

⁵Senate floor amendments adopted December 2, 2021.

1 (b) a physical health care service⁴ that was⁴ provided⁴ [using
 2 telemedicine or telehealth utilizing] through⁴ real-time, two way
 3 audio without a video component, whether or not utilized in
 4 combination with asynchronous store-and-forward technology,
 5 ⁴[the] including through audio-only telephone conversation. The⁴
 6 reimbursement rate for ⁴[which] a⁴ physical health care service
 7 ⁴that is subject to this subparagraph⁴ shall be determined under the
 8 ⁴[plan when delivered through in-person contact and consultation in
 9 New Jersey] contract between the carrier and the provider;
 10 provided that the reimbursement rate for a physical health care
 11 service when provided through audio-only telephone conversation
 12 shall be at least 50 percent of the reimbursement rate for the service
 13 when provided in person⁴ .

14 (3) The provisions of subparagraph (b) of paragraph (2) of this
 15 subsection shall not apply to ⁴a⁴ behavioral health ⁴[services]
 16 service that was⁴ provided⁴ [using telemedicine or telehealth
 17 utilizing] through⁴ real-time, two way audio without a video
 18 component, whether or not utilized in combination with
 19 asynchronous store-and-forward technology, ⁴[which] including
 20 audio-only telephone conversation. A⁴ behavioral health care
 21 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
 22 that equals the provider reimbursement rate for the service when
 23 provided in person³]⁵ .

24 b. A carrier may limit coverage to services that are delivered
 25 by health care providers in the health benefits plan's network, but
 26 may not charge any deductible, copayment, or coinsurance for a
 27 health care service, delivered through telemedicine or telehealth, in
 28 an amount that exceeds the deductible, copayment, or coinsurance
 29 amount that is applicable to an in-person consultation. In no case
 30 shall a carrier:

31 (1) impose any restrictions on the location or setting of the
 32 distant site used by a health care provider to provide services using
 33 telemedicine and telehealth¹ or on the location or setting of the
 34 originating site where the patient is located when receiving services
 35 using telemedicine and telehealth¹ ⁵, except to ensure that the
 36 services provided using telemedicine and telehealth meet the same
 37 standard of care as would be provided if the services were provided
 38 in person⁵ ; ¹[or]¹

39 (2) restrict the ability of a provider to use any electronic or
 40 technological platform² [, including interactive, real-time, two-way
 41 audio in combination with asynchronous store-and-forward
 42 technology without video capabilities.] ³[that the federal Centers
 43 for Medicare and Medicaid Services has authorized for use in
 44 connection with the federal Medicare program²]³ to provide
 45 services using telemedicine or telehealth³, including, but not
 46 limited to, interactive, real-time, two-way audio, which may be used
 47 in combination with asynchronous store-and-forward technology

- 1 without video capabilities, ⁴including audio-only telephone
2 conversations, ⁴ to provide services using telemedicine or telehealth³
3 ², provided² that ²]:
4 (a) ¹ the platform^{2 3} used :
5 (a)³ allows the provider to meet the same standard of care as
6 would be provided if the services were provided in person ²]; and
7 (b) is compliant with the requirements of the federal health
8 privacy rule set forth at 45 CFR Parts 160 and 164]^{2 1}; ³[or] and
9 (b) is compliant with the requirements of the federal health
10 privacy rule set forth at 45 CFR Parts 160 and 164;³
11 (3) deny coverage for or refuse to provide reimbursement for
12 routine patient monitoring performed using telemedicine and
13 telehealth, including remote monitoring of a patient's vital signs
14 and routine check-ins with the patient to monitor the patient's status
15 and condition, if coverage and reimbursement would be provided if
16 those services are provided in person ⁵, and the provider is able to
17 meet the same standard of care as would be provided if the services
18 were provided in person^{5 3}; ⁵or⁵
19 (4) ⁵[use telemedicine or telehealth to satisfy network adequacy
20 requirements with regard to a health care service; or
21 (5)]⁵ limit coverage only to services delivered by select third
22 party telemedicine or telehealth organizations^{3 1}.
23 c. Nothing in this section shall be construed to:
24 (1) prohibit a carrier from providing coverage for only those
25 services that are medically necessary, subject to the terms and
26 conditions of the covered person's health benefits plan; or
27 (2) allow a carrier to require a covered person to use
28 telemedicine or telehealth in lieu of receiving an in-person service
29 from an in-network provider ³[²or] ⁵];
30 (3)³ allow a carrier to impose more stringent utilization
31 management requirements on the provision of services using
32 telemedicine and telehealth than apply when those services are
33 provided in person^{2 3}; or
34 (4) allow a carrier to impose any other requirements for the use
35 of telemedicine or telehealth to provide a health care service that
36 are more restrictive than the requirements that apply when the
37 service is provided in person³]⁵ .
38 d. The Commissioner of Banking and Insurance shall adopt
39 rules and regulations, pursuant to the "Administrative Procedure
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
41 provisions of this section.
42 e. As used in this section:
43 "Asynchronous store-and-forward" means the same as that term
44 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
45 "Carrier" means the same as that term is defined by section 2 of
46 P.L.1997, c.192 (C.26:2S-2).

1 "Covered person" means the same as that term is defined by
2 section 2 of P.L.1997, c.192 (C.26:2S-2).

3 "Distant site" means the same as that term is defined by section 1
4 of P.L.2017, c.117 (C.45:1-61).

5 "Health benefits plan" means the same as that term is defined by
6 section 2 of P.L.1997, c.192 (C.26:2S-2).

7 ¹"Originating site" means the same as that term is defined by
8 section 1 of P.L.2017, c.117 (C.45:1-61).¹

9 "Telehealth" means the same as that term is defined by section 1
10 of P.L.2017, c.117 (C.45:1-61).

11 "Telemedicine" means the same as that term is defined by
12 section 1 of P.L.2017, c.117 (C.45:1-61).

13 ²"Telemedicine or telehealth organization" means the same as
14 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
15 (cf: P.L.2017, c.117, s.8)

16
17 2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to
18 read as follows:

19 7. a. ⁵~~[(1)]~~⁵ The State Medicaid and NJ FamilyCare
20 programs shall provide coverage and payment for ²~~[all forms of]~~²
21 ⁵~~[physical and behavioral]~~⁵ health care services delivered to a
22 benefits recipient through telemedicine or telehealth, on the same
23 basis as, and at a provider reimbursement rate that ~~[does not~~
24 ~~exceed]~~ ⁵~~[equals]~~ does not exceed⁵ the provider reimbursement
25 rate that is applicable, when the services are delivered through in-
26 person contact and consultation in New Jersey ², provided the
27 services are otherwise covered when delivered through in-person
28 contact and consultation in New Jersey². Reimbursement payments
29 under this section may be provided either to the individual
30 practitioner who delivered the reimbursable services, or to the
31 agency, facility, or organization that employs the individual
32 practitioner who delivered the reimbursable services, as appropriate
33 ³~~[~~²; provided that, if a telemedicine or telehealth organization does
34 not provide a given service on an in-person basis in New Jersey, the
35 telemedicine or telehealth organization shall not be subject to this
36 requirement²~~]~~ ⁵~~[.~~

37 (2) The requirements of paragraph (1) of this subsection shall
38 not apply to:

39 (a) a health care service provided by a telemedicine or telehealth
40 organization that does not provide the health care service on an in-
41 person basis in New Jersey; or

42 (b) a physical health care service ⁴that was⁴ provided ⁴~~[using~~
43 ~~telemedicine or telehealth utilizing]~~ through⁴ real-time, two way
44 audio without a video component, whether or not utilized in
45 combination with asynchronous store-and-forward technology,
46 ⁴~~[the]~~ including through audio-only telephone conversation. The⁴
47 reimbursement rate for ⁴~~[which]~~ a⁴ physical health care service

1 ⁴that is subject to this subparagraph⁴ shall be determined under the
2 ⁴[plan when delivered through in-person contact and consultation in
3 New Jersey] contract between the State Medicaid or NJ FamilyCare
4 program and the provider; provided that the reimbursement rate for
5 a physical health care service when provided through audio-only
6 telephone conversation shall be at least 50 percent of the
7 reimbursement rate for the service when provided in person⁴ .

8 (3) The provisions of subparagraph (b) of paragraph (2) of this
9 subsection shall not apply to ⁴a⁴ behavioral health ⁴[services]
10 service that was⁴ provided ⁴[using telemedicine or telehealth
11 utilizing] through⁴ real-time, two way audio without a video
12 component, whether or not utilized in combination with
13 asynchronous store-and-forward technology, ⁴[which] including
14 audio-only telephone conversation. A⁴ behavioral health care
15 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
16 that equals the provider reimbursement rate for the service when
17 provided in person³]⁵ .

18 b. The State Medicaid and NJ FamilyCare programs may limit
19 coverage to services that are delivered by participating health care
20 providers, but may not charge any deductible, copayment, or
21 coinsurance for a health care service, delivered through
22 telemedicine or telehealth, in an amount that exceeds the deductible,
23 copayment, or coinsurance amount that is applicable to an in-person
24 consultation. In no case shall the State Medicaid and NJ
25 FamilyCare programs:

26 (1) impose any restrictions on the location or setting of the
27 distant site used by a health care provider to provide services using
28 telemedicine and telehealth ¹or on the location or setting of the
29 originating site where the patient is located when receiving services
30 using telemedicine and telehealth¹ ⁵, except to ensure that the
31 services provided using telemedicine and telehealth meet the same
32 standard of care as would be provided if the services were provided
33 in person⁵ ; ¹[or]¹

34 (2) restrict the ability of a provider to use any electronic or
35 technological platform ²[, including interactive, real-time, two-way
36 audio in combination with asynchronous store-and-forward
37 technology without video capabilities,] ³[that the federal Centers
38 for Medicare and Medicaid Services has authorized for use in
39 connection with the federal Medicare program²]³ to provide
40 services using telemedicine or telehealth ³, including, but not
41 limited to, interactive, real-time, two-way audio, which may be used
42 in combination with asynchronous store-and-forward technology
43 without video capabilities, ⁴including audio-only telephone
44 conversations,⁴ to provide services using telemedicine or
45 telehealth³ ², provided² that ²[:

46 (a) the platform² ³used :

- 1 (a)³ allows the provider to meet the same standard of care as
2 would be provided if the services were provided in person²; and
3 (b) is compliant with the requirements of the federal health
4 privacy rule set forth at 45 CFR Parts 160 and 164^{2 1};³[or] and
5 (b) is compliant with the requirements of the federal health
6 privacy rule set forth at 45 CFR Parts 160 and 164;³
7 (3) deny coverage for or refuse to provide reimbursement for
8 routine patient monitoring performed using telemedicine and
9 telehealth, including remote monitoring of a patient's vital signs
10 and routine check-ins with the patient to monitor the patient's status
11 and condition, if coverage and reimbursement would be provided if
12 those services are provided in person^{1 5}, and the provider is able to
13 meet the same standard of care as would be provided if the services
14 were provided in person^{5 3}; or
15 (4) limit coverage only to services delivered by select third
16 party telemedicine or telehealth organizations³ .
17 c. Nothing in this section shall be construed to:
18 (1) prohibit the State Medicaid or NJ FamilyCare programs
19 from providing coverage for only those services that are medically
20 necessary, subject to the terms and conditions of the recipient's
21 benefits plan; or
22 (2) allow the State Medicaid or NJ FamilyCare programs to
23 require a benefits recipient to use telemedicine or telehealth in lieu
24 of obtaining an in-person service from a participating health care
25 provider³[²or]⁵;
26 (3)³ allow the State Medicaid or NJ FamilyCare programs to
27 impose more stringent utilization management requirements on the
28 provision of services using telemedicine and telehealth than apply
29 when those services are provided in person^{2 3}; or
30 (4) allow the State Medicaid or NJ FamilyCare programs to
31 impose any other requirements for the use of telemedicine or
32 telehealth to provide a health care service that are more restrictive
33 than the requirements that apply when the service is provided in
34 person³]⁵ .
35 d. The Commissioner of Human Services, in consultation with
36 the Commissioner of Children and Families, shall apply for such
37 State plan amendments or waivers as may be necessary to
38 implement the provisions of this section and to secure federal
39 financial participation for State expenditures under the federal
40 Medicaid program and Children's Health Insurance Program.
41 e. As used in this section:
42 "Asynchronous store-and-forward" means the same as that term
43 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).
44 "Benefits recipient" or "recipient" means a person who is eligible
45 for, and who is receiving, hospital or medical benefits under the
46 State Medicaid program established pursuant to P.L.1968, c.413
47 (C.30:4D-1 et seq.), or under the NJ FamilyCare program

1 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
2 appropriate.

3 "Distant site" means the same as that term is defined by section 1
4 of P.L.2017, c.117 (C.45:1-61).

5 ¹"Originating site" means the same as that term is defined by
6 section 1 of P.L.2017, c.117 (C.45:1-61).¹

7 "Participating health care provider" means a licensed or certified
8 health care provider who is registered to provide health care
9 services to benefits recipients under the State Medicaid or NJ
10 FamilyCare programs, as appropriate.

11 "Telehealth" means the same as that term is defined by section 1
12 of P.L.2017, c.117 (C.45:1-61).

13 "Telemedicine" means the same as that term is defined by
14 section 1 of P.L.2017, c.117 (C.45:1-61).

15 ²"Telemedicine or telehealth organization" means the same as
16 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
17 (cf: P.L.2017, c.117, s.7)

18
19 ⁴3. Section 1 of P.L.2017, c.117 (C. 45:1-61) is amended to read
20 as follows:

21 1. As used in P.L.2017, c.117 (C.45:1-61 et al.):

22 "Asynchronous store-and-forward" means the acquisition and
23 transmission of images, diagnostics, data, and medical information
24 either to, or from, an originating site or to, or from, the health care
25 provider at a distant site, which allows for the patient to be
26 evaluated without being physically present.

27 "Cross-coverage service provider" means a health care provider,
28 acting within the scope of a valid license or certification issued
29 pursuant to Title 45 of the Revised Statutes, who engages in a
30 remote medical evaluation of a patient, without in-person contact, at
31 the request of another health care provider who has established a
32 proper provider-patient relationship with the patient.

33 "Distant site" means a site at which a health care provider, acting
34 within the scope of a valid license or certification issued pursuant to
35 Title 45 of the Revised Statutes, is located while providing health
36 care services by means of telemedicine or telehealth.

37 "Health care provider" means an individual who provides a
38 health care service to a patient, and includes, but is not limited to, a
39 licensed physician, nurse, nurse practitioner, psychologist,
40 psychiatrist, psychoanalyst, clinical social worker, physician
41 assistant, professional counselor, respiratory therapist, speech
42 pathologist, audiologist, optometrist, or any other health care
43 professional acting within the scope of a valid license or
44 certification issued pursuant to Title 45 of the Revised Statutes.

45 "On-call provider" means a licensed or certified health care
46 provider who is available, where necessary, to physically attend to
47 the urgent and follow-up needs of a patient for whom the provider
48 has temporarily assumed responsibility, as designated by the

1 patient's primary care provider or other health care provider of
2 record.

3 "Originating site" means a site at which a patient is located at the
4 time that health care services are provided to the patient by means
5 of telemedicine or telehealth.

6 "Telehealth" means the use of information and communications
7 technologies, including telephones, remote patient monitoring
8 devices, or other electronic means, to support clinical health care,
9 provider consultation, patient and professional health-related
10 education, public health, health administration, and other services in
11 accordance with the provisions of P.L.2017, c.117 (C.45:1-
12 61 et al.).

13 "Telemedicine" means the delivery of a health care service using
14 electronic communications, information technology, or other
15 electronic or technological means to bridge the gap between a
16 health care provider who is located at a distant site and a patient
17 who is located at an originating site, either with or without the
18 assistance of an intervening health care provider, and in accordance
19 with the provisions of P.L.2017, c.117 (C.45:1-61 et al.).

20 **["Telemedicine" does not include the use, in isolation, of audio-
21 only telephone conversation, electronic mail, instant messaging,
22 phone text, or facsimile transmission.]** ⁵"Telemedicine" does not
23 include the use, in isolation, of electronic mail, instant messaging,
24 phone text, or facsimile transmission.⁵

25 "Telemedicine or telehealth organization" means a corporation,
26 sole proprietorship, partnership, or limited liability company that is
27 organized for the primary purpose of administering services in the
28 furtherance of telemedicine or telehealth.⁴

29 (cf: P.L.2017, c.117, s.1)

30

31 ⁴**[3.]** ⁴ Section 2 of P.L.2017, c.117 (C.45:1-62) is amended
32 to read as follows:

33 2. a. Unless specifically prohibited or limited by federal or
34 State law, a health care provider who establishes a proper provider-
35 patient relationship with a patient may remotely provide health care
36 services to a patient through the use of telemedicine ¹**[, regardless
37 of whether the health care provider is located in New Jersey at the
38 time the remote health care services are provided]**¹. A health care
39 provider may also engage in telehealth as may be necessary to
40 support and facilitate the provision of health care services to
41 patients. ³Nothing in P.L.2017, c.117 (C.45:1-61 et al.) shall be
42 construed to ⁴**[restrict the right of a patient to receive health care
43 services on an in-person basis upon request, and no patient shall be
44 required to engage in a telemedicine or telehealth encounter to
45 receive health care services if those same services are available, in
46 person, from a provider that is reasonably accessible to the patient]**
47 allow a provider to require a patient to use telemedicine or

1 telehealth in lieu of receiving services from an in-network
2 provider⁴ .³

3 b. Any health care provider who uses telemedicine or engages
4 in telehealth while providing health care services to a patient, shall:
5 (1) be validly licensed, certified, or registered, pursuant to Title 45
6 of the Revised Statutes, to provide such services in the State of New
7 Jersey; (2) remain subject to regulation by the appropriate New
8 Jersey State licensing board or other New Jersey State professional
9 regulatory entity; (3) act in compliance with existing requirements
10 regarding the maintenance of liability insurance; and (4) remain
11 subject to New Jersey jurisdiction ⁵**[if either the patient or the**
12 **provider is located in New Jersey at the time services are**
13 **provided]**⁵ .

14 c. (1) Telemedicine services ¹**[shall]** may¹ be provided using
15 interactive, real-time, two-way communication technologies ¹or,
16 subject to the requirements of paragraph (2) of this paragraph,
17 asynchronous store-and-forward technology¹ .

18 (2) A health care provider engaging in telemedicine or
19 telehealth may use asynchronous store-and-forward technology ¹**[to**
20 **allow for the electronic transmission of images, diagnostics, data,**
21 **and medical information; except that the health care provider may**
22 **use interactive, real-time, two-way audio in combination with**
23 **asynchronous store-and-forward technology, without video**
24 **capabilities,]** to provide services¹ ²with or without the use of
25 interactive, real-time, two-way audio² if, after accessing and
26 reviewing the patient's medical records, the provider determines
27 that the provider is able to meet the same standard of care as if the
28 health care services were being provided in person ¹and ²informs²
29 the patient ²**[concur[s], in writing, in the provider's assessment that**
30 **the provider will be able to meet in-person standard of care**
31 **requirements when using asynchronous store-and forward**
32 **technology**¹ **]** of this determination at the outset of the telemedicine
33 or telehealth encounter.²

34 (3) ³(a) At the time the patient requests health care services to
35 be provided using telemedicine or telehealth, the patient shall be
36 clearly advised that the telemedicine or telehealth encounter may be
37 with a health care provider who is not a physician, and that the
38 patient may specifically request that the telemedicine or telehealth
39 encounter be scheduled with a physician. If the patient requests that
40 the telemedicine or telehealth encounter be with a physician, the
41 encounter shall be scheduled with a physician.

42 (b)³ The identity, professional credentials, and contact
43 information of a health care provider providing telemedicine or
44 telehealth services shall be made available to the patient ²at the time
45 the patient schedules services to be provided using telemedicine or
46 telehealth, ³**[except that, if the identity of the provider is not known**
47 **at the time the services are scheduled, this information]** if available,

1 or upon confirmation of the scheduled telemedicine or telehealth
2 encounter, and³ shall be made available to the patient² during and
3 after the provision of services ³], and, at the time the services are
4 scheduled, the patient shall be advised that the health care provider
5 who provides services may not be a physician²]³ . The contact
6 information shall enable the patient to contact the health care
7 provider, or a substitute health care provider authorized to act on
8 behalf of the provider who provided services, for at least 72 hours
9 following the provision of services. ¹If the health care provider is
10 not a physician, ²[the health care provider shall request from the
11 patient, prior to the start of the telemedicine or telehealth encounter,
12 an affirmative written acknowledgement that the patient
13 understands the provider is not a physician and would still like to
14 proceed with the encounter] and the patient requests that the
15 services be provided by a physician, the health care provider shall
16 assist the patient with scheduling a telemedicine or telehealth
17 encounter with a physician² .¹

18 (4) A health care provider engaging in telemedicine or
19 telehealth shall review the medical history and any medical records
20 provided by the patient. For an initial encounter with the patient,
21 the provider shall review the patient's medical history and medical
22 records prior to initiating contact with the patient, as required
23 pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,
24 c.117 (C.45:1-63). In the case of a subsequent telemedicine or
25 telehealth encounter conducted pursuant to an ongoing provider-
26 patient relationship, the provider may review the information prior
27 to initiating contact with the patient or contemporaneously with the
28 telemedicine or telehealth encounter.

29 (5) Following the provision of services using telemedicine or
30 telehealth, the patient's medical information shall be ²[made
31 available to the patient upon the patient's request, and, with the
32 patient's affirmative consent,] entered into the patient's ³medical
33 record, whether the medical record is a physical record, an³
34 electronic health record ³, or both,³ and, if so requested to by the
35 patient² ³,³ forwarded directly to the patient's primary care provider
36 ²[or] ²,² health care provider of record ²[, or, upon request by the
37 patient, to] or any² other health care providers ²as may be specified
38 by the patient² . For patients without a primary care provider or
39 other health care provider of record, the health care provider
40 engaging in telemedicine or telehealth may advise the patient to
41 contact a primary care provider, and, upon request by the patient,
42 ²shall² assist the patient with locating a primary care provider or
43 other in-person medical assistance that, to the extent possible, is
44 located within reasonable proximity to the patient. The health care
45 provider engaging in telemedicine or telehealth shall also refer the
46 patient to appropriate follow up care where necessary, including
47 making appropriate referrals for ²in-person care or² emergency or

1 ³~~complimentary~~ complementary³ care, if needed. Consent may
2 be oral, written, or digital in nature, provided that the chosen
3 method of consent is deemed appropriate under the standard of care.

4 d. (1) Any health care provider providing health care services
5 using telemedicine or telehealth shall be subject to the same
6 standard of care or practice standards as are applicable to in-person
7 settings. If telemedicine or telehealth services would not be
8 consistent with this standard of care, the health care provider shall
9 direct the patient to seek in-person care.

10 (2) Diagnosis, treatment, and consultation recommendations,
11 including discussions regarding the risk and benefits of the patient's
12 treatment options, which are made through the use of telemedicine
13 or telehealth, including the issuance of a prescription based on a
14 telemedicine or telehealth encounter, shall be held to the same
15 standard of care or practice standards as are applicable to in-person
16 settings. Unless the provider has established a proper provider-
17 patient relationship with the patient, a provider shall not issue a
18 prescription to a patient based solely on the responses provided in
19 an online ¹static¹ questionnaire.

20 ¹(3) In the event that a mental health screener, screening service,
21 or screening psychiatrist subject to the provisions of P.L.1987,
22 c.116 (C.30:4-27.1 et seq.) determines that an in-person psychiatric
23 evaluation is necessary to meet standard of care requirements, or in
24 the event that a patient requests an in-person psychiatric evaluation
25 in lieu of a psychiatric evaluation performed using telemedicine or
26 telehealth, the mental health screener, screening service, or
27 screening psychiatrist may nevertheless perform a psychiatric
28 evaluation using telemedicine and telehealth if it is determined that
29 the patient cannot be scheduled for an in-person psychiatric
30 evaluation within the next 24 hours. Nothing in this paragraph shall
31 be construed to prevent a patient who receives a psychiatric
32 evaluation using telemedicine and telehealth as provided in this
33 paragraph from receiving a subsequent, in-person psychiatric
34 evaluation in connection with the same treatment event, provided
35 that the subsequent in-person psychiatric evaluation is necessary to
36 meet standard of care requirements for that patient.¹

37 e. The prescription of Schedule II controlled dangerous
38 substances through the use of telemedicine or telehealth shall be
39 authorized only after an initial in-person examination of the patient,
40 as provided by regulation, and a subsequent in-person visit with the
41 patient shall be required every three months for the duration of time
42 that the patient is being prescribed the Schedule II controlled
43 dangerous substance. However, the provisions of this subsection
44 shall not apply, and the in-person examination or review of a patient
45 shall not be required, when a health care provider is prescribing a
46 stimulant which is a Schedule II controlled dangerous substance for
47 use by a minor patient under the age of 18, provided that the health
48 care provider is using interactive, real-time, two-way audio and

1 video technologies when treating the patient and the health care
2 provider has first obtained written consent for the waiver of these
3 in-person examination requirements from the minor patient's parent
4 or guardian.

5 f. A mental health screener, screening service, or screening
6 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
7 27.1 et seq.):

8 (1) shall not be required to obtain a separate authorization in
9 order to engage in telemedicine or telehealth for mental health
10 screening purposes; and

11 (2) shall not be required to request and obtain a waiver from
12 existing regulations, prior to engaging in telemedicine or telehealth.

13 g. A health care provider who engages in telemedicine or
14 telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall
15 maintain a complete record of the patient's care, and shall comply
16 with all applicable State and federal statutes and regulations for
17 recordkeeping, confidentiality, and disclosure of the patient's
18 medical record.

19 h. A health care provider shall not be subject to any
20 professional disciplinary action under Title 45 of the Revised
21 Statutes solely on the basis that the provider engaged in
22 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-
23 61 et al.).

24 i. (1) In accordance with the "Administrative Procedure Act,"
25 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
26 entities that, pursuant to Title 45 of the Revised Statutes, are
27 responsible for the licensure, certification, or registration of health
28 care providers in the State, shall each adopt rules and regulations
29 that are applicable to the health care providers under their
30 respective jurisdictions, as may be necessary to implement the
31 provisions of this section and facilitate the provision of
32 telemedicine and telehealth services. Such rules and regulations
33 shall, at a minimum:

34 (a) include best practices for the professional engagement in
35 telemedicine and telehealth;

36 (b) ensure that the services patients receive using telemedicine
37 or telehealth are appropriate, medically necessary, and meet current
38 quality of care standards;

39 (c) include measures to prevent fraud and abuse in connection
40 with the use of telemedicine and telehealth, including requirements
41 concerning the filing of claims and maintaining appropriate records
42 of services provided; and

43 (d) provide substantially similar metrics for evaluating quality
44 of care and patient outcomes in connection with services provided
45 using telemedicine and telehealth as currently apply to services
46 provided in person.

47 (2) In no case shall the rules and regulations adopted pursuant to
48 paragraph (1) of this subsection require a provider to conduct an

1 initial in-person visit with the patient as a condition of providing
2 services using telemedicine or telehealth.

3 (3) The failure of any licensing board to adopt rules and
4 regulations pursuant to this subsection shall not have the effect of
5 delaying the implementation of this act, and shall not prevent health
6 care providers from engaging in telemedicine or telehealth in
7 accordance with the provisions of this act and the practice act
8 applicable to the provider's professional licensure, certification, or
9 registration.

10 (cf: P.L.2017, c.117, s.2)

11

12 ⁴[4.] ⁵5. ⁴ Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is
13 amended to read as follows:

14 9. a. ⁵[³(1)³]⁵ The State Health Benefits Commission shall
15 ensure that every contract purchased thereby, which provides
16 hospital and medical expense benefits, additionally provides
17 coverage and payment for ²[¹all forms of]² ⁵[physical and
18 behavioral¹]⁵ health care services delivered to a covered person
19 through telemedicine or telehealth, on the same basis as, and at a
20 provider reimbursement rate that [does not exceed] ⁵[equals] does
21 not exceed⁵ the provider reimbursement rate that is applicable,
22 when the services are delivered through in-person contact and
23 consultation in New Jersey ², provided the services are otherwise
24 covered under the contract when delivered through in-person
25 contact and consultation in New Jersey² . Reimbursement
26 payments under this section may be provided either to the
27 individual practitioner who delivered the reimbursable services, or
28 to the agency, facility, or organization that employs the individual
29 practitioner who delivered the reimbursable services, as appropriate
30 ³[²: provided that, if a telemedicine or telehealth organization does
31 not provide a given service on an in-person basis in New Jersey, the
32 telemedicine or telehealth organization shall not be subject to this
33 requirement²]⁵ [⁵].

34 (2) The requirements of paragraph (1) of this subsection shall
35 not apply to:

36 (a) a health care service provided by a telemedicine or telehealth
37 organization that does not provide the health care service on an in-
38 person basis in New Jersey; or

39 (b) a physical health care service ⁴that was⁴ provided ⁴[using
40 telemedicine or telehealth utilizing] through⁴ real-time, two way
41 audio without a video component, whether or not utilized in
42 combination with asynchronous store-and-forward technology,
43 ⁴[the] including audio-only telephone conversation. The⁴
44 reimbursement rate for ⁴[which] a⁴ physical health care service
45 ⁴that is subject to this subparagraph⁴ shall be determined under the
46 ⁴[plan when delivered through in-person contact and consultation in
47 New Jersey] contract purchased by the State Health Benefits

1 Commission with the provider; provided that the reimbursement
 2 rate for a physical health care service when provided through audio-
 3 only telephone conversation shall be at least 50 percent of the
 4 reimbursement rate for the service when provided in person⁴ .

5 (3) The provisions of subparagraph (b) of paragraph (2) of this
 6 subsection shall not apply to ⁴a⁴ behavioral health ⁴[services]
 7 service that was⁴ provided ⁴[using telemedicine or telehealth
 8 utilizing] through⁴ real-time, two way audio without a video
 9 component, whether or not utilized in combination with
 10 asynchronous store-and-forward technology, ⁴[which] including
 11 audio-only telephone conversation. A⁴ behavioral health care
 12 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
 13 that equals the provider reimbursement rate for the service when
 14 provided in person³]⁵ .

15 b. A health benefits contract purchased by the State Health
 16 Benefits Commission may limit coverage to services that are
 17 delivered by health care providers in the health benefits plan's
 18 network, but may not charge any deductible, copayment, or
 19 coinsurance for a health care service, delivered through
 20 telemedicine or telehealth, in an amount that exceeds the deductible,
 21 copayment, or coinsurance amount that is applicable to an in-person
 22 consultation. In no case shall a health benefits contract purchased
 23 by the State Health Benefits Commission:

24 (1) impose any restrictions on the location or setting of the
 25 distant site used by a health care provider to provide services using
 26 telemedicine and telehealth ¹or on the location or setting of the
 27 originating site where the patient is located when receiving services
 28 using telemedicine and telehealth¹ ⁵, except to ensure that the
 29 services provided using telemedicine and telehealth meet the same
 30 standard of care as would be provided if the services were provided
 31 in person⁵ ; ¹[or]¹

32 (2) restrict the ability of a provider to use any electronic or
 33 technological platform ²[, including interactive, real-time, two-way
 34 audio in combination with asynchronous store-and-forward
 35 technology without video capabilities,] ³[that the federal Centers
 36 for Medicare and Medicaid Services has authorized for use in
 37 connection with the federal Medicare program²]³ to provide
 38 services using telemedicine or telehealth ³, including, but not
 39 limited to, interactive, real-time, two-way audio, which may be used
 40 in combination with asynchronous store-and-forward technology
 41 without video capabilities, ⁴including audio-only telephone
 42 conversations,⁴ to provide services using telemedicine or telehealth³
 43 ², provided² that ²[:

44 (a) the platform² ³used :

45 (a)³ allows the provider to meet the same standard of care as
 46 would be provided if the services were provided in person ²[: and

1 (b) is compliant with the requirements of the federal health
 2 privacy rule set forth at 45 CFR Parts 160 and 164]^{2 1; 3}[or] and

3 (b) is compliant with the requirements of the federal health
 4 privacy rule set forth at 45 CFR Parts 160 and 164;³

5 (3) deny coverage for or refuse to provide reimbursement for
 6 routine patient monitoring performed using telemedicine and
 7 telehealth, including remote monitoring of a patient's vital signs
 8 and routine check-ins with the patient to monitor the patient's status
 9 and condition, if coverage and reimbursement would be provided if
 10 those services are provided in person^{1 5}, and the provider is able to
 11 meet the same standard of care as would be provided if the services
 12 were provided in person^{5 3; 5} or⁵

13 (4) ⁵use telemedicine or telehealth to satisfy network adequacy
 14 requirements with regard to a health care service ⁴for plans or
 15 contracts entered into on or after the effective date of P.L. , c.
 16 (pending before the Legislature as this bill)⁴ ; or

17 (5)]⁵ limit coverage only to services delivered by select third
 18 party telemedicine or telehealth organizations³ .

19 c. Nothing in this section shall be construed to:

20 (1) prohibit a health benefits contract from providing coverage
 21 for only those services that are medically necessary, subject to the
 22 terms and conditions of the covered person's health benefits plan; or

23 (2) allow the State Health Benefits Commission, or a contract
 24 purchased thereby, to require a covered person to use telemedicine
 25 or telehealth in lieu of receiving an in-person service from an in-
 26 network provider ³[²or] ⁵];

27 (3)³ allow the State Health Benefits Commission, or a contract
 28 purchased thereby, to impose more stringent utilization
 29 management requirements on the provision of services using
 30 telemedicine and telehealth than apply when those services are
 31 provided in person^{2 3}; or

32 (4) allow State Health Benefits Commission, or a contract
 33 purchased thereby, to impose any other requirements for the use of
 34 telemedicine or telehealth to provide a health care service that are
 35 more restrictive than the requirements that apply when the service is
 36 provided in person³]⁵ .

37 d. The State Health Benefits Commission shall adopt rules and
 38 regulations, pursuant to the "Administrative Procedure Act,"
 39 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
 40 of this section.

41 e. As used in this section:

42 "Asynchronous store-and-forward" means the same as that term
 43 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

44 "Distant site" means the same as that term is defined by section 1
 45 of P.L.2017, c.117 (C.45:1-61).

46 ¹"Originating site" means the same as that term is defined by
 47 section 1 of P.L.2017, c.117 (C.45:1-61).¹

1 "Telehealth" means the same as that term is defined by section 1
2 of P.L.2017, c.117 (C.45:1-61).

3 "Telemedicine" means the same as that term is defined by
4 section 1 of P.L.2017, c.117 (C.45:1-61).

5 ²"Telemedicine or telehealth organization" means the same as
6 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
7 (cf: P.L.2017, c.117, s.9)

8
9 ⁴[5.] 6.⁴ Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
10 amended to read as follows:

11 10. a. ⁵[³(1)³]⁵ The School Employees' Health Benefits
12 Commission shall ensure that every contract purchased thereby,
13 which provides hospital and medical expense benefits, additionally
14 provides coverage and payment for ²[¹all forms of]² ⁵[physical and
15 behavioral¹]⁵ health care services delivered to a covered person
16 through telemedicine or telehealth, on the same basis as, and at a
17 provider reimbursement rate that [does not exceed] ⁵[equals] does
18 not exceed⁵ the provider reimbursement rate that is applicable,
19 when the services are delivered through in-person contact and
20 consultation in New Jersey ², provided the services are otherwise
21 covered under the contract when delivered through in-person
22 contact and consultation in New Jersey² . Reimbursement
23 payments under this section may be provided either to the
24 individual practitioner who delivered the reimbursable services, or
25 to the agency, facility, or organization that employs the individual
26 practitioner who delivered the reimbursable services, as appropriate
27 ³[²; provided that, if a telemedicine or telehealth organization does
28 not provide a given service on an in-person basis in New Jersey, the
29 telemedicine or telehealth organization shall not be subject to this
30 requirement²]⁵ [.

31 (2) The requirements of paragraph (1) of this subsection shall
32 not apply to:

33 (a) a health care service provided by a telemedicine or telehealth
34 organization that does not provide the health care service on an in-
35 person basis in New Jersey; or

36 (b) a physical health care service ⁴that was⁴ provided ⁴[using
37 telemedicine or telehealth utilizing] through⁴ real-time, two way
38 audio without a video component, whether or not utilized in
39 combination with asynchronous store-and-forward technology,
40 ⁴[the] including audio-only telephone conversations. The⁴
41 reimbursement rate for ⁴[which] a⁴ physical health care service
42 ⁴that is subject to this subparagraph⁴ shall be determined under the
43 ⁴[plan when delivered through in-person contact and consultation in
44 New Jersey] contract purchased by the School Employees' Health
45 Benefits Commission with the provider; provided that the
46 reimbursement rate for a physical health care service when provided
47 through audio-only telephone conversation shall be at least 50

1 percent of the reimbursement rate for the service when provided in
2 person⁴.

3 (3) The provisions of subparagraph (b) of paragraph (2) of this
4 subsection shall not apply to ⁴a⁴ behavioral health ⁴[services]
5 service that was⁴ provided ⁴[using telemedicine or telehealth
6 utilizing] through⁴ real-time, two way audio without a video
7 component, whether or not utilized in combination with
8 asynchronous store-and-forward technology, ⁴[which] including
9 audio-only telephone conversation. A⁴ behavioral health care
10 service ⁴described in this paragraph⁴ shall be reimbursed at a rate
11 that equals the provider reimbursement rate for the service when
12 provided in person³]⁵.

13 b. A health benefits contract purchased by the School
14 Employees' Health Benefits Commission may limit coverage to
15 services that are delivered by health care providers in the health
16 benefits plan's network, but may not charge any deductible,
17 copayment, or coinsurance for a health care service, delivered
18 through telemedicine or telehealth, in an amount that exceeds the
19 deductible, copayment, or coinsurance amount that is applicable to
20 an in-person consultation. In no case shall a health benefits
21 contract purchased by the School Employees' Health Benefits
22 Commission:

23 (1) impose any restrictions on the location or setting of the
24 distant site used by a health care provider to provide services using
25 telemedicine and telehealth ¹or on the location or setting of the
26 originating site where the patient is located when receiving services
27 using telemedicine and telehealth¹ ⁵, except to ensure that the
28 services provided using telemedicine⁴ and telehealth meet the same
29 standard of care as would be provided if the services were provided
30 in person⁵ ; ¹[or]¹

31 (2) restrict the ability of a provider to use any electronic or
32 technological platform ²[, including interactive, real-time, two-way
33 audio in combination with asynchronous store-and-forward
34 technology without video capabilities,] ³[that the federal Centers
35 for Medicare and Medicaid Services has authorized for use in
36 connection with the federal Medicare program²]³ to provide
37 services using telemedicine or telehealth ³, including, but not
38 limited to, interactive, real-time, two-way audio, which may be used
39 in combination with asynchronous store-and-forward technology
40 without video capabilities, ⁴including audio-only telephone
41 conversations,⁴ to provide services using telemedicine or
42 telehealth³ ², provided² that ²[:

43 (a)] the platform² ³used :

44 (a)³ allows the provider to meet the same standard of care as
45 would be provided if the services were provided in person ²[: and

46 (b) is compliant with the requirements of the federal health
47 privacy rule set forth at 45 CFR Parts 160 and 164]² ¹; ³[or] and

1 **(b) is compliant with the requirements of the federal health**
2 **privacy rule set forth at 45 CFR Parts 160 and 164;**³

3 **(3) deny coverage for or refuse to provide reimbursement for**
4 **routine patient monitoring performed using telemedicine and**
5 **telehealth, including remote monitoring of a patient's vital signs**
6 **and routine check-ins with the patient to monitor the patient's status**
7 **and condition, if coverage and reimbursement would be provided if**
8 **those services are provided in person**^{1 5}, **and the provider is able to**
9 **meet the same standard of care as would be provided if the services**
10 **were provided in person**^{5 3; 5 or 5}

11 **(4)**⁵ **[use telemedicine or telehealth to satisfy network adequacy**
12 **requirements with regard to a health care service**⁴ **for plans or**
13 **contracts entered into on or after the effective date of P.L. _____,**
14 **c. (pending before the Legislature as this bill)**⁴ **; or**

15 **(5)**⁵ **limit coverage only to services delivered by select third**
16 **party telemedicine or telehealth organizations**³.

17 c. Nothing in this section shall be construed to:

18 (1) prohibit a health benefits contract from providing coverage
19 for only those services that are medically necessary, subject to the
20 terms and conditions of the covered person's health benefits plan; or

21 (2) allow the School Employees' Health Benefits Commission,
22 or a contract purchased thereby, to require a covered person to use
23 telemedicine or telehealth in lieu of receiving an in-person service
24 from an in-network provider^{3 [2 or] 5};

25 (3)³ **allow the School Employees' Health Benefits Commission,**
26 **or a contract purchased thereby, to impose more stringent utilization**
27 **management requirements on the provision of services using**
28 **telemedicine and telehealth than apply when those services are**
29 **provided in person**^{2 3}; or

30 (4) **allow the School Employees' Health Benefits Commission,**
31 **or a contract purchased thereby, to impose any other requirements**
32 **for the use of telemedicine or telehealth to provide a health care**
33 **service that are more restrictive than the requirements that apply**
34 **when the service is provided in person**^{3] 5}.

35 d. The School Employees' Health Benefits Commission shall
36 adopt rules and regulations, pursuant to the "Administrative
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement
38 the provisions of this section.

39 e. As used in this section:

40 **"Asynchronous store-and-forward" means the same as that term**
41 **is defined by section 1 of P.L.2017, c.117 (C.45:1-61).**

42 **"Distant site" means the same as that term is defined by section 1**
43 **of P.L.2017, c.117 (C.45:1-61).**

44 **"Originating site" means the same as that term is defined by**
45 **section 1 of P.L.2017, c.117 (C.45:1-61).**¹

46 **"Telehealth" means the same as that term is defined by section 1**
47 **of P.L.2017, c.117 (C.45:1-61).**

1 "Telemedicine" means the same as that term is defined by
2 section 1 of P.L.2017, c.117 (C.45:1-61).

3 ²"Telemedicine or telehealth organization" means the same as
4 that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).²
5 (cf: P.L.2017, c.117, s.10)

6
7 ³[²6. (New section) The Commissioner of Banking and
8 Insurance shall conduct a study to determine whether telemedicine
9 and telehealth may be appropriately used to satisfy network
10 adequacy requirements applicable to health benefits plans in New
11 Jersey. The commissioner shall prepare and submit a report to the
12 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
13 19.1), to the Legislature, no later than one year after the effective
14 date of this act outlining the commissioner's findings and any
15 recommendations for legislation, administrative action, or other
16 actions as the commissioner deems appropriate.²³

17
18 ⁴[³6.] ^{7.}⁴ (New section) a. A carrier that offers a health
19 benefits plan in this State shall provide coverage, without the
20 imposition of any cost sharing requirements, including deductibles,
21 copayments, or coinsurance, prior authorization requirements, or
22 other medical management requirements, for the following items
23 and services furnished during any portion of the federal state of
24 emergency declared in response to the coronavirus disease 2019
25 (COVID-19) pandemic:

26 (1) testing for COVID-19, provided that a health care
27 practitioner has issued a medical order for the testing; and

28 (2) items and services furnished or provided to an individual
29 during health care provider office visits, including in-person visits
30 and telemedicine and telehealth encounters, urgency care center
31 visits, and emergency department visits, that result in an order for
32 administration of a test for COVID-19⁵, but only to the extent that
33 the items and services relate to the furnishing or administration of
34 the test for COVID-19 or to the evaluation of the individual for
35 purposes of determining the need of the individual for that test⁵.

36 b. As used in this section, "carrier," means an insurance
37 company, health service corporation, hospital service corporation,
38 medical service corporation, or health maintenance organization
39 authorized to issue health benefits plans in this State, and shall
40 include the State Health Benefits Program and the School
41 Employees' Health Benefits Program.³

42
43 ²[6.] ⁴[^{7.}²] ^{8.}⁴ The Commissioner of Human Services shall
44 apply for such State plan amendments or waivers as may be
45 necessary to implement the provisions of this act and to secure
46 federal financial participation for State Medicaid expenditures
47 under the federal Medicaid program.

48

1 ²[¹7.] ⁴[^{8.}²] ⁵[^{9.}⁴] There is appropriated from the General Fund
2 to the Department of Human Services the sum of \$5,000,000 to
3 establish a program under which health care providers that provide
4 telemedicine or telehealth services to patients who are enrolled in
5 the State Medicaid program can be reimbursed for the costs of
6 ²[making telemedicine and telehealth technologies available to]
7 providing² those patients ²with access, on a temporary or permanent
8 basis, to appropriate devices, programs, and technologies necessary
9 to enable patients who do not ordinarily have access to those
10 devices, programs, or technologies to engage in a telemedicine or
11 telehealth encounter². The Commissioner of Human Services shall
12 establish standards and protocols for health care providers to apply
13 for reimbursement under the program established pursuant to this
14 section.¹ ²The funds appropriated pursuant to this section may only
15 be expended on acquiring electronic communication and
16 information devices, programs, and technologies for use by patients,
17 and in no case shall the funds be used to provide any form of direct
18 reimbursement to an individual provider for physical or behavioral
19 health care services provided to a patient using telemedicine or
20 telehealth, or to provide reimbursement for any electronic
21 communication or information device, program, or technology for
22 which payment may be made or covered or for which
23 reimbursement is provided by a health benefits plan or any other
24 State or federal program. Nothing in this section shall be construed
25 to require a health benefits plan, Medicaid or NJ FamilyCare, the
26 State Health Benefits Plan, or the School Employees' Health
27 Benefits plan to provide reimbursement for acquiring or providing
28 access to any electronic communication or information device,
29 program, or technology for which coverage would not ordinarily be
30 provided under the plan or contract.²]⁵

31
32 ⁵9. (New section) a. The Commissioner of Health shall conduct
33 a study to assess whether or to what extent coverage and payment
34 for health care services delivered to a covered person through
35 telemedicine or telehealth should be reimbursed at a provider
36 reimbursement rate that equals the provider reimbursement rate that
37 is applicable, when the services are delivered through in-person
38 contact and consultation in New Jersey, as well as to assess whether
39 telemedicine and telehealth may be appropriately used to satisfy
40 network adequacy requirements applicable to health benefits plans
41 in New Jersey. In conducting the study, the commissioner shall
42 consider the effect of the availability and provision of health care
43 services delivered through telemedicine or telehealth upon
44 utilization, access to care, patient outcomes, and patient
45 satisfaction; whether the delivery of services through telemedicine
46 or telehealth affects the standard, quality, or cost of care; whether
47 different or more stringent utilization management requirements
48 should be adopted for coverage and payment for health care

1 services delivered through telehealth or telemedicine; how the
2 incentivization of the provision of telehealth and telemedicine
3 services impacts underserved populations; and any consideration
4 the commissioner deems relevant. As part of the study, the
5 commissioner may also consider the adoption and impact of
6 reimbursement requirements for telehealth and telemedicine in
7 other jurisdictions. Nothing herein shall preclude the
8 commissioner, in the commissioner's discretion, from engaging,
9 contracting, or entering into an agreement with one or more third-
10 party vendors to conduct all or part of the study required by the
11 subsection. Such vendor may consider or analyze any additional
12 factors or information the vendor deems relevant to the study, as
13 approved by the commissioner. The commissioner or such vendor
14 shall consult with the Commissioner of Banking and Insurance, the
15 State Treasurer, and the Commissioner of Human Services in
16 conducting the study.

17 b. The commissioner shall prepare and submit a report to the
18 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
19 19.1), to the Legislature, no later than the first day of the eighteenth
20 month next following the effective date of P.L. , c. (pending
21 before the Legislature as this bill) outlining the commissioner's
22 findings and any recommendations for legislation, administrative
23 action, or other actions as the commissioner deems appropriate.
24 Such recommendations shall not on their own be binding on any
25 health benefits plan in New Jersey, State Medicaid and NJ
26 FamilyCare, the State Health Benefits Plan, or the School
27 Employees' Health benefits Plan. Nothing herein shall preclude the
28 commissioner, in the commissioner's discretion, from engaging,
29 contracting, or entering into an agreement with one or more third-
30 party vendors to prepare the report required by this subsection.

31 c. There is appropriated from the General Fund to the
32 Department of Health the sum of \$500,000 to effectuate the
33 provisions of this section.⁵
34

35 ⁴~~[³9.] 10.~~⁴ P.L.2020, c.3 and P.L.2020, c.7 are repealed.³
36

37 ⁵11. (New section) a. For the period beginning on the effective
38 date of P.L. , c. (pending before the Legislature as this bill) and
39 ending on December 31, 2023, a health benefits plan in this State
40 shall provide coverage and payment for health care services
41 delivered to a covered person through telemedicine or telehealth at
42 a provider reimbursement rate that equals the provider
43 reimbursement rate that is applicable, when the services are
44 delivered through in-person contact and consultation in New Jersey,
45 provided the services are otherwise covered by the health benefits
46 plan when delivered through in-person contact and consultation in
47 New Jersey. The requirements of this subsection shall not apply to:

1 (1) a health care service provided by a telemedicine or telehealth
 2 organization that does not provide the health care service on an in-
 3 person basis in New Jersey; or

4 (2) a physical health care service that was provided through
 5 real-time, two-way audio without a video component, whether or
 6 not utilized in combination with asynchronous store-and-forward
 7 technology, including through audio-only telephone conversation.
 8 The reimbursement rate for a physical health care service that is
 9 subject to this paragraph shall be determined under the contract
 10 with the provider; provided that the reimbursement rate for a
 11 physical health care service when provided through audio-only
 12 telephone conversation shall be at least 50 percent of the
 13 reimbursement rate for the service when provided in person.

14 (3) The provisions of paragraph (2) of this subsection shall not
 15 apply to a behavioral health service that was provided through real-
 16 time, two-way audio without a video component, whether or not
 17 utilized in combination with asynchronous store-and-forward
 18 technology, including audio-only telephone conversation. A
 19 behavioral health care service described in this paragraph shall be
 20 reimbursed at a rate that equals the provider reimbursement rate for
 21 the service when provided in person.

22 b. For the purposes of this section:

23 “Carrier” means an insurance company, health service
 24 corporation, hospital service corporation, medical service
 25 corporation, or health maintenance organization authorized to issue
 26 health benefits plans in this State.

27 “Covered person” means the same as that term is defined in
 28 section 2 of P.L.1997, c.192 (C.26:2S-2); a “benefits recipient” as
 29 that term is defined under section 7 of P.L.2017, c.117 (C.30:4D-
 30 6k); and a person covered under a contract purchased by the State
 31 Health Benefits Commission or the School Employees’ Health
 32 Benefits Commission.

33 “Health benefits plan” means a benefits plan which pays hospital
 34 or medical expense benefits for covered services, and is delivered or
 35 issued for delivery in this State by or through a carrier or a contract
 36 purchased by the State Health Benefits Commission or the School
 37 Employees’ Health Benefits Commission. The term shall include
 38 the State Medicaid program established pursuant to P.L.1968, c.410
 39 (C.30:4D-1 et seq.) and the NJ FamilyCare program established
 40 pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).⁵

41
 42 ¹[7.] ²[8.] ³[9.] ⁴[10.] ⁵[11.] ⁵ 12.⁵ This act shall take
 43 effect immediately ³[², except that sections 1, 2, 4, and 5 of this act
 44 shall take effect January 1, 2022]³ and shall apply to all health
 45 benefits plans or contracts issued or renewed on or after that date² .

46 ³Section ⁵[6] ⁷5 of this act shall expire upon the end of the federal
 47 state of emergency declared in response to the coronavirus disease
 48 2019 pandemic.³

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S2559 [5R]

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3 Revises requirements for health insurance providers and Medicaid

4 to cover services provided using telemedicine and telehealth;

5 appropriates \$500,000.

CHAPTER 310

AN ACT concerning telemedicine and telehealth, amending P.L.2017, c.117, repealing P.L.2020, c.3 and P.L.2020, c.7, and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to read as follows:

C.26:2S-29 Carrier offering a health benefits plan to provide coverage, payment.

8. a. A carrier that offers a health benefits plan in this State shall provide coverage and payment for health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered under the plan when delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. A carrier may limit coverage to services that are delivered by health care providers in the health benefits plan's network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall a carrier:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth or on the location or setting of the originating site where the patient is located when receiving services using telemedicine and telehealth, except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person;

(2) restrict the ability of a provider to use any electronic or technological platform to provide services using telemedicine or telehealth, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, including audio-only telephone conversations, to provide services using telemedicine or telehealth, provided that the platform used:

(a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164;

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person, and the provider is able to meet the same standard of care as would be provided if the services were provided in person; or

(4) limit coverage only to services delivered by select third-party telemedicine or telehealth organizations.

c. Nothing in this section shall be construed to:

(1) prohibit a carrier from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's health benefits plan; or

(2) allow a carrier to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

d. The Commissioner of Banking and Insurance shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Carrier" means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).

"Covered person" means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).

"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Health benefits plan" means the same as that term is defined by section 2 of P.L.1997, c.192 (C.26:2S-2).

"Originating site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine or telehealth organization" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to read as follows:

C.30:4D-6k State Medicaid, NJ FamilyCare programs to provide coverage, payment.

7. a. The State Medicaid and NJ FamilyCare programs shall provide coverage and payment for health care services delivered to a benefits recipient through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered when delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. The State Medicaid and NJ FamilyCare programs may limit coverage to services that are delivered by participating health care providers, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall the State Medicaid and NJ FamilyCare programs:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth or on the location or setting of the originating site where the patient is located when receiving services using telemedicine and telehealth, except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person;

(2) restrict the ability of a provider to use any electronic or technological platform to provide services using telemedicine or telehealth, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, including audio-only telephone conversations, to provide services using telemedicine or telehealth, provided that the platform used:

(a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164;

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person, and the provider is able to meet the same standard of care as would be provided if the services were provided in person; or

(4) limit coverage only to services delivered by select third-party telemedicine or telehealth organizations.

c. Nothing in this section shall be construed to:

(1) prohibit the State Medicaid or NJ FamilyCare programs from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the recipient's benefits plan; or

(2) allow the State Medicaid or NJ FamilyCare programs to require a benefits recipient to use telemedicine or telehealth in lieu of obtaining an in-person service from a participating health care provider.

d. The Commissioner of Human Services, in consultation with the Commissioner of Children and Families, shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this section and to secure federal financial participation for State expenditures under the federal Medicaid program and Children's Health Insurance Program.

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Benefits recipient" or "recipient" means a person who is eligible for, and who is receiving, hospital or medical benefits under the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), or under the NJ FamilyCare program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as appropriate.

"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Originating site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Participating health care provider" means a licensed or certified health care provider who is registered to provide health care services to benefits recipients under the State Medicaid or NJ FamilyCare programs, as appropriate.

"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine or telehealth organization" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

3. Section 1 of P.L.2017, c.117 (C.45:1-61) is amended to read as follows:

C.45:1-61 Definitions relative to telemedicine and telehealth.

1. As used in P.L.2017, c.117 (C.45:1-61 et al.):

"Asynchronous store-and-forward" means the acquisition and transmission of images, diagnostics, data, and medical information either to, or from, an originating site or to, or from, the health care provider at a distant site, which allows for the patient to be evaluated without being physically present.

"Cross-coverage service provider" means a health care provider, acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes, who engages in a remote medical evaluation of a patient, without in-person contact, at the request of another health care provider who has established a proper provider-patient relationship with the patient.

"Distant site" means a site at which a health care provider, acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes, is located while providing health care services by means of telemedicine or telehealth.

"Health care provider" means an individual who provides a health care service to a patient, and includes, but is not limited to, a licensed physician, nurse, nurse practitioner, psychologist, psychiatrist, psychoanalyst, clinical social worker, physician assistant, professional counselor, respiratory therapist, speech pathologist, audiologist, optometrist, or any other health care professional acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes.

"On-call provider" means a licensed or certified health care provider who is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the provider has temporarily assumed responsibility, as designated by the patient's primary care provider or other health care provider of record.

"Originating site" means a site at which a patient is located at the time that health care services are provided to the patient by means of telemedicine or telehealth.

"Telehealth" means the use of information and communications technologies, including telephones, remote patient monitoring devices, or other electronic means, to support clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services in accordance with the provisions of P.L.2017, c.117 (C.45:1-61 et al.).

"Telemedicine" means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a health care provider who is located at a distant site and a patient who is located at an originating site, either with or without the assistance of an intervening health care provider, and in accordance with the provisions of P.L.2017, c.117 (C.45:1-61 et al.). "Telemedicine" does not include the use, in isolation, of electronic mail, instant messaging, phone text, or facsimile transmission.

"Telemedicine or telehealth organization" means a corporation, sole proprietorship, partnership, or limited liability company that is organized for the primary purpose of administering services in the furtherance of telemedicine or telehealth.

4. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read as follows:

C.45:1-62 Provision of health care through use of telemedicine, telehealth; requirements for provider.

2. a. Unless specifically prohibited or limited by federal or State law, a health care provider who establishes a proper provider-patient relationship with a patient may remotely provide

health care services to a patient through the use of telemedicine. A health care provider may also engage in telehealth as may be necessary to support and facilitate the provision of health care services to patients. Nothing in P.L.2017, c.117 (C.45:1-61 et al.) shall be construed to allow a provider to require a patient to use telemedicine or telehealth in lieu of receiving services from an in-network provider.

b. Any health care provider who uses telemedicine or engages in telehealth while providing health care services to a patient, shall: (1) be validly licensed, certified, or registered, pursuant to Title 45 of the Revised Statutes, to provide such services in the State of New Jersey; (2) remain subject to regulation by the appropriate New Jersey State licensing board or other New Jersey State professional regulatory entity; (3) act in compliance with existing requirements regarding the maintenance of liability insurance; and (4) remain subject to New Jersey jurisdiction.

c. (1) Telemedicine services may be provided using interactive, real-time, two-way communication technologies or, subject to the requirements of paragraph (2) of this paragraph, asynchronous store-and-forward technology.

(2) A health care provider engaging in telemedicine or telehealth may use asynchronous store-and-forward technology to provide services with or without the use of interactive, real-time, two-way audio if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person and informs the patient of this determination at the outset of the telemedicine or telehealth encounter.

(3) (a) At the time the patient requests health care services to be provided using telemedicine or telehealth, the patient shall be clearly advised that the telemedicine or telehealth encounter may be with a health care provider who is not a physician, and that the patient may specifically request that the telemedicine or telehealth encounter be scheduled with a physician. If the patient requests that the telemedicine or telehealth encounter be with a physician, the encounter shall be scheduled with a physician.

(b) The identity, professional credentials, and contact information of a health care provider providing telemedicine or telehealth services shall be made available to the patient at the time the patient schedules services to be provided using telemedicine or telehealth, if available, or upon confirmation of the scheduled telemedicine or telehealth encounter, and shall be made available to the patient during and after the provision of services. The contact information shall enable the patient to contact the health care provider, or a substitute health care provider authorized to act on behalf of the provider who provided services, for at least 72 hours following the provision of services. If the health care provider is not a physician, and the patient requests that the services be provided by a physician, the health care provider shall assist the patient with scheduling a telemedicine or telehealth encounter with a physician.

(4) A health care provider engaging in telemedicine or telehealth shall review the medical history and any medical records provided by the patient. For an initial encounter with the patient, the provider shall review the patient's medical history and medical records prior to initiating contact with the patient, as required pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017, c.117 (C.45:1-63). In the case of a subsequent telemedicine or telehealth encounter conducted pursuant to an ongoing provider-patient relationship, the provider may review the information prior to initiating contact with the patient or contemporaneously with the telemedicine or telehealth encounter.

(5) Following the provision of services using telemedicine or telehealth, the patient's medical information shall be entered into the patient's medical record, whether the medical record is a physical record, an electronic health record, or both, and, if so requested to by the patient, forwarded directly to the patient's primary care provider, health care provider of record

or any other health care providers as may be specified by the patient. For patients without a primary care provider or other health care provider of record, the health care provider engaging in telemedicine or telehealth may advise the patient to contact a primary care provider, and, upon request by the patient, shall assist the patient with locating a primary care provider or other in-person medical assistance that, to the extent possible, is located within reasonable proximity to the patient. The health care provider engaging in telemedicine or telehealth shall also refer the patient to appropriate follow up care where necessary, including making appropriate referrals for in-person care or emergency or complementary care, if needed. Consent may be oral, written, or digital in nature, provided that the chosen method of consent is deemed appropriate under the standard of care.

d. (1) Any health care provider providing health care services using telemedicine or telehealth shall be subject to the same standard of care or practice standards as are applicable to in-person settings. If telemedicine or telehealth services would not be consistent with this standard of care, the health care provider shall direct the patient to seek in-person care.

(2) Diagnosis, treatment, and consultation recommendations, including discussions regarding the risk and benefits of the patient's treatment options, which are made through the use of telemedicine or telehealth, including the issuance of a prescription based on a telemedicine or telehealth encounter, shall be held to the same standard of care or practice standards as are applicable to in-person settings. Unless the provider has established a proper provider-patient relationship with the patient, a provider shall not issue a prescription to a patient based solely on the responses provided in an online static questionnaire.

(3) In the event that a mental health screener, screening service, or screening psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.) determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in this paragraph shall be construed to prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth as provided in this paragraph from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

e. The prescription of Schedule II controlled dangerous substances through the use of telemedicine or telehealth shall be authorized only after an initial in-person examination of the patient, as provided by regulation, and a subsequent in-person visit with the patient shall be required every three months for the duration of time that the patient is being prescribed the Schedule II controlled dangerous substance. However, the provisions of this subsection shall not apply, and the in-person examination or review of a patient shall not be required, when a health care provider is prescribing a stimulant which is a Schedule II controlled dangerous substance for use by a minor patient under the age of 18, provided that the health care provider is using interactive, real-time, two-way audio and video technologies when treating the patient and the health care provider has first obtained written consent for the waiver of these in-person examination requirements from the minor patient's parent or guardian.

f. A mental health screener, screening service, or screening psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.):

(1) shall not be required to obtain a separate authorization in order to engage in telemedicine or telehealth for mental health screening purposes; and

(2) shall not be required to request and obtain a waiver from existing regulations, prior to engaging in telemedicine or telehealth.

g. A health care provider who engages in telemedicine or telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall maintain a complete record of the patient's care, and shall comply with all applicable State and federal statutes and regulations for recordkeeping, confidentiality, and disclosure of the patient's medical record.

h. A health care provider shall not be subject to any professional disciplinary action under Title 45 of the Revised Statutes solely on the basis that the provider engaged in telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-61 et al.).

i. (1) In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other entities that, pursuant to Title 45 of the Revised Statutes, are responsible for the licensure, certification, or registration of health care providers in the State, shall each adopt rules and regulations that are applicable to the health care providers under their respective jurisdictions, as may be necessary to implement the provisions of this section and facilitate the provision of telemedicine and telehealth services. Such rules and regulations shall, at a minimum:

(a) include best practices for the professional engagement in telemedicine and telehealth;

(b) ensure that the services patients receive using telemedicine or telehealth are appropriate, medically necessary, and meet current quality of care standards;

(c) include measures to prevent fraud and abuse in connection with the use of telemedicine and telehealth, including requirements concerning the filing of claims and maintaining appropriate records of services provided; and

(d) provide substantially similar metrics for evaluating quality of care and patient outcomes in connection with services provided using telemedicine and telehealth as currently apply to services provided in person.

(2) In no case shall the rules and regulations adopted pursuant to paragraph (1) of this subsection require a provider to conduct an initial in-person visit with the patient as a condition of providing services using telemedicine or telehealth.

(3) The failure of any licensing board to adopt rules and regulations pursuant to this subsection shall not have the effect of delaying the implementation of this act, and shall not prevent health care providers from engaging in telemedicine or telehealth in accordance with the provisions of this act and the practice act applicable to the provider's professional licensure, certification, or registration.

5. Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is amended to read as follows:

C.52:14-17.29w State Health Benefits Commission to provide coverage, payment.

9. a. The State Health Benefits Commission shall ensure that every contract purchased thereby, which provides hospital and medical expense benefits, additionally provides coverage and payment for health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered under the contract when delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. A health benefits contract purchased by the State Health Benefits Commission may limit coverage to services that are delivered by health care providers in the health benefits plan's network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall a health benefits contract purchased by the State Health Benefits Commission:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth or on the location or setting of the originating site where the patient is located when receiving services using telemedicine and telehealth, except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person;

(2) restrict the ability of a provider to use any electronic or technological platform to provide services using telemedicine or telehealth, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, including audio-only telephone conversations, to provide services using telemedicine or telehealth, provided that the platform used:

(a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164;

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person, and the provider is able to meet the same standard of care as would be provided if the services were provided in person; or

(4) limit coverage only to services delivered by select third-party telemedicine or telehealth organizations.

c. Nothing in this section shall be construed to:

(1) prohibit a health benefits contract from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's health benefits plan; or

(2) allow the State Health Benefits Commission, or a contract purchased thereby, to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

d. The State Health Benefits Commission shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Originating site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine or telehealth organization" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

6. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is amended to read as follows:

C.52:14-17.46.6h School Employees Health Benefits Commission to provide coverage, payment.

10. a. The School Employees' Health Benefits Commission shall ensure that every contract purchased thereby, which provides hospital and medical expense benefits, additionally provides coverage and payment for health care services delivered to a covered person through telemedicine or telehealth, on the same basis as, and at a provider reimbursement rate that does not exceed the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered under the contract when delivered through in-person contact and consultation in New Jersey. Reimbursement payments under this section may be provided either to the individual practitioner who delivered the reimbursable services, or to the agency, facility, or organization that employs the individual practitioner who delivered the reimbursable services, as appropriate.

b. A health benefits contract purchased by the School Employees' Health Benefits Commission may limit coverage to services that are delivered by health care providers in the health benefits plan's network, but may not charge any deductible, copayment, or coinsurance for a health care service, delivered through telemedicine or telehealth, in an amount that exceeds the deductible, copayment, or coinsurance amount that is applicable to an in-person consultation. In no case shall a health benefits contract purchased by the School Employees' Health Benefits Commission:

(1) impose any restrictions on the location or setting of the distant site used by a health care provider to provide services using telemedicine and telehealth or on the location or setting of the originating site where the patient is located when receiving services using telemedicine and telehealth, except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person;

(2) restrict the ability of a provider to use any electronic or technological platform to provide services using telemedicine or telehealth, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, including audio-only telephone conversations, to provide services using telemedicine or telehealth, provided that the platform used:

(a) allows the provider to meet the same standard of care as would be provided if the services were provided in person; and

(b) is compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164;

(3) deny coverage for or refuse to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person, and the provider is able to meet the same standard of care as would be provided if the services were provided in person; or

(4) limit coverage only to services delivered by select third-party telemedicine or telehealth organizations.

c. Nothing in this section shall be construed to:

(1) prohibit a health benefits contract from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's health benefits plan; or

(2) allow the School Employees' Health Benefits Commission, or a contract purchased thereby, to require a covered person to use telemedicine or telehealth in lieu of receiving an in-person service from an in-network provider.

d. The School Employees' Health Benefits Commission shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

e. As used in this section:

"Asynchronous store-and-forward" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Distant site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Originating site" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telehealth" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

"Telemedicine or telehealth organization" means the same as that term is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

7. a. A carrier that offers a health benefits plan in this State shall provide coverage, without the imposition of any cost sharing requirements, including deductibles, copayments, or coinsurance, prior authorization requirements, or other medical management requirements, for the following items and services furnished during any portion of the federal state of emergency declared in response to the coronavirus disease 2019 (COVID-19) pandemic:

(1) testing for COVID-19, provided that a health care practitioner has issued a medical order for the testing; and

(2) items and services furnished or provided to an individual during health care provider office visits, including in-person visits and telemedicine and telehealth encounters, urgency care center visits, and emergency department visits, that result in an order for administration of a test for COVID-19, but only to the extent that the items and services relate to the furnishing or administration of the test for COVID-19 or to the evaluation of the individual for purposes of determining the need of the individual for that test.

b. As used in this section, "carrier," means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State, and shall include the State Health Benefits Program and the School Employees' Health Benefits Program.

8. The Commissioner of Human Services shall apply for such State plan amendments or waivers as may be necessary to implement the provisions of this act and to secure federal financial participation for State Medicaid expenditures under the federal Medicaid program.

9. a. The Commissioner of Health shall conduct a study to assess whether or to what extent coverage and payment for health care services delivered to a covered person through telemedicine or telehealth should be reimbursed at a provider reimbursement rate that equals the provider reimbursement rate that is applicable, when the services are delivered through in-

person contact and consultation in New Jersey, as well as to assess whether telemedicine and telehealth may be appropriately used to satisfy network adequacy requirements applicable to health benefits plans in New Jersey. In conducting the study, the commissioner shall consider the effect of the availability and provision of health care services delivered through telemedicine or telehealth upon utilization, access to care, patient outcomes, and patient satisfaction; whether the delivery of services through telemedicine or telehealth affects the standard, quality, or cost of care; whether different or more stringent utilization management requirements should be adopted for coverage and payment for health care services delivered through telehealth or telemedicine; how the incentivization of the provision of telehealth and telemedicine services impacts underserved populations; and any consideration the commissioner deems relevant. As part of the study, the commissioner may also consider the adoption and impact of reimbursement requirements for telehealth and telemedicine in other jurisdictions. Nothing herein shall preclude the commissioner, in the commissioner's discretion, from engaging, contracting, or entering into an agreement with one or more third-party vendors to conduct all or part of the study required by the subsection. Such vendor may consider or analyze any additional factors or information the vendor deems relevant to the study, as approved by the commissioner. The commissioner or such vendor shall consult with the Commissioner of Banking and Insurance, the State Treasurer, and the Commissioner of Human Services in conducting the study.

b. The commissioner shall prepare and submit a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, no later than the first day of the eighteenth month next following the effective date of P.L.2021, c.310 outlining the commissioner's findings and any recommendations for legislation, administrative action, or other actions as the commissioner deems appropriate. Such recommendations shall not on their own be binding on any health benefits plan in New Jersey, State Medicaid and NJ FamilyCare, the State Health Benefits Plan, or the School Employees' Health benefits Plan. Nothing herein shall preclude the commissioner, in the commissioner's discretion, from engaging, contracting, or entering into an agreement with one or more third-party vendors to prepare the report required by this subsection.

c. There is appropriated from the General Fund to the Department of Health the sum of \$500,000 to effectuate the provisions of this section.

Repealer.

10. P.L.2020, c.3 and P.L.2020, c.7 are repealed.

11. a. For the period beginning on the effective date of P.L.2021, c.310 and ending on December 31, 2023, a health benefits plan in this State shall provide coverage and payment for health care services delivered to a covered person through telemedicine or telehealth at a provider reimbursement rate that equals the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered by the health benefits plan when delivered through in-person contact and consultation in New Jersey. The requirements of this subsection shall not apply to:

(1) a health care service provided by a telemedicine or telehealth organization that does not provide the health care service on an in-person basis in New Jersey; or

(2) a physical health care service that was provided through real-time, two-way audio without a video component, whether or not utilized in combination with asynchronous store-and-forward technology, including through audio-only telephone conversation. The reimbursement rate for a physical health care service that is subject to this paragraph shall be

determined under the contract with the provider; provided that the reimbursement rate for a physical health care service when provided through audio-only telephone conversation shall be at least 50 percent of the reimbursement rate for the service when provided in person.

(3) The provisions of paragraph (2) of this subsection shall not apply to a behavioral health service that was provided through real-time, two-way audio without a video component, whether or not utilized in combination with asynchronous store-and-forward technology, including audio-only telephone conversation. A behavioral health care service described in this paragraph shall be reimbursed at a rate that equals the provider reimbursement rate for the service when provided in person.

b. For the purposes of this section:

“Carrier” means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State.

“Covered person” means the same as that term is defined in section 2 of P.L.1997, c.192 (C.26:2S-2); a “benefits recipient” as that term is defined under section 7 of P.L.2017, c.117 (C.30:4D-6k); and a person covered under a contract purchased by the State Health Benefits Commission or the School Employees’ Health Benefits Commission.

“Health benefits plan” means a benefits plan which pays hospital or medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier or a contract purchased by the State Health Benefits Commission or the School Employees’ Health Benefits Commission. The term shall include the State Medicaid program established pursuant to P.L.1968, c.410 (C.30:4D-1 et seq.) and the NJ FamilyCare program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.).

12. This act shall take effect immediately and shall apply to all health benefits plans or contracts issued or renewed on or after that date. Section 7 of this act shall expire upon the end of the federal state of emergency declared in response to the coronavirus disease 2019 pandemic.

Approved December 21, 2021.

SENATE, No. 2559

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 8, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senators Corrado, Diegnan, Brown, T.Kean Singer and Turner

SYNOPSIS

Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2020)

1 AN ACT concerning telemedicine and telehealth and amending
2 P.L.2017, c.117.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to
8 read as follows:

9 8. a. A carrier that offers a health benefits plan in this State
10 shall provide coverage and payment for health care services
11 delivered to a covered person through telemedicine or telehealth, on
12 the same basis as, and at a provider reimbursement rate that **[does**
13 **not exceed]** equals the provider reimbursement rate that is
14 applicable, when the services are delivered through in-person
15 contact and consultation in New Jersey. Reimbursement payments
16 under this section may be provided either to the individual
17 practitioner who delivered the reimbursable services, or to the
18 agency, facility, or organization that employs the individual
19 practitioner who delivered the reimbursable services, as appropriate.

20 b. A carrier may limit coverage to services that are delivered
21 by health care providers in the health benefits plan's network, but
22 may not charge any deductible, copayment, or coinsurance for a
23 health care service, delivered through telemedicine or telehealth, in
24 an amount that exceeds the deductible, copayment, or coinsurance
25 amount that is applicable to an in-person consultation. In no case
26 shall a carrier:

27 (1) impose any restrictions on the location or setting of the
28 distant site used by a health care provider to provide services using
29 telemedicine and telehealth; or

30 (2) restrict the ability of a provider to use any electronic or
31 technological platform, including interactive, real-time, two-way
32 audio in combination with asynchronous store-and-forward
33 technology without video capabilities, to provide services using
34 telemedicine or telehealth that:

35 (a) allows the provider to meet the same standard of care as
36 would be provided if the services were provided in person; and

37 (b) is compliant with the requirements of the federal health
38 privacy rule set forth at 45 CFR Parts 160 and 164.

39 c. Nothing in this section shall be construed to:

40 (1) prohibit a carrier from providing coverage for only those
41 services that are medically necessary, subject to the terms and
42 conditions of the covered person's health benefits plan; or

43 (2) allow a carrier to require a covered person to use
44 telemedicine or telehealth in lieu of receiving an in-person service
45 from an in-network provider.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 d. The Commissioner of Banking and Insurance shall adopt
2 rules and regulations, pursuant to the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
4 provisions of this section.

5 e. As used in this section:

6 "Asynchronous store-and-forward" means the same as that term
7 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

8 "Carrier" means the same as that term is defined by section 2 of
9 P.L.1997, c.192 (C.26:2S-2).

10 "Covered person" means the same as that term is defined by
11 section 2 of P.L.1997, c.192 (C.26:2S-2).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Health benefits plan" means the same as that term is defined by
15 section 2 of P.L.1997, c.192 (C.26:2S-2).

16 "Telehealth" means the same as that term is defined by section 1
17 of P.L.2017, c.117 (C.45:1-61).

18 "Telemedicine" means the same as that term is defined by
19 section 1 of P.L.2017, c.117 (C.45:1-61).

20 (cf: P.L.2017, c.117, s.8)

21

22 2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to
23 read as follows:

24 7. a. The State Medicaid and NJ FamilyCare programs shall
25 provide coverage and payment for health care services delivered to
26 a benefits recipient through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. The State Medicaid and NJ FamilyCare programs may limit
36 coverage to services that are delivered by participating health care
37 providers, but may not charge any deductible, copayment, or
38 coinsurance for a health care service, delivered through
39 telemedicine or telehealth, in an amount that exceeds the deductible,
40 copayment, or coinsurance amount that is applicable to an in-person
41 consultation. In no case shall the State Medicaid and NJ
42 FamilyCare programs:

43 (1) impose any restrictions on the location or setting of the
44 distant site used by a health care provider to provide services using
45 telemedicine and telehealth; or

46 (2) restrict the ability of a provider to use any electronic or
47 technological platform, including interactive, real-time, two-way
48 audio in combination with asynchronous store-and-forward

1 technology without video capabilities, to provide services using
2 telemedicine or telehealth that:

3 (a) allows the provider to meet the same standard of care as
4 would be provided if the services were provided in person; and

5 (b) is compliant with the requirements of the federal health
6 privacy rule set forth at 45 CFR Parts 160 and 164.

7 c. Nothing in this section shall be construed to:

8 (1) prohibit the State Medicaid or NJ FamilyCare programs
9 from providing coverage for only those services that are medically
10 necessary, subject to the terms and conditions of the recipient's
11 benefits plan; or

12 (2) allow the State Medicaid or NJ FamilyCare programs to
13 require a benefits recipient to use telemedicine or telehealth in lieu
14 of obtaining an in-person service from a participating health care
15 provider.

16 d. The Commissioner of Human Services, in consultation with
17 the Commissioner of Children and Families, shall apply for such
18 State plan amendments or waivers as may be necessary to
19 implement the provisions of this section and to secure federal
20 financial participation for State expenditures under the federal
21 Medicaid program and Children's Health Insurance Program.

22 e. As used in this section:

23 "Asynchronous store-and-forward" means the same as that term
24 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

25 "Benefits recipient" or "recipient" means a person who is eligible
26 for, and who is receiving, hospital or medical benefits under the
27 State Medicaid program established pursuant to P.L.1968, c.413
28 (C.30:4D-1 et seq.), or under the NJ FamilyCare program
29 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
30 appropriate.

31 "Distant site" means the same as that term is defined by section 1
32 of P.L.2017, c.117 (C.45:1-61).

33 "Participating health care provider" means a licensed or certified
34 health care provider who is registered to provide health care
35 services to benefits recipients under the State Medicaid or NJ
36 FamilyCare programs, as appropriate.

37 "Telehealth" means the same as that term is defined by section 1
38 of P.L.2017, c.117 (C.45:1-61).

39 "Telemedicine" means the same as that term is defined by
40 section 1 of P.L.2017, c.117 (C.45:1-61).

41 (cf: P.L.2017, c.117, s.7)

42

43 3. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read
44 as follows:

45 2. a. Unless specifically prohibited or limited by federal or
46 State law, a health care provider who establishes a proper provider-
47 patient relationship with a patient may remotely provide health care
48 services to a patient through the use of telemedicine, regardless of

1 whether the health care provider is located in New Jersey at the
2 time the remote health care services are provided. A health care
3 provider may also engage in telehealth as may be necessary to
4 support and facilitate the provision of health care services to
5 patients.

6 b. Any health care provider who uses telemedicine or engages
7 in telehealth while providing health care services to a patient, shall:
8 (1) be validly licensed, certified, or registered, pursuant to Title 45
9 of the Revised Statutes, to provide such services in the State of New
10 Jersey; (2) remain subject to regulation by the appropriate New
11 Jersey State licensing board or other New Jersey State professional
12 regulatory entity; (3) act in compliance with existing requirements
13 regarding the maintenance of liability insurance; and (4) remain
14 subject to New Jersey jurisdiction if either the patient or the
15 provider is located in New Jersey at the time services are provided.

16 c. (1) Telemedicine services shall be provided using
17 interactive, real-time, two-way communication technologies.

18 (2) A health care provider engaging in telemedicine or
19 telehealth may use asynchronous store-and-forward technology to
20 allow for the electronic transmission of images, diagnostics, data,
21 and medical information; except that the health care provider may
22 use interactive, real-time, two-way audio in combination with
23 asynchronous store-and-forward technology, without video
24 capabilities, if, after accessing and reviewing the patient's medical
25 records, the provider determines that the provider is able to meet the
26 same standard of care as if the health care services were being
27 provided in person.

28 (3) The identity, professional credentials, and contact
29 information of a health care provider providing telemedicine or
30 telehealth services shall be made available to the patient during and
31 after the provision of services. The contact information shall enable
32 the patient to contact the health care provider, or a substitute health
33 care provider authorized to act on behalf of the provider who
34 provided services, for at least 72 hours following the provision of
35 services.

36 (4) A health care provider engaging in telemedicine or
37 telehealth shall review the medical history and any medical records
38 provided by the patient. For an initial encounter with the patient,
39 the provider shall review the patient's medical history and medical
40 records prior to initiating contact with the patient, as required
41 pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,
42 c.117 (C.45:1-63). In the case of a subsequent telemedicine or
43 telehealth encounter conducted pursuant to an ongoing provider-
44 patient relationship, the provider may review the information prior
45 to initiating contact with the patient or contemporaneously with the
46 telemedicine or telehealth encounter.

47 (5) Following the provision of services using telemedicine or
48 telehealth, the patient's medical information shall be made available

1 to the patient upon the patient's request, and, with the patient's
2 affirmative consent, forwarded directly to the patient's primary care
3 provider or health care provider of record, or, upon request by the
4 patient, to other health care providers. For patients without a
5 primary care provider or other health care provider of record, the
6 health care provider engaging in telemedicine or telehealth may
7 advise the patient to contact a primary care provider, and, upon
8 request by the patient, assist the patient with locating a primary care
9 provider or other in-person medical assistance that, to the extent
10 possible, is located within reasonable proximity to the patient. The
11 health care provider engaging in telemedicine or telehealth shall
12 also refer the patient to appropriate follow up care where necessary,
13 including making appropriate referrals for emergency or
14 complimentary care, if needed. Consent may be oral, written, or
15 digital in nature, provided that the chosen method of consent is
16 deemed appropriate under the standard of care.

17 d. (1) Any health care provider providing health care services
18 using telemedicine or telehealth shall be subject to the same
19 standard of care or practice standards as are applicable to in-person
20 settings. If telemedicine or telehealth services would not be
21 consistent with this standard of care, the health care provider shall
22 direct the patient to seek in-person care.

23 (2) Diagnosis, treatment, and consultation recommendations,
24 including discussions regarding the risk and benefits of the patient's
25 treatment options, which are made through the use of telemedicine
26 or telehealth, including the issuance of a prescription based on a
27 telemedicine or telehealth encounter, shall be held to the same
28 standard of care or practice standards as are applicable to in-person
29 settings. Unless the provider has established a proper provider-
30 patient relationship with the patient, a provider shall not issue a
31 prescription to a patient based solely on the responses provided in
32 an online questionnaire.

33 e. The prescription of Schedule II controlled dangerous
34 substances through the use of telemedicine or telehealth shall be
35 authorized only after an initial in-person examination of the patient,
36 as provided by regulation, and a subsequent in-person visit with the
37 patient shall be required every three months for the duration of time
38 that the patient is being prescribed the Schedule II controlled
39 dangerous substance. However, the provisions of this subsection
40 shall not apply, and the in-person examination or review of a patient
41 shall not be required, when a health care provider is prescribing a
42 stimulant which is a Schedule II controlled dangerous substance for
43 use by a minor patient under the age of 18, provided that the health
44 care provider is using interactive, real-time, two-way audio and
45 video technologies when treating the patient and the health care
46 provider has first obtained written consent for the waiver of these
47 in-person examination requirements from the minor patient's parent
48 or guardian.

1 f. A mental health screener, screening service, or screening
2 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
3 27.1 et seq.):

4 (1) shall not be required to obtain a separate authorization in
5 order to engage in telemedicine or telehealth for mental health
6 screening purposes; and

7 (2) shall not be required to request and obtain a waiver from
8 existing regulations, prior to engaging in telemedicine or telehealth.

9 g. A health care provider who engages in telemedicine or
10 telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall
11 maintain a complete record of the patient's care, and shall comply
12 with all applicable State and federal statutes and regulations for
13 recordkeeping, confidentiality, and disclosure of the patient's
14 medical record.

15 h. A health care provider shall not be subject to any
16 professional disciplinary action under Title 45 of the Revised
17 Statutes solely on the basis that the provider engaged in
18 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-
19 61 et al.).

20 i. (1) In accordance with the "Administrative Procedure Act,"
21 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
22 entities that, pursuant to Title 45 of the Revised Statutes, are
23 responsible for the licensure, certification, or registration of health
24 care providers in the State, shall each adopt rules and regulations
25 that are applicable to the health care providers under their
26 respective jurisdictions, as may be necessary to implement the
27 provisions of this section and facilitate the provision of
28 telemedicine and telehealth services. Such rules and regulations
29 shall, at a minimum:

30 (a) include best practices for the professional engagement in
31 telemedicine and telehealth;

32 (b) ensure that the services patients receive using telemedicine
33 or telehealth are appropriate, medically necessary, and meet current
34 quality of care standards;

35 (c) include measures to prevent fraud and abuse in connection
36 with the use of telemedicine and telehealth, including requirements
37 concerning the filing of claims and maintaining appropriate records
38 of services provided; and

39 (d) provide substantially similar metrics for evaluating quality
40 of care and patient outcomes in connection with services provided
41 using telemedicine and telehealth as currently apply to services
42 provided in person.

43 (2) In no case shall the rules and regulations adopted pursuant to
44 paragraph (1) of this subsection require a provider to conduct an
45 initial in-person visit with the patient as a condition of providing
46 services using telemedicine or telehealth.

47 (3) The failure of any licensing board to adopt rules and
48 regulations pursuant to this subsection shall not have the effect of

1 delaying the implementation of this act, and shall not prevent health
2 care providers from engaging in telemedicine or telehealth in
3 accordance with the provisions of this act and the practice act
4 applicable to the provider's professional licensure, certification, or
5 registration.

6 (cf: P.L.2017, c.117, s.2)

7

8 4. Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is amended
9 to read as follows:

10 9. a. The State Health Benefits Commission shall ensure that
11 every contract purchased thereby, which provides hospital and
12 medical expense benefits, additionally provides coverage and
13 payment for health care services delivered to a covered person
14 through telemedicine or telehealth, on the same basis as, and at a
15 provider reimbursement rate that **[does not exceed]** equals the
16 provider reimbursement rate that is applicable, when the services
17 are delivered through in-person contact and consultation in New
18 Jersey. Reimbursement payments under this section may be
19 provided either to the individual practitioner who delivered the
20 reimbursable services, or to the agency, facility, or organization that
21 employs the individual practitioner who delivered the reimbursable
22 services, as appropriate.

23 b. A health benefits contract purchased by the State Health
24 Benefits Commission may limit coverage to services that are
25 delivered by health care providers in the health benefits plan's
26 network, but may not charge any deductible, copayment, or
27 coinsurance for a health care service, delivered through
28 telemedicine or telehealth, in an amount that exceeds the deductible,
29 copayment, or coinsurance amount that is applicable to an in-person
30 consultation. In no case shall a health benefits contract purchased
31 by the State Health Benefits Commission:

32 (1) impose any restrictions on the location or setting of the
33 distant site used by a health care provider to provide services using
34 telemedicine and telehealth; or

35 (2) restrict the ability of a provider to use any electronic or
36 technological platform, including interactive, real-time, two-way
37 audio in combination with asynchronous store-and-forward
38 technology without video capabilities, to provide services using
39 telemedicine or telehealth that:

40 (a) allows the provider to meet the same standard of care as
41 would be provided if the services were provided in person; and

42 (b) is compliant with the requirements of the federal health
43 privacy rule set forth at 45 CFR Parts 160 and 164.

44 c. Nothing in this section shall be construed to:

45 (1) prohibit a health benefits contract from providing coverage
46 for only those services that are medically necessary, subject to the
47 terms and conditions of the covered person's health benefits plan; or

1 (2) allow the State Health Benefits Commission, or a contract
2 purchased thereby, to require a covered person to use telemedicine
3 or telehealth in lieu of receiving an in-person service from an in-
4 network provider.

5 d. The State Health Benefits Commission shall adopt rules and
6 regulations, pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
8 of this section.

9 e. As used in this section:

10 "Asynchronous store-and-forward" means the same as that term
11 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Telehealth" means the same as that term is defined by section 1
15 of P.L.2017, c.117 (C.45:1-61).

16 "Telemedicine" means the same as that term is defined by
17 section 1 of P.L.2017, c.117 (C.45:1-61).

18 (cf: P.L.2017, c.117, s.9)

19
20 5. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
21 amended to read as follows:

22 10. a. The School Employees' Health Benefits Commission
23 shall ensure that every contract purchased thereby, which provides
24 hospital and medical expense benefits, additionally provides
25 coverage and payment for health care services delivered to a
26 covered person through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. A health benefits contract purchased by the School
36 Employees' Health Benefits Commission may limit coverage to
37 services that are delivered by health care providers in the health
38 benefits plan's network, but may not charge any deductible,
39 copayment, or coinsurance for a health care service, delivered
40 through telemedicine or telehealth, in an amount that exceeds the
41 deductible, copayment, or coinsurance amount that is applicable to
42 an in-person consultation. In no case shall a health benefits
43 contract purchased by the School Employees' Health Benefits
44 Commission:

45 (1) impose any restrictions on the location or setting of the
46 distant site used by a health care provider to provide services using
47 telemedicine and telehealth; or

1 provide expanded coverage for services provided using
2 telemedicine and telehealth.

3 Specifically, the bill requires that reimbursement for
4 telemedicine and telehealth services be equal to the reimbursement
5 rate for the same services when they are provided in person.
6 Current law provides telemedicine and telehealth services may be
7 reimbursed up to the amount at which the service would be
8 reimbursed if provided in person.

9 The bill also prohibits health benefits plans, Medicaid and NJ
10 FamilyCare, and the SHBP and SEHBP from imposing “place of
11 service” requirements on services provided using telemedicine and
12 telehealth, and expressly allows health care providers to provide
13 services using telemedicine and telehealth regardless of whether the
14 provider is located in New Jersey when providing services,
15 provided that the provider is otherwise licensed to practice health
16 care in New Jersey.

17 The bill prohibits health benefits plans, Medicaid and NJ
18 FamilyCare, and the SHBP and SEHBP from placing restrictions on
19 the electronic or technological platform used to provide
20 telemedicine and telehealth, if the services provided when using
21 that platform would meet the in-person standard of care for that
22 service, and if the platform is otherwise compliant with the
23 requirements of the federal health privacy rule set forth at 45 CFR
24 Parts 160 and 164.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 2559

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 14, 2021

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2559.

As amended by the committee, this bill revises the telemedicine and telehealth law, P.L.2017, c.117 (C.45:1-1 et al.), to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage for services provided using telemedicine and telehealth.

Specifically, the amended bill requires that reimbursement for telemedicine and telehealth services for all forms of physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The amended bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth, if the services provided when using that platform would meet the in-person standard of care for that service, and if the platform is otherwise compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

The amended bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including

remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person.

The bill as amended provides for expanded use of asynchronous store-and-forward technologies to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill as amended revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies any time the provider determines that the in-person standard of care can be met using those technologies. The amended bill adds a requirement that the patient concur, in writing, in the provider's assessment that the standard of care can be met.

The amended bill adds a requirement that, at the outset of a telemedicine or telehealth encounter, if the provider is not a physician, the provider request an affirmative written acknowledgement that the patient understands the provider is not a physician and would still like to proceed with the encounter.

As amended by the committee, the bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

As amended, the bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine

or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of making telemedicine and telehealth technologies available to those patients. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program.

COMMITTEE AMENDMENTS:

The committee amendments add language clarifying that health insurance coverage for telemedicine and telehealth services is to include all forms of physical and behavioral health care services.

The committee amendments revise a provision establishing a prohibition against site of service requirements for providers to additionally prohibit the imposition of site of service requirements on patients.

The committee amendments add a provision prohibiting health benefits plans from denying coverage or refusing reimbursement for routine patient monitoring and routine patient check-ins using telemedicine or telehealth if the monitoring or check-ins would be covered or reimbursed if performed in person.

The committee amendments remove language expressly allowing a licensed New Jersey health care provider to provide services using telemedicine and telehealth while located outside New Jersey.

The committee amendments remove certain limitations on using asynchronous store-and-forward technologies to provide telemedicine or telehealth services, such that asynchronous store-and-forward technologies may be used any time the in-person standard of care can be met. The amendments add a requirement that the patient provide written agreement with the health care provider's determination that standard of care requirements can be met when using asynchronous store-and-forward technologies.

The committee amendments add a new requirement that, when a health care provider is not a physician, the provider is to request that the patient provide an affirmative written acknowledgement that the patient knows the provider is not a physician and that the patient would still like to proceed with the telemedicine or telehealth encounter.

The committee amendments revise a restriction on issuing prescriptions using telemedicine and telehealth solely based on the responses provided in an online questionnaire to provide that the restriction applies to online static questionnaires.

The committee amendments add a requirement that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the

mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. The patient will not be prohibited from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event if the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

The committee amendments add in a \$5 million appropriation for the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of making telemedicine and telehealth technologies available to those patients. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program.

The committee amendments revise the title and synopsis of the bill to reflect that the bill now makes an appropriation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2559

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 22, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2559 (1R), with committee amendments.

As amended by the committee, this bill revises the telemedicine and telehealth law, P.L.2017, c.117 (C.45:1-1 et al.), to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage for services provided using telemedicine and telehealth.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The amended bill provides that, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth if the federal Centers for Medicare and Medicaid Services has authorized the use of the platform to provide services using telemedicine and telehealth under the federal Medicare program.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and

reimbursement would be provided if those services are provided in person. The bill as amended further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person.

The bill, as amended, provides for expanded use of asynchronous store-and-forward technologies, with or without the use of real-time, two-way audio, to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies any time the provider determines that the in-person standard of care can be met using those technologies. The amended bill adds a requirement the provider inform the patient at the outset of the encounter that the provider has determined that the standard of care can be met.

As amended, the bill revises the current requirement that the health care provider provide the patient with the provider's identity, professional credentials, and contact information at the time services are provided, to require that this information be provided at the time the patient schedules the telemedicine or telehealth encounter, if the provider is known at that time. If the provider is not known, the information is to be provided at the time of the encounter, but the patient is to be informed at the time of scheduling that the provider may not be a physician. At the time the provider initiates the telemedicine or telehealth encounter, if the provider is not a physician and the patient requests that the encounter be with a physician, the provider will be required to assist the patient in scheduling a telemedicine or telehealth encounter with a physician.

Current law requires that the patient's medical information be forwarded to the patient's primary care provider or another health care provider, if so requested by the patient. As amended, the bill additionally requires that the patient's medical information be recorded in the patient's electronic health record.

As amended, the bill adds language clarifying that the provider is to assist the patient in finding a primary care provider if so requested by the patient, and clarifying that, when scheduling the patient for

appropriate follow-up services, follow-up services may include in-person services.

The bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

As amended, the bill requires the Commissioner of Banking and Insurance to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to those requirements. The commissioner will be required to submit to the Governor and the Legislature, within one year after the effective date of the bill, a report that includes the commissioner's findings and recommendations.

As amended, the bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not ordinarily have access to those devices, programs, or technologies. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program established pursuant to this section. The bill specifies that the appropriated funds may only be expended on acquiring electronic communication and information devices, programs, and technologies for use by patients, and in no case are the funds to be used to provide any form of direct reimbursement to an individual provider for physical or behavioral health care services provided to a patient using telemedicine or telehealth, or to provide reimbursement for any electronic communication or information device, program, or technology for which payment may be made or covered or for which reimbursement is provided by a health benefits plan or by any other State or federal program. As amended, the bill specifies that nothing in its provisions is to be construed to require a health benefits plan, the State Health Benefits Plan, or the

School Employees' Health Benefits plan to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

As amended, the provisions of the bill revising the coverage mandates for telemedicine and telehealth will not take effect until January 1, 2022, and will apply to all plans and contracts issued or renewed after that date. The remainder of the bill will take effect immediately.

COMMITTEE AMENDMENTS:

The committee amendments revise language requiring health benefits plans to provide coverage for "all forms of physical and behavioral health care services provided using telemedicine and telehealth" to remove the phrase "all forms of," and to clarify that coverage applies only to the extent that the services are otherwise covered when provided on an in-person basis in New Jersey.

The committee amendments add language clarifying that if telemedicine and telehealth organization does not provide a given service on an in-person basis, the coverage mandates set forth in the bill do not apply.

The committee amendments revise a provision prohibiting restrictions on the types of electronic or technological platforms used for telemedicine and telehealth to provide plans may not impose coverage restrictions on any electronic or technological program that the federal Centers for Medicare and Medicaid Services has approved for use with the federal Medicare program that allows the provider to meet standard of care requirements.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on services provided using telemedicine and telehealth than would apply when those services are provided in person.

The committee amendments revise the requirements for providing services using asynchronous store-and-forward technologies to allow for the technologies to be used with or without real-time two-way audio.

The committee amendments revise a requirement that a provider using asynchronous store-and-forward technologies to provide services using telemedicine and telehealth obtain a written concurrence from the patient that standard of care requirements can be met, to instead just require the provider to advise the patient at the outset of the encounter that the provider has determined standard of care requirements can be met.

The committee amendments revise the requirement for providers to furnish the patient with the provider's identity, professional credentials, and contact information at the time services are provided

to instead require this information to be provided at the time services are scheduled, if the provider is known at that time. If the provider is not known, the patient is to be advised the provider may not be a physician. If the provider is not a physician, and the patient requests a telemedicine or telehealth visit with a physician, the provider will be required to assist the patient in scheduling a telemedicine or telehealth encounter with a physician. The committee amendments remove a requirement that non-physicians obtain a written acknowledgment and consent from the patient prior to proceeding with a telemedicine or telehealth encounter.

The committee amendments add a requirement that the patient's medical information be included in the patient's medical record at the end of the telemedicine encounter, and clarify that if the patient requests assistance with finding a primary care provider, the individual providing telemedicine or telehealth services is required to assist the patient in doing so. The committee amendments further clarify that appropriate follow-up services may include in-person services.

The committee amendments add a requirement for the Commissioner of Banking and Insurance to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to network adequacy requirements.

The committee amendments revise the requirements for the appropriation being made under the bill to clarify that the appropriation may only be used to assist patients to acquire the devices, programs, or technologies they need to engage in a telemedicine or telehealth encounter, and that the appropriation is in no way to be used to provide direct reimbursements to providers for health care services provided using telemedicine or telehealth. The amendments further clarify that no reimbursement is to be provided if the devices, programs, or technologies are covered or otherwise reimbursed by any other source, including health insurance and other government programs. The amendments specify that nothing in the bill is to be construed to require health benefits plans to cover the cost of furnishing patients with electronic communication or information devices, programs, or technologies if coverage would not ordinarily be provided under the contract.

The committee amendments revise the effective date to provide that the revisions to the insurance coverage mandates for telemedicine and telehealth services will not take effect until January 1, 2022, and will apply to plans and contracts issued or renewed on or after that date.

FISCAL IMPACT:

Fiscal information is not currently available for this bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 2559

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Senate Bill No. 2559 (2R), with committee amendments.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The amended bill provides that, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply. Similarly, the pay parity requirements will not apply to physical health care services provided using telemedicine or telehealth utilizing an audio-only platform; the pay parity requirements will continue to apply to behavioral health care services regardless of the platform used.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP) from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, that: 1) allows the provider to meet standard of care requirements; and 2) is compliant with federal health privacy rules.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, and from limiting

coverage only to services provided by select third party telemedicine or telehealth providers.

As amended, the bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person and from imposing other requirements for the use of telemedicine or telehealth that are more restrictive than the requirements that apply when the service is provided in person.

As amended, the bill prohibits health benefits plans, the SHBP, and the SEHBP from using telemedicine and telehealth to meet network adequacy requirements for physical health care services.

As amended, the bill specifies that nothing in the telemedicine law is to be construed to restrict the right of a patient to receive health care services on an in-person basis upon request, and no patient may be required to engage in a telemedicine or telehealth encounter to receive health care services if those same services are available, in person, from a provider that is reasonably accessible to the patient.

The bill, as amended, provides for expanded use of asynchronous store-and-forward technologies, with or without the use of real-time, two-way audio, to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person.

The bill revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies, with or without real-time, two-way audio, any time the provider determines that the in-person standard of care can be met using those technologies. The amended bill adds a requirement the provider inform the patient at the outset of the encounter that the provider has determined that the standard of care can be met. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

As amended, the bill requires that, at the time the patient requests health care services to be provided using telemedicine or telehealth, the patient shall be clearly advised that the telemedicine or telehealth encounter may be with a health care provider who is not a physician, and that the patient may specifically request that the telemedicine or telehealth encounter be scheduled with a physician. If the patient requests that the telemedicine or telehealth encounter be with a physician, the encounter is to be scheduled with a physician.

As amended, the bill revises the current requirement that the health care provider provide the patient with the provider's identity,

professional credentials, and contact information at the time services are provided, to require that this information be provided at the time the patient schedules the telemedicine or telehealth encounter, if the provider is known at that time, or upon confirmation of the scheduled telemedicine or telehealth encounter.

Current law requires that the patient's medical information be forwarded to the patient's primary care provider or another health care provider, if so requested by the patient. As amended, the bill requires that the patient's medical information be recorded in the patient's medical record, whether it is a physical record, electronic record, or both. Additionally, if so requested by the patient, the record is to be forwarded to the patient's primary care provider, health care provider of record, or another provider specified by the patient; the record would no longer be automatically transmitted to the patient's primary care provider or health care provider of record.

As amended, the bill adds language clarifying that the provider is to assist the patient in finding a primary care provider if so requested by the patient, and clarifying that, when scheduling the patient for appropriate follow-up services, follow-up services may include in-person services.

The bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

As amended, the bill repeals P.L.2020, c.3 and P.L.2020, c.7. P.L.2020, c.3 established certain requirements concerning the expanded use of telemedicine and telehealth to provide services during the coronavirus disease 2019 (COVID-19) pandemic; P.L.2020, c.7 established insurance coverage requirements for certain services, including telemedicine and telehealth, during the COVID-19 pandemic. Absent repeal, P.L.2020, c.3 and P.L.2020, c.7, would each have expired 90 days after the end of both the state of emergency and the public health emergency declared in response to the COVID-19 pandemic.

As amended, the bill establishes a new section, similar to what is currently provided in P.L.2020, c.7, requiring health benefits plans to

cover practitioner-ordered testing for COVID-19 and items and services that result in an order for a COVID-19 test. These requirements will expire upon the end of the federal state of emergency declared in response to the COVID-19 pandemic.

As amended, the bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not ordinarily have access to those devices, programs, or technologies. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program. The bill specifies that the appropriated funds may only be expended on acquiring electronic communication and information devices, programs, and technologies for use by patients, and in no case are the funds to be used to provide any form of direct reimbursement to an individual provider for physical or behavioral health care services provided to a patient using telemedicine or telehealth, or to provide reimbursement for any electronic communication or information device, program, or technology for which payment may be made or covered or for which reimbursement is provided by a health benefits plan or by any other State or federal program. The bill specifies that nothing in its provisions is to be construed to require a health benefits plan, the State Health Benefits Plan, or the School Employees' Health Benefits plan to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

As amended, the bill provides that the revised coverage mandates for telemedicine and telehealth will apply to all plans and contracts issued or renewed after that date.

As amended and reported by the committee, Senate Bill No. 2559 (2R) is identical to Assembly Bill Nos. 4179/4200 (ACS), which the committee also amended and reported on this date.

COMMITTEE AMENDMENTS:

The committee amendments add language clarifying that if telemedicine and telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage mandates set forth in the bill do not apply. The amendments also provide that the coverage mandates will not apply to physical health care services provided using audio-only platforms.

The committee amendments revise language prohibiting restrictions on the types of electronic or technological platforms used

for telemedicine and telehealth, including interactive, real-time, two-way audio, which may be combined with asynchronous store-and-forward technologies without video capabilities, to include any platform that: 1) allows the provider to meet standard of care requirements; and 2) is compliant with federal health privacy laws. The amendments remove language that would have applied the requirement to platforms approved for use with the federal Medicare program.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from limiting coverage only to service delivered by select third party telemedicine or telehealth organizations.

The committee amendments prohibit health benefits plan carriers, the SHBP, and the SEHBP from using telemedicine and telehealth to meet network adequacy requirements.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing any other requirements on services provided using telemedicine and telehealth that are more restrictive than the requirements that apply when those services are provided in person.

The committee amendments provide that nothing in the telemedicine and telehealth law is to be construed to restrict the right of a patient to receive health care services on an in-person basis upon request or to require a patient to engage in a telemedicine or telehealth encounter to receive health care services if those same services are reasonably available in person.

The committee amendments add language requiring patients be expressly told that the telemedicine or telehealth encounter may be with a provider who is not a physician, and specifying that the patient has the right to request and have the encounter scheduled with a physician.

The committee amendments revise the requirements for provider information to be provided to patients to require it be provided to patients at the time the telemedicine or telehealth encounter is scheduled, if known at that time, or at the time the scheduled encounter is confirmed.

The committee amendments revise a restriction on issuing prescriptions using telemedicine and telehealth solely based on the responses provided in an online questionnaire to provide that the restriction applies to online static questionnaires.

The committee amendments add a requirement that the patient's medical information be included in the patient's medical record at the end of the telemedicine encounter, including physical records, electronic health records, or both.

The committee amendments repeal P.L.2020, c.3 and P.L.2020, c.7, which established certain requirements for the expanded provision of services using telemedicine and telehealth and insurance coverage

for certain services provided during the COVID-19 pandemic. The amendments add a new section, similar to what was provided in P.L.2020, c.7, requiring health benefits plans to cover practitioner-ordered testing for COVID-19 and items and services that result in an order for a COVID-19 test. This requirement will expire upon the end of the federal state of emergency declared in response to the COVID-19 pandemic.

The committee amendments remove a section that would require the Commissioner of Banking and Insurance to conduct a study to determine whether telemedicine and telehealth can be appropriately used to satisfy network adequacy requirements.

The committee amendments revise the effective date to provide that the revisions to the insurance coverage mandates for telemedicine and telehealth services will apply to plans and contracts issued or renewed on or after the effective date of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

The bill additionally appropriates \$5 million from the State General Fund to the Department of Human Services (DHS) to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services.

Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program and the State Health Benefits Program (SEHBP/SHBP), the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million.

STATEMENT TO
[Third Reprint]
SENATE, No. 2559

with Assembly Floor Amendments
(Proposed by Assemblywoman DOWNEY)

ADOPTED: JUNE 21, 2021

These Assembly amendments revise an exemption from the coverage mandates for telemedicine and telehealth that apply to health benefits plan carriers, the State Medicaid and NJ FamilyCare programs, the State Health Benefits Program (SHBP), and the School Employees' Health Benefits Program (SEHBP), to provide that reimbursement rates for physical health care services provided using real-time, two-way audio without a video component, including audio-only telephone conversations, will be subject to the exception are to be determined under the contract between the insurer and the provider. The amendments also make certain non-substantive grammatical and structural changes to the coverage mandate exception language.

The amendments revise language prohibiting the SHBP and SEHBP from using telemedicine and telehealth to satisfy network adequacy requirements to clarify this prohibition will apply to contracts entered into by the SHBP and SEHBP after the effective date of the bill.

The committee amendments remove language providing that nothing in the telemedicine and telehealth law is to be construed to restrict a right of a patient to receive in-person services, and replace it with language providing that no provider can compel a patient to use telemedicine or telehealth in lieu of receiving in-person services.

The amendments revise the definition of "telemedicine" set forth in current law to remove language specifying that the term "telemedicine" does not mean the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2559

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: MARCH 30, 2021

SUMMARY

- Synopsis:** Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth; appropriates \$5 million.
- Type of Impact:** State expenditure increase from the General Fund.
- Agencies Affected:** Department of Human Services; Department of Banking and Insurance; Department of the Treasury; Department of Children and Families.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost (Medicaid)	Indeterminate Increase
State Cost (Appropriation)	\$5,000,000
State Cost (SEHBP/SHBP)	\$5,000,000 - \$50,000,000
State Revenue	Indeterminate Increase

- The Office of Legislative Services (OLS) finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.
- The bill additionally appropriates \$5 million from the State General Fund to the Department of Human Services (DHS) to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for

the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services.

- Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program and the State Health Benefits Program (SEHBP/SHBP), the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million.

BILL DESCRIPTION

This bill revises the State's telemedicine and telehealth law to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage for services provided using telemedicine and telehealth.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person. However, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth if the federal Centers for Medicare and Medicaid Services has authorized the use of the platform to provide services using telemedicine and telehealth under the federal Medicare program.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for, or refusing to provide reimbursement for, routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and reimbursement would be provided if those services are provided in person. The bill additionally prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person.

The bill provides for expanded use of asynchronous store-and-forward technologies, with or without the use of real-time, two-way audio, to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person. The bill

further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies any time the provider determines that the in-person standard of care can be met using those technologies.

This bill additionally revises the current requirement that the health care provider provide the patient with the provider's identity, professional credentials, and contact information at the time services are provided, to require that this information be provided at the time the patient schedules the telemedicine or telehealth encounter, if the provider is known at that time. If the provider is not known, the information is to be provided at the time of the encounter, but the patient is to be informed at the time of scheduling that the provider may not be a physician. At the time the provider initiates the telemedicine or telehealth encounter, if the provider is not a physician and the patient requests that the encounter be with a physician, the provider will be required to assist the patient in scheduling a telemedicine or telehealth encounter with a physician.

Current law requires that the patient's medical information be forwarded to the patient's primary care provider or another health care provider, if so requested by the patient. This bill additionally requires that the patient's medical information be recorded in the patient's electronic health record.

The bill also adds language clarifying that the provider is to assist the patient in finding a primary care provider if so requested by the patient, and clarifying that, when scheduling the patient for appropriate follow-up services, follow-up services may include in-person services.

The bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

Pursuant to this bill, the Department of Banking and Insurance (DOBI) is to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to those requirements. The DOBI will be required to submit to the Governor and the Legislature, within one year after the effective date of the bill, a report that includes the commissioner's findings and recommendations.

The bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not ordinarily have access to those devices, programs, or technologies. The DHS will be required to establish standards and protocols for health care providers to apply for reimbursement under the program established pursuant to this section. The bill specifies that the appropriated funds may only be expended on acquiring electronic communication and information devices, programs, and technologies for use by patients, and in no case are the funds to be used to provide any form of direct reimbursement to an individual provider for physical or behavioral health care services provided to a patient using telemedicine or telehealth, or to provide reimbursement for any

electronic communication or information device, program, or technology for which payment may be made or covered, or for which reimbursement is provided, by a health benefits plan or by any other State or federal program. The bill also specifies that nothing in its provisions is to be construed to require a health benefits plan, the SHBP, or the SEHBP to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

The provisions of the bill revising the coverage mandates for telemedicine and telehealth will not take effect until January 1, 2022, and will apply to all plans and contracts issued or renewed after that date. The remainder of the bill will take effect immediately.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

New Jersey FamilyCare

The OLS finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. Under current law, NJ FamilyCare reimburses for telemedicine and telehealth services up to the amount at which such services would be reimbursed if provided during an in-person encounter.

Currently, approximately 95 percent of NJ FamilyCare beneficiaries are enrolled with a Medicaid MCO, under contract with the Division of Medical Assistance and Health Services (DMAHS) in the DHS. Pursuant to the Medicaid MCO contract, the DMAHS makes a prepaid monthly capitation payment to the Medicaid MCOs for each NJ FamilyCare enrollee, in exchange for the provision of a package of covered health benefits. Moreover, the OLS does not have access to the specific reimbursement rate paid by each Medicaid MCO to providers of telemedicine and telehealth services. To the extent that Medicaid MCO reimbursement rates for telemedicine and telehealth services are lower than the rates paid for the same services provided on an in-person basis, costs to the Medicaid MCOs will increase under this bill. The OLS assumes that the Medicaid MCOs will pass these increased costs for telemedicine and telehealth services along to the State in the form of higher capitation payments in the calendar year following the bill's enactment. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

The bill additionally appropriates \$5 million from the General Fund to the DHS to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services. The bill also directs the DHS to establish protocols by which providers may apply for reimbursement under this program;

the OLS assumes that the DHS will base these protocols on those established for other DHS grant programs, thereby minimizing additional costs to the department.

SHBP/SEHBP

Pursuant to current State law, the SEHBP and the SHBP programs provide coverage of telemedicine services without cost sharing and copayment requirements during, and for up to 90 days after the end of, the public health emergency declared pursuant to Executive Order No. 103 of 2020. According to informal information from the Division of Pensions and Benefits, the SEHBP and SHBP programs currently reimburse providers of telemedicine services at a rate consistent with rates paid for in-person services delivered by an in-network provider.

Although it is not possible to precisely estimate the impact of the bill's requirements on the SEHBP and the SHBP, the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million. Moreover, because the SEHBP and the SHBP are secondary payers to the Medicare program, for retired SEHBP/SHBP enrollees who are also enrolled in Medicare, if the bill expressly requires coverage of services that are not currently covered by Medicare, this bill could result in additional costs to the State plans.

Department of Banking and Insurance

The OLS concludes that the DOBI would utilize current operational budget resources in order to promulgate regulations governing implementation of the requirements under this bill, and to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to those requirements. The DOBI is to submit to the Governor and the Legislature, within one year after the effective date of the bill, a report concerning the Commissioner's findings and recommendations.

Section: Human Services

*Analyst: Anne Hunt Cappabianca
Associate Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

STATEMENT TO
[Third Reprint]
SENATE, No. 2559

with Assembly Floor Amendments
(Proposed by Assemblywoman DOWNEY)

ADOPTED: JUNE 21, 2021

These Assembly amendments revise an exemption from the coverage mandates for telemedicine and telehealth that apply to health benefits plan carriers, the State Medicaid and NJ FamilyCare programs, the State Health Benefits Program (SHBP), and the School Employees' Health Benefits Program (SEHBP), to provide that reimbursement rates for physical health care services provided using real-time, two-way audio without a video component, including audio-only telephone conversations, will be subject to the exception are to be determined under the contract between the insurer and the provider. The amendments also make certain non-substantive grammatical and structural changes to the coverage mandate exception language.

The amendments revise language prohibiting the SHBP and SEHBP from using telemedicine and telehealth to satisfy network adequacy requirements to clarify this prohibition will apply to contracts entered into by the SHBP and SEHBP after the effective date of the bill.

The committee amendments remove language providing that nothing in the telemedicine and telehealth law is to be construed to restrict a right of a patient to receive in-person services, and replace it with language providing that no provider can compel a patient to use telemedicine or telehealth in lieu of receiving in-person services.

The amendments revise the definition of "telemedicine" set forth in current law to remove language specifying that the term "telemedicine" does not mean the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

ASSEMBLY, No. 4179

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 1, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblyman Freiman

SYNOPSIS

Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2020)

1 AN ACT concerning telemedicine and telehealth and amending
2 P.L.2017, c.117.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to
8 read as follows:

9 8. a. A carrier that offers a health benefits plan in this State
10 shall provide coverage and payment for health care services
11 delivered to a covered person through telemedicine or telehealth, on
12 the same basis as, and at a provider reimbursement rate that **[does**
13 **not exceed]** equals the provider reimbursement rate that is
14 applicable, when the services are delivered through in-person
15 contact and consultation in New Jersey. Reimbursement payments
16 under this section may be provided either to the individual
17 practitioner who delivered the reimbursable services, or to the
18 agency, facility, or organization that employs the individual
19 practitioner who delivered the reimbursable services, as appropriate.

20 b. A carrier may limit coverage to services that are delivered
21 by health care providers in the health benefits plan's network, but
22 may not charge any deductible, copayment, or coinsurance for a
23 health care service, delivered through telemedicine or telehealth, in
24 an amount that exceeds the deductible, copayment, or coinsurance
25 amount that is applicable to an in-person consultation. In no case
26 shall a carrier:

27 (1) impose any restrictions on the location or setting of the
28 distant site used by a health care provider to provide services using
29 telemedicine and telehealth; or

30 (2) restrict the ability of a provider to use any electronic or
31 technological platform, including interactive, real-time, two-way
32 audio in combination with asynchronous store-and-forward
33 technology without video capabilities, to provide services using
34 telemedicine or telehealth that:

35 (a) allows the provider to meet the same standard of care as
36 would be provided if the services were provided in person; and

37 (b) is compliant with the requirements of the federal health
38 privacy rule set forth at 45 CFR Parts 160 and 164.

39 c. Nothing in this section shall be construed to:

40 (1) prohibit a carrier from providing coverage for only those
41 services that are medically necessary, subject to the terms and
42 conditions of the covered person's health benefits plan; or

43 (2) allow a carrier to require a covered person to use
44 telemedicine or telehealth in lieu of receiving an in-person service
45 from an in-network provider.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 d. The Commissioner of Banking and Insurance shall adopt
2 rules and regulations, pursuant to the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
4 provisions of this section.

5 e. As used in this section:

6 "Asynchronous store-and-forward" means the same as that term
7 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

8 "Carrier" means the same as that term is defined by section 2 of
9 P.L.1997, c.192 (C.26:2S-2).

10 "Covered person" means the same as that term is defined by
11 section 2 of P.L.1997, c.192 (C.26:2S-2).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Health benefits plan" means the same as that term is defined by
15 section 2 of P.L.1997, c.192 (C.26:2S-2).

16 "Telehealth" means the same as that term is defined by section 1
17 of P.L.2017, c.117 (C.45:1-61).

18 "Telemedicine" means the same as that term is defined by
19 section 1 of P.L.2017, c.117 (C.45:1-61).

20 (cf: P.L.2017, c.117, s.8)

21

22 2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to
23 read as follows:

24 7. a. The State Medicaid and NJ FamilyCare programs shall
25 provide coverage and payment for health care services delivered to
26 a benefits recipient through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. The State Medicaid and NJ FamilyCare programs may limit
36 coverage to services that are delivered by participating health care
37 providers, but may not charge any deductible, copayment, or
38 coinsurance for a health care service, delivered through
39 telemedicine or telehealth, in an amount that exceeds the deductible,
40 copayment, or coinsurance amount that is applicable to an in-person
41 consultation. In no case shall the State Medicaid and NJ
42 FamilyCare programs:

43 (1) impose any restrictions on the location or setting of the
44 distant site used by a health care provider to provide services using
45 telemedicine and telehealth; or

46 (2) restrict the ability of a provider to use any electronic or
47 technological platform, including interactive, real-time, two-way
48 audio in combination with asynchronous store-and-forward

1 technology without video capabilities, to provide services using
2 telemedicine or telehealth that:

3 (a) allows the provider to meet the same standard of care as
4 would be provided if the services were provided in person; and

5 (b) is compliant with the requirements of the federal health
6 privacy rule set forth at 45 CFR Parts 160 and 164.

7 c. Nothing in this section shall be construed to:

8 (1) prohibit the State Medicaid or NJ FamilyCare programs
9 from providing coverage for only those services that are medically
10 necessary, subject to the terms and conditions of the recipient's
11 benefits plan; or

12 (2) allow the State Medicaid or NJ FamilyCare programs to
13 require a benefits recipient to use telemedicine or telehealth in lieu
14 of obtaining an in-person service from a participating health care
15 provider.

16 d. The Commissioner of Human Services, in consultation with
17 the Commissioner of Children and Families, shall apply for such
18 State plan amendments or waivers as may be necessary to
19 implement the provisions of this section and to secure federal
20 financial participation for State expenditures under the federal
21 Medicaid program and Children's Health Insurance Program.

22 e. As used in this section:

23 "Asynchronous store-and-forward" means the same as that term
24 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

25 "Benefits recipient" or "recipient" means a person who is eligible
26 for, and who is receiving, hospital or medical benefits under the
27 State Medicaid program established pursuant to P.L.1968, c.413
28 (C.30:4D-1 et seq.), or under the NJ FamilyCare program
29 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
30 appropriate.

31 "Distant site" means the same as that term is defined by section 1
32 of P.L.2017, c.117 (C.45:1-61).

33 "Participating health care provider" means a licensed or certified
34 health care provider who is registered to provide health care
35 services to benefits recipients under the State Medicaid or NJ
36 FamilyCare programs, as appropriate.

37 "Telehealth" means the same as that term is defined by section 1
38 of P.L.2017, c.117 (C.45:1-61).

39 "Telemedicine" means the same as that term is defined by
40 section 1 of P.L.2017, c.117 (C.45:1-61).

41 (cf: P.L.2017, c.117, s.7)

42

43 3. Section 2 of P.L.2017, c.117 (C.45:1-62) is amended to read
44 as follows:

45 2. a. Unless specifically prohibited or limited by federal or
46 State law, a health care provider who establishes a proper provider-
47 patient relationship with a patient may remotely provide health care
48 services to a patient through the use of telemedicine, regardless of

1 whether the health care provider is located in New Jersey at the
2 time the remote health care services are provided. A health care
3 provider may also engage in telehealth as may be necessary to
4 support and facilitate the provision of health care services to
5 patients.

6 b. Any health care provider who uses telemedicine or engages
7 in telehealth while providing health care services to a patient, shall:
8 (1) be validly licensed, certified, or registered, pursuant to Title 45
9 of the Revised Statutes, to provide such services in the State of New
10 Jersey; (2) remain subject to regulation by the appropriate New
11 Jersey State licensing board or other New Jersey State professional
12 regulatory entity; (3) act in compliance with existing requirements
13 regarding the maintenance of liability insurance; and (4) remain
14 subject to New Jersey jurisdiction if either the patient or the
15 provider is located in New Jersey at the time services are provided.

16 c. (1) Telemedicine services shall be provided using interactive,
17 real-time, two-way communication technologies.

18 (2) A health care provider engaging in telemedicine or
19 telehealth may use asynchronous store-and-forward technology to
20 allow for the electronic transmission of images, diagnostics, data,
21 and medical information; except that the health care provider may
22 use interactive, real-time, two-way audio in combination with
23 asynchronous store-and-forward technology, without video
24 capabilities, if, after accessing and reviewing the patient's medical
25 records, the provider determines that the provider is able to meet the
26 same standard of care as if the health care services were being
27 provided in person.

28 (3) The identity, professional credentials, and contact
29 information of a health care provider providing telemedicine or
30 telehealth services shall be made available to the patient during and
31 after the provision of services. The contact information shall enable
32 the patient to contact the health care provider, or a substitute health
33 care provider authorized to act on behalf of the provider who
34 provided services, for at least 72 hours following the provision of
35 services.

36 (4) A health care provider engaging in telemedicine or
37 telehealth shall review the medical history and any medical records
38 provided by the patient. For an initial encounter with the patient,
39 the provider shall review the patient's medical history and medical
40 records prior to initiating contact with the patient, as required
41 pursuant to paragraph (3) of subsection a. of section 3 of P.L.2017,
42 c.117 (C.45:1-63). In the case of a subsequent telemedicine or
43 telehealth encounter conducted pursuant to an ongoing provider-
44 patient relationship, the provider may review the information prior
45 to initiating contact with the patient or contemporaneously with the
46 telemedicine or telehealth encounter.

47 (5) Following the provision of services using telemedicine or
48 telehealth, the patient's medical information shall be made available

1 to the patient upon the patient's request, and, with the patient's
2 affirmative consent, forwarded directly to the patient's primary care
3 provider or health care provider of record, or, upon request by the
4 patient, to other health care providers. For patients without a
5 primary care provider or other health care provider of record, the
6 health care provider engaging in telemedicine or telehealth may
7 advise the patient to contact a primary care provider, and, upon
8 request by the patient, assist the patient with locating a primary care
9 provider or other in-person medical assistance that, to the extent
10 possible, is located within reasonable proximity to the patient. The
11 health care provider engaging in telemedicine or telehealth shall
12 also refer the patient to appropriate follow up care where necessary,
13 including making appropriate referrals for emergency or
14 complimentary care, if needed. Consent may be oral, written, or
15 digital in nature, provided that the chosen method of consent is
16 deemed appropriate under the standard of care.

17 d. (1) Any health care provider providing health care services
18 using telemedicine or telehealth shall be subject to the same
19 standard of care or practice standards as are applicable to in-person
20 settings. If telemedicine or telehealth services would not be
21 consistent with this standard of care, the health care provider shall
22 direct the patient to seek in-person care.

23 (2) Diagnosis, treatment, and consultation recommendations,
24 including discussions regarding the risk and benefits of the patient's
25 treatment options, which are made through the use of telemedicine
26 or telehealth, including the issuance of a prescription based on a
27 telemedicine or telehealth encounter, shall be held to the same
28 standard of care or practice standards as are applicable to in-person
29 settings. Unless the provider has established a proper provider-
30 patient relationship with the patient, a provider shall not issue a
31 prescription to a patient based solely on the responses provided in
32 an online questionnaire.

33 e. The prescription of Schedule II controlled dangerous
34 substances through the use of telemedicine or telehealth shall be
35 authorized only after an initial in-person examination of the patient,
36 as provided by regulation, and a subsequent in-person visit with the
37 patient shall be required every three months for the duration of time
38 that the patient is being prescribed the Schedule II controlled
39 dangerous substance. However, the provisions of this subsection
40 shall not apply, and the in-person examination or review of a patient
41 shall not be required, when a health care provider is prescribing a
42 stimulant which is a Schedule II controlled dangerous substance for
43 use by a minor patient under the age of 18, provided that the health
44 care provider is using interactive, real-time, two-way audio and
45 video technologies when treating the patient and the health care
46 provider has first obtained written consent for the waiver of these
47 in-person examination requirements from the minor patient's parent
48 or guardian.

1 f. A mental health screener, screening service, or screening
2 psychiatrist subject to the provisions of P.L.1987, c.116 (C.30:4-
3 27.1 et seq.):

4 (1) shall not be required to obtain a separate authorization in
5 order to engage in telemedicine or telehealth for mental health
6 screening purposes; and

7 (2) shall not be required to request and obtain a waiver from
8 existing regulations, prior to engaging in telemedicine or telehealth.

9 g. A health care provider who engages in telemedicine or
10 telehealth, as authorized by P.L.2017, c.117 (C.45:1-61 et al.), shall
11 maintain a complete record of the patient's care, and shall comply
12 with all applicable State and federal statutes and regulations for
13 recordkeeping, confidentiality, and disclosure of the patient's
14 medical record.

15 h. A health care provider shall not be subject to any
16 professional disciplinary action under Title 45 of the Revised
17 Statutes solely on the basis that the provider engaged in
18 telemedicine or telehealth pursuant to P.L.2017, c.117 (C.45:1-61 et
19 al.).

20 i. (1) In accordance with the "Administrative Procedure Act,"
21 P.L.1968, c.410 (C.52:14B-1 et seq.), the State boards or other
22 entities that, pursuant to Title 45 of the Revised Statutes, are
23 responsible for the licensure, certification, or registration of health
24 care providers in the State, shall each adopt rules and regulations
25 that are applicable to the health care providers under their
26 respective jurisdictions, as may be necessary to implement the
27 provisions of this section and facilitate the provision of
28 telemedicine and telehealth services. Such rules and regulations
29 shall, at a minimum:

30 (a) include best practices for the professional engagement in
31 telemedicine and telehealth;

32 (b) ensure that the services patients receive using telemedicine
33 or telehealth are appropriate, medically necessary, and meet current
34 quality of care standards;

35 (c) include measures to prevent fraud and abuse in connection
36 with the use of telemedicine and telehealth, including requirements
37 concerning the filing of claims and maintaining appropriate records
38 of services provided; and

39 (d) provide substantially similar metrics for evaluating quality
40 of care and patient outcomes in connection with services provided
41 using telemedicine and telehealth as currently apply to services
42 provided in person.

43 (2) In no case shall the rules and regulations adopted pursuant to
44 paragraph (1) of this subsection require a provider to conduct an
45 initial in-person visit with the patient as a condition of providing
46 services using telemedicine or telehealth.

47 (3) The failure of any licensing board to adopt rules and
48 regulations pursuant to this subsection shall not have the effect of

1 delaying the implementation of this act, and shall not prevent health
2 care providers from engaging in telemedicine or telehealth in
3 accordance with the provisions of this act and the practice act
4 applicable to the provider's professional licensure, certification, or
5 registration.

6 (cf: P.L.2017, c.117, s.2)

7

8 4. Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is amended
9 to read as follows:

10 9. a. The State Health Benefits Commission shall ensure that
11 every contract purchased thereby, which provides hospital and
12 medical expense benefits, additionally provides coverage and
13 payment for health care services delivered to a covered person
14 through telemedicine or telehealth, on the same basis as, and at a
15 provider reimbursement rate that **[does not exceed]** equals the
16 provider reimbursement rate that is applicable, when the services
17 are delivered through in-person contact and consultation in New
18 Jersey. Reimbursement payments under this section may be
19 provided either to the individual practitioner who delivered the
20 reimbursable services, or to the agency, facility, or organization that
21 employs the individual practitioner who delivered the reimbursable
22 services, as appropriate.

23 b. A health benefits contract purchased by the State Health
24 Benefits Commission may limit coverage to services that are
25 delivered by health care providers in the health benefits plan's
26 network, but may not charge any deductible, copayment, or
27 coinsurance for a health care service, delivered through
28 telemedicine or telehealth, in an amount that exceeds the deductible,
29 copayment, or coinsurance amount that is applicable to an in-person
30 consultation. In no case shall a health benefits contract purchased
31 by the State Health Benefits Commission:

32 (1) impose any restrictions on the location or setting of the
33 distant site used by a health care provider to provide services using
34 telemedicine and telehealth; or

35 (2) restrict the ability of a provider to use any electronic or
36 technological platform, including interactive, real-time, two-way
37 audio in combination with asynchronous store-and-forward
38 technology without video capabilities, to provide services using
39 telemedicine or telehealth that:

40 (a) allows the provider to meet the same standard of care as
41 would be provided if the services were provided in person; and

42 (b) is compliant with the requirements of the federal health
43 privacy rule set forth at 45 CFR Parts 160 and 164.

44 c. Nothing in this section shall be construed to:

45 (1) prohibit a health benefits contract from providing coverage
46 for only those services that are medically necessary, subject to the
47 terms and conditions of the covered person's health benefits plan; or

1 (2) allow the State Health Benefits Commission, or a contract
2 purchased thereby, to require a covered person to use telemedicine
3 or telehealth in lieu of receiving an in-person service from an in-
4 network provider.

5 d. The State Health Benefits Commission shall adopt rules and
6 regulations, pursuant to the "Administrative Procedure Act,"
7 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
8 of this section.

9 e. As used in this section:

10 "Asynchronous store-and-forward" means the same as that term
11 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Telehealth" means the same as that term is defined by section 1
15 of P.L.2017, c.117 (C.45:1-61).

16 "Telemedicine" means the same as that term is defined by
17 section 1 of P.L.2017, c.117 (C.45:1-61).

18 (cf: P.L.2017, c.117, s.9)

19

20 5. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
21 amended to read as follows:

22 10. a. The School Employees' Health Benefits Commission
23 shall ensure that every contract purchased thereby, which provides
24 hospital and medical expense benefits, additionally provides
25 coverage and payment for health care services delivered to a
26 covered person through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. A health benefits contract purchased by the School
36 Employees' Health Benefits Commission may limit coverage to
37 services that are delivered by health care providers in the health
38 benefits plan's network, but may not charge any deductible,
39 copayment, or coinsurance for a health care service, delivered
40 through telemedicine or telehealth, in an amount that exceeds the
41 deductible, copayment, or coinsurance amount that is applicable to
42 an in-person consultation. In no case shall a health benefits
43 contract purchased by the School Employees' Health Benefits
44 Commission:

45 (1) impose any restrictions on the location or setting of the
46 distant site used by a health care provider to provide services using
47 telemedicine and telehealth; or

1 provide expanded coverage for services provided using
2 telemedicine and telehealth.

3 Specifically, the bill requires that reimbursement for
4 telemedicine and telehealth services be equal to the reimbursement
5 rate for the same services when they are provided in person.
6 Current law provides telemedicine and telehealth services may be
7 reimbursed up to the amount at which the service would be
8 reimbursed if provided in person.

9 The bill also prohibits health benefits plans, Medicaid and NJ
10 FamilyCare, and the SHBP and SEHBP from imposing “place of
11 service” requirements on services provided using telemedicine and
12 telehealth, and expressly allows health care providers to provide
13 services using telemedicine and telehealth regardless of whether the
14 provider is located in New Jersey when providing services,
15 provided that the provider is otherwise licensed to practice health
16 care in New Jersey.

17 The bill prohibits health benefits plans, Medicaid and NJ
18 FamilyCare, and the SHBP and SEHBP from placing restrictions on
19 the electronic or technological platform used to provide
20 telemedicine and telehealth, if the services provided when using
21 that platform would meet the in-person standard of care for that
22 service, and if the platform is otherwise compliant with the
23 requirements of the federal health privacy rule set forth at 45 CFR
24 Parts 160 and 164.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 4179 and 4200

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 22, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Co-Sponsored by:

Assemblywoman Vainieri Huttel, Assemblymen Freiman, Giblin, Assemblywomen Reynolds-Jackson, Speight, Murphy, Assemblymen Spearman, Johnson, Assemblywoman Timberlake, Assemblyman DiMaio, Assemblywoman Stanfield, Assemblyman Zwicker and Assemblywoman Dunn

SYNOPSIS

Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Health Committee.



(Sponsorship Updated As Of: 6/9/2021)

1 AN ACT concerning telemedicine and telehealth and amending
2 P.L.2017, c.117.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 8 of P.L.2017, c.117 (C.26:2S-29) is amended to
8 read as follows:

9 8. a. A carrier that offers a health benefits plan in this State
10 shall provide coverage and payment for health care services
11 delivered to a covered person through telemedicine or telehealth, on
12 the same basis as, and at a provider reimbursement rate that **[does**
13 **not exceed]** equals the provider reimbursement rate that is
14 applicable, when the services are delivered through in-person
15 contact and consultation in New Jersey. Reimbursement payments
16 under this section may be provided either to the individual
17 practitioner who delivered the reimbursable services, or to the
18 agency, facility, or organization that employs the individual
19 practitioner who delivered the reimbursable services, as appropriate.

20 b. A carrier may limit coverage to services that are delivered
21 by health care providers in the health benefits plan's network, but
22 may not charge any deductible, copayment, or coinsurance for a
23 health care service, delivered through telemedicine or telehealth, in
24 an amount that exceeds the deductible, copayment, or coinsurance
25 amount that is applicable to an in-person consultation. In no case
26 shall a carrier:

27 (1) impose any restrictions on the location or setting of the
28 distant site used by a health care provider to provide services using
29 telemedicine and telehealth; or

30 (2) restrict the ability of a provider to use any electronic or
31 technological platform, including interactive, real-time, two-way
32 audio in combination with asynchronous store-and-forward
33 technology without video capabilities, to provide services using
34 telemedicine or telehealth that:

35 (a) allows the provider to meet the same standard of care as
36 would be provided if the services were provided in person; and

37 (b) is compliant with the requirements of the federal health
38 privacy rule set forth at 45 CFR Parts 160 and 164.

39 c. Nothing in this section shall be construed to:

40 (1) prohibit a carrier from providing coverage for only those
41 services that are medically necessary, subject to the terms and
42 conditions of the covered person's health benefits plan; or

43 (2) allow a carrier to require a covered person to use
44 telemedicine or telehealth in lieu of receiving an in-person service
45 from an in-network provider.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. The Commissioner of Banking and Insurance shall adopt
2 rules and regulations, pursuant to the "Administrative Procedure
3 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the
4 provisions of this section.

5 e. As used in this section:

6 "Asynchronous store-and-forward" means the same as that term
7 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

8 "Carrier" means the same as that term is defined by section 2 of
9 P.L.1997, c.192 (C.26:2S-2).

10 "Covered person" means the same as that term is defined by
11 section 2 of P.L.1997, c.192 (C.26:2S-2).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Health benefits plan" means the same as that term is defined by
15 section 2 of P.L.1997, c.192 (C.26:2S-2).

16 "Telehealth" means the same as that term is defined by section 1
17 of P.L.2017, c.117 (C.45:1-61).

18 "Telemedicine" means the same as that term is defined by
19 section 1 of P.L.2017, c.117 (C.45:1-61).

20 (cf: P.L.2017, c.117, s.8)

21
22 2. Section 7 of P.L.2017, c.117 (C.30:4D-6k) is amended to
23 read as follows:

24 7. a. The State Medicaid and NJ FamilyCare programs shall
25 provide coverage and payment for health care services delivered to
26 a benefits recipient through telemedicine or telehealth, on the same
27 basis as, and at a provider reimbursement rate that **【does not**
28 **exceed】** equals the provider reimbursement rate that is applicable,
29 when the services are delivered through in-person contact and
30 consultation in New Jersey. Reimbursement payments under this
31 section may be provided either to the individual practitioner who
32 delivered the reimbursable services, or to the agency, facility, or
33 organization that employs the individual practitioner who delivered
34 the reimbursable services, as appropriate.

35 b. The State Medicaid and NJ FamilyCare programs may limit
36 coverage to services that are delivered by participating health care
37 providers, but may not charge any deductible, copayment, or
38 coinsurance for a health care service, delivered through
39 telemedicine or telehealth, in an amount that exceeds the deductible,
40 copayment, or coinsurance amount that is applicable to an in-person
41 consultation. In no case shall the State Medicaid and NJ
42 FamilyCare programs:

43 (1) impose any restrictions on the location or setting of the
44 distant site used by a health care provider to provide services using
45 telemedicine and telehealth; or

46 (2) restrict the ability of a provider to use any electronic or
47 technological platform, including interactive, real-time, two-way
48 audio in combination with asynchronous store-and-forward

1 technology without video capabilities, to provide services using
2 telemedicine or telehealth that:

3 (a) allows the provider to meet the same standard of care as
4 would be provided if the services were provided in person; and

5 (b) is compliant with the requirements of the federal health
6 privacy rule set forth at 45 CFR Parts 160 and 164.

7 c. Nothing in this section shall be construed to:

8 (1) prohibit the State Medicaid or NJ FamilyCare programs
9 from providing coverage for only those services that are medically
10 necessary, subject to the terms and conditions of the recipient's
11 benefits plan; or

12 (2) allow the State Medicaid or NJ FamilyCare programs to
13 require a benefits recipient to use telemedicine or telehealth in lieu
14 of obtaining an in-person service from a participating health care
15 provider.

16 d. The Commissioner of Human Services, in consultation with
17 the Commissioner of Children and Families, shall apply for such
18 State plan amendments or waivers as may be necessary to
19 implement the provisions of this section and to secure federal
20 financial participation for State expenditures under the federal
21 Medicaid program and Children's Health Insurance Program.

22 e. As used in this section:

23 "Asynchronous store-and-forward" means the same as that term
24 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

25 "Benefits recipient" or "recipient" means a person who is eligible
26 for, and who is receiving, hospital or medical benefits under the
27 State Medicaid program established pursuant to P.L.1968, c.413
28 (C.30:4D-1 et seq.), or under the NJ FamilyCare program
29 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), as
30 appropriate.

31 "Distant site" means the same as that term is defined by section 1
32 of P.L.2017, c.117 (C.45:1-61).

33 "Participating health care provider" means a licensed or certified
34 health care provider who is registered to provide health care
35 services to benefits recipients under the State Medicaid or NJ
36 FamilyCare programs, as appropriate.

37 "Telehealth" means the same as that term is defined by section 1
38 of P.L.2017, c.117 (C.45:1-61).

39 "Telemedicine" means the same as that term is defined by
40 section 1 of P.L.2017, c.117 (C.45:1-61).

41 (cf: P.L.2017, c.117, s.7)

42

43 3. Section 9 of P.L.2017, c.117 (C.52:14-17.29w) is amended
44 to read as follows:

45 9. a. The State Health Benefits Commission shall ensure that
46 every contract purchased thereby, which provides hospital and
47 medical expense benefits, additionally provides coverage and
48 payment for health care services delivered to a covered person

1 through telemedicine or telehealth, on the same basis as, and at a
2 provider reimbursement rate that **【does not exceed】** equals the
3 provider reimbursement rate that is applicable, when the services
4 are delivered through in-person contact and consultation in New
5 Jersey. Reimbursement payments under this section may be
6 provided either to the individual practitioner who delivered the
7 reimbursable services, or to the agency, facility, or organization that
8 employs the individual practitioner who delivered the reimbursable
9 services, as appropriate.

10 b. A health benefits contract purchased by the State Health
11 Benefits Commission may limit coverage to services that are
12 delivered by health care providers in the health benefits plan's
13 network, but may not charge any deductible, copayment, or
14 coinsurance for a health care service, delivered through
15 telemedicine or telehealth, in an amount that exceeds the deductible,
16 copayment, or coinsurance amount that is applicable to an in-person
17 consultation. In no case shall a health benefits contract purchased
18 by the State Health Benefits Commission:

19 (1) impose any restrictions on the location or setting of the
20 distant site used by a health care provider to provide services using
21 telemedicine and telehealth; or

22 (2) restrict the ability of a provider to use any electronic or
23 technological platform, including interactive, real-time, two-way
24 audio in combination with asynchronous store-and-forward
25 technology without video capabilities, to provide services using
26 telemedicine or telehealth that:

27 (a) allows the provider to meet the same standard of care as
28 would be provided if the services were provided in person; and

29 (b) is compliant with the requirements of the federal health
30 privacy rule set forth at 45 CFR Parts 160 and 164.

31 c. Nothing in this section shall be construed to:

32 (1) prohibit a health benefits contract from providing coverage
33 for only those services that are medically necessary, subject to the
34 terms and conditions of the covered person's health benefits plan; or

35 (2) allow the State Health Benefits Commission, or a contract
36 purchased thereby, to require a covered person to use telemedicine
37 or telehealth in lieu of receiving an in-person service from an in-
38 network provider.

39 d. The State Health Benefits Commission shall adopt rules and
40 regulations, pursuant to the "Administrative Procedure Act,"
41 P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions
42 of this section.

43 e. As used in this section:

44 "Asynchronous store-and-forward" means the same as that term
45 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

46 "Distant site" means the same as that term is defined by section 1
47 of P.L.2017, c.117 (C.45:1-61).

1 "Telehealth" means the same as that term is defined by section 1
2 of P.L.2017, c.117 (C.45:1-61).

3 "Telemedicine" means the same as that term is defined by
4 section 1 of P.L.2017, c.117 (C.45:1-61).

5 (cf: P.L.2017, c.117, s.9)

6
7 4. Section 10 of P.L.2017, c.117 (C.52:14-17.46.6h) is
8 amended to read as follows:

9 10. a. The School Employees' Health Benefits Commission
10 shall ensure that every contract purchased thereby, which provides
11 hospital and medical expense benefits, additionally provides
12 coverage and payment for health care services delivered to a
13 covered person through telemedicine or telehealth, on the same
14 basis as, and at a provider reimbursement rate that **【does not**
15 **exceed】** equals the provider reimbursement rate that is applicable,
16 when the services are delivered through in-person contact and
17 consultation in New Jersey. Reimbursement payments under this
18 section may be provided either to the individual practitioner who
19 delivered the reimbursable services, or to the agency, facility, or
20 organization that employs the individual practitioner who delivered
21 the reimbursable services, as appropriate.

22 b. A health benefits contract purchased by the School
23 Employees' Health Benefits Commission may limit coverage to
24 services that are delivered by health care providers in the health
25 benefits plan's network, but may not charge any deductible,
26 copayment, or coinsurance for a health care service, delivered
27 through telemedicine or telehealth, in an amount that exceeds the
28 deductible, copayment, or coinsurance amount that is applicable to
29 an in-person consultation. In no case shall a health benefits
30 contract purchased by the School Employees' Health Benefits
31 Commission:

32 (1) impose any restrictions on the location or setting of the
33 distant site used by a health care provider to provide services using
34 telemedicine and telehealth; or

35 (2) restrict the ability of a provider to use any electronic or
36 technological platform, including interactive, real-time, two-way
37 audio in combination with asynchronous store-and-forward
38 technology without video capabilities, to provide services using
39 telemedicine or telehealth that:

40 (a) allows the provider to meet the same standard of care as
41 would be provided if the services were provided in person; and

42 (b) is compliant with the requirements of the federal health
43 privacy rule set forth at 45 CFR Parts 160 and 164.

44 c. Nothing in this section shall be construed to:

45 (1) prohibit a health benefits contract from providing coverage
46 for only those services that are medically necessary, subject to the
47 terms and conditions of the covered person's health benefits plan; or

1 (2) allow the School Employees' Health Benefits Commission,
2 or a contract purchased thereby, to require a covered person to use
3 telemedicine or telehealth in lieu of receiving an in-person service
4 from an in-network provider.

5 d. The School Employees' Health Benefits Commission shall
6 adopt rules and regulations, pursuant to the "Administrative
7 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement
8 the provisions of this section.

9 e. As used in this section:

10 "Asynchronous store-and-forward" means the same as that term
11 is defined by section 1 of P.L.2017, c.117 (C.45:1-61).

12 "Distant site" means the same as that term is defined by section 1
13 of P.L.2017, c.117 (C.45:1-61).

14 "Telehealth" means the same as that term is defined by section 1
15 of P.L.2017, c.117 (C.45:1-61).

16 "Telemedicine" means the same as that term is defined by
17 section 1 of P.L.2017, c.117 (C.45:1-61).

18 (cf: P.L.2017, c.117, s.10)

19

20 5. The Commissioner of Human Services shall apply for such
21 State plan amendments or waivers as may be necessary to
22 implement the provisions of this act and to secure federal financial
23 participation for State Medicaid expenditures under the federal
24 Medicaid program.

25

26 6. This act shall take effect immediately.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 4179 and 4200

STATE OF NEW JERSEY

DATED: JUNE 23, 2020

The Assembly Health Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 4179 and 4200.

This bill revises the telemedicine and telehealth law, P.L.2017, c.117 (C.45:1-1 et al.), to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage for services provided using telemedicine and telehealth.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services be equal to the reimbursement rate for the same services when they are provided in person. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth, if the services provided when using that platform would meet the in-person standard of care for that service, and if the platform is otherwise compliant with the requirements of the federal health privacy rule set forth at 45 CFR Parts 160 and 164.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 4179 and 4200**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 4179 and 4200 (ACS), with committee amendments.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The amended bill provides that, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply. Similarly, the pay parity requirements will not apply to physical health care services provided using telemedicine or telehealth utilizing an audio-only platform; the pay parity requirements will continue to apply to behavioral health care services regardless of the platform used.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP) from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, that: 1) allows the provider to meet standard of care requirements; and 2) is compliant with federal health privacy rules.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring

performed using telemedicine and telehealth, and from limiting coverage only to services provided by select third party telemedicine or telehealth providers.

As amended, the bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person and from imposing other requirements for the use of telemedicine or telehealth that are more restrictive than the requirements that apply when the service is provided in person.

As amended, the bill prohibits health benefits plans, the SHBP, and the SEHBP from using telemedicine and telehealth to meet network adequacy requirements for physical health care services.

As amended, the bill specifies that nothing in the telemedicine law is to be construed to restrict the right of a patient to receive health care services on an in-person basis upon request, and no patient may be required to engage in a telemedicine or telehealth encounter to receive health care services if those same services are available, in person, from a provider that is reasonably accessible to the patient.

The bill, as amended, provides for expanded use of asynchronous store-and-forward technologies, with or without the use of real-time, two-way audio, to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person.

The bill revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies, with or without real-time, two-way audio, any time the provider determines that the in-person standard of care can be met using those technologies. The amended bill adds a requirement the provider inform the patient at the outset of the encounter that the provider has determined that the standard of care can be met. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

As amended, the bill requires that, at the time the patient requests health care services to be provided using telemedicine or telehealth, the patient shall be clearly advised that the telemedicine or telehealth encounter may be with a health care provider who is not a physician, and that the patient may specifically request that the telemedicine or telehealth encounter be scheduled with a physician. If the patient requests that the telemedicine or telehealth encounter be with a physician, the encounter is to be scheduled with a physician.

As amended, the bill revises the current requirement that the health care provider provide the patient with the provider's identity, professional credentials, and contact information at the time services are provided, to require that this information be provided at the time the patient schedules the telemedicine or telehealth encounter, if the provider is known at that time, or upon confirmation of the scheduled telemedicine or telehealth encounter.

Current law requires that the patient's medical information be forwarded to the patient's primary care provider or another health care provider, if so requested by the patient. As amended, the bill requires that the patient's medical information be recorded in the patient's medical record, whether it is a physical record, electronic record, or both. Additionally, if so requested by the patient, the record is to be forwarded to the patient's primary care provider, health care provider of record, or another provider specified by the patient; the record would no longer be automatically transmitted to the patient's primary care provider or health care provider of record.

As amended, the bill adds language clarifying that the provider is to assist the patient in finding a primary care provider if so requested by the patient, and clarifying that, when scheduling the patient for appropriate follow-up services, follow-up services may include in-person services.

The bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

As amended, the bill repeals P.L.2020, c.3 and P.L.2020, c.7. P.L.2020, c.3 established certain requirements concerning the expanded use of telemedicine and telehealth to provide services during the coronavirus disease 2019 (COVID-19) pandemic; P.L.2020, c.7 established insurance coverage requirements for certain services, including telemedicine and telehealth, during the COVID-19 pandemic. Absent repeal, P.L.2020, c.3 and P.L.2020, c.7, would each have expired 90 days after the end of both the state of emergency and the public health emergency declared in response to the COVID-19 pandemic.

As amended, the bill establishes a new section, similar to what is currently provided in P.L.2020, c.7, requiring health benefits plans to cover practitioner-ordered testing for COVID-19 and items and services that result in an order for a COVID-19 test. These requirements will expire upon the end of the federal state of emergency declared in response to the COVID-19 pandemic.

As amended, the bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not ordinarily have access to those devices, programs, or technologies. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program. The bill specifies that the appropriated funds may only be expended on acquiring electronic communication and information devices, programs, and technologies for use by patients, and in no case are the funds to be used to provide any form of direct reimbursement to an individual provider for physical or behavioral health care services provided to a patient using telemedicine or telehealth, or to provide reimbursement for any electronic communication or information device, program, or technology for which payment may be made or covered or for which reimbursement is provided by a health benefits plan or by any other State or federal program. The bill specifies that nothing in its provisions is to be construed to require a health benefits plan, the State Health Benefits Plan, or the School Employees' Health Benefits plan to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

As amended, the bill provides that the revised coverage mandates for telemedicine and telehealth will apply to all plans and contracts issued or renewed after that date.

As amended and reported by the committee, Assembly Bill No. 4179/4200 (ACS) is identical to Senate Bill No. 2559 (2R), which the committee also amended and reported on this date.

COMMITTEE AMENDMENTS:

The committee amendments add language requiring health benefits plans to provide coverage for both physical and behavioral health care services, provided that the services are otherwise covered when provided on an in-person basis in New Jersey.

The committee amendments add language clarifying that if telemedicine and telehealth organization does not provide a given

service on an in-person basis in New Jersey, the coverage mandates set forth in the bill do not apply. The amendments also provide that the coverage mandates will not apply to physical health care services provided using audio-only platforms.

The committee amendments revise new language prohibiting health benefits plans, Medicaid, the SHBP, and the SEHBP from imposing site-of-service restrictions on the location of a health care provider using telemedicine and telehealth, to additionally prohibit the plans from imposing site-of-service restrictions on the location of the patient receiving services.

The committee amendments revise language prohibiting restrictions on the types of electronic or technological platforms used for telemedicine and telehealth, including interactive, real-time, two-way audio, which may be combined with asynchronous store-and-forward technologies without video capabilities, to include any platform that: 1) allows the provider to meet standard of care requirements; and 2) is compliant with federal health privacy laws.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring, including remote patient monitoring, performed using telemedicine and telehealth.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from limiting coverage only to service delivered by select third party telemedicine or telehealth organizations.

The committee amendments prohibit health benefits plan carriers, the SHBP, and the SEHBP from using telemedicine and telehealth to meet network adequacy requirements.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on services provided using telemedicine and telehealth than would apply when those services are provided in person.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing any other requirements on services provided using telemedicine and telehealth that are more restrictive than the requirements that apply when those services are provided in person.

The committee amendments provide that nothing in the telemedicine and telehealth law is to be construed to restrict the right of a patient to receive health care services on an in-person basis upon request or to require a patient to engage in a telemedicine or telehealth encounter to receive health care services if those same services are reasonably available in person.

The committee amendments revise the requirements for providing services using asynchronous store-and-forward technologies to allow

for the technologies to be used with or without real-time two-way audio, provided standard of care requirements can be met. The provider will be required to inform the patient at the outset of the encounter that the provider believes the standard of care can be met.

The committee amendments add language requiring patients be expressly told that the telemedicine or telehealth encounter may be with a provider who is not a physician, and specifying that the patient has the right to request and have the encounter scheduled with a physician.

The committee amendments revise the requirements for provider information to be provided to patients to require it be provided to patients at the time the telemedicine or telehealth encounter is scheduled, if known at that time, or at the time the scheduled encounter is confirmed.

The committee amendments add a requirement that the patient's medical information be included in the patient's medical record at the end of the telemedicine encounter, including physical records, electronic health records, or both.

The amendments revise a requirement under current law that the patient's medical information be forwarded to the patient's primary care provider, health care provider of record, or another provider as may be requested by the patient, to instead require the medical information be transmitted to these providers only if requested by the patient. The committee amendments further clarify that appropriate follow-up services may include in-person services.

The committee amendments revise a restriction on issuing prescriptions using telemedicine and telehealth solely based on the responses provided in an online questionnaire to provide that the restriction applies to online static questionnaires.

The committee amendments add a requirement that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. The patient will not be prohibited from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event if the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

The committee amendments repeal P.L.2020, c.3 and P.L.2020, c.7, which established certain requirements for the expanded provision of services using telemedicine and telehealth and insurance coverage for certain services provided during the COVID-19 pandemic. The

amendments add a new section, similar to what was provided in P.L.2020, c.7, requiring health benefits plans to cover practitioner-ordered testing for COVID-19 and items and services that result in an order for a COVID-19 test. This requirement will expire upon the end of the federal state of emergency declared in response to the COVID-19 pandemic.

The committee amendments add a \$5 million appropriation to be used to assist patients to acquire the devices, programs, or technologies they need to engage in a telemedicine or telehealth encounter, which includes restrictions on using the funds to provide direct reimbursements to providers for health care services provided using telemedicine or telehealth or to provide reimbursement for devices, programs, or technologies that are covered or otherwise reimbursed by any other source, including health insurance and other government programs. The amendments specify that nothing in the bill is to be construed to require health benefits plans to cover the cost of furnishing patients with electronic communication or information devices, programs, or technologies if coverage would not ordinarily be provided under the contract.

The committee amendments revise the effective date to provide that the revisions to the insurance coverage mandates for telemedicine and telehealth services will apply to plans and contracts issued or renewed on or after the effective date of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

The bill additionally appropriates \$5 million from the State General Fund to the Department of Human Services (DHS) to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services.

Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program and the State Health Benefits Program (SEHBP/SHBP), the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million.

STATEMENT TO
[First Reprint]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4179

with Assembly Floor Amendments
(Proposed by Assemblywoman DOWNEY)

ADOPTED: JUNE 21, 2021

These Assembly amendments revise an exemption from the coverage mandates for telemedicine and telehealth that apply to health benefits plan carriers, the State Medicaid and NJ FamilyCare programs, the State Health Benefits Program (SHBP), and the School Employees' Health Benefits Program (SEHBP), to provide that reimbursement rates for physical health care services provided using real-time, two-way audio without a video component, including audio-only telephone conversations, will be subject to the exception are to be determined under the contract between the insurer and the provider. The amendments also make certain non-substantive grammatical and structural changes to the coverage mandate exception language.

The amendments revise language prohibiting the SHBP and SEHBP from using telemedicine and telehealth to satisfy network adequacy requirements to clarify this prohibition will apply to contracts entered into by the SHBP and SEHBP after the effective date of the bill.

The committee amendments remove language providing that nothing in the telemedicine and telehealth law is to be construed to restrict a right of a patient to receive in-person services, and replace it with language providing that no provider can compel a patient to use telemedicine or telehealth in lieu of receiving in-person services.

The amendments revise the definition of "telemedicine" set forth in current law to remove language specifying that the term "telemedicine" does not mean the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 4179 and 4200
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 29, 2021

SUMMARY

- Synopsis:** Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth; appropriates \$5 million.
- Type of Impact:** State expenditure increase from the General Fund.
- Agencies Affected:** Department of Human Services; Department of Banking and Insurance; Department of the Treasury; Department of Children and Families.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost (Medicaid)	Indeterminate Increase
State Cost (Appropriation)	\$5,000,000
State Cost (SEHBP/SHBP)	\$5,000,000 - \$50,000,000
State Cost (DOBI)	No Impact
State Revenue	Indeterminate Increase

- The Office of Legislative Services (OLS) finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

- The bill additionally appropriates \$5 million from the State General Fund to the Department of Human Services (DHS) to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services.
- Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program and the State Health Benefits Program (SEHBP/SHBP), the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million.

BILL DESCRIPTION

This bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The bill stipulates that, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply. The coverage parity requirements, moreover, will not apply in the case of a health care service provided through real-time, two way audio without a video component, including an audio-only telephone conversation. Rather, the reimbursement rate in such a case is to be determined under the contract between the provider and the carrier, provided that the contracted rate is at least 50 percent of the reimbursement rate for the same service when provided in person. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP) from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from limiting coverage only to services provided by select third party telemedicine or telehealth providers. The bill additionally prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person and from imposing other requirements for the use of telemedicine or telehealth that are more restrictive than the requirements that apply when the service is provided in person.

Under the bill, health care providers are specifically prohibited from requiring a patient to use telemedicine or telehealth in lieu of receiving services from an in-network provider.

The bill also includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not

ordinarily have access to those devices, programs, or technologies. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program. The bill specifies that nothing in its provisions is to be construed to require a health benefits plan, the State Health Benefits Plan, or the School Employees' Health Benefits plan to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

New Jersey FamilyCare

The OLS finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. Under current law, NJ FamilyCare reimburses for telemedicine and telehealth services up to the amount at which such services would be reimbursed if provided during an in-person encounter.

The bill does provide exceptions to the coverage parity requirement in certain cases, such as a physical health care service provided through real-time, two way audio without a video component, including an audio-only telephone conversation. Reimbursement in such a case would be determined by the rate established in the contract between NJ FamilyCare and the provider.

Currently, approximately 95 percent of NJ FamilyCare beneficiaries are enrolled with a Medicaid MCO, under contract with the Division of Medical Assistance and Health Services (DMAHS) in the DHS. Pursuant to the Medicaid MCO contract, the DMAHS makes a prepaid monthly capitation payment to the Medicaid MCOs for each NJ FamilyCare enrollee, in exchange for the provision of a package of covered health benefits. Moreover, the OLS does not have access to the specific reimbursement rate paid by each Medicaid MCO to providers of telemedicine and telehealth services. To the extent that Medicaid MCO reimbursement rates for telemedicine and telehealth services are lower than the rates paid for the same services provided on an in-person basis, costs to the Medicaid MCOs will increase under this bill. The OLS assumes that the Medicaid MCOs will pass these increased costs for telemedicine and telehealth services along to the State in the form of higher capitation payments in the calendar year following the bill's enactment. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

The bill additionally appropriates \$5 million from the General Fund to the DHS to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees may be reimbursed for the cost of providing temporary or ongoing access to

the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services. The bill also directs the DHS to establish protocols by which providers may apply for reimbursement under this program; the OLS assumes that the DHS will base these protocols on those established for other DHS grant programs, thereby minimizing additional costs to the department.

SHBP/SEHBP

Pursuant to current State law, the SEHBP and the SHBP programs provide coverage of telemedicine services without cost sharing and copayment requirements during, and for up to 90 days after the end of, the public health emergency declared pursuant to Executive Order No. 103 of 2020. According to informal information from the Division of Pensions and Benefits, the SEHBP and SHBP programs currently reimburse providers of telemedicine services at a rate consistent with rates paid for in-person services delivered by an in-network provider.

Although it is not possible to precisely estimate the impact of the bill's requirements on the SEHBP and the SHBP, the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million. Moreover, because the SEHBP and the SHBP are secondary payers to the Medicare program, for retired SEHBP/SHBP enrollees who are also enrolled in Medicare, if the bill expressly requires coverage of services that are not currently covered by Medicare, this bill could result in additional costs to the State plans.

Department of Banking and Insurance

The OLS concludes that the DOBI would utilize current operational budget resources in order to promulgate regulations governing implementation of the requirements under this bill.

Section: Human Services
Analyst: Anne Hunt Cappabianca
Associate Fiscal Analyst
Approved: Thomas Koenig
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BILL NO. 2559
(Fourth Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 2559 (Fourth Reprint) with my recommendations for reconsideration.

Senate Bill No. 2559 (Fourth Reprint) would require telehealth pay parity for health care services covered by (1) a carrier offering a health benefits plan in New Jersey, (2) the State Medicaid program, and (3) the State Health Benefits and School Employee Health Benefits Programs (collectively, "carriers"). Pay parity prohibits carriers from reimbursing health care providers for a service delivered via telemedicine or telehealth at a lower reimbursement rate than the reimbursement rate for that service delivered in person. Under the bill, pay parity would be required for all services that are covered and provided in-person in New Jersey. Pay parity would not apply to audio-only physical telemedicine or telehealth care services, as such services would be required to be reimbursed at no less than 50 percent of the reimbursement rate for the equivalent in-person service, but pay parity would apply to audio-only behavioral health services. The bill also prohibits restricting the locations from which services are provided or the technological platforms used, imposes restrictions on carriers related to coverage and utilization management, and establishes certain notice obligations on health care providers when delivering telehealth or telemedicine services. Finally, the bill repeals and replaces statutes related to the provision of tests and health care during the Coronavirus disease 2019 ("COVID-19") emergency.

I commend the bill's sponsors for their commitment to expanding access to telehealth and telemedicine and for their support of New Jersey health care providers, who have heroically

cared for New Jerseyans during the COVID-19 pandemic. The pandemic has sparked massive investments in telehealth and telemedicine capabilities over the past 18 months as in-person contact was limited and utilization of telehealth and telemedicine increased exponentially. To ensure the continuity of care for patients and revenue stability for providers, the Department of Banking and Insurance ("DOBI") acted quickly to issue a bulletin instituting pay parity for telemedicine and telehealth. DOBI's pay parity requirement will expire on January 11, 2022, unless the Legislature and I agree to extend it 90 more days. See P.L.2021, c.103.

There are many ways in which the recent shift towards telehealth and telemedicine has been overwhelmingly positive. Telehealth provides patients flexibility regarding when and from whom they receive care, thereby expanding access and, in many cases, improving outcomes. This is particularly true for patients living in underserved communities. Those who support making pay parity permanent argue that the policy is necessary to preserve and continue this progress because New Jersey providers do not see cost savings from telehealth and will be disincentivized from offering it if it is reimbursed at a lower rate than in-person care.

While I wholeheartedly support expanding telehealth and telemedicine access and believe that New Jersey should be a national leader in innovative health care policy, I have reservations about making permanent a measure that was intended as a stopgap to preserve public health during an unprecedented emergency. To start, approving this bill would amount to a very heavy thumb on the scale in favor of providers vis-à-vis carriers, in an area traditionally left to private negotiations. Moreover, the cost to carriers - which would be felt both by those paying

premiums and taxpayers alike - could be substantial. And, while the cost of providing telehealth may be the same as or higher than the cost of providing in-person care in the short term, providers could realize significant cost savings over the long term, as expanding telehealth options might bring reductions in clinical space, support staff, and other expenses.

I am also concerned about the bill's restrictions on cost containment measures, which include prohibiting more restrictive utilization management techniques for telehealth. These restrictions may eliminate the flexibility needed to adjust to the challenges of new technologies and methods of care.

Most importantly, we do not yet have a full understanding of whether or how pay parity could negatively affect patients. Notably, the federal Centers for Medicare & Medicaid Services has not yet taken a permanent position on pay parity. And, although providers must meet the same standard of care for telehealth as for in-person care, the quality of care could be impacted. In the short term, the flexibility afforded by expanded access to telehealth has greatly benefited New Jersey residents who may not have the time or resources to receive in-person care when local in-network options are limited. But I am concerned that in the long term, pay parity could over-incentivize telehealth, further limiting in-person options. This could be especially detrimental for those in underserved communities.

After careful consideration, I am not confident that this bill achieves the necessary equilibrium between continuing to prioritize in-person care and incentivizing telehealth when it will increase access and improve outcomes for patients. To be sure, we are presented with a pivotal opportunity for the State to enter the next generation of health care. But we must rigorously

evaluate the consequences of pay parity before enacting a permanent change. I am thus recommending that Senate Bill No. 2559 (Fourth Reprint) be amended to require the Department of Health ("DOH") to, within the next 18 months, assess pay parity and make a policy recommendation as to whether and under what circumstances pay parity should continue, taking into account the considerations discussed above. DOH may utilize a qualified and neutral vendor for this assessment and report if it chooses.

To continue to support providers and patients as we emerge from the pandemic, I am recommending that pay parity remain in place through the end of 2023 in order to give policymakers ample time to review the results of the study and make revisions to the law, as appropriate. This approach will support both patients who may remain hesitant to receive in-person care, as well as providers who have made and will continue to make substantial investments in telehealth technology. I am also recommending amendments to remove some of the restrictions placed on carriers in order to ensure that carriers continue to have the flexibility they need to adapt to changing circumstances.

I once again commend the bill's sponsors for their commitment to increasing access to care for all New Jerseyans. I look forward to continuing to work with the Legislature, stakeholders, and advocacy groups as we develop innovative policies for affordable and equitable health care.

Therefore, I herewith return Senate Bill No. 2559 (Fourth Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 10:</u>	Delete "(1)"
<u>Page 2, Section 1, Line 12:</u>	Delete "physical and behavioral"
<u>Page 2, Section 1, Line 14:</u>	Delete "equals" and insert "does not exceed"
<u>Page 2, Section 1, Lines 27-44:</u>	Delete in their entirety

Page 3, Section 1, Lines 1-10: Delete in their entirety

Page 3, Section 1, Line 22: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 3, Section 1, Line 47: After "person" insert ", and the provider is able to meet the same standard of care as would be provided if the services were provided in person"

Page 3, Section 1, Line 47: After ";" insert "or"

Page 4, Section 1, Lines 1-2: Delete in their entirety

Page 4, Section 1, Line 3: Delete "(5)" and insert "(4)"

Page 4, Section 1, Line 11: Delete ";" and insert "."

Page 4, Section 1, Lines 12-19: Delete in their entirety

Page 4, Section 2, Line 47: Delete "(1)"

Page 4, Section 2, Line 48: Delete "physical"

Page 5, Section 2, Line 1: Delete "and behavioral"

Page 5, Section 2, Line 3: Delete "equals" and insert "does not exceed"

Page 5, Section 2, Lines 16-43: Delete in their entirety

Page 6, Section 2, Line 9: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 6, Section 2, Line 34: After "person" insert ", and the provider is able to meet the same standard of care as would be provided if the services were provided in person"

Page 6, Section 2, Line 45: Delete ";" and insert "."

Page 6, Section 2, Lines 46-47: Delete in their entirety

Page 7, Section 2, Lines 1-7: Delete in their entirety

Page 8, Section 3, Line 39: After "al.)" insert "'Telemedicine' does not include the use, in isolation, of electronic mail, instant

messaging, phone text, or facsimile transmission."

Page 9, Section 4, Line 28: Delete "if either the patient or the" and insert "."

Page 9, Section 4, Line 29: Delete in its entirety

Page 13, Section 5, Line 29: Delete "(1)"

Page 13, Section 5, Line 32: Delete "physical and behavioral"

Page 13, Section 5, Line 35: Delete "equals" and insert "does not exceed"

Page 14, Section 5, Lines 1-28: Delete in their entirety

Page 14, Section 5, Line 42: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 15, Section 5, Line 20: After "person" insert ", and the provider is able to meet the same standard of care as would be provided if the services were provided in person"

Page 15, Section 5, Line 20: After ";" insert "or"

Page 15, Section 5, Lines 21-24: Delete in their entirety

Page 15, Section 5, Line 25: Delete "(5)" and insert "(4)"

Page 15, Section 5, Line 34: Delete ";" and insert "."

Page 15, Section 5, Lines 35-44: Delete in their entirety

Page 16, Section 6, Line 20: Delete "(1)"

Page 16, Section 6, Lines 23-24: Delete "physical and behavioral"

Page 16, Section 6, Line 26: Delete "equals" and insert "does not exceed"

Page 16, Section 6, Lines 39-47: Delete in their entirety

Page 17, Section 6, Lines 1-20: Delete in their entirety

Page 17, Section 6, Line 35: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 18, Section 6, Line 13: After "person" insert ", and the provider is able to meet the same standard of care as

would be provided if the services were provided in person"

- Page 18, Section 6, Line 13: After ";" insert "or"
- Page 18, Section 6, Lines 14-17: Delete in their entirety
- Page 18, Section 6, Line 18: Delete "(5)" and insert "(4)"
- Page 18, Section 6, Line 27: Delete ";" and insert "."
- Page 18, Section 6, Lines 28-37: Delete in their entirety
- Page 19, Section 7, Line 36: After "COVID-19" insert ", but only to the extent that the items and services relate to the furnishing or administration of the test for COVID-19 or to the evaluation of the individual for purposes of determining the need of the individual for that test"
- Page 20, Section 9, Lines 1-30: Delete in their entirety
- Page 20, Line 31: Insert new section:
- "9. a. The Commissioner of Health shall conduct a study to assess whether or to what extent coverage and payment for health care services delivered to a covered person through telemedicine or telehealth should be reimbursed at a provider reimbursement rate that equals the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, as well as to assess whether telemedicine and telehealth may be appropriately used to satisfy network adequacy requirements applicable to health benefits plans in New Jersey. In conducting the study, the commissioner shall consider the effect of the availability and provision of health care services delivered through telemedicine or telehealth upon utilization, access to care, patient outcomes, and patient satisfaction; whether the delivery of services through telemedicine or telehealth affects the standard, quality, or cost of care; whether different or more stringent utilization management requirements should be adopted for coverage and payment for health care services delivered

through telehealth or telemedicine; how the incentivization of the provision of telehealth and telemedicine services impacts underserved populations; and any other consideration the commissioner deems relevant. As part of the study, the commissioner may also consider the adoption and impact of reimbursement requirements for telehealth and telemedicine in other jurisdictions. Nothing herein shall preclude the commissioner, in the commissioner's discretion, from engaging, contracting, or entering into an agreement with one or more third-party vendors to conduct all or part of the study required by this subsection. Such vendor may consider or analyze any additional factors or information the vendor deems relevant to the study, as approved by the commissioner. The commissioner or such vendor shall consult with the Commissioner of Banking and Insurance, the State Treasurer, and the Commissioner of Human Services in conducting the study.

b. The commissioner shall prepare and submit a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, no later than the first day of the eighteenth month next following the effective date of P.L. , c. (pending before the Legislature as this bill) outlining the commissioner's findings and any recommendations for legislation, administrative action, or other actions as the commissioner deems appropriate. Such recommendations shall not on their own be binding on any health benefits plan in New Jersey, State Medicaid and NJ FamilyCare, the State Health Benefits Plan, or the School Employees' Health Benefits Plan. Nothing herein shall preclude the commissioner, in the commissioner's discretion, from engaging, contracting, or entering into an agreement with one or more third-party

vendors to prepare the report required by this subsection.

c. There is appropriated from the General Fund to the Department of Health the sum of \$500,000 to effectuate the provisions of this section."

Page 20, Line 33:

Insert new section:

"11. a. For the period beginning on the effective date of P.L. , c. (pending before the Legislature as this bill) and ending on December 31, 2023, a health benefits plan in this State shall provide coverage and payment for health care services delivered to a covered person through telemedicine or telehealth at a provider reimbursement rate that equals the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered by the health benefits plan when delivered through in-person contact and consultation in New Jersey. The requirements of this paragraph shall not apply to:

(1) a health care service provided by a telemedicine or telehealth organization that does not provide the health care service on an in-person basis in New Jersey; or

(2) a physical health care service that was provided through real-time, two-way audio without a video component, whether or not utilized in combination with asynchronous store-and-forward technology, including through audio-only telephone conversation. The reimbursement rate for a physical health care service that is subject to this paragraph shall be determined under the contract with the provider; provided that the reimbursement rate for a physical health care service when provided through audio-only telephone conversation shall be at least 50 percent of the reimbursement rate for the

service when provided in person.

(3) The provisions of paragraph (2) of this subsection shall not apply to a behavioral health service that was provided through real-time, two-way audio without a video component, whether or not utilized in combination with asynchronous store-and-forward technology, including audio-only telephone conversation. A behavioral health care service described in this paragraph shall be reimbursed at a rate that equals the provider reimbursement rate for the service when provided in person.

b. For the purposes of this section:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State.

"Covered person" means the same as that term is defined under section 2 of P.L.1997, c.192 (C.26:2S-2); a "benefits recipient" as that term is defined under section 7 of P.L.2017, c.117 (C.30:4D-6k); and a person covered under a contract purchased by the State Health Benefits Commission or the School Employees' Health Benefits Commission.

"Health benefits plan" means a benefits plan which pays hospital or medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier or a contract purchased by the State Health Benefits Commission or the School Employees' Health Benefits Commission. The term shall include the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and the NJ FamilyCare program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.)."

Page 20, Section 11, Line 38:

[seal]

Delete "6" and insert "7"

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor

Governor Murphy Takes Action on Legislation

11/8/2021

TRENTON – Today, Governor Murphy signed the following bills into law:

S-249/A-1259 (Singleton, Turner/Schaer, DeCroce, Vainieri Huttle) – Requires pharmacy benefits manager providing services within Medicaid program to disclose certain information to DHS

S-324/A-3533 (Diegnan, A.M. Bucco/Benson, Freiman, DeCroce) – Authorizes operators of motor vehicles to display electronic proof of registration; requires MVC to send application for registration renewal to lessee of leased vehicle

SCS for S-399 and 1645/ACS for A-869 and 1380 (Lagana, Weinberg, Stack, Turner, Cunningham/Chiaravalloti, Holley) – Requires residential landlords to install covers on steam radiators upon request of tenant

S-537/A-3110 (Codey/McKeon, Verrelli, Vainieri Huttle) – Establishes certain minimum and maximum temperatures in rooming and boarding houses, dementia care homes, and certain nursing homes and residential health care facilities

S-550/A-1616 (Codey, Pennacchio/Lampitt, Conaway, Vainieri Huttle) – Requires certain student identification cards to contain telephone number for suicide prevention hotline

SCS for S-647/A-4825 (Greenstein, Singleton/McKeon, Karabinchak, Stanley) – Revises cybersecurity, asset management, and related reporting requirements in “Water Quality Accountability Act”

S-828/A-2101 (Lagana, Greenstein/Swain, Tully, Verrelli) – Requires public utilities and local units to provide notice prior to initiating certain infrastructure projects

S-829/A-2135 (Lagana, Singleton/Tully, Swain, Murphy) – Requires property condition disclosure statement to indicate presence of lead plumbing in residential property

S-830/A-2134 (Lagana, Greenstein/Tully, Swain, Conaway) – Requires public water systems to offer drinking water tests to customers in certain circumstances

S-894/A-3874 (Pou, Greenstein/Lopez, Vainieri Huttle) – Prohibits sale of paint or coating removal products that contain methylene chloride unless purchaser meets certain safety standards for use

S-1010/A-2103 (Lagana, Turner/Swain, Tully, Johnson) – Permits counties and municipalities to bond for alternative fuel vehicles

S-1047/A-1712 (Cryan, Pou/Burzichelli, Karabinchak, Giblin) – Concerns disclosure of certain information prior to sale of real estate

S-1148/A-1221 (Ruiz, Pou/Chaparro, Speight, Wimberly) – Requires emergency contact information and access instructions for social services hotline to be provided to tenants of multiple dwellings

S-1239/A-5131 (Codey/McKeon, Danielsen, Jasey) – Authorizes imposition of fee for connection to municipal electric distribution system

S-1259/A-2628 (Singleton/Murphy) – Concerns labor contractors

S-1726/A-795 (Lagana, Pou/Verrelli, Swain, Zwicker) – Prohibits sale of cosmetic products that have been tested on animals

- S-2727/A-4775 (Pennacchio, Pou/Vainieri Huttle, Jasey, McKnight)** – Establishes Multigenerational Family Housing Continuity Commission; provides municipal guidance to periodically analyze local advancement of commission’s senior citizen housing recommendations
- S-2861/A-5390 (Singleton, Addiego/Quijano, McKnight, Speight)** – Concerns certain restrictive covenants on real property
- S-2996/A-5019 (Testa, Sweeney/McClellan, Taliaferro, Johnson)** – Allows Board of Cosmetology and Hairstyling licensees to operate mobile facilities when providing services
- S-3000/A-4688 (Weinberg, Greenstein/Benson, Verrelli, Vainieri Huttle)** – Codifies and establishes certain network adequacy standards for pediatric primary and specialty care in Medicaid program
- S-3032/A-4855 (Sweeney, Vitale/Benson, Vainieri Huttle, Chiaravalloti)** – Requires DOH to develop Statewide plan for infection control and prevention infrastructure improvements in nursing homes
- S-3091/A-4933 (Addiego, Bateman/Burzichelli, Benson, Mukherji)** – Requires builders to offer unit concrete products that utilize carbon footprint-reducing technology as option in new construction; establishes tax incentives, and State and local purchasing requirements, for unit concrete products that utilize carbon footprint-reducing technology
- S-3253/A-2619 (Singleton, Ruiz/Murphy, Speight, Mukherji)** – Establishes alternate route to expedite certification of teachers at early college high school programs
- S-3318/A-5893 (Sweeney, Pou/Vainieri Huttle, Caputo, Karabinchak)** – Provides for voluntary contributions by taxpayers on gross income tax returns for Special Olympics New Jersey
- S-3590/A-5536 (Diegnan, Turner/Burzichelli, Giblin)** – Allows formation of limited liability companies by real estate salespersons and broker-salespersons to receive commission income and requires certain disclosures on promotions
- S-3811/A-5769 (Sweeney, Scutari/Reynolds-Jackson, Quijano, Carter)** – Establishes Kean University as public urban research university
- S-3948/A-5896 (Addiego, Gopal/Houghtaling, Downey)** – Authorizes supplemental State aid to school districts receiving certain federal Impact Aid; makes appropriation
- SJR-41/AJR-33 (Cruz-Perez, Addiego/Lopez, McKnight)** – Designates June 2 of each year as “Gun Violence Awareness Day”
- SJR-109/AJR-208 (Weinberg, Pou/McKnight, Benson, Vainieri Huttle)** – Condemns hate and violent extremism and commits to defense of safe and just democracy
- A-637/S-2670 (Caputo, Dancer, Houghtaling/Beach)** – Revises permit and license processes for sports pools operators and online sports pool operators; revises definitions of certain sports events; allows for transactional waiver for sports wagering lounge
- A-853/S-797 (Chiaravalloti, Karabinchak, McKnight/Cunningham, Doherty)** – Prohibits municipal licensure of children operating temporary businesses
- A-2311/S-356 (Calabrese, Jasey/Cryan, Codey)** – Establishes study commission to examine development of mutually beneficial relationships between institutions of higher education and municipalities
- A-3027/S-793 (Lampitt, Jasey, Houghtaling/Cunningham, Singleton)** – Commits \$3 million from Supplemental Workforce Fund for Basic Skill to NJ Community College Consortium for Workforce and Economic Development
- ACS for A-3352/S-3504 (Kennedy, Stanley, Calabrese/Smith)** – Requires certain newly constructed warehouses to be solar-ready buildings

A-3897/S-3263 (Armato, Mazzeo, DiMaso/Beach, Gopal) – Increases fee for New Jersey Waterfowl Stamps

A-4138/S-2701 (Vainieri Huttle, Benson, Giblin/Gopal, Codey) – Requires Department of Human Services to develop public emergency response plan for licensed providers of services to individuals with developmental disabilities

A-4367/S-2794 (Mukherji, Sumter, Taliaferro/Pou, Scutari) – Provides that AOC shall administer program for municipal courts allowing defendants to engage in online plea negotiations, entry of guilty plea, and payment of fine or penalty

A-4484/S-3153 (McKnight, Kennedy, Mukherji, Gove/Pou, Vitale) – Requires State Long-Term Care Ombudsman to establish long-term care advocacy and educational training program

A-4538/S-3131 (Lampitt, Quijano/Pou, A.M. Bucco) – Requires dental insurers to provide credits for reduced usage during coronavirus disease 2019 pandemic

A-4544/S-3150 (Caputo, Jasey, Murphy/Pou, Codey) – Permits school nurse who is retired from TPAF to return to employment for up to two years without reenrollment in TPAF

A-4633/S-2856 (Giblin, DeCroce/Pou) – Permits certain nonresident Certified Public Accountants to provide attest services

A-4831/S-3953 (Chaparro, Kennedy, Murphy/Scutari) – Clarifies classification in this State of criminal offenses committed in other states or under federal law

A-4836/S-3313 (Giblin, Benson, Downey/Pou, Turner) – Establishes task force to evaluate quality, efficacy, costs, and educational outcomes of online courses offered by public and independent institutions of higher education and degree-granting proprietary institutions during COVID-19 pandemic

A-4861/S-3041 (Vainieri Huttle, Armato, Verrelli/Vitale, Gopal) – Requires DOH to publish total number of COVID-19 deaths and cases in long-term care facilities

A-4869/S-2414 (Wirths, Verrelli, Space/Singleton, Madden) – Requires certain bidders for prevailing wage public work to provide proof that prevailing wage will be paid

A-5059/S-3031 (Conaway, Vainieri Huttle, Benson/Sweeney, Vitale) – Requires DOH to establish certain nursing education and professional advancement programs

A-5212/S-3638 (Conaway, Verrelli, Karabinchak/Turner, Diegnan) – Permits dentists to administer vaccines under certain circumstances

A-5751/S-3823 (Swain, Timberlake, Carter, Johnson/Weinberg, Gopal) – Expands State corrections officers training to include topics contributing to their core mission of treating inmates with dignity, fairness, and respect

A-5817/S-3852 (Tully, Swain, Benson/Lagana, Diegnan) – Revises violation and fines for approving or assigning unauthorized individuals as school bus drivers

A-5818/S-3849 (Tully, Swain, Benson/Lagana, Diegnan) – Provides for debarment of school bus contractors for certain violations; requires certain information in pupil transportation contract bid

AJR-204/SJR-105 (Jasey, Benson, Reynolds-Jackson/Cunningham, T. Kean) – Designates April of each year as “Educational Opportunity Fund (EOF) Month” in New Jersey

AJR-238/SJR-123 (Burzichelli/Sweeney, Singleton) – Urges U.S. President and EPA to take appropriate action, through waivers and other reforms, to allow blending of renewable fuels under the federal “Clean Air Act”

Governor Murphy conditionally vetoed the following bills:

S-108/A-169 (Gill, Turner/Caputo, Wirths) – **CONDITIONAL** - Concerns speech rights of student journalists at public schools and public institutions of higher education

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S-2078/A-5008 (Weinberg, Addiego/Lampitt, Benson, Vainieri Huttle) – CONDITIONAL - Establishes “Stillbirth Resource Center” and regional Fetal and Infant Mortality Review Committee, and programs for the prevention and reduction of incidences of stillbirth; expands list of professionals authorized to provide stillbirth-related care

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S-2160/A-5701 (Sweeney, Oroho, Singer/Carter, Lampitt, Jasey) – CONDITIONAL - Creates special education unit within the Office of Administrative Law; requires annual report

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S-2525/A-4274 (Rice, Singleton, Turner/Conaway, Sumter, Stanley) – CONDITIONAL - Expands powers and duties of State Chief Diversity Officer to promote diversity in State government and public contracting

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S-2559/ACS for A-4179 and 4200 (Gopal, Gill/Downey, Conaway, Benson, Houghtaling, Karabinchak) – CONDITIONAL - Revises requirements for health insurance providers and Medicaid to cover services provided using telemedicine and telehealth; appropriates \$5 million

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S-2834/A-5312 (Ruiz, Cunningham/Quijano, Lampitt, McKnight) – CONDITIONAL - Mandates training on culturally responsive teaching for all candidates for teaching certification

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S-2953/A-4785 (Sweeney, Cunningham/Quijano, Verrelli, Mukherji) – CONDITIONAL - Expands scope of inmate reentry assistance and benefits

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S-3238/A-5213 (Ruiz, Pou/Verrelli, McKnight, McKeon) – CONDITIONAL - Establishes New Jersey Easy Enrollment Health Insurance Program

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S-3488/A-5537 (Sweeney, Gopal, O'Scanlon/Burzichelli, Dancer, Spearman) – CONDITIONAL - Modifies certain procedures pertaining to school district regionalization; establishes grant program for cost reimbursement of conducting regionalization feasibility studies; and provides financial incentives for regionalization

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S-3867/A-5868 (Addiego, Singleton/Benson, Verrelli, Vainieri Huttle) – CONDITIONAL - Establishes Opioid Recovery and Remediation Fund and Opioid Recovery and Remediation Fund Advisory Council; provides for funds received from opioid settlements to support substance use disorder prevention and treatment programs

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S-3955/A-5905 (Ruiz/Timberlake, Speight, Spearman) – CONDITIONAL - Establishes “Rental Assistance Navigation Program” in DCA; makes appropriation

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A-1533/S-3321 (Spearman, Reynolds-Jackson, Schaer/Stack, Turner) – CONDITIONAL - Requires reservation of portion of tenant-based vouchers under State rental assistance program for persons displaced due to redevelopment of an affordable housing development; provides displaced persons with affordable housing priority status

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A-2455/S-2204 (Benson, Vainieri Huttie, DeAngelo/Greenstein, Oroho) – CONDITIONAL - Establishes pilot program in DOE to support FIRST Robotics Programs in school districts

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A-3062/S-1196 (Pintor Marin, Moen, Reynolds-Jackson/Pou, Cruz-Perez) – CONDITIONAL - Establishes three year Financial Empowerment Pilot Program

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A-4002/S-2257 (Caputo, Dancer, Murphy/Gopal, Sarlo) – CONDITIONAL - Allows deduction of promotional gaming credit from gross revenue on sports wagering

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A-4433/S-2715 (Greenwald, Mukherji, Lampitt/Beach, Corrado) – CONDITIONAL - Creates grant program to encourage school districts to partner with institutions of higher education in training school-based mental health services providers

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A-4435/S-2717 (Verrelli, Greenwald, Speight, Lampitt/Beach, Corrado) – CONDITIONAL - Requires DCF to give priority to certain school districts with student mental health counseling centers in awarding grants under School Based Youth Services Program

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A-4630/S-577 (Burzichelli/Madden, Singleton) – CONDITIONAL - Concerns labor harmony agreements in retail and distribution center projects

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A-4746/S-3947 (Mosquera, Lopez, Chaparro, Dunn/Vitale, Turner) – CONDITIONAL - Requires that certain provider subsidy payments for child care services be based on enrollment

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A-4834/S-3474 (Mazzeo, Quijano, Downey/Pou, Turner) – CONDITIONAL - Requires disclosure letter be included with mail falsely implying State government connection

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A-4850/S-3095 (Karabinchak, Freiman, Calabrese, Greenwald/Diegnan) – CONDITIONAL - Establishes expedited construction inspection program

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A-5033/S-3279 (Benson, Dancer, Verrelli/Gopal) – CONDITIONAL - Authorizes motor vehicle dealers to sell motor vehicles online and obtain electronic signatures for motor vehicle transactions

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A-5353/S-3421 (Conaway, Vainieri Huttie, Benson/Madden, Turner) – CONDITIONAL - Provides for certification of temporary nurse aides

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A-5599/S-3916 (Chiaravalloti, Vainieri Huttie, McKnight/Scutari, Gill) – CONDITIONAL - Establishes order of protection for current or former judge; upgrades and clarifies harassment against current or former judge; bars firearms possession by persons against whom current or former judge order of protection is entered

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A-5864/S-3939 (Speight, Pintor Marin, Chaparro, McKnight, DeAngelo, Bergen/Gopal, Cryan) – CONDITIONAL - Allows law enforcement officers to review body worn camera recordings prior to creating initial report

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Governor Murphy absolute vetoed the following bills:

S-415/A-4685 (Turner/Quijano, Verrelli) – ABSOLUTE - Requires reentry assistance to be provided to certain inmates who have served their maximum sentence

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S-969/ACS for A-2687 (Ruiz, Turner/Mazzeo, Lampitt, Moen) – CONDITIONAL - Establishes loan redemption program for teachers in certain fields to redeem loan amounts received under New Jersey College Loans to Assist State Students Loan Program through employment in certain low performing schools

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S-2261/A-4265 (Singleton/Conaway) – ABSOLUTE - Revises law relating to common interest communities

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S-2347/A-4030 (Sweeney, Greenstein, T. Kean/Mukherji, Benson, Murphy) – ABSOLUTE - Establishes Employment and Business-Related Tax Deferral Assistance Program in EDA to allow small businesses to defer the payment and remittance of certain employment and business-related taxes during COVID-19 public health emergency

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S-3093/A-4910 (Gopal, Sweeney, Singleton/Burzichelli, Johnson, Danielsen) – ABSOLUTE - Establishes county-based mitigation plan to allow businesses to operate during pandemic

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S-3505/A-5371 (Scutari, Weinberg/Mukherji, Johnson, Quijano) – ABSOLUTE - Requires assignment of unemployment claims handlers to legislative districts and partisan offices during COVID-19 pandemic state of emergency; appropriates \$1.8 million

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S-3868/A-5895 (Sarlo/Giblin) – ABSOLUTE - Concerns construction code enforcing agency fee revenue

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A-2722/S-1862 (Mukherji/Gopal, Oroho) – ABSOLUTE - Requires Commissioner of Corrections to institute 30-minute shift overlap in State correctional facilities

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A-4297/S-2631 (Houghtaling, Downey, Space/Gopal, Oroho) – ABSOLUTE - Permits conduct of bingos and raffles remotely; permits online sale of tickets for all bingos and raffles

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A-5231/S-3806 (Lopez, Coughlin, Freiman/Vitale) – ABSOLUTE - Allows county or municipal governing body to enter into revenue sharing agreement for alcoholic beverage sales by concessionaire permit holder

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