As Introduced

134th General Assembly
Regular Session
2021-2022

H. B. No. 122

Representatives Fraizer, Holmes
Cosponsors: Representatives Carfagna, Hall, Seitz

A BILL

To amend sections 3902.30, 4723.94, 4731.2910, 4732.33, and 5164.95; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 4731.2910 (4743.09); and to enact sections 3701.1310, 3721.60, 4725.35, 4729.284, 4730.60, 4731.741, 4734.60, 4753.20, 4755.90, 4757.50, 4758.80, 4759.20, 4778.30, and 5119.368 of the Revised Code to establish and modify requirements regarding the provision of telehealth services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3902.30, 4723.94, 4731.2910, 4732.33, and 5164.95 be amended; section 4731.2910 (4743.09) be amended for the purpose of adopting a new section number as indicated in parentheses; and sections 3701.1310, 3721.60, 4725.35, 4729.284, 4730.60, 4731.741, 4734.60, 4753.20, 4755.90, 4757.50, 4758.80, 4759.20, 4778.30, and 5119.368 of the Revised Code be enacted to read as follows:

Sec. 3701.1310. During any declared disaster, epidemic,

pandemic, public health emergency, or public safety emergency, an individual with a developmental disability or any other permanent disability who is in need of surgery or any other health care procedure, any medical or other health care test, or any clinical care visit shall be given the opportunity to have at least one parent or legal guardian present if the presence of the individual's parent or legal guardian is necessary to alleviate any negative reaction that may be experienced by the individual who is the patient.

The director of health may take any action necessary to enforce this section.

Sec. 3721.60. (A) As used in this section, "long-term care facility" means all of the following:

(1) A home, as defined in section 3721.10 of the Revised Code;

(2) A residential facility licensed by the department of mental health and addiction services under section 5119.34 of the Revised Code;

(3) A residential facility licensed by the department of developmental disabilities under section 5123.19 of the Revised Code;

(4) A facility operated by a hospice care program licensed by the department of health under Chapter 3712. of the Revised Code that is used exclusively for care of hospice patients or any other facility in which a hospice care program provides care for hospice patients.

(B) During any declared disaster, epidemic, pandemic, public health emergency, or public safety emergency, each long-term care facility shall provide residents and their families

with a video-conference visitation option if the governor, the director of health, other government official or entity, or the long-term care facility determines that allowing in-person visits at the facility would create a risk to the health of the residents.

Sec. 3902.30. (A) As used in this section:

(1) "Cost sharing" means the cost to a covered individual under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.

(2) "Health benefit plan," "health care services," and "health plan issuer" have the same meanings as in section 3922.01 of the Revised Code.

~~(2)~~ (3) "Health care professional" ~~means any of the following:~~

~~(a) A physician licensed under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;~~

~~(b) A physician assistant licensed under Chapter 4731. of the Revised Code;~~

~~(c) An advanced practice registered nurse as defined in section 4723.01 of the Revised Code.~~ has the same meaning as in section 4743.09 of the Revised Code.

~~(3)~~ (4) "In-person health care services" means health care services delivered by a health care professional through the use of any communication method where the professional and patient are simultaneously present in the same geographic location.

~~(4) "Recipient" means a patient receiving health care~~

~~services or a health care professional with whom the provider of health care services is consulting regarding the patient.~~

(5) ~~"Telemedicine~~ "Telehealth services" ~~means a mode of providing health care services through synchronous or asynchronous information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where the recipient is located~~has the same meaning as in section 4743.09 of the Revised Code.

(B)(1) A health benefit plan shall provide coverage for ~~telemedicine~~ telehealth services on the same basis and to the same extent that the plan provides coverage for the provision of in-person health care services.

(2) A health benefit plan shall not exclude coverage for a service solely because it is provided as a ~~telemedicine~~ telehealth service.

(3) A health plan issuer shall reimburse a health care professional for a telehealth service that is covered under a patient's health benefit plan. Division (B)(3) of this section shall not be construed to require a specific reimbursement amount.

(C) A health benefit plan shall not impose any annual or lifetime benefit maximum in relation to ~~telemedicine~~ telehealth services other than such a benefit maximum imposed on all benefits offered under the plan.

~~(D) This~~ (D)(1) A health benefit plan shall not impose a cost-sharing requirement for telehealth services that exceeds the cost-sharing requirement for comparable in-person health care services.

(2)(a) A health benefit plan shall not impose a cost-sharing requirement for a communication when all of the following apply:

(i) The communication was initiated by the health care professional.

(ii) The patient consented to receive a telehealth service from that provider on any prior occasion.

(iii) The communication is conducted for the purposes of preventive health care services only.

(b) If a communication described in division (D)(2)(a) of this section is coded based on time, then only the time the health care professional spends engaged in the communication is billable.

(E) This section shall not be construed as doing ~~any~~ either of the following:

(1) ~~Prohibiting a health benefit plan from assessing cost-sharing requirements to a covered individual for telemedicine services, provided that such cost-sharing requirements for telemedicine services are not greater than those for comparable in-person health care services;~~

~~(2)~~ Requiring a health plan issuer to reimburse a health care professional for any costs or fees associated with the provision of ~~telemedicine~~ telehealth services that would be in addition to or greater than the standard reimbursement for comparable in-person health care services;

~~(3)~~ (2) Requiring a health plan issuer to reimburse a ~~telemedicine~~ telehealth provider for ~~telemedicine~~ telehealth services at the same rate as in-person services.

~~(E) This section applies to all health benefit plans issued, offered, or renewed on or after January 1, 2021.~~

(F) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to carry out the requirements of this section. Any such rules are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

Sec. 4723.94. ~~(A) As used in this section:~~

~~(1) "Facility fee" means any fee charged or billed for telemedicine services provided in a facility that is intended to compensate the facility for its operational expenses and is separate and distinct from a professional fee.~~

~~(2) "Health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.~~

~~(3) "Telemedicine services" has the same meaning as in section 3902.30 of the Revised Code.~~

~~(B)~~ An advanced practice registered nurse ~~providing telemedicine~~ may provide telehealth services ~~shall not charge a facility fee, an origination fee, or any fee associated with the cost of the equipment used to provide telemedicine services to a health plan issuer covering telemedicine services under~~ in accordance with section ~~3902.30~~ 4743.09 of the Revised Code.

Sec. 4725.35. An optometrist who holds a therapeutic pharmaceutical agents certificate issued under this chapter may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4729.284. A pharmacist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4730.60. A physician assistant may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4731.741. A physician may provide telehealth services in accordance with sections 4743.09 of the Revised Code.

Sec. 4732.33. (A) The state board of psychology shall adopt rules governing the use of telepsychology for the purpose of protecting the welfare of recipients of telepsychology services and establishing requirements for the responsible use of telepsychology in the practice of psychology and school psychology, including supervision of persons registered with the state board of psychology as described in division (B) of section 4732.22 of the Revised Code. The rules shall be consistent with section 4743.09 of the Revised Code.

(B) A psychologist or school psychologist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4734.60. A chiropractor may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. ~~4731.2910~~ 4743.09. (A) As used in this section:

(1) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, and generally is not useful to a person in the absence of illness or injury. "Durable medical equipment" includes a remote monitoring device utilized by a physician, physician assistant, or advanced practice registered nurse in accordance with this section.

(2) "Facility fee" ~~has the same meaning as in section 4723.94 of the Revised Code~~ means any fee charged or billed for

telehealth services provided in a facility that is intended to compensate the facility for its operational expenses and is separate and distinct from a professional fee.

~~(2)~~ (3) "Health care professional" means:

(a) An advanced practice registered nurse, as defined in section 4723.01 of the Revised Code;

(b) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

(c) A pharmacist licensed under Chapter 4729. of the Revised Code;

(d) A physician assistant licensed under Chapter 4730. of the Revised Code;

(e) A physician licensed under ~~this chapter~~ Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

~~(b) A physician assistant licensed under Chapter 4730.~~

(f) A psychologist or school psychologist licensed under Chapter 4732. of the Revised Code;

(g) A chiropractor licensed under Chapter 4734. of the Revised Code;

(h) An audiologist or speech-language pathologist licensed under Chapter 4753. of the Revised Code;

(i) An occupational therapist or physical therapist licensed under Chapter 4755. of the Revised Code;

(j) A professional clinical counselor, independent social

worker, or independent marriage and family therapist licensed under Chapter 4757. of the Revised Code;

(k) An independent chemical dependency counselor licensed under Chapter 4758. of the Revised Code;

(l) A dietitian licensed under Chapter 4759. of the Revised Code;

(m) A genetic counselor licensed under Chapter 4778.

of the Revised Code.

~~(3)~~ (4) "Health care professional licensing board" means any of the following:

(a) The board of nursing;

(b) The state vision professionals board;

(c) The state board of pharmacy;

(d) The state medical board;

(e) The state board of psychology;

(f) The state chiropractic board;

(g) The state speech and hearing professionals board;

(h) The Ohio occupational therapy, physical therapy, and athletic trainers board;

(i) The counselor, social worker, and marriage and family therapist board;

(j) The chemical dependency professionals board.

(5) "Health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.

~~(4)~~ (6) "~~Telemedicine~~ Telehealth services" ~~has the same meaning as in section 3902.30 of the Revised Code~~means health care services provided through the use of information and communication technology by a health care professional, within the professional's scope of practice, who is located at a site other than the site where either of the following is located:

(a) The patient receiving the services;

(b) Another health care professional with whom the provider of the services is consulting regarding the patient.

(B) Each health care professional licensing board shall permit a health care professional under its jurisdiction to provide the professional's services as telehealth services in accordance with this section. The board may adopt any rules it considers necessary to implement this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(C) With respect to the provision of telehealth services, all of the following apply:

(1) A health care professional may use synchronous or asynchronous technology to provide telehealth services to a patient during an initial visit if the appropriate standard of care for an initial visit is satisfied.

(2) A health care professional may deny a patient telehealth services and, instead, require the patient to undergo an in-person visit.

(3) When providing telehealth services in accordance with this section, a health care professional shall comply with all requirements under state and federal law regarding the protection of patient information. A health care professional shall ensure that any username or password information and any

electronic communications between the professional and a patient are securely transmitted and stored.

(4) A health care professional may use technology to provide telehealth services to a patient during an annual visit if the appropriate standard of care for an annual visit is satisfied.

(5) In the case of a health care professional who is a physician, physician assistant, or advanced practice registered nurse, both of the following apply:

(a) The professional may provide telehealth services to a patient located outside of this state if permitted by the laws of the state in which the patient is located.

(b) The professional may provide telehealth services through the use of medical devices that enable remote monitoring, including such activities as monitoring a patient's blood pressure, heart rate, or glucose level.

(D) When a patient has consented to receiving telehealth services, the health care professional who provides those services is not liable in damages under any claim made on the basis that the services do not meet the same standard of care that would apply if the services were provided in-person.

(E)(1) A health care professional providing ~~telemedicine~~ telehealth services shall not charge a health plan issuer covering telehealth services under section 3902.30 of the Revised Code any of the following: a facility fee, an origination fee, or any fee associated with the cost of the equipment used at the provider site to provide ~~telemedicine~~ telehealth services ~~to a health plan issuer covering telemedicine services under section 3902.30 of the Revised Code~~.

A health care professional may charge a health plan issuer for durable medical equipment used at a patient or client site.

(2) A health care professional may negotiate with a health plan issuer to establish a reimbursement rate for fees associated with the administrative costs incurred in providing telehealth services as long as a patient is not responsible for any portion of the fee.

(3) A health care professional providing telehealth services shall obtain a patient's consent before billing for the cost of providing the services, but the requirement to do so applies only once.

(F) Nothing in this section limits or otherwise affects any other provision of the Revised Code that requires a health care professional who is not a physician to practice under the supervision of, in collaboration with, in consultation with, or pursuant to the referral of another health care professional.

Sec. 4753.20. An audiologist or speech-language pathologist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4755.90. An occupational therapist or physical therapist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4757.50. A professional clinical counselor, independent social worker, or independent marriage and family therapist may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4758.80. An independent chemical dependency counselor may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4759.20. A dietitian may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 4778.30. A genetic counselor may provide telehealth services in accordance with section 4743.09 of the Revised Code.

Sec. 5119.368. (A) As used in this section, "telehealth services" has the same meaning as in section 3902.30 of the Revised Code.

(B) Each community mental health services provider and community addiction services provider shall establish written policies and procedures describing how the provider will ensure that staff persons assisting clients with receiving telehealth services or providing telehealth services are fully trained in using equipment necessary for providing the services.

(C) Prior to providing telehealth services to a client, a provider shall describe to the client the potential risks associated with receiving treatment through telehealth services and shall document that the client was provided with the risks and agreed to assume those risks. The risks communicated to a client shall address the following:

(1) Clinical aspects of receiving treatment through telehealth services;

(2) Security considerations when receiving treatment through telehealth services;

(3) Confidentiality for individual and group counseling.

(D) It is the responsibility of the provider, to the extent possible, to ensure contractually that any entity or individuals involved in the transmission of information through telehealth mechanisms guarantee that the confidentiality of the

information is protected.

(E) Every provider shall have a contingency plan for providing telehealth services to clients in the event that technical problems occur during the provision of those services.

(F) Providers shall maintain, at a minimum, the following information pertaining to local resources:

(1) The local suicide prevention telephone hotline, if available, or the national suicide prevention telephone hotline.

(2) Contact information for the local police and fire departments.

The provider shall provide the client written information on how to access assistance in a crisis, including one caused by equipment malfunction or failure.

(G) It is the responsibility of the provider to ensure that equipment meets standards sufficient to do the following:

(1) To the extent possible, ensure confidentiality of communication;

(2) Provide for interactive communication between the provider and the client;

(3) When providing telehealth services using synchronous technology, ensure that video or audio are sufficient to enable real-time interaction between the client and the provider and to ensure the quality of the service provided.

(H) A mental health facility or unit that is serving as a client site shall be maintained in such a manner that appropriate staff persons are on hand at the facility or unit in the event of a malfunction with the equipment used to provide

telehealth services.

(I)(1) All telehealth services provided by interactive videoconferencing shall meet both of the following conditions:

(a) Begin with the verification of the client through a name and password or personal identification number when treatment services are being provided;

(b) Be provided in accordance with state and federal law.

(2) When providing telehealth services in accordance with this section, a provider shall comply with all requirements under state and federal law regarding the protection of patient information. Each provider shall ensure that any username or password information and any electronic communications between the provider and a client are securely transmitted and stored.

(J) The department of mental health and addiction services may adopt rules as it considers necessary to implement this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code. Any such rules are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

Sec. 5164.95. (A) As used in this section, "telehealth service" means a health care service delivered to a patient through the use of interactive audio, video, or other telecommunications or electronic technology from a site other than the site where the patient is located.

(B) The department of medicaid shall establish standards for medicaid payments for health care services the department determines are appropriate to be covered by the medicaid program when provided as telehealth services. The standards shall be established in rules adopted under section 5164.02 of the

Revised Code.

In accordance with section 5162.021 of the Revised Code, the medicaid director shall adopt rules authorizing the directors of other state agencies to adopt rules regarding the medicaid coverage of telehealth services under programs administered by the other state agencies. Any such rules adopted by the medicaid director or the directors of other state agencies are not subject to the requirements of division (F) of section 121.95 of the Revised Code.

(C)(1) The following practitioners are eligible to provide telehealth services covered pursuant to this section:

(a) A physician licensed under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(b) A psychologist licensed under Chapter 4732. of the Revised Code;

(c) A physician assistant licensed under Chapter 4730. of the Revised Code;

(d) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner licensed under Chapter 4723. of the Revised Code;

(e) An independent social worker, independent marriage and family therapist, or professional clinical counselor licensed under Chapter 4757. of the Revised Code;

(f) An independent chemical dependency counselor licensed under Chapter 4758. of the Revised Code;

(g) A supervised practitioner or supervised trainee;

(h) An audiologist or speech-language pathologist licensed under Chapter 4753. of the Revised Code;

(i) An audiology aide or speech-language pathology aide, as defined in section 4753.072 of the Revised Code, or an individual holding a conditional license under section 4753.071 of the Revised Code;

(j) An occupational therapist or physical therapist licensed under Chapter 4755. of the Revised Code;

(k) An occupational therapy assistant or physical therapist assistant licensed under Chapter 4755. of the Revised Code.

(l) A dietitian licensed under Chapter 4759. of the Revised Code;

(m) A chiropractor licensed under Chapter 4734. of the Revised Code;

(n) A pharmacist licensed under Chapter 4729. of the Revised Code;

(o) A genetic counselor licensed under Chapter 4778. of the Revised Code;

(p) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

(q) A practitioner who provides services through a medicaid school program;

(r) Subject to section 5119.368 of the Revised Code, a practitioner authorized to provide services and supports certified under section 5119.36 of the Revised Code through a

community mental health services provider or community addiction services provider;

(s) Any other practitioner the medicaid director considers eligible to provide telehealth services.

(2) The following provider types are eligible to submit claims for medicaid payments for providing telehealth services:

(a) Any practitioner described in division (B)(1) of this section, except for those described in divisions (B)(1)(g), (i), and (k) of this section;

(b) A professional medical group;

(c) A federally qualified health center or rural health clinic;

(d) An ambulatory health care clinic;

(e) An outpatient hospital;

(f) A medicaid school program;

(g) Subject to section 5119.368 of the Revised Code, a community mental health services provider or community addiction services provider that offers services and supports certified under section 5119.36 of the Revised Code;

(h) Any other provider type the medicaid director considers eligible to submit the claims for payment.

(D)(1) When providing telehealth services under this section, a practitioner shall comply with all requirements under state and federal law regarding the protection of patient information. A practitioner shall ensure that any username or password information and any electronic communications between the practitioner and a patient are securely transmitted and

stored.

(2) When providing telehealth services under this section, every practitioner site shall have access to the medical records of the patient at the time telehealth services are provided.

Section 2. That existing sections 3902.30, 4723.94, 4732.33, 5164.95, and 4731.2910 of the Revised Code are hereby repealed.

Section 3. Section 3902.30 of the Revised Code, as amended by this act, applies to health benefit plans, as defined in section 3922.01 of the Revised Code, that are in effect on the effective date of the amendment to that section and to plans that are issued, renewed, modified, or amended on or after the effective date of that amendment.