

1 H.406

2 Introduced by Representative McFaun of Barre Town

3 Referred to Committee on

4 Date:

5 Subject: Health; health care; health care providers; telemedicine; telehealth

6 Statement of purpose of bill as introduced: This bill proposes to revise
7 provisions relating to the delivery of health care services through telemedicine
8 and by store-and-forward means.

9 An act relating to telemedicine

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 18 V.S.A. § 9361 is amended to read:

12 § 9361. HEALTH CARE PROVIDERS DELIVERING HEALTH CARE
13 SERVICES THROUGH TELEMEDICINE OR BY STORE-AND-
14 FORWARD MEANS

15 (a) As used in this section;

16 (1) ~~“distant~~ Distant site, “health care provider,” and “originating site,”
17 ~~“store and forward,” and “telemedicine”~~ shall have the same meanings as in 8
18 V.S.A. § 4100k.

19 (2) “Store and forward” means an exchange of information regarding a
20 patient that does not occur in real time, including the secure collection and

1 transmission of a patient’s medical information, clinical data, clinical images,
2 laboratory results, or a self-reported medical history.

3 (3) “Telemedicine” means the use of audio, video, or other telemedicine
4 technologies by a health care provider in one location to a patient at a different
5 location for purposes of diagnosis, consultation, or treatment, including the use
6 of store-and-forward technologies.

7 (4) “Telemedicine technologies” means technologies and devices
8 enabling secure electronic communications and information exchange between
9 a health care provider in one location and a patient in another location with or
10 without an intervening health care provider.

11 (b) Subject to the limitations of the license under which the individual is
12 practicing, a health care provider licensed in this State may prescribe, dispense,
13 or administer drugs or medical supplies, or otherwise provide treatment
14 recommendations to a patient after having performed an appropriate
15 examination of the patient in person, through telemedicine, ~~or by the use of~~
16 ~~instrumentation and diagnostic equipment through which images and medical~~
17 ~~records may be transmitted electronically.~~ Treatment recommendations made
18 via ~~electronic means~~ telemedicine, including issuing a prescription via
19 electronic means, shall be held to the ~~same standards~~ prevailing standard of
20 appropriate practice as those in traditional provider-patient settings care.

1 (c)(1) A health care provider delivering health care services or dental
2 services through telemedicine shall obtain and document a patient's oral or
3 written informed consent for the use of telemedicine ~~technology~~ technologies
4 prior to delivering services to the patient.

5 (A) The informed consent for telemedicine services shall be provided
6 in accordance with Vermont and national policies and guidelines on the
7 appropriate use of telemedicine within the provider's profession and shall
8 include, in language that patients can easily understand:

9 (i) an explanation of the opportunities and limitations of delivering
10 health care services or dental services through telemedicine;

11 (ii) informing the patient of the presence of any other individual
12 who will be participating in or observing the patient's consultation with the
13 provider at the distant site and obtaining the patient's permission for the
14 participation or observation; and

15 (iii) assurance that all services the health care provider delivers to
16 the patient through telemedicine will be delivered over a secure connection that
17 complies, if applicable, with the requirements of the Health Insurance
18 Portability and Accountability Act of 1996, Pub. L. No. 104-191.

19 (B) For services delivered through telemedicine on an ongoing basis,
20 the health care provider shall be required to obtain consent only at the first
21 episode of care.

1 (2) The provider shall include the patient's written consent in the
2 patient's medical record or document the patient's oral consent in the patient's
3 medical record.

4 (3) A health care provider delivering telemedicine services through a
5 contract with a third-party vendor shall comply with the provisions of this
6 subsection (c) to the extent permissible under the terms of the contract. If the
7 contract requires the health care provider to use the vendor's own informed
8 consent provisions instead of those set forth in this subsection, the health care
9 provider shall be deemed to be in compliance with the requirements of this
10 subsection if ~~he or she~~ the health care provider adheres to the terms of the
11 vendor's informed consent policies.

12 (4) Notwithstanding any provision of this subsection to the contrary, a
13 health care provider shall not be required to obtain a patient's informed
14 consent for the use of telemedicine in the following circumstances:

15 (A) in the case of a medical emergency;

16 (B) for the second certification of an emergency examination
17 determining whether an individual is a person in need of treatment pursuant to
18 section 7508 of this title; or

19 (C) for a psychiatrist's examination to determine whether an
20 individual is in need of inpatient hospitalization pursuant to 13 V.S.A.
21 § 4815(g)(3).

1 (d) Neither a health care provider nor a patient shall create or cause to be
2 created a recording of a provider's telemedicine consultation with a patient.

3 (e)(1) A patient ~~receiving health care services or dental services by store-~~
4 ~~and forward means~~ shall be ~~informed of the patient's right~~ provided with all
5 necessary information regarding receipt of health care services or dental
6 services via telemedicine, including through the use of store-and-forward
7 means, when the health care provider obtains informed consent, as described in
8 subsection (c) of this section. A patient shall have the opportunity to refuse to
9 receive services in this manner ~~and to~~. A patient may request services in an
10 alternative format, such as through real-time telemedicine services or an in-
11 person visit; however, a health care provider shall not be required to offer
12 telemedicine services in the requested alternative format and shall inform the
13 patient of such as part of the informed consent process.

14 (2) Receipt of services by store-and-forward means shall not preclude a
15 patient from ~~receiving~~ requesting real-time telemedicine services or an in-
16 person visit with the distant site health care provider at a future date; provided,
17 however, that the distant site health care provider shall not be required to
18 provide services in the requested format.

19 (3) Originating site health care providers involved in the store-and-
20 forward process shall obtain informed consent from the patient as described in
21 subsection (c) of this section.

1 (f) Nothing in this section shall require a health care provider to use
2 telemedicine to provide health care services when the health care provider
3 determines that providing health care services through telemedicine does not
4 meet the standard of care.

5 Sec. 2. EFFECTIVE DATE

6 This act shall take effect on passage.