

A Review of Current State Laws Impacting Telehealth/Telemedicine

Leverage Telehealth and Telemedicine Task Force
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Interstate Medical Licensure Compact

- ▶ South Dakota joined the compact (IMLC) in 2015 (See SDCL 36-4-44)
- ▶ An expedited pathway to licensure for qualified physicians who want to practice in multiple states
- ▶ Increases access to health care for patients in underserved areas through the use of telemedicine technologies
- ▶ Includes 29 member states and covers physicians licensed by 43 different licensing boards

Telehealth Utilization By Healthcare Professionals

SDCL Chapter 34-52 (2019 Senate Bill 136)

How does the law define “telehealth”?

The use of secure electronic information, imaging, and communication technologies by a health care professional to deliver health care services to a patient, including interactive audio-video, interactive audio with store and forward, store-and-forward technology, and remote patient monitoring. It does not include the delivery of health care services through an audio-only telephone, electronic mail message, text message, mail service, facsimile transmission or any combination thereof.

Who can treat a patient through telehealth?

Any health care professional fully licensed in the state or employed by a licensed health care facility, an accredited prevention or treatment facility, a community support provider, a nonprofit mental health center, or a licensed child welfare agency.

What does the law require of a health care provider utilizing telehealth?

- ▶ A proper health provider-patient relationship
- ▶ Treatment and consultation recommendations within the health care provider's scope of practice
- ▶ Compliance with all applicable state and federal laws and regulations, including those concerning medical record retention and confidentiality
- ▶ An appropriate face-to-face exam of a patient using real-time audio and visual technology prior to diagnosis and treatment if a face-to-face exam of that patient would otherwise be required

Without a prior and proper health provider-patient relationship, no provider may prescribe a controlled drug or substance solely in response to an internet questionnaire or an encounter via telephone.

Health Insurance Coverage for Services provided via Telehealth

SDCL Sections 58-17-167 to 58-17-170, inclusive
(2019 Senate Bill 137)

No health insurer may exclude a service for coverage solely because the service is provided through telehealth.

Covered services must be appropriate, delivered in accordance with applicable laws, rules, and health care standards, and medically necessary.

Under the new law, a health insurer may:

- ▶ Establish certain criteria that a health care provider must meet to demonstrate the safety and efficacy of certain services delivered via telehealth;
- ▶ Require a provider to agree to certain documentation or billing practices; and
- ▶ Include a deductible, copayment, or coinsurance requirement if the same requirement also applies to services not provided through telehealth.

The requirements of this new law apply to insurance policies, contracts, certificates, or plans delivered on or after January 1, 2020.

The requirements do not apply to any policy, plan, or contract providing coverage for certain specific diseases or purposes such as long-term care insurance, Medicare supplements, vision insurance and more.