

# New York Legislative Update

## A Review of SB 7852 and Pending Amendments

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From the [Center for Connected Health Policy](#) and the [Northeast Telehealth Resource Center](#):

On Dec. 29, 2014 New York State's Governor, Andrew Cuomo, signed landmark telehealth legislation ([SB 7852](#)) regarding coverage of certain telemedicine and telehealth services by private insurance plans and the state's Medicaid program. Accompanying the bill, the Governor included [Approval Memo 35](#), making his approval contingent on a chapter amendment to address several concerns he had with the bill, including its effective date and that the bill's language may obligate insurers to provide coverage for services via telehealth, even when those services are not covered under the patient's existing contract or policies.

The language currently existing in SB 7852, and signed into law under Chapter 550 of the New York Laws of 2014, will be superseded by the chapter amendment if and when it is signed into law retroactively. **In the meantime, the Department of Health will not enforce the provisions of SB 7852 due to the pending amendment.**

[AB 2552-A](#) and [SB 2405](#) were recently introduced into the 2015 legislative session to clarify SB 7852's language and address the Governor's concerns, and upon passage would provide the chapter amendment needed to fully enforce the provisions of SB 7852, although the language may be considerably altered. The bills also clarify some of the more confusing language included in SB 7852. Both AB 2552-A and SB 2405 are currently making their way through the legislative process.

Here are some key points that AB 2552-A and SB 2405 (hereafter referred to as the Chapter Amendment) address, as the bills were introduced in January 2015:

### Telemedicine/Telehealth Definition

SB 7852 established new definitions for both *telemedicine* and *telehealth*, and attached different coverage requirements to each term for both Medicaid and private payers. While telemedicine is confined to real time two-way electronic audio visual communication and store and forward technology, telehealth has a broader meaning encompassing information and communication technology generally.

In the Chapter Amendment, this strategy of building certain coverage requirements around each term is eliminated, and instead insurers are simply required to cover *telehealth*, defined as:

*"Telehealth" means the use of electronic information and communication technologies by telehealth providers to deliver health care services, which shall include the assessment, diagnosis, consultation, treatment, education, care management and/or self-management of a patient. Telehealth shall not include delivery of health care services by means of audio-only telephone communication, facsimile machines, or electronic messaging alone, though use of these technologies is not precluded if used in conjunction with telemedicine, store and forward technology, or remote patient monitoring. For purposes of this section, telehealth shall be limited to telemedicine, store and forward technology, and remote patient monitoring. This subdivision shall not preclude the delivery of health care service by means of "home telehealth" as used in section thirty-six hundred fourteen of this chapter.*

Additional definitions are provided in the Chapter Amendment for *telemedicine*, *store and forward technology*, and *remote patient monitoring*.

### **Originating Sites and Eligible Providers**

The current draft of the Chapter Amendment defines *Originating Site* (where the patient is located) as facilities licensed by Articles 28 and 40 of the Public Health law, facilities as defined in Subdivision 6 of Section 1.03 of the Mental Hygiene law, private physician's offices in New York State, and patient's residence for remote monitoring. The complete laws of New York can be reviewed at: <http://public.leginfo.state.ny.us>

SB 7852 includes a definition for *Health Care Provider*, but the current draft of the Chapter Amendment defines *Telehealth Provider*. This includes references to physicians, physician assistants, dentists, nurse practitioners, registered professional nurses (to receive data for remote patient monitoring only), podiatrists, optometrists, psychologists, social workers, speech language pathologists or audiologists, midwives, certified diabetes educators, certified asthma educators, certified genetic counselors, hospitals, home care service agencies, hospices, or other providers determined by the commissioner pursuant to the regulation. It should be noted that this definition may change as the bills move through the legislative process.

### **Private Insurance**

According to the language in SB 7852, private insurers would have only been required to cover telemedicine services if it was specifically requested by the policy holder, and if the service met the requirements of [Medicare's telehealth rules and regulations](#) (with the exception of their originating site restrictions). This would have limited reimbursement to live video, and confined coverage to a limited list of providers and CPT codes. The Chapter Amendment would eliminate these requirements.

In response to the Governor's concern that SB 7852 would obligate insurers to provide coverage for telehealth services not covered when delivered in-person, the new bill clarifies that an insurer may exclude from coverage a service by a health care provider where the provider is not otherwise covered under the policy.

### **Medicaid**

Subject to the approval of the Director of the Budget, New York Medicaid will be required to pay for *telehealth* services. SB 7852 and the Chapter Amendment obligates New York Medicaid to reimburse services that are, at a minimum, those already required in New York's Public Health Law regarding demonstration rates for home telehealth services provided by home health agencies. However, SB 7852 and the Chapter Amendment allows for further expansion of telehealth reimbursement by New York Medicaid.

### **Effective Date**

Governor Cuomo stated in his approval memo that January 1, 2015 as the effective date for SB 7852 did not allow enough time for insurers to restructure their coverage options and build them into their calendar year 2015 premiums, making it unfeasible. The new effective date included in the Chapter Amendment is **January 1, 2016**.

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