

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

828B0448

## SENATE ENGROSSED NO. **SB 136** - 2/6/2019

Introduced by: Senators Curd, Ewing, Heinert, Kennedy, Maher, Nesiba, Partridge, Russell, Soholt, Stalzer, White, and Wismer and Representatives Peterson (Kent), Chase, Diedrich, Duba, Duvall, Glanzer, Hunhoff, Jensen (Kevin), Johnson (David), Lake, McCleerey, Reed, Ring, Schoenfish, and York

1 FOR AN ACT ENTITLED, An Act to provide for the utilization of telehealth by a health care  
2 professional.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Health care professional," as defined in § 58-17F-1 who is licensed, certified, or  
7 otherwise authorized under the laws of this state to provide health care services;

8 (2) "Health care facility," any office or institution where health services are provided,  
9 including any hospital, clinic, ambulatory surgery center, outpatient care facility,  
10 nursing home, assisted living facility, laboratory, or office of a health care  
11 professional;

12 (3) "Originating site," a site where a patient is located at the time health care services are  
13 delivered to the patient via telehealth;

14 (4) "Store-and-forward technology," secure electronic information, imaging, or data,



1 including audio, video, and data communication that is transferred or recorded or  
2 otherwise stored for asynchronous delivery of health care services to a patient; and  
3 (5) "Telehealth," the use of secure electronic information, imaging, and communication  
4 technologies by a health care professional to deliver health care services to a patient,  
5 including interactive audio-video, interactive audio with store and forward,  
6 store-and-forward technology, and remote patient monitoring. Telehealth does not  
7 include the delivery of health care services through an audio-only telephone,  
8 electronic mail message, text message, mail service, facsimile transmission, or any  
9 combination thereof.

10 Section 2. That the code be amended by adding a NEW SECTION to read:

11 Any health care professional treating a patient in the state through telehealth shall be:

- 12 (1) Fully licensed to practice in the state or employed by a licensed health care facility,  
13 an accredited prevention or treatment facility, a community support provider, a  
14 nonprofit mental health center, or a licensed child welfare agency under § 36-32-12;  
15 and  
16 (2) Subject to any rule or regulation adopted by the applicable South Dakota licensing  
17 body.

18 Consultation between a resident health care professional and a nonresident health care  
19 professional under this Act is governed by § 36-2-9.

20 Section 3. That the code be amended by adding a NEW SECTION to read:

21 Telehealth may not be utilized by a health care professional with respect to any patient  
22 located in the state in the absence of a provider-patient relationship. Any health care  
23 professional who utilizes telehealth shall ensure that a proper health provider-patient  
24 relationship is established and includes:

- 1 (1) Verifying and authenticating the location and, to the extent reasonable, identifying  
2 the requesting patient;
- 3 (2) Disclosing and validating the health care professional's identity and applicable  
4 credentials, as appropriate;
- 5 (3) Obtaining appropriate consent for treatment from a requesting patient after disclosure  
6 regarding the delivery models and treatment methods or limitations;
- 7 (4) Establishing a diagnosis through the use of acceptable medical practices, including  
8 patient history, mental status examination, physical examination, and appropriate  
9 diagnostic and laboratory testing;
- 10 (5) Discussing with the patient the diagnosis and its evidentiary basis and the risks and  
11 benefits of various treatment options;
- 12 (6) Ensuring appropriate follow-up care for the patient; and
- 13 (7) Providing a visit summary to the patient or consult note.

14 Exceptions to the requirements of this section include on-call, cross coverage situations,  
15 consultation with another health care professional who has an ongoing health care provider  
16 relationship with the patient who agrees to supervise the patient's care, and emergency  
17 treatment.

18 Section 4. That the code be amended by adding a NEW SECTION to read:

19 Treatment and consultation recommendations made through telehealth via a health care  
20 professional shall be appropriately provided and within the health care professional's scope of  
21 practice, training, and experience.

22 Section 5. That the code be amended by adding a NEW SECTION to read:

23 A health care professional using telehealth to provide medical care to any patient located in  
24 the state shall provide an appropriate face-to-face examination using real-time audio and visual

1 technology prior to diagnosis and treatment of the patient, if a face-to-face encounter would  
2 otherwise be required in the provision of the same service not delivered via telehealth.

3 Section 6. That the code be amended by adding a NEW SECTION to read:

4 Without a prior and proper provider-patient relationship, a health care professional using  
5 telehealth technologies may not prescribe a controlled drug or substance, as defined by  
6 § 34-20B-3, solely in response to an internet questionnaire or consult, including any encounter  
7 via telephone.

8 Section 7. That the code be amended by adding a NEW SECTION to read:

9 A health care professional using telehealth shall follow any applicable state or federal statute  
10 or rule for informed consent.

11 Section 8. That the code be amended by adding a NEW SECTION to read:

12 A health care professional or the originating site treating a patient through telehealth shall:

- 13 (1) Maintain a complete record of the patient's care;
- 14 (2) Disclose the record to the patient consistent with state and federal laws; and
- 15 (3) Follow applicable state and federal statutes and regulations for medical record  
16 retention and confidentiality.