

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE NO. 3 FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1617
99TH GENERAL ASSEMBLY

4389S.04T

2018

AN ACT

To repeal sections 191.1145, 208.670, 208.671, 208.673, 208.675, and 208.677, RSMo, and to enact in lieu thereof three new sections relating to telehealth.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 191.1145, 208.670, 208.671, 208.673, 208.675, and 208.677, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 191.1145, 208.670, and 208.677, to read as follows:

191.1145. 1. As used in sections 191.1145 and 191.1146, the following terms shall mean:

- (1) "Asynchronous store-and-forward transfer", the collection of a patient's relevant health information and the subsequent transmission of that information from an originating site to a health care provider at a distant site without the patient being present;
- (2) "Clinical staff", any health care provider licensed in this state;
- (3) "Distant site", a site at which a health care provider is located while providing health care services by means of telemedicine;
- (4) "Health care provider", as that term is defined in section 376.1350;
- (5) "Originating site", a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine. For the purposes of asynchronous store-

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 and-forward transfer, originating site shall also mean the location at which the health care
13 provider transfers information to the distant site;

14 (6) "Telehealth" or "telemedicine", the delivery of health care services by means of
15 information and communication technologies which facilitate the assessment, diagnosis,
16 consultation, treatment, education, care management, and self-management of a patient's health
17 care while such patient is at the originating site and the health care provider is at the distant site.
18 Telehealth or telemedicine shall also include the use of asynchronous store-and-forward
19 technology.

20 2. Any licensed health care provider shall be authorized to provide telehealth services
21 if such services are within the scope of practice for which the health care provider is licensed and
22 are provided with the same standard of care as services provided in person. **This section shall**
23 **not be construed to prohibit a health carrier, as defined in section 376.1350, from**
24 **reimbursing non-clinical staff for services otherwise allowed by law.**

25 3. In order to treat patients in this state through the use of telemedicine or telehealth,
26 health care providers shall be fully licensed to practice in this state and shall be subject to
27 regulation by their respective professional boards.

28 4. Nothing in subsection 3 of this section shall apply to:

29 (1) Informal consultation performed by a health care provider licensed in another state,
30 outside of the context of a contractual relationship, and on an irregular or infrequent basis
31 without the expectation or exchange of direct or indirect compensation;

32 (2) Furnishing of health care services by a health care provider licensed and located in
33 another state in case of an emergency or disaster; provided that, no charge is made for the
34 medical assistance; or

35 (3) Episodic consultation by a health care provider licensed and located in another state
36 who provides such consultation services on request to a physician in this state.

37 5. Nothing in this section shall be construed to alter the scope of practice of any health
38 care provider or to authorize the delivery of health care services in a setting or in a manner not
39 otherwise authorized by the laws of this state.

40 6. No originating site for services or activities provided under this section shall be
41 required to maintain immediate availability of on-site clinical staff during the telehealth services,
42 except as necessary to meet the standard of care for the treatment of the patient's medical
43 condition if such condition is being treated by an eligible health care provider who is not at the
44 originating site, has not previously seen the patient in person in a clinical setting, and is not
45 providing coverage for a health care provider who has an established relationship with the
46 patient.

47 7. Nothing in this section shall be construed to alter any collaborative practice
48 requirement as provided in chapters 334 and 335.

208.670. 1. As used in this section, these terms shall have the following meaning:

2 (1) **"Consultation", a type of evaluation and management service as defined by the**
3 **most recent edition of the Current Procedural Terminology published annually by the**
4 **American Medical Association;**

5 (2) **"Distant site", the same meaning as such term is defined in section 191.1145;**

6 (3) **"Originating site", the same meaning as such term is defined in section**
7 **191.1145;**

8 (4) **"Provider", [any provider of medical services and mental health services, including**
9 **all other medical disciplines] the same meaning as the term "health care provider" is defined**
10 **in section 191.1145, and such provider meets all other MO HealthNet eligibility**
11 **requirements;**

12 [~~2~~] (5) **"Telehealth", the same meaning as such term is defined in section 191.1145.**

13 2. [~~Reimbursement for the use of asynchronous store-and-forward technology in the~~
14 ~~practice of telehealth in the MO HealthNet program shall be allowed for orthopedics,~~
15 ~~dermatology, ophthalmology and optometry, in cases of diabetic retinopathy, burn and wound~~
16 ~~care, dental services which require a diagnosis, and maternal-fetal medicine ultrasounds.~~

17 ~~3. The department of social services, in consultation with the departments of mental~~
18 ~~health and health and senior services, shall promulgate rules governing the practice of telehealth~~
19 ~~in the MO HealthNet program. Such rules shall address, but not be limited to, appropriate~~
20 ~~standards for the use of telehealth, certification of agencies offering telehealth, and payment for~~
21 ~~services by providers. Telehealth providers shall be required to obtain participant consent before~~
22 ~~telehealth services are initiated and to ensure confidentiality of medical information.~~

23 ~~4. Telehealth may be utilized to service individuals who are qualified as MO HealthNet~~
24 ~~participants under Missouri law. Reimbursement for such services shall be made in the same~~
25 ~~way as reimbursement for in-person contacts.~~

26 ~~5. The provisions of section 208.671 shall apply to the use of asynchronous~~
27 ~~store-and-forward technology in the practice of telehealth in the MO HealthNet program]~~

28 **department of social services shall reimburse providers for services provided through**
29 **telehealth if such providers can ensure services are rendered meeting the standard of care**
30 **that would otherwise be expected should such services be provided in person. The**
31 **department shall not restrict the originating site through rule or payment so long as the**
32 **provider can ensure services are rendered meeting the standard of care that would**
33 **otherwise be expected should such services be provided in person. Payment for services**
34 **rendered via telehealth shall not depend on any minimum distance requirement between**

35 **the originating and distant site. Reimbursement for telehealth services shall be made in**
 36 **the same way as reimbursement for in-person contact; however, consideration shall also**
 37 **be made for reimbursement to the originating site. Reimbursement for asynchronous**
 38 **store-and-forward may be capped at the reimbursement rate had the service been provided**
 39 **in person.**

208.677. ~~[1. For purposes of the provision of telehealth services in the MO HealthNet program, the term "originating site" shall mean a telehealth site where the MO HealthNet participant receiving the telehealth service is located for the encounter. The standard of care in the practice of telehealth shall be the same as the standard of care for services provided in person. An originating site shall be one of the following locations:~~

- ~~6 — (1) An office of a physician or health care provider;~~
- ~~7 — (2) A hospital;~~
- ~~8 — (3) A critical access hospital;~~
- ~~9 — (4) A rural health clinic;~~
- ~~10 — (5) A federally qualified health center;~~
- ~~11 — (6) A long-term care facility licensed under chapter 198;~~
- ~~12 — (7) A dialysis center;~~
- ~~13 — (8) A Missouri state habilitation center or regional office;~~
- ~~14 — (9) A community mental health center;~~
- ~~15 — (10) A Missouri state mental health facility;~~
- ~~16 — (11) A Missouri state facility;~~
- ~~17 — (12) A Missouri residential treatment facility licensed by and under contract with the children's division. Facilities shall have multiple campuses and have the ability to adhere to technology requirements. Only Missouri licensed psychiatrists, licensed psychologists, or provisionally licensed psychologists, and advanced practice registered nurses who are MO HealthNet providers shall be consulting providers at these locations;~~
- ~~22 — (13) A comprehensive substance treatment and rehabilitation (CSTAR) program;~~
- ~~23 — (14) A school;~~
- ~~24 — (15) The MO HealthNet recipient's home;~~
- ~~25 — (16) A clinical designated area in a pharmacy; or~~
- ~~26 — (17) A child assessment center as described in section 210.001.~~

27 ~~2. If the originating site is a school, the school shall obtain permission from the parent~~
 28 ~~or guardian of any student receiving telehealth services prior to each provision of service.]~~ **Prior**
 29 **to the provision of telehealth services in a school, the parent or guardian of the child shall**
 30 **provide authorization for the provision of such service. Such authorization shall include**

31 the ability for the parent or guardian to authorize services via telehealth in the school for
32 the remainder of the school year.

2 ~~[208.671. 1. As used in this section and section 208.673, the following~~
3 ~~terms shall mean:~~

4 ~~———— (1) "Asynchronous store-and-forward", the transfer of a participant's~~
5 ~~clinically important digital samples, such as still images, videos, audio, text files,~~
6 ~~and relevant data from an originating site through the use of a camera or similar~~
7 ~~recording device that stores digital samples that are forwarded via~~
8 ~~telecommunication to a distant site for consultation by a consulting provider~~
9 ~~without requiring the simultaneous presence of the participant and the~~
10 ~~participant's treating provider;~~

11 ~~———— (2) "Asynchronous store-and-forward technology", cameras or other~~
12 ~~recording devices that store images which may be forwarded via~~
13 ~~telecommunication devices at a later time;~~

14 ~~———— (3) "Consultation", a type of evaluation and management service as~~
15 ~~defined by the most recent edition of the Current Procedural Terminology~~
16 ~~published annually by the American Medical Association;~~

17 ~~———— (4) "Consulting provider", a provider who, upon referral by the treating~~
18 ~~provider, evaluates a participant and appropriate medical data or images delivered~~
19 ~~through asynchronous store-and-forward technology. If a consulting provider is~~
20 ~~unable to render an opinion due to insufficient information, the consulting~~
21 ~~provider may request additional information to facilitate the rendering of an~~
22 ~~opinion or decline to render an opinion;~~

23 ~~———— (5) "Distant site", the site where a consulting provider is located at the~~
24 ~~time the consultation service is provided;~~

25 ~~———— (6) "Originating site", the site where a MO HealthNet participant~~
26 ~~receiving services and such participant's treating provider are both physically~~
27 ~~located;~~

28 ~~———— (7) "Provider", any provider of medical, mental health, optometric, or~~
29 ~~dental health services, including all other medical disciplines, licensed and~~
30 ~~providing MO HealthNet services who has the authority to refer participants for~~
31 ~~medical, mental health, optometric, dental, or other health care services within~~
32 ~~the scope of practice and licensure of the provider;~~

33 ~~———— (8) "Telehealth", as that term is defined in section 191.1145;~~

34 ~~———— (9) "Treating provider", a provider who:~~

35 ~~———— (a) Evaluates a participant;~~

36 ~~———— (b) Determines the need for a consultation;~~

37 ~~———— (c) Arranges the services of a consulting provider for the purpose of~~
38 ~~diagnosis and treatment; and~~

39 ~~———— (d) Provides or supplements the participant's history and provides~~
40 ~~pertinent physical examination findings and medical information to the~~
41 ~~consulting provider.~~

41 ~~2. The department of social services, in consultation with the departments~~
 42 ~~of mental health and health and senior services, shall promulgate rules governing~~
 43 ~~the use of asynchronous store-and-forward technology in the practice of~~
 44 ~~telehealth in the MO HealthNet program. Such rules shall include, but not be~~
 45 ~~limited to:~~

46 ~~— (1) Appropriate standards for the use of asynchronous store-and-forward~~
 47 ~~technology in the practice of telehealth;~~

48 ~~— (2) Certification of agencies offering asynchronous store-and-forward~~
 49 ~~technology in the practice of telehealth;~~

50 ~~— (3) Timelines for completion and communication of a consulting~~
 51 ~~provider's consultation or opinion, or if the consulting provider is unable to~~
 52 ~~render an opinion, timelines for communicating a request for additional~~
 53 ~~information or that the consulting provider declines to render an opinion;~~

54 ~~— (4) Length of time digital files of such asynchronous store-and-forward~~
 55 ~~services are to be maintained;~~

56 ~~— (5) Security and privacy of such digital files;~~

57 ~~— (6) Participant consent for asynchronous store-and-forward services; and~~

58 ~~— (7) Payment for services by providers; except that, consulting providers~~
 59 ~~who decline to render an opinion shall not receive payment under this section~~
 60 ~~unless and until an opinion is rendered.~~

61

62 ~~Telehealth providers using asynchronous store-and-forward technology shall be~~
 63 ~~required to obtain participant consent before asynchronous store-and-forward~~
 64 ~~services are initiated and to ensure confidentiality of medical information.~~

65 ~~3. Asynchronous store-and-forward technology in the practice of~~
 66 ~~telehealth may be utilized to service individuals who are qualified as MO~~
 67 ~~HealthNet participants under Missouri law. The total payment for both the~~
 68 ~~treating provider and the consulting provider shall not exceed the payment for a~~
 69 ~~face-to-face consultation of the same level.~~

70 ~~4. The standard of care for the use of asynchronous store-and-forward~~
 71 ~~technology in the practice of telehealth shall be the same as the standard of care~~
 72 ~~for services provided in person.]~~

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2 ~~[208.673. 1. There is hereby established the "Telehealth Services~~
 3 ~~Advisory Committee" to advise the department of social services and propose~~
 4 ~~rules regarding the coverage of telehealth services in the MO HealthNet program~~
 5 ~~utilizing asynchronous store-and-forward technology.~~

6 ~~2. The committee shall be comprised of the following members:~~

7 ~~— (1) The director of the MO HealthNet division, or the director's designee;~~

8 ~~— (2) The medical director of the MO HealthNet division;~~

9 ~~— (3) A representative from a Missouri institution of higher education with~~
~~expertise in telehealth;~~

- 10 ~~———— (4) A representative from the Missouri office of primary care and rural~~
11 ~~health;~~
12 ~~———— (5) Two board-certified specialists licensed to practice medicine in this~~
13 ~~state;~~
14 ~~———— (6) A representative from a hospital located in this state that utilizes~~
15 ~~telehealth;~~
16 ~~———— (7) A primary care physician from a federally qualified health center~~
17 ~~(FQHC) or rural health clinic;~~
18 ~~———— (8) A primary care physician from a rural setting other than from an~~
19 ~~FQHC or rural health clinic;~~
20 ~~———— (9) A dentist licensed to practice in this state; and~~
21 ~~———— (10) A psychologist, or a physician who specializes in psychiatry,~~
22 ~~licensed to practice in this state.~~
23 ~~———— 3. Members of the committee listed in subdivisions (3) to (10) of~~
24 ~~subsection 2 of this section shall be appointed by the governor with the advice~~
25 ~~and consent of the senate. The first appointments to the committee shall consist~~
26 ~~of three members to serve three-year terms, three members to serve two-year~~
27 ~~terms, and three members to serve a one-year term as designated by the governor.~~
28 ~~Each member of the committee shall serve for a term of three years thereafter.~~
29 ~~———— 4. Members of the committee shall not receive any compensation for~~
30 ~~their services but shall be reimbursed for any actual and necessary expenses~~
31 ~~incurred in the performance of their duties.~~
32 ~~———— 5. Any member appointed by the governor may be removed from office~~
33 ~~by the governor without cause. If there is a vacancy for any cause, the governor~~
34 ~~shall make an appointment to become effective immediately for the unexpired~~
35 ~~term.~~
36 ~~———— 6. Any rule or portion of a rule, as that term is defined in section 536.010,~~
37 ~~that is created under the authority delegated in this section shall become effective~~
38 ~~only if it complies with and is subject to all of the provisions of chapter 536 and,~~
39 ~~if applicable, section 536.028. This section and chapter 536 are nonseverable and~~
40 ~~if any of the powers vested with the general assembly pursuant to chapter 536 to~~
41 ~~review, to delay the effective date, or to disapprove and annul a rule are~~
42 ~~subsequently held unconstitutional, then the grant of rulemaking authority and~~
43 ~~any rule proposed or adopted after August 28, 2016, shall be invalid and void.]~~
44

2 ~~[208.675. For purposes of the provision of telehealth services in the MO~~
3 ~~HealthNet program, the following individuals, licensed in Missouri, shall be~~
4 ~~considered eligible health care providers:~~

- 4 ~~———— (1) Physicians, assistant physicians, and physician assistants;~~
5 ~~———— (2) Advanced practice registered nurses;~~
6 ~~———— (3) Dentists, oral surgeons, and dental hygienists under the supervision~~
7 ~~of a currently registered and licensed dentist;~~
8 ~~———— (4) Psychologists and provisional licensees;~~

9 ~~_____ (5) Pharmacists;~~
10 ~~_____ (6) Speech, occupational, or physical therapists;~~
11 ~~_____ (7) Clinical social workers;~~
12 ~~_____ (8) Podiatrists;~~
13 ~~_____ (9) Optometrists;~~
14 ~~_____ (10) Licensed professional counselors; and~~
15 ~~_____ (11) Eligible health care providers under subdivisions (1) to (10) of this~~
16 ~~section practicing in a rural health clinic, federally qualified health center, or~~
17 ~~community mental health center.]~~

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