

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1585 Session of 2023

INTRODUCED BY FRANKEL, MADDEN, SANCHEZ, HILL-EVANS, McNEILL, GUENST, DELLOSO, TAKAC, KHAN, DONAHUE, BOROWSKI AND GREEN, JULY 18, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, NOVEMBER 15, 2023

AN ACT

1 Providing for teledentistry; authorizing the regulation of
2 teledentistry by the board; and providing for insurance
3 coverage of teledentistry.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Teledentistry
8 Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Audio-only medium." A prerecorded audio presentation or
14 recording.

15 "Board." The State Board of Dentistry.

16 "Children's Health Insurance ~~Program.~~ PROGRAM" OR "CHIP." <--

17 The children's health insurance program under Article XXIII-A of

1 the act of May 17, 1921 (P.L.682, No.284), known as The  
2 Insurance Company Law of 1921.

3 "Dental care provider." A dentist, dental hygienist or  
4 public health dental hygiene practitioner who holds a valid  
5 license or certificate under the Dental Law.

6 "Dental insurance policy." As follows:

7 (1) An insurance policy that pays or provides dental  
8 expense benefits for covered dental services and is delivered  
9 or issued for delivery by or through a dental insurer.

10 (2) The term includes coverage for dental benefits  
11 issued, either on a stand-alone basis or integrated, or  
12 otherwise incorporated into the terms and coverage of a  
13 health benefits plan.

14 "Dental Law." The act of May 1, 1933 (P.L.216, No.76), known  
15 as The Dental Law.

16 "Dental services." The general and usual services rendered  
17 and care administered by a dental care provider.

18 "Health Information Technology for Economic and Clinical  
19 Health Act." The Health Information Technology for Economic and  
20 Clinical Health Act (Public Law 111-5, 123 Stat. 226-279 and  
21 467-496).

22 "Health Insurance Portability and Accountability Act of  
23 1996." The Health Insurance Portability and Accountability Act  
24 of 1996 (Public Law 104-191, 110 Stat. 1936).

25 "Health insurer." An entity that holds a valid license by  
26 the Insurance Department to issue a dental insurance policy and  
27 is governed under any of the following:

28 (1) The Insurance Company Law of 1921, including section  
29 630 and Article XXIV of that act.

30 (2) The act of December 29, 1972 (P.L.1701, No.364),

1 known as the Health Maintenance Organization Act.

2 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
3 corporations).

4 (4) 40 Pa.C.S. Ch. 63 (relating to professional health  
5 services plan corporations).

6 "Interactive audio and video." Real-time two-way or  
7 multiple-way communication between a dental care provider and a  
8 patient.

9 "Medical assistance." ~~Medical assistance as provided in~~ <--  
10 ~~subarticle (f) of~~ THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED <--  
11 UNDER Article IV of the act of June 13, 1967 (P.L.31, No.21),  
12 known as the Human Services Code.

13 ~~"On call or cross coverage services." The provision of~~ <--  
14 ~~teledentistry by a dental care provider designated by another~~  
15 ~~dental care provider with a provider patient relationship to~~  
16 ~~deliver dental services on a temporary basis so long as the~~  
17 ~~designated dental care provider:~~

- 18 ~~(1) is in the same group or health system;~~  
19 ~~(2) has access to the patient's prior dental records;~~  
20 ~~(3) holds a valid license under the Dental Law; and~~  
21 ~~(4) is in a position to coordinate care.~~

22 "MEDICAL ASSISTANCE OR CHILDREN'S HEALTH INSURANCE PROGRAM <--  
23 MANAGED CARE PLAN" OR "MA OR CHIP MANAGED CARE PLAN." A HEALTH  
24 CARE PLAN THAT USES A GATEKEEPER TO MANAGE THE UTILIZATION OF  
25 HEALTH CARE SERVICES BY MEDICAL ASSISTANCE OR CHILDREN'S HEALTH  
26 INSURANCE PROGRAM ENROLLEES AND INTEGRATES THE FINANCING AND  
27 DELIVERY OF HEALTH CARE SERVICES.

28 "Participating network provider." A dental provider that has  
29 entered a contractual or operating relationship with a health  
30 insurer ~~or medical assistance or Children's Health Insurance~~ <--

1 ~~Program managed care plan to participate in one or more~~  
2 ~~designated networks of the health insurer or medical assistance~~  
3 ~~or Children's Health Insurance Program managed care plan TO~~ <--  
4 PARTICIPATE IN ONE OR MORE DESIGNATED NETWORKS OF THE HEALTH  
5 INSURER to provide dental services under the terms of a health  
6 insurance policy ~~or an agreement with the Department of Human~~ <--  
7 ~~Services.~~

8 "Remote patient monitoring." The collection of physiological  
9 data from a patient in one location, which is transmitted  
10 through electronic communication technology to a dental care  
11 provider in a different location for use in care and related  
12 support of the patient.

13 "Store-and-forward technology." As follows:

14 (1) Technology that stores and transmits or grants  
15 access to a patient's health information for review by a  
16 dental care provider who is at a different location. Health  
17 information stored and transmitted using store-and-forward  
18 technology may include radiographs, photographs, video or  
19 digital impressions.

20 (2) The term does not include the storage, transmission  
21 or use of electronic dental records without the concurrent  
22 transmission of additional health information not already  
23 present in the electronic dental records.

24 "Teledentistry." The delivery of dental services, including  
25 patient education, provided through teledentistry technologies  
26 to a patient by a dental care provider who is at a different  
27 location.

28 "Teledentistry technologies." As follows:

29 (1) Electronic information and telecommunications  
30 technology, including interactive audio and video, remote

1 patient monitoring or store-and-forward technology, that  
2 meets the requirements of the following:

3 (i) The Health Insurance Portability and  
4 Accountability Act of 1996.

5 (ii) The Health Information Technology for Economic  
6 and Clinical Health Act.

7 (iii) Other applicable Federal or State law.

8 (2) The term does not include the use of:

9 (i) Audio-only medium, voicemail, facsimile, email,  
10 instant messaging, text messaging or online questionnaire  
11 or any combination thereof.

12 (ii) A telephone call, except as provided under  
13 section 5(a)(3).

14 Section 3. Regulation of teledentistry by board.

15 (a) Requirements.--

16 (1) A dental care provider shall be authorized to  
17 practice teledentistry in accordance with this act and the  
18 corresponding regulations promulgated by the board.

19 (2) A dental care provider who engages in teledentistry  
20 in a manner that does not comply with the standards of care  
21 or rules of practice shall be subject to discipline by the  
22 board under the Dental Law.

23 (b) Regulations.--Within 24 months of the effective date of  
24 this subsection, the board shall promulgate final regulations  
25 that are consistent with this act to provide for and regulate  
26 teledentistry within the scope of practice and standard of care  
27 regulated by the board. The following apply:

28 (1) The standard of care applicable to an in-person  
29 encounter shall apply to a teledentistry encounter.

30 (2) The regulations shall:

1 (i) Consider model policies and clinical guidelines  
2 for the appropriate use of teledentistry technologies,  
3 including care coordination, preventive care and  
4 emergency care.

5 (ii) Include patient privacy and data security  
6 standards that are in compliance with:

7 (A) The Health Insurance Portability and  
8 Accountability Act of 1996.

9 (B) The Health Information Technology for  
10 Economic and Clinical Health Act.

11 (C) Other applicable Federal or State law.

12 (c) Temporary regulations.--To facilitate the prompt  
13 implementation of this act, within 270 days of the effective  
14 date of this subsection, the board shall transmit notice of  
15 temporary regulations regarding implementation of this act to  
16 the Legislative Reference Bureau for publication in the next  
17 available issue of the Pennsylvania Bulletin. The following  
18 apply:

19 (1) The temporary regulations shall not be subject to:

20 (i) Section 612 of the act of April 9, 1929  
21 (P.L.177, No.175), known as The Administrative Code of  
22 1929.

23 (ii) Sections 201, 202, 203, 204 and 205 of the act  
24 of July 31, 1968 (P.L.769, No.240), referred to as the  
25 Commonwealth Documents Law.

26 (iii) Sections 204(b) and 301(10) of the act of  
27 October 15, 1980 (P.L.950, No.164), known as the  
28 Commonwealth Attorneys Act.

29 (iv) The act of June 25, 1982 (P.L.633, No.181),  
30 known as the Regulatory Review Act.

1           (2) The temporary regulations shall expire no later than  
2           24 months following publication of temporary regulations.  
3           Regulations adopted after this period shall be promulgated as  
4           provided by law.

5           (d) Construction.--The provisions of this act shall be in  
6           full force and effect even if the board has not yet published  
7           temporary regulations or implemented the regulations required  
8           under this section.

9           Section 4. Compliance.

10          A dental care provider providing teledentistry services to an  
11          individual located within this Commonwealth shall comply with  
12          all applicable Federal and State laws and regulations and shall  
13          hold a valid license by the board. Failure to hold a valid  
14          license shall subject the dental care provider to discipline by  
15          the board for unlicensed practice under the Dental Law.

16          Section 5. Evaluation and treatment.

17          (a) Requirements.--Except as provided under subsection (b),  
18          a dental care provider who provides teledentistry to an  
19          individual located in this Commonwealth shall:

20               (1) For a teledentistry encounter in which the dental  
21               care provider does not have an established provider-patient  
22               relationship:

23                       (i) verify the state location and identity of the  
24                       individual receiving dental care by requesting that the  
25                       patient provide at least two patient identifiers, such as  
26                       name and date of birth; and

27                       (ii) disclose the dental care provider's identity,  
28                       geographic location, license number and dental specialty  
29                       or applicable credentials.

30               (2) Obtain informed consent regarding the use of

1 teledentistry technologies from the individual or other  
2 person acting in a dental care decision-making capacity for  
3 the individual. The individual or other person acting in a  
4 dental care decision-making capacity, including the parent or  
5 legal guardian of a child in accordance with the act of  
6 February 13, 1970 (P.L.19, No.10), entitled "An act enabling  
7 certain minors to consent to medical, dental and health  
8 services, declaring consent unnecessary under certain  
9 circumstances," has the right to choose the form of service  
10 delivery, which includes the right to refuse teledentistry  
11 services without jeopardizing the individual's access to  
12 other available services.

13 (3) Perform an appropriate clinical examination or  
14 assessment using teledentistry technologies. The following  
15 apply:

16 (i) The dental care provider may utilize interactive  
17 audio without the requirement of interactive video if it  
18 is used in conjunction with store-and-forward technology  
19 and, after access and review of the patient's medical  
20 records, the dental care provider determines that the  
21 dental care provider is able to meet the appropriate  
22 ~~legal~~ standard of care. <--

23 (ii) If the dental care provider utilizes  
24 interactive audio without interactive video, the dental  
25 care provider shall inform the patient that the patient  
26 has the option to request interactive audio and video.

27 (4) Establish a diagnosis and treatment plan or execute  
28 a treatment plan, including care coordination or referrals,  
29 unless inconsistent with the ~~legal~~ standard of care. <--

30 (5) Create and maintain an electronic dental record or

1 update an existing electronic dental record for the patient  
2 within 24 hours. An electronic dental record shall be  
3 maintained in accordance with electronic medical records  
4 privacy rules under the Health Insurance Portability and  
5 Accountability Act of 1996 and other applicable Federal or  
6 State laws.

7 (6) Provide a visit summary to the individual.

8 (7) Have an emergency action plan in place for dental  
9 emergencies and referrals or care coordination.

10 (b) Limitations on treatment.--Teledentistry services shall  
11 be subject to the same ~~legal~~ standard of care applicable to an <--  
12 in-person encounter.

13 Section 6. Insurance coverage of teledentistry.

14 (a) Insurance coverage and reimbursement.--

15 (1) A dental insurance policy utilizing a provider  
16 network that is issued, delivered, executed or renewed in  
17 this Commonwealth after the effective date of this section  
18 shall provide coverage for both medically necessary and  
19 preventive teledentistry delivered by a dental care provider  
20 who provides a covered service via teledentistry consistent  
21 with the health insurer's dental policies. A dental insurance  
22 policy may not exclude a dental service from coverage solely  
23 because the service is provided through teledentistry.

24 (2) Subject to paragraph (1), a health insurer shall  
25 reimburse a participating network provider for covered dental  
26 services delivered through teledentistry and pursuant to a  
27 health insurance policy in accordance with the terms and  
28 conditions of the participation agreement as negotiated  
29 between the health insurer and the participating network  
30 provider. A participation agreement that includes

1 reimbursement for covered dental services delivered through  
2 teledentistry may not prohibit reimbursement solely because a  
3 dental service is provided by teledentistry. Reimbursement  
4 may not be conditioned upon the use of an exclusive  
5 proprietary teledentistry technology or teledentistry vendor.

6 (b) Applicability.--

7 (1) Subsection (a) shall not apply if the teledentistry-  
8 enabling device, technology or service fails to comply with  
9 applicable law or regulatory guidance.

10 (2) For a dental insurance policy for which either rates  
11 or forms are required to be filed with the Federal Government  
12 or the Insurance Department, this section shall apply to a  
13 policy for which a form or rate is first filed on or after  
14 180 days after the effective date of this section.

15 (3) For a dental insurance policy for which neither  
16 rates nor forms are required to be filed with the Federal  
17 Government or the Insurance Department, this section shall  
18 apply to a policy issued or renewed on or after 180 days  
19 after the effective date of this section.

20 (c) Construction.--Nothing under this section shall be  
21 construed to:

22 (1) Prohibit a health insurer from reimbursing other  
23 dental providers for covered services provided via  
24 teledentistry.

25 (2) Require a health insurer to reimburse an out-of-  
26 network dental care provider for teledentistry.

27 (3) Require an insurer to reimburse a participating  
28 network provider if the provision of the dental service  
29 through teledentistry would be inconsistent with the ~~legal~~ <--  
30 standard of care.

1 ~~Section 7. Medical assistance program reimbursement.~~ <--

2 ~~(a) Medical assistance payment. Medical assistance payments~~  
3 ~~shall be made on behalf of eligible individuals for~~  
4 ~~teledentistry, consistent with Federal law, as specified under~~  
5 ~~this act, if the service would be covered through an in person~~  
6 ~~encounter.~~

7 ~~(b) Applicability.~~

8 ~~(1) To perform teledentistry services, a dental care~~  
9 ~~provider must use technology platforms that are compliant~~  
10 ~~with the Health Insurance Portability and Accountability Act~~  
11 ~~of 1996.~~

12 ~~(2) Teledentistry services must be consistent with the~~  
13 ~~legal standard of care.~~

14 ~~Section 8. Children's Health Insurance Program reimbursement.~~

15 ~~(a) Children's Health Insurance Program payment. Children's~~  
16 ~~Health Insurance Program payments shall be made on behalf of~~  
17 ~~eligible individuals for teledentistry, consistent with Federal~~  
18 ~~law, as specified under this act if the service would be covered~~  
19 ~~through an in person encounter.~~

20 ~~(b) Applicability.~~

21 ~~(1) To perform teledentistry services, a dental care~~  
22 ~~provider must use technology platforms that are compliant~~  
23 ~~with the Health Insurance Portability and Accountability Act~~  
24 ~~of 1996.~~

25 ~~(2) Teledentistry services must be consistent with the~~  
26 ~~legal standard of care.~~

27 SECTION 7. MEDICAL ASSISTANCE AND CHILDREN'S HEALTH INSURANCE <--

28 PROGRAM COVERAGE.

29 (A) GENERAL RULE.--MEDICAL ASSISTANCE AND CHIP PAYMENTS  
30 SHALL BE MADE FOR MEDICALLY NECESSARY SERVICES IF ALL OF THE

1 FOLLOWING APPLY:

2 (1) IF THE SERVICES THROUGH TELEDENTISTRY WOULD BE  
3 COVERED THROUGH AN IN-PERSON ENCOUNTER.

4 (2) A SERVICE THROUGH TELEDENTISTRY IS CONSISTENT WITH  
5 FEDERAL LAW, THE LAWS OF THIS COMMONWEALTH AND APPLICABLE  
6 REGULATIONS AND GUIDANCE.

7 (3) FEDERAL APPROVAL, IF NECESSARY, HAS BEEN RECEIVED BY  
8 THE DEPARTMENT OF HUMAN SERVICES.

9 (B) APPLICABILITY.--

10 (1) SUBSECTION (A) SHALL NOT APPLY IF THE TELEDENTISTRY  
11 TECHNOLOGY FAILS TO COMPLY WITH APPLICABLE STATUTE,  
12 REGULATIONS AND DEPARTMENTAL GUIDANCE.

13 (2) NOTHING IN THIS BILL SHALL REQUIRE MEDICAL  
14 ASSISTANCE OR CHIP TO PAY FOR A SERVICE UTILIZING STORE-AND-  
15 FORWARD TECHNOLOGY OR REMOTE PATIENT MONITORING.

16 (C) CONSTRUCTION.--THIS SECTION MAY NOT BE CONSTRUED TO:

17 (1) PROHIBIT A MA OR CHIP MANAGED CARE PLAN FROM MAKING  
18 PAYMENTS ON BEHALF OF ENROLLEES TO OTHER DENTAL CARE  
19 PROVIDERS FOR A COVERED SERVICE PROVIDED.

20 (2) REQUIRE MEDICAL ASSISTANCE OR CHIP TO PAY FOR A  
21 SERVICE UNDER THIS ACT IF THE DELIVERY OF THE SERVICE THROUGH  
22 TELEDENTISTRY WOULD BE INCONSISTENT WITH THE NECESSARY  
23 STANDARD OF CARE.

24 Section 9 8. Effective date.

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25 This act shall take effect as follows:

26 (1) Section 6 shall take effect upon publication in the  
27 Pennsylvania Bulletin of the temporary regulations required  
28 in section 3(c).

29 ~~(2) Section 7 shall take effect in 90 days.~~

<--

30 ~~(3)~~ (2) The remainder of this act shall take effect

<--

1 immediately.