



**PA 21-9—HB 5596**

*Public Health Committee*

## **AN ACT CONCERNING TELEHEALTH**

**SUMMARY:** This act modifies requirements for the delivery of telehealth services and insurance coverage of these services until June 30, 2023.

Among other things, it:

1. expands the types of health providers authorized to provide telehealth services;
2. allows certain telehealth providers to provide telehealth services using audio-only telephone;
3. allows certain telehealth providers to use additional information and communication technologies in accordance with federal requirements (e.g., certain third-party video communication applications, such as Apple FaceTime);
4. authorizes the Department of Public Health (DPH) commissioner to temporarily modify, waive, or suspend certain regulatory requirements to reduce the spread of COVID-19 and protect the public health;
5. establishes requirements for telehealth providers seeking payment from uninsured or underinsured patients;
6. requires insurance coverage for telehealth services and prohibits providers reimbursed for services from seeking payment from an insured patient beyond cost sharing; and
7. prohibits (a) insurance policies from excluding coverage for a telehealth platform selected by an in-network provider and (b) carriers from reducing reimbursement to a provider because services are provided through telehealth instead of in-person.

Additionally, the act permits physicians and advanced practice registered nurses (APRNs) to certify a qualifying patient's use of medical marijuana and provide follow-up care using telehealth if they comply with other statutory certification and recordkeeping requirements. They may do so notwithstanding existing laws, regulations, policies, or procedures on medical marijuana certifications (§ 7).

Lastly, the act makes a conforming change to a law requiring telehealth providers who are prescribing practitioners to issue prescriptions electronically (§ 2).

**EFFECTIVE DATE:** Upon passage

### **§§ 1, 2 & 6 — TELEHEALTH**

The act modifies requirements for health care providers who provide health services through telehealth. These changes are effective from the act's passage

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through June 30, 2023.  
*Telehealth Providers*

The act applies only to telehealth providers who are (1) in-network providers for fully-insured health plans or (2) Connecticut Medical Assistance Program (“CMAP,” i.e., Medicaid and HUSKY B) providers, including:

1. telehealth providers authorized under existing law (see BACKGROUND);
2. certified, licensed, or registered art therapists, athletic trainers, behavior analysts, dentists, genetic counselors, music therapists, nurse mid-wives, and occupational or physical therapist assistants; and
3. any of the above listed providers who (a) are appropriately licensed, certified, or registered in another U.S. state or territory, or the District of Columbia; (b) are authorized to practice telehealth under any relevant order issued by the DPH commissioner; and (c) have professional liability insurance or other indemnity against professional malpractice liability in an amount at least equal to that required for Connecticut health providers.

Until June 30, 2023, the act also requires any Connecticut entity, institution, or provider who contracts with an out-of-state telehealth provider to:

1. verify the provider’s credentials to ensure the provider is certified, licensed, or registered and in good standing in his or her home jurisdiction and
2. confirm that the telehealth provider has professional liability insurance or other indemnity against professional malpractice liability in an amount at least equal to that required for Connecticut health providers.

### *Audio-Only Telephone*

Unlike prior law, the act allows in-network and CMAP telehealth providers to provide telehealth services via audio-only telephone. Under the act and existing law, “telehealth” excludes fax, texting, and email. It includes:

1. interaction between a patient at an originating site and the telehealth provider at a distant site and
2. synchronous (real-time) interactions, asynchronous store and forward transfers (transmitting medical information from the patient to the telehealth provider for review at a later time), or remote patient monitoring.

### *Expanded CMAP Coverage*

The act authorizes the Department of Social Services (DSS) commissioner, to the extent allowed under federal law, to enable CMAP to cover applicable services provided through audio-only telehealth services. (PA 21-133 requires the DSS commissioner to cover audio-only telehealth services under certain circumstances when doing so is clinically appropriate.)

### *Service Delivery*

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Under existing law, a telehealth provider can provide telehealth services to a patient only when the provider has met certain requirements, such as (1) having access to, or knowledge of, the patient's medical history and health record and (2) conforming to his or her professional standard of care expected for in-person care appropriate for the patient's age and presenting condition.

The act requires that the provider also determine whether the (1) patient has health coverage that is fully insured, not fully insured, or provided through CMAP and (2) coverage includes telehealth services.

Additionally, the act allows telehealth providers to provide telehealth services from any location. (Under PA 21-133, this provision applies regardless of any state licensing standards and is subject to compliance with applicable federal requirements.)

### *Initial Telehealth Interactions*

Existing law requires a provider, at the first telehealth interaction with a patient, to document in the patient's medical record that he or she obtained the patient's consent after giving information about telehealth methods and limitations. Under the act, this must include information on the limited duration of the act's provisions. A patient's revocation of consent must also be documented in the patient's medical record.

### *Use of Additional Communication Technologies*

The act modifies the requirement that telehealth services and health records comply with the Health Insurance Portability and Accountability Act (HIPAA) by allowing telehealth providers to use additional information and communication technologies in accordance with HIPAA requirements for remote communication as directed by the federal Department of Health and Human Services' Office of Civil Rights (e.g., certain third-party video communication applications, such as Apple FaceTime, Skype, or Facebook Messenger).

### *Payment for Uninsured and Underinsured Patients*

The act requires a telehealth provider to determine whether the patient has health coverage for any such services provided. Under the act, the provider must accept the following as payment in full for telehealth services:

1. for patients who do not have health insurance coverage for telehealth services, an amount equal to the Medicare reimbursement rate for telehealth services or
2. for patients with health insurance coverage, the amount the carrier reimburses for telehealth services and any cost sharing (e.g., copay, coinsurance, deductible) or other out-of-pocket expense imposed by the health plan.

Under the act, a telehealth provider who determines that a patient is unable to

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pay for telehealth services must offer the patient financial assistance to the extent required under federal or state law.

### *DPH Regulatory Requirements*

Notwithstanding existing law, the act authorizes the DPH commissioner to waive, modify, or suspend regulatory requirements adopted by DPH or state licensing boards and commissions regarding health care professions, health care facilities, emergency medical services, and other specified topics. Until June 30, 2023, she may do this as she deems necessary to reduce the spread of COVID-19 and protect the public health.

## §§ 3-5 — INSURANCE COVERAGE FOR TELEHEALTH SERVICES

### *Coverage Required*

Existing law generally establishes requirements and restrictions for health insurance coverage of services provided through telehealth. The act temporarily replaces these requirements with similar but more expansive requirements for telehealth coverage from the act's passage until June 30, 2023.

As with existing law, the act requires certain commercial health insurance policies to cover medical advice, diagnosis, care, or treatment provided through telehealth to the extent that they cover those services when provided in person. It generally subjects telehealth coverage to the same terms and conditions that apply to other benefits under a health policy. Under the act and existing law, insurers, HMOs, and related entities may conduct utilization review for telehealth services in the same manner they do for in-person services, including using the same clinical review criteria.

### *Prohibitions*

Under the act and existing law, health insurance policies cannot exclude coverage solely because a service is provided through telehealth, as long as telehealth is appropriate.

The act further prohibits policies from excluding coverage for a telehealth platform that a telehealth provider selects.

The act also prohibits a telehealth provider who receives reimbursement for providing a telehealth service from seeking any payment from the insured patient except for cost sharing (e.g., copay, coinsurance, deductible). The provider must accept the amount as payment in full.

Lastly, the act prohibits health carriers (e.g., insurers and HMOs), until June 30, 2023, from reducing the amount of reimbursement they pay to telehealth providers for covered services appropriately provided through telehealth instead of in person.

### *Applicability*

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The act applies to individual and group health insurance policies in effect any time from the act's passage until June 30, 2023, that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; or (4) hospital or medical services, including those provided under an HMO plan. (Because of the federal Employee Retirement Income Security Act (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.)

### BACKGROUND

#### *Authorized Telehealth Providers*

Existing law allows the following licensed health care providers to provide health care services using telehealth: APRNs, alcohol and drug counselors, audiologists, certified dietician-nutritionists, chiropractors, clinical and master social workers, marital and family therapists, naturopaths, occupational or physical therapists, optometrists, paramedics, pharmacists, physicians, physician assistants, podiatrists, professional counselors, psychologists, registered nurses, respiratory care practitioners, and speech and language pathologists.

By law, authorized telehealth providers must provide telehealth services within their profession's scope of practice and standard of care.