

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 949

S.P. 304

In Senate, March 9, 2017

An Act Regarding Telehealth

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator GRATWICK of Penobscot.
Cosponsored by Representative HIGGINS of Dover-Foxcroft and
Senators: CHIPMAN of Cumberland, DAVIS of Piscataquis, DOW of Lincoln, KEIM of
Oxford, MAKER of Washington, Representatives: BROOKS of Lewiston, HAMANN of
South Portland, MARTIN of Eagle Lake.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24 MRSA §2904, sub-§1, ¶A**, as enacted by PL 2003, c. 438, §2, is
3 amended to read:

4 A. A licensed health care practitioner who voluntarily, without the expectation or
5 receipt of monetary or other compensation either directly or indirectly, provides
6 professional services, including services provided through telehealth as defined in
7 Title 24-A, section 4316, subsection 1, paragraph E, within the scope of that health
8 care practitioner's licensure:

9 (1) To a nonprofit organization;

10 (2) To an agency of the State or any political subdivision of the State;

11 (3) To members or recipients of services of a nonprofit organization or state or
12 local agency;

13 (4) To support the State's response to a public health threat as defined in Title 22,
14 section 801, subsection 10;

15 (5) To support the State's response to an extreme public health emergency as
16 defined in Title 22, section 801, subsection 4-A; or

17 (6) To support the State's response to a disaster as defined in Title 37-B, section
18 703, subsection 2; or

19 **Sec. 2. 24-A MRSA §2189** is enacted to read:

20 **§2189. Professional liability insurance for telehealth services**

21 An insurer providing professional liability insurance for a health care practitioner, as
22 defined in Title 24, section 2502, subsection 1-A, shall ensure that every policy that is
23 issued, amended or renewed in this State shall provide professional liability coverage for
24 telehealth services in the same manner as the coverage is provided for in-person
25 consultation between a health care practitioner and a patient. An insurer providing
26 professional liability insurance may not require in-person consultation between a health
27 care practitioner and a patient as a prerequisite for coverage if services are appropriately
28 provided through telehealth in accordance with generally accepted health care practices
29 and standards prevailing in the applicable professional community at the time the services
30 were provided.

31 **Sec. 3. 24-A MRSA §4316**, as enacted by PL 2009, c. 169, §1, is repealed and the
32 following enacted in its place:

33 **§4316. Coverage for telehealth services**

34 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
35 following terms have the following meanings.

36 A. "Enrollee originating site" means a site where an enrollee is physically located at
37 the time that health care services are provided through telehealth.

1 B. "Mobile health device" means a wearable device used to track health and
2 wellness, including, but not limited to, a heart rate and respiratory monitor, an
3 electrocardiogram monitor and a glucose monitor.

4 C. "Provider distant site" means a site where a provider is physically located while
5 providing health care services through telehealth.

6 D. "Store and forward transfers" means transmission of an enrollee's recorded health
7 history through a secure electronic system to a provider.

8 E. "Telehealth," as it pertains to the delivery of health care services, means the use of
9 interactive real-time visual and audio or other electronic media for the purpose of
10 consultation and education concerning and diagnosis, treatment, care management
11 and self-management of an enrollee's physical and mental health and includes real-
12 time interaction between the enrollee at an enrollee originating site and the telehealth
13 provider at a provider distant site, synchronous encounters, asynchronous encounters,
14 store and forward transfers and remote patient monitoring. "Telehealth" does not
15 include the use of audio-only telephone, facsimile machine, e-mail or texting.

16 F. "Telemonitoring," as it pertains to the delivery of health care services, means the
17 use of information technology to remotely monitor an enrollee's health status via
18 electronic means through the use of clinical data while the enrollee remains in a
19 residential setting, allowing the provider to track the enrollee's health data over time.
20 Telemonitoring may or may not take place in real time.

21 G. "Telephonic services," as it pertains to the delivery of health care services, means
22 the use of telephone communication by a provider at a distance for the purpose of
23 diagnosis, disease monitoring or treatment.

24 **2. Parity for telehealth services.** A carrier offering a health plan in this State may
25 not deny coverage on the basis that the health care service is provided through telehealth
26 if the health care service would be covered if it was provided through in-person
27 consultation between an enrollee and a provider. Coverage for health care services
28 provided through telehealth must be determined in a manner consistent with coverage for
29 health care services provided through in-person consultation. If an enrollee is eligible for
30 coverage and the delivery of the health care service through telehealth is medically
31 appropriate as determined by the enrollee's provider, a carrier may not deny coverage for
32 telehealth services. A carrier may offer a health plan containing a provision for a
33 deductible, copayment or coinsurance requirement for a health care service provided
34 through telehealth as long as the deductible, copayment or coinsurance does not exceed
35 the deductible, copayment or coinsurance applicable to an in-person consultation. A
36 carrier may not exclude a health care service from coverage solely because such health
37 care service is provided only through a telehealth encounter between the enrollee and the
38 provider and not through an in-person consultation between the enrollee and the provider,
39 as long as telehealth is appropriate for the provision of such health care service.

40 **3. Coverage for telehealth services.** Except as provided in this section, a carrier
41 shall provide coverage for any medically necessary health care service delivered through
42 telehealth as long as the following requirements are met.

43 A. The health care service is otherwise covered under an enrollee's health plan.

1 B. The health care service delivered by telehealth is of comparable quality to the
2 health care service delivered through in-person consultation.

3 C. Prior authorization is required for telehealth services only if prior authorization is
4 required for the corresponding covered health care service. An in-person consultation
5 prior to the delivery of services through telehealth is not required.

6 D. Coverage for telehealth services is not limited in any way on the basis of
7 geography, location or distance for travel.

8 E. The carrier shall require that a physical exam is conducted either in person or
9 through telehealth before a provider may write a prescription that is covered.

10 F. Coverage for a prescribed schedule I, II or III controlled substance, as defined in
11 21 United States Code, Section 812, is not permitted.

12 G. The carrier shall provide coverage for the treatment of 2 or more persons at the
13 same time through telehealth, including counseling for substance use disorders
14 involving opioids.

15 **4. Coverage for telemonitoring.** A carrier shall provide coverage for
16 telemonitoring if:

17 A. The telemonitoring is intended to collect an enrollee's health-related data,
18 including, but not limited to, pulse and blood pressure readings, that assist a provider
19 in monitoring and assessing the enrollee's medical condition;

20 B. A provider has evaluated an enrollee and determined that telemonitoring is
21 medically necessary for the enrollee;

22 C. A provider has evaluated an enrollee to ensure that the enrollee is cognitively and
23 physically capable of operating the mobile health devices or to ensure that the
24 enrollee has a caregiver willing and able to assist with the mobile health devices; and

25 D. A provider has evaluated an enrollee's residence and determined its suitability for
26 telemonitoring. If the residence appears unable to support telemonitoring, the
27 telemonitoring may not be provided unless necessary adaptations are made.

28 **5. Coverage for telephonic services.** A carrier shall provide coverage for
29 telephonic services when telehealth services are unavailable and the telephonic services
30 are medically appropriate for the corresponding covered health care services.

31 **6. Disclosure to enrollees.** A carrier shall disclose to prospective and current
32 enrollees a written description of the benefits provided under a health plan for telehealth,
33 including information on copayments, deductibles and coinsurance requirements. Written
34 information provided by a carrier must be current, understandable on an 8th-grade Flesch
35 reading ease scale and available prior to the issuance of a health plan.

36 **7. Exclusions.** A carrier may exclude the following health care services from
37 coverage under a health plan in this State:

38 A. Health care services delivered via telehealth if those services are not otherwise
39 covered under a health plan;

1 B. Health care services that require direct physical contact with an enrollee by a
2 provider and that cannot be delegated to another provider at the enrollee originating
3 site; and

4 C. Any health care service that is medically inappropriate for delivery through
5 telehealth.

6 **8. Utilization review.** This section does not prohibit or limit a carrier from
7 conducting a utilization review for telehealth services as long as the utilization review is
8 conducted in the same manner and uses the same clinical review criteria as a utilization
9 review for an in-person consultation for the same service.

10 **9. Provider eligibility.** In order to be eligible for reimbursement under this section,
11 a provider providing health care services through telehealth must be acting within the
12 scope of the provider's license. A carrier may not impose additional credentialing
13 requirements or prior approval requirements for a provider as a condition of
14 reimbursement for health care services provided under this section.

15 **10. Telehealth equipment.** A carrier may not require a provider to use specific
16 telecommunications technology and equipment as a condition of coverage under this
17 section as long as the provider uses telecommunications technology and equipment that
18 comply with current industry interoperability standards and that comply with standards
19 required under the federal Health Insurance Portability and Accountability Act of 1996,
20 Public Law 104-191 and regulations promulgated under that Act.

21 SUMMARY

22 This bill does the following.

23 1. It provides immunity from liability to health care practitioners who voluntarily
24 provide health care services through telehealth in the same manner as immunity is
25 provided to health care practitioners who voluntarily provide health care services in
26 person.

27 2. It requires insurers to provide professional liability insurance for health care
28 services provided through telehealth services in the same manner as the coverage is
29 provided through face-to-face contact between a health care practitioner and a patient.

30 3. It requires carriers that offer health plans in this State to provide coverage for
31 health care services provided through telehealth services in the same manner as coverage
32 is provided for services provided in person and sets forth certain standards for coverage
33 of telehealth services.