

HR 2725 - 21st Century Care for Military and Veterans Act

Rep. Peters (D-CA), Honda (D-CA), Polis (D-CO) and Jones (R-NC)

Author Intent: To expand the use of telehealth under the TRICARE program in the Department of Veterans Affairs, and for other purposes.

BILL DRAFT	CURRENT LAW
<p><u>Telehealth Under TRICARE Program</u> Care Provided at Military Medical Treatment Facilities: The Secretary may furnish health care to a covered beneficiary (described in current law section) via a telecommunications system.</p>	<p>A dependent of a member of a uniformed service may be given certain types of medical and dental care in facilities of the uniformed services, subject to the availability of space and facilities and capabilities of medical and dental staff, once the member or former member would have reached age 60.</p>
<p><u>Telehealth Under TRICARE Program</u> Care Provided at Private Facilities: An item or service furnished to a covered beneficiary (described in current law section) via a telecommunications system shall be covered by a plan to the same extent the item or service would be covered in the same location as the individual. Benefits shall not be denied solely on the basis that the item or service is furnished via a telecommunications system.</p>	<p>The Secretary of Defense shall contract for medical care for certain service members, former service members, and their dependents under such insurance, medical service, or health plans as he considers appropriate.</p> <p>The law is currently silent on the use of telehealth.</p>
<p><u>Health Care Provided by the Department of Veterans Affairs</u> Direct Care: The Secretary may furnish an item or service via a telecommunications system.</p> <p>Contracted Care: An item or service furnished to a covered beneficiary via a telecommunications system shall be covered by a plan to the same extent the item or service would be covered if furnished in the same location as the individual. Benefits shall not be denied solely on the basis that the item or service is furnished via a telecommunications system.</p>	<p>The Secretary shall carry out an initiative of teleconsultation for the provision of remote mental health and traumatic brain injury assessment in facilities of Departments that are not otherwise able to provide such assessment without contracting with third party providers or reimbursing providers through a fee basis system.</p>
<p><u>TRICARE and Department of Veterans Affairs</u> For the purposes of reimbursement, licensure, professional liability and other purposes, with respect to the provision of telehealth services, practitioners, suppliers and providers of such services are considered to be furnishing such services at their location and not at the originating site. (Applicable to 38 USC Ch. 17 & 18, 10 USC Sec. 1079 & 1086.)</p>	<p>Currently, a service is considered to be where the patient is located, requiring providers to be subject to the laws of the patient's state.</p>
<p>Clinical software and health software are not subject to regulation under the Federal Food, Drug and Cosmetic Act.</p>	<p>N/A</p>



Impact and Analysis

If passed, HR 2725 would stipulate that TRICARE, the health care program serving Uniformed Service members, retirees and their families, may provide and must reimburse certain beneficiaries for services furnished via a telecommunications system. Similarly, it stipulates that the Department of Veterans Affairs (VA) may provide direct care and must reimburse contracted care furnished to a covered beneficiary via a telecommunications system.

Although the VA has been a leader in the telehealth field, there is nothing in Title 38 (Veterans Benefits) of the US Code which authorizes the VA to provide or reimburse for telehealth services beyond the narrowly defined teleconsultation initiative, which only requires the establishment of an initiative for veterans (excluding dependents) to utilize remote mental health and traumatic brain injury assessment services. HR 2725 would provide the VA with clear authorization to provide services using telecommunications systems for veterans and their eligible dependents.

Although the word “telehealth” is used in the description of HR 2725, the title of Section 2, and in relation to determining the site of service, “telecommunications system” is used throughout the remainder of the bill. HR 2725 does not define “telecommunications system,” making it unclear if “telecommunications system” is being used interchangeably with the term “telehealth”. It is also unclear whether or not store-and-forward or remote patient monitoring systems would be included under the term “telecommunications system”. Additionally, there is no definition of “telecommunications system” in either titles of US Code (Titles 10 and 38), which the bill amends.

The language used in HR 2725 to mandate reimbursement for services delivered via telecommunications systems mirrors many states’ private payer laws. Although most states use the terms “telemedicine” or “telehealth” instead of “telecommunications system,” state private payer telehealth laws commonly require telehealth coverage to the same extent as if the service was furnished in person (or face-to-face). Further, many of these laws prohibit benefit denial solely on the basis that the service was furnished via telehealth/telemedicine. Both stipulations are requirements of HR 2725.

For purposes of health care liability, licensure, and reimbursement (and other purposes) services would be considered furnished from the provider site. This means that when telehealth is used by a patient and provider in different states, the provider would no longer need to comply with the malpractice, licensure and other laws of the patient’s state, as is current law. If a malpractice suit were to arise, for example, it would need to be filed in the state of the provider, not the patient. This would prevent providers from worrying about patient state licensing laws and other regulations. It would also ensure liability insurance covers them in the patient state. HR 2725 would only apply to services delivered through the VA and TRICARE.