

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
May 30, 2018
S.B. 779
PRINCIPAL CLERK

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SENATE BILL DRS35322-BCz-4B*

Short Title: Telemedicine Policy.

(Public)

Sponsors: Senator Pate (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A TELEMEDICINE POLICY FOR THE STATE OF NORTH
3 CAROLINA AND DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN
4 SERVICES TO STUDY AND REPORT RECOMMENDATIONS FOR VARIOUS
5 TELEMEDICINE STANDARDS, AS RECOMMENDED BY THE JOINT
6 LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN SERVICES.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 90 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 1L.

11 "North Carolina Telemedicine Practice Act.

12 "§ 90-21.130. Title.

13 This Article shall be known and may be cited as the "North Carolina Telemedicine Practice
14 Act."

15 "§ 90-21.131. Definitions.

16 The following definitions apply in this Article:

- 17 (1) Business associate. – As defined in 45 C.F.R. § 160.103.
18 (2) Business associate contract. – As defined in 45 C.F.R. § 160.103.
19 (3) Covered entity. – As defined in 45 C.F.R. § 160.103.
20 (4) Department. – The North Carolina Department of Health and Human
21 Services.
22 (5) HIE Network. – As defined in G.S. 90-414.3(8).
23 (6) In-home monitoring. – The use of a nonportable medical device or
24 equipment, in combination with an Internet connection, to collect and store
25 vital signs, or other health information, and transmit it to a health care
26 provider.
27 (7) Protected health information. – As defined in 45 C.F.R. § 160.103.
28 (8) Remote patient monitoring. – The use of a portable medical device, smart
29 phone and dedicated application software, portable monitoring sensor, or
30 other wearable technology, in combination with an Internet connection, to
31 collect and store vital signs, or other health information, and transmit it to a
32 health care provider.
33 (9) Store-and-forward imaging. – The acquisition and storing of clinical data,
34 including images, sound, or video, that is asynchronously transmitted to
35 another site for clinical evaluation.



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1 (10) Telemedicine or telehealth. – The use of electronic information and
2 telecommunication technologies to support and promote long-distance
3 clinical health care, patient and professional health-related education, public
4 health, and health administration. Technologies include video conferencing,
5 the Internet, store-and-forward imaging, streaming media, terrestrial and
6 wireless communications, remote patient monitoring, and in-home
7 monitoring. Telemedicine or telehealth does not include the provision of
8 health care services through audio-only telephone or teleconference, e-mail,
9 or facsimile.

10 **"§ 90-21.132. Practice of telemedicine.**

11 Any individual licensed as a health care provider in the State of North Carolina under
12 Chapter 90 of the General Statutes may provide health care services, consistent with the
13 provider's licensed scope of practice, via telemedicine to any individual located in the State of
14 North Carolina.

15 **"§ 90-21.133. Informed consent.**

16 (a) Before a health care provider delivers health care via telemedicine, the health care
17 provider shall obtain written or verbal informed consent from the patient. If the consent is
18 written, a copy shall be placed in the patient's medical record. If the consent is obtained
19 verbally, a notation shall be made in the patient's medical record.

20 (b) Consent to receive health care services via telemedicine is informed only if all of the
21 following conditions are satisfied:

22 (1) The patient has been informed of his or her rights when receiving
23 telemedicine treatment, including the right to stop or refuse treatment.

24 (2) The patient has been informed of his or her own responsibilities when
25 receiving telemedicine treatment.

26 (3) The telemedicine provider has established a formal complaint or grievance
27 process to resolve any potential ethical concerns or issues that might arise as
28 a result of practicing telemedicine and the patient has been informed of that
29 process.

30 (4) A description of the potential benefits, constraints, and risks of telemedicine
31 has been provided to the patient.

32 (5) The patient has been informed of what will happen in the case of technology
33 or equipment failures during telemedicine sessions, and a contingency plan
34 has been developed and communicated to the patient.

35 (6) The telemedicine provider has made a determination that the patient is
36 comfortable operating the technology being used to deliver health care
37 services via telemedicine.

38 **"§ 90-21.134. Secure handling of protected health information.**

39 (a) Covered entities and business associates engaged in the practice of telemedicine
40 shall comply with all federal and State laws and regulations to secure protected health
41 information. Any dedicated software application provided by a covered entity to a telemedicine
42 patient shall ensure that all data is stored and transmitted in accordance with all federal and
43 State laws and regulations for the secure storage and transmission of protected health
44 information.

45 (b) Before any health care provider, covered entity, or business associate engages in the
46 practice of telemedicine or handles any protected health information obtained through the
47 practice of telemedicine, the health care provider, covered entity, or business associate shall
48 first conduct risk analyses and install administrative, physical, and technical safeguards, as
49 determined to be appropriate by the Department, or the Department of Information Technology,
50 to ensure the secure handling of protected health information.

51 **"§ 90-21.135. Standard of care.**

1 (a) Each health care provider engaged in the practice of telemedicine is responsible for
2 ensuring that health care delivered to telemedicine patients adheres to the same standard of care
3 applicable to in-person patients. In addition, health care providers engaged in the practice of
4 telemedicine shall ensure all of the following as part of the standard of care for delivering
5 health care via telemedicine:

- 6 (1) All health care providers and their staff members who provide care via
7 telemedicine shall be trained in the use of telemedicine equipment and
8 technology and its operation.
- 9 (2) All telemedicine technology and equipment used by health care providers
10 must be sufficient to accurately assess, diagnose, and treat the patient;
11 however, a telemedicine provider may use physical findings obtained by a
12 physical examination of the patient by another licensed health care provider
13 as part of the assessment.
- 14 (3) All telemedicine providers shall maintain a complete record of the
15 telemedicine patient's care according to prevailing medical records
16 standards. The record must include an appropriate evaluation of the patient's
17 symptoms and all elements of the electronic professional interaction.
- 18 (4) No health care provider shall prescribe a controlled substance for the
19 treatment of pain unless that provider has, within the last 12 months,
20 conducted an in-person physical examination of the patient for the condition
21 causing the pain for which the prescription is sought."

22 **SECTION 2.(a)** By September 1, 2019, The Department of Health and Human
23 Services shall study and report to the Joint Legislative Oversight Committee on Health and
24 Human Services recommendations for telemedicine reimbursement standards for private health
25 benefit plans. In conducting this study, the Department of Health and Human Services shall (i)
26 solicit the input from the Department of Insurance and relevant stakeholders and (ii) consider at
27 least all of the following:

- 28 (1) The health benefit plan reimbursement standards of other states and the
29 results of those standards on cost and access to care.
- 30 (2) The specific telemedicine modalities for which health benefit plans should
31 be required to provide reimbursement.
- 32 (3) The areas of care for which health benefit plans should be required to
33 provide reimbursement.
- 34 (4) Whether private health benefit plans should be required to provide
35 reimbursement for health care delivered via telemedicine on the same terms
36 as reimbursement for in-person care.
- 37 (5) How to ensure the State's telemedicine reimbursement policy remains
38 flexible enough to evolve with innovation.
- 39 (6) How to best encourage market competition and ensure private health benefit
40 plans retain sufficient flexibility to realize efficiencies.
- 41 (7) Any other issues the Department deems appropriate.

42 **SECTION 2.(b)** By September 1, 2019, the Department of Health and Human
43 Services shall study and report to the Joint Legislative Oversight Committee on Health and
44 Human Services recommendations for a plan to ensure that all North Carolina residents have
45 sufficiently advanced Internet connectivity to receive health care via telemedicine. In
46 conducting this study, the Department of Health and Human Services shall solicit input from
47 the Department of Information Technology and consider at least all of the following:

- 48 (1) The best manner in which to incentivize investment in next-generation,
49 future-proof broadband infrastructure and reduce barriers to deployment of
50 that infrastructure.

- (2) How to create community-based broadband adoption, utilization, and initiatives.
- (3) How to ensure all health care providers are connected to the North Carolina HIE Network.
- (4) Any other issues the Department deems appropriate.

SECTION 2.(c) By September 1, 2019, the Department of Health and Human Services, in consultation with the North Carolina Institute of Medicine and the North Carolina Medical Board, shall study and report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on recommended performance metrics to be used by the Department of Health and Human Services in assessing the quality of telemedicine services provided in the State. In conducting this study, the Department is encouraged to examine all of the following:

- (1) The final report entitled "Creating a Framework to Support Measure Development for Telehealth" released by the National Quality Forum in August 2017.
- (2) Guidelines established by the Agency for Healthcare Research and Quality.
- (3) Any other sources the Department deems appropriate.

SECTION 2.(d) September 1, 2019, the Department of Health and Human Services shall report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on recommended State licensing standards, credentialing processes, and prescribing standards for telemedicine providers, including any proposed legislation. The report shall include at least all of the following:

- (1) A proposal for a standardized and centralized credentialing process for all providers that is consistent with the language in the 1115 Medicaid waiver submitted by the Department to the Centers for Medicare and Medicaid Services.
- (2) A recommendation as to whether North Carolina should participate in the Interstate Medical Licensure Compact formulated by the Federation of State Medical Boards.
- (3) Any other issues the Department deems appropriate.

SECTION 3. This act is effective when it becomes law.