

HB 1623-FN - AS AMENDED BY THE SENATE

11Mar2020... 0509h  
06/16/2020 1345s  
06/16/2020 1530s

2020 SESSION

20-2023  
01/05

HOUSE BILL **1623-FN**

AN ACT relative to telemedicine.

SPONSORS: Rep. Marsh, Carr. 8; Rep. Allard, Merr. 21; Rep. MacDonald, Carr. 6; Rep. Edwards, Rock. 4; Rep. Baldasaro, Rock. 5; Rep. M. Pearson, Rock. 34; Rep. Snow, Hills. 19; Rep. Crawford, Carr. 4; Rep. Schapiro, Ches. 16; Sen. Bradley, Dist 3; Sen. Kahn, Dist 10

COMMITTEE: Health, Human Services and Elderly Affairs

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AMENDED ANALYSIS

This bill:

I. Ensures reimbursement parity, expands site of service, and enables all providers to provide services through telehealth for Medicaid and commercial health coverage.

II. Enables access to medication assisted treatment (MAT) in specific settings by means of telehealth services.

III. Amends the Physicians and Surgeons Practice Act to expand the definition of telemedicine.

IV. Amends the relevant practice acts to expand the definition of telemedicine.

V. Enables the use of telehealth services to deliver Medicaid reimbursed services to schools.

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Explanation: Matter added to current law appears in **bold italics**.  
Matter removed from current law appears ~~[in brackets and struck through.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT relative to telemedicine.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d, III to read as follows:

2 III.(a) Coverage under this section shall include the use of telehealth or telemedicine for  
3 Medicaid-covered services provided within the scope of practice of a physician or other health care  
4 provider as a method of delivery of medical care:

5 (1) Which is an appropriate application of telehealth services provided by physicians  
6 and other health care providers, as determined by the department based on the Centers for Medicare  
7 and Medicaid Services regulations, and also including persons providing psychotherapeutic services  
8 as provided in He-M 426.08 and 426.09;

9 (2) By which telemedicine services for primary care, remote patient monitoring, and  
10 substance use disorder services shall only be covered in the event that the patient has already  
11 established care at an originating site via face-to-face in-person service; and

12 (3) By which an individual shall receive medical services from a physician or other  
13 health care provider who is an enrolled Medicaid provider without in-person contact with that  
14 provider.

15 (b) *The Medicaid program shall provide coverage and reimbursement for health  
16 care services provided through telemedicine on the same basis as the Medicaid program  
17 provides coverage and reimbursement for health care services provided in person.*

18 (c) *The combined amount of reimbursement that the Medicaid program allows  
19 for the compensation to the distant site and the originating site shall not be less than the  
20 total amount allowed for health care services provided in person.*

21 (d) *There shall be no restriction on eligible originating or distant sites for  
22 telehealth services. An originating site means the location of the member at the time the  
23 service is being furnished via a telecommunication system. A distant site means the  
24 location of the provider at the time the service is being furnished via a telecommunication  
25 system.*

26 (e) *The Medicaid program shall provide reimbursement for all modes of  
27 telehealth, including video and audio, audio-only, or other electronic media provided by  
28 medical providers to treat all members for all medically necessary services.*

1           ***(f) Medical providers below shall be allowed to perform health care services***  
2 ***through the use of all modes of telehealth, including video and audio, audio-only, or other***  
3 ***electronic media. Medical providers include, but are not limited to, the following:***

4           ***(1) Physicians and physician assistants, governed by RSA 329 and RSA 328-***  
5 ***D;***

6           ***(2) Advanced practice nurses, governed by RSA 326-B and registered nurses***  
7 ***under RSA 326-B employed by home health care providers under RSA 151:2-b;***

8           ***(3) Midwives, governed by RSA 326-D;***

9           ***(4) Psychologists, governed by RSA 329-B;***

10          ***(5) Allied health professionals, governed by RSA 328-F;***

11          ***(6) Dentists, governed by RSA 317-A;***

12          ***(7) Mental health practitioners governed by RSA 330-A;***

13          ***(8) Community mental health providers employed by community mental***  
14 ***health programs pursuant to RSA 135-C:7;***

15          ***(9) Alcohol and other drug use professionals, governed by RSA 330-C;***

16          ***(10) Dietitians, governed by RSA 326-H; and***

17          ***(11) Professionals certified by the national behavior analyst certification***  
18 ***board or persons performing services under the supervision of a person certified by the***  
19 ***national behavior analyst certification board.***

20          ***(g) Nothing in this section shall be construed to prohibit the Medicaid program from***  
21 ***providing coverage for only those services that are medically necessary and subject to all other terms***  
22 ***and conditions of the coverage. Services delivered through telehealth under this section shall***  
23 ***comply with all applicable state and federal law or regulation as allowed by the Medicaid***  
24 ***program. Any conflict with the provisions of this section and federal law or regulation***  
25 ***shall preempt and supersede any provision of this section.***

26          2 New Hampshire Telemedicine Act; Coverage for Telemedicine Services. Amend RSA 415-J:2,  
27 III to read as follows:

28            III. "Telemedicine," as it pertains to the delivery of health care services, means the use of  
29 audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment.  
30 Telemedicine does not include the use of [~~audio-only telephone or~~] facsimile.

31          3 New Hampshire Telemedicine Act; Coverage for Telemedicine Services. Amend RSA 415-J:3,  
32 III to read as follows:

33            III. ***An insurer offering a health plan in this state shall provide coverage and***  
34 ***reimbursement for health care services provided through telemedicine on the same basis as***  
35 ***the insurer provides coverage and reimbursement for health care services provided in***  
36 ***person.***

1           IV. *An insurer shall provide reasonable compensation to an originating site*  
2 *operated by a health care provider or a licensed health care facility if the health care*  
3 *provider or licensed health care facility is authorized to bill the insurer directly for health*  
4 *care services. In the event of a dispute between a provider and an insurance carrier*  
5 *relative to the reasonable compensation under this section, the insurance commissioner*  
6 *shall have exclusive jurisdiction under RSA 420-J:8-e to determine if the compensation is*  
7 *commercially reasonable. The provider and the insurance carrier shall each make best*  
8 *efforts to resolve any dispute prior to applying to the insurance commissioner for*  
9 *resolution, which shall include presenting to the other party evidence supporting its*  
10 *contention that the compensation level it is proposing is commercially reasonable.*

11           V. *The combined amount of reimbursement that a health benefit plan allows for the*  
12 *compensation to the distant site and the originating site shall be the same as the total*  
13 *amount allowed for health care services provided in person.*

14           VI. *Nothing in this section shall be construed to prohibit an insurer from paying*  
15 *reasonable compensation to a provider at a distant site in addition to a fee paid to the*  
16 *health care provider.*

17           VII. *If an insurer excludes a health care service from its in-person reimbursable*  
18 *service, then comparable services shall not be reimbursable as a telemedicine service.*

19           VIII. *An insurer shall not impose on coverage for health care services provided*  
20 *through telemedicine any additional benefit plan limitations to include annual or lifetime*  
21 *dollar maximums on coverage, deductibles, copayments, coinsurance, benefit limitation or*  
22 *maximum benefits that are not equally imposed upon similar services provided in-person.*

23           IX. *Nothing in this section shall be construed to allow an insurer to reimburse more*  
24 *for a health care service provided through telemedicine than would have been reimbursed*  
25 *if the health care service was provided in person.*

26           X. *There shall be no restriction on eligible originating or distant sites for telehealth*  
27 *services. An originating site means the location of the member at the time the service is*  
28 *being furnished via a telecommunication system. A distant site means the location of the*  
29 *provider at the time the service is being furnished via a telecommunication system.*

30           XI. *An insurer shall provide reimbursement for all modes of telehealth, including*  
31 *video and audio, audio-only, or other electronic media provided by medical providers to*  
32 *treat all members for all medically necessary services.*

33           XII. *The following medical providers shall be allowed to perform health care*  
34 *services through the use of all modes of telehealth, including video and audio, audio-only,*  
35 *or other electronic media. Medical providers include, but are not limited to:*

36               (a) *Physicians and physician assistants, under RSA 329 and RSA 328-D;*

37               (b) *Advanced practice nurses, under RSA 326-B and registered nurses under*

1 *RSA 326-B employed by home health care providers under RSA 151:2-b;*

2 *(c) Midwives, under RSA 326-D;*

3 *(d) Psychologists, under RSA 329-B;*

4 *(e) Allied health professionals, under RSA 328-F;*

5 *(f) Dentists, under RSA 317-A;*

6 *(g) Mental health practitioners governed by RSA 330-A;*

7 *(h) Community mental health providers employed by community mental health*  
8 *programs pursuant to RSA 135-C:7;*

9 *(i) Alcohol and other drug use professionals, governed by RSA 330-C;*

10 *(j) Dietitians, governed by RSA 326-H; and*

11 *(k) Professionals certified by the national behavior analyst certification board*  
12 *or persons performing services under the supervision of a person certified by the national*  
13 *behavior analyst certification board as required by RSA 417-E:2.*

14 **XIII.** Nothing in this section shall be construed to prohibit an insurer from providing  
15 coverage for only those services that are medically necessary and subject to the terms and conditions  
16 of the covered person's policy.

17 4 New Subdivision; Commission to Study Telehealth Services. Amend RSA 329 by inserting  
18 after section 329:1-e the following new subdivision:

19 Commission to Study Telehealth Services

20 329:1-f Commission to Study Telehealth Services

21 I. There is established a commission to study telehealth services.

22 (a) The members of the commission shall be as follows:

23 (1) One member of the senate, appointed by the president of the senate.

24 (2) Two members of the house of representatives, appointed by the speaker of the  
25 house of representatives.

26 (3) The Medicaid director, or designee.

27 (4) The commissioner of the department of insurance, or designee.

28 (5) A member of the New Hampshire Americas Health Insurance Plans, or designee.

29 (6) A member of the New Hampshire Hospital Association, appointed by the  
30 association.

31 (7) A member of the Community Behavioral Health Association, appointed by the  
32 association.

33 (8) A member of the New Hampshire Medical Society, appointed by the society.

34 (9) A member of Bi-State Primary Care Association, appointed by the association.

35 (10) A member from a nonprofit social services organization representing the patient  
36 perspective, appointed by the president of the senate.

1           (11) A member of the NH Nurse Practitioner Association, appointed by the  
2 association.

3           (12) A member of the Granite State Home Health & Hospice Association, appointed  
4 by the association.

5           (13) A representative of the Medicaid Managed Care Organization (MCO) as  
6 nominated by the MCOs operating in the state of New Hampshire.

7           (b) Legislative members of the commission shall receive mileage at the legislative rate  
8 when attending to the duties of the commission.

9           II.(a) The commission shall:

10           (1) Review available data compiled by the department of insurance requested by the  
11 commission. This data may include, but not limited to, utilization and cost of services through  
12 telehealth in New Hampshire.

13           (2) Review available data compiled by health care providers requested by the  
14 commission. This data may include, but not limited to, utilization, patient experience, delivery costs,  
15 and savings achieved through telehealth in New Hampshire.

16           (3) Review other information and material as determined by the commission.

17           (b) The commission may solicit input from any person or entity the commission deems  
18 relevant to its study, including data collected by an independent research contractor. This data may  
19 include review of telehealth parity in all commercial payers, NH Medicaid fee for service, and  
20 managed care plans; patient and provider access to telehealth; provider use of telehealth services;  
21 patient utilization, including chronic disease management and prevention services; quality of care  
22 delivered by telehealth; and the impact of telehealth on the cost of healthcare delivery.

23           III. The members of the commission shall elect a chairperson from among the members.  
24 The first meeting of the commission shall be called by the senate member. The first meeting of the  
25 commission shall be held within 45 days of the effective date of this section. Six members of the  
26 commission shall constitute a quorum.

27           IV. The commission shall make an interim report by December 1, 2022 and a final report  
28 with its findings and any recommendations for proposed legislation on or before December 1, 2024 to  
29 the president of the senate, the speaker of the house of representatives, the senate clerk, the house  
30 clerk, the governor, and the state library.

31           5 Statement of Intent for Access to Medication Assisted Treatment (MAT) in Specific Settings.

32           I. The general court hereby recognizes that:

33           (a) Recent medical research indicates that substance use treatment can be safely done  
34 utilizing telemedicine (Rubin R., Using Telemedicine to Treat Opioid Use Disorder in Rural Areas.  
35 JAMA. Published online August 28, 2019); and

36           (b) Recent court decisions (Smith v. Aroostook County, No. 19-1340 (1st Cir. 2019))  
37 require the increased availability of substance use treatment in correctional facilities; and

1 (c) Recent changes in federal law allow the registration of certain individuals to  
2 prescribe opioid drugs to be used in substance use disorder without first conducting an in person  
3 examination (21 U.S.C. section 831(h)), which registration regulations are pending.

4 II. Therefore, the general court hereby enacts the following legislation.

5 6 Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d, II(c)-(e) to read as follows:

6 (c) ***"Doorways" means the statewide points of entry for the delivery of substance***  
7 ***use services.***

8 (d) "Originating site" means the location of the patient, whether or not accompanied by  
9 a health care provider, at the time services are provided by a health care provider through  
10 telemedicine, including, but not limited to, a health care provider's office, a hospital, or a health care  
11 facility, or the patient's home or another nonmedical environment such as a school-based health  
12 center, a university-based health center, or the patient's workplace.

13 ~~(d)~~ (e) "Remote patient monitoring" means the use of electronic technology to remotely  
14 monitor a patient's health status through the collection and interpretation of clinical data while the  
15 patient remains at an originating site. Remote patient monitoring may or may not take place in real  
16 time. Remote patient monitoring shall include assessment, observation, education and virtual visits  
17 provided by all covered providers including licensed home health care providers.

18 ~~(e)~~(f) "Store and forward," as it pertains to telemedicine and as an exception to 42  
19 C.F.R. section 410.78, means the use of asynchronous electronic communications between a patient  
20 at an originating site and a health care service provider at a distant site for the purpose of diagnostic  
21 and therapeutic assistance in the care of patients. This includes the forwarding and/or transfer of  
22 stored medical data from the originating site to the distant site through the use of any electronic  
23 device that records data in its own storage and forwards its data to the distant site via  
24 telecommunication for the purpose of diagnostic and therapeutic assistance.

25 7 Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d, III(a)(2) to read as follows:

26 (2) By which telemedicine services for primary care, remote patient monitoring, and  
27 substance use disorder services shall only be covered in the event that the patient has already  
28 established care at an originating site via face-to-face in-person service[;]. ***A provider shall not be***  
29 ***required to establish care via face-to-face in-person service when:***

30 (a) ***The provider is a Department of Veteran Affairs (VA) practitioner or VA-***  
31 ***contracted practitioner not required to obtain a special registration pursuant to 21 U.S.C.***  
32 ***section 831(h);***

33 (b) ***The patient is being treated by, and is physically located in a correctional***  
34 ***facility administered by the state of New Hampshire or a New Hampshire county;***

35 (c) ***The patient is being treated by, and is physically located in a doorway as***  
36 ***defined in RSA 167:4-d, II(c);***

1           (d) *The patient is being treated by and is physically located in a state*  
2 *designated community mental health center pursuant to RSA 135; or*

3           (e) *The patient is being treated by, and physically located in, a hospital or clinic*  
4 *registered in a manner fully consistent with 21 U.S.C. section 823(f); and*

5           8 New Paragraph; Medicaid Coverage of Telehealth Services. Amend RSA 167:4-d by inserting  
6 after paragraph IV the following new paragraph:

7           IV-a. With written consent of the patient receiving medication assisted treatment through  
8 telehealth services provided under this section, the health care provider shall provide notification of  
9 the patient's medication assisted treatment to the doorway, as defined in RSA 167:4-d, II(c), within  
10 the region where the patient resides.

11           9 Controlled Drug Act; Prohibited Acts. Amend RSA 318-B:2, XVI to read as follows:

12           XVI.(a)(1) The prescribing of a non-opioid controlled drug classified in schedule II through  
13 IV by means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA  
14 326-B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-  
15 patient relationship, for purposes of monitoring or follow-up care~~[- or who are treating patients at a~~  
16 ~~state designated community mental health center pursuant to RSA 135-C or at a Substance Abuse~~  
17 ~~and Mental Health Services Administration (SAMHSA) certified state opioid treatment program,~~  
18 ~~and shall require an initial in-person exam by a practitioner licensed to prescribe the drug]. A~~  
19 *provider shall not be required to establish care via face-to-face in-person service when:*

20                   (A) *The provider is a Department of Veteran Affairs (VA) practitioner or*  
21 *VA-contracted practitioner not required to obtain a special registration pursuant to 21*  
22 *U.S.C. section 831(h);*

23                   (B) *The patient is being treated by, and is physically located in a*  
24 *correctional facility administered by the state of New Hampshire or a New Hampshire*  
25 *county;*

26                   (C) *The patient is being treated by, and is physically located in a*  
27 *doorway as defined in RSA 167:4-d, II(c);*

28                   (D) *The patient is being treated by and is physically located in a state*  
29 *designated community mental health center pursuant to RSA 135; or*

30                   (E) *The patient is being treated by, and physically located in, a hospital*  
31 *or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).*

32           (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the  
33 drug at intervals appropriate for the patient, medical condition, and drug, but not less than  
34 annually.

35           (b)(1) The prescribing of an opioid controlled drug classified in schedule II through IV by  
36 means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA 326-B:2,  
37 XII(a)~~[- who are treating patients at a SAMHSA certified state opioid treatment program. Such~~

1 ~~prescription authority shall require an initial in-person exam by a practitioner licensed to prescribe~~  
2 ~~the drug and].~~ ***A provider shall not be required to establish care via face-to-face in-person***  
3 ***service when:***

4 ***(A) The provider is a Department of Veteran Affairs (VA) practitioner or***  
5 ***VA-contracted practitioner not required to obtain a special registration pursuant to 21***  
6 ***U.S.C. section 831(h);***

7 ***(B) The patient is being treated by, and is physically located in a***  
8 ***correctional facility administered by the state of New Hampshire or a New Hampshire***  
9 ***county;***

10 ***(C) The patient is being treated by, and is physically located in a***  
11 ***Doorway as defined in RSA 167:4-d, II(c);***

12 ***(D) The patient is being treated by and is physically located in a state***  
13 ***designated community mental health center pursuant to RSA 135; or***

14 ***(E) The patient is being treated by, and physically located in, a hospital***  
15 ***or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).***

16 ***(2)*** Subsequent in-person exams shall be by a practitioner licensed to prescribe the  
17 drug at intervals appropriate for the patient, medical condition, and opioid, but not less than  
18 annually.

19 ***(c) The prescription authority under this paragraph shall be limited to a***  
20 ***practitioner licensed to prescribe the drug and in compliance with all federal laws,***  
21 ***including the United States Drug Enforcement Agency registration or waiver when***  
22 ***required. An initial face-to-face in person exam shall be required with the exception of the***  
23 ***locations enumerated in this paragraph.***

24 10 New Paragraph; Nurse Practice Act; Rulemaking Added. Amend RSA 326-B:9 by inserting  
25 after paragraph XII the following new paragraph:

26 XIII. A process for registering practitioners who have been granted a special registration to  
27 prescribe controlled substances via telemedicine pursuant to 21 U.S.C. section 831(h).

28 11 Physicians and Surgeons; Telemedicine. Amend RSA 329:1-d, III and IV to read as follows:

29 III. It shall be unlawful for any person to prescribe by means of telemedicine a controlled  
30 drug classified in schedule II through IV, ***except substance use disorder (SUD) treatment as***  
31 ***permitted in locations enumerated in paragraph IV. Methadone hydrochloride, as defined***  
32 ***in RSA 318-B:10, VII(d)(2) shall not be included in the exemption.***

33 IV.(a)(1) The prescribing of a non-opioid controlled drug classified in schedule II through IV  
34 by means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA 326-  
35 B:2, XII(a), who are treating a patient with whom the prescriber has an in-person practitioner-  
36 patient relationship, for purposes of monitoring or follow-up care~~[-or who are treating patients at a~~  
37 ~~state-designated community mental health center pursuant to RSA 135-C or at a Substance Abuse~~

1 ~~and Mental Health Services Administration (SAMHSA) certified state opioid treatment program,~~  
2 ~~and shall require an initial in-person exam by a practitioner licensed to prescribe the drug]. A~~  
3 ***provider shall not be required to establish care via face-to-face in-person service when:***

4 ***(A) The provider is a Department of Veteran Affairs (VA) practitioner or***  
5 ***VA-contracted practitioner not required to obtain a special registration pursuant to 21***  
6 ***U.S.C. section 831(h);***

7 ***(B) The patient is being treated by, and is physically located in a***  
8 ***correctional facility administered by the state of New Hampshire or a New Hampshire***  
9 ***county;***

10 ***(C) The patient is being treated by, and is physically located in a***  
11 ***Doorway as defined in RSA 167:4-d, II(c);***

12 ***(D) The patient is being treated by and is physically located in a state***  
13 ***designated community mental health center pursuant to RSA 135; or***

14 ***(E) The patient is being treated by, and physically located in, a hospital***  
15 ***or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).***

16 (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the  
17 drug at intervals appropriate for the patient, medical condition, and drug, but not less than  
18 annually.

19 (b)(1) The prescribing of an opioid controlled drug classified in schedule II through IV by  
20 means of telemedicine shall be limited to prescribers as defined in RSA 329:1-d, I and RSA 326-B:2,  
21 XII(a)~~, who are treating patients at a SAMHSA certified state opioid treatment program. Such~~  
22 ~~prescription authority shall require an initial in-person exam by a practitioner licensed to prescribe~~  
23 ~~the drug and]. A provider shall not be required to establish care via face-to-face in-person~~  
24 ***service when:***

25 ***(A) The provider is a Department of Veteran Affairs (VA) practitioner or***  
26 ***VA-contracted practitioner not required to obtain a special registration pursuant to 21***  
27 ***U.S.C. section 831(h);***

28 ***(B) The patient is being treated by, and is physically located in a***  
29 ***correctional facility administered by the state of New Hampshire or a New Hampshire***  
30 ***county;***

31 ***(C) The patient is being treated by, and is physically located in a***  
32 ***doorway as defined in RSA 167:4-d, II(c);***

33 ***(D) The patient is being treated by and is physically located in a state***  
34 ***designated community mental health center pursuant to RSA 135; or***

35 ***(E) The patient is being treated by, and physically located in, a hospital***  
36 ***or clinic registered in a manner fully consistent with 21 U.S.C. section 823(f).***

37 (2) Subsequent in-person exams shall be by a practitioner licensed to prescribe the

1 drug at intervals appropriate for the patient, medical condition, and opioid, but not less than  
2 annually.

3           ***(c) The prescription authority under this paragraph shall be limited to a***  
4 ***practitioner licensed to prescribe the drug and in compliance with all federal laws,***  
5 ***including the United States Drug Enforcement Agency registration or waiver when***  
6 ***required. An initial face-to-face in person exam shall be required with the exception of the***  
7 ***locations enumerated in this paragraph.***

8           12 New Section; Telemedicine and Telehealth Services. Amend RSA 310-A by inserting after  
9 section 1-e the following new section:

10           310-A:1-f Telemedicine and Telehealth Services.

11           I. "Telemedicine" means the use of audio, video, or other electronic media for the purpose of  
12 diagnosis, consultation, or treatment.

13           II. "Telehealth" means the use of audio, video, or other electronic media for the purpose of  
14 diagnosis, consultation, or treatment.

15           III. Individuals licensed, certified, or registered pursuant to RSA 137-F; RSA 151-A; RSA  
16 315; RSA 316-A; RSA 317-A; RSA 326-B; RSA 326-D; RSA 326-H; RSA 327; RSA 328-E; RSA 328-F;  
17 RSA 328-G; RSA 329-B; RSA 330-A; RSA 330-C; RSA 327-A; RSA 329; RSA 326-B; RSA 318; RSA  
18 328-I; RSA 328-J may provide services through telemedicine or telehealth, provided the services  
19 rendered are authorized by scope of practice. Nothing in this provision shall be construed to expand  
20 the scope of practice for individuals regulated under this chapter.

21           IV. Notwithstanding any provision of law to the contrary, an out-of-state healthcare  
22 professional providing services by means of telemedicine or telehealth shall be required to be  
23 licensed, certified, or registered by the appropriate licensing board within the division of health  
24 professions. This paragraph shall not apply to out-of-state physicians who provide consultation  
25 services pursuant to RSA 329:21, II.

26           V. An individual providing services by means of telemedicine or telehealth directly to a  
27 patient shall:

28                   (a) Use the same standard of care as used in an in-person encounter;

29                   (b) Maintain a medical record; and

30                   (c) Subject to the patient's consent, forward the medical record to the patient's primary  
31 care or treating provider, if appropriate.

32           VI. Under this section, Medicaid coverage for telehealth services shall comply with the  
33 provisions of 42 C.F.R. section 410.78 and RSA 167:4-d.

34           13 New Paragraph; Physicians and Surgeons; Rulemaking. Amend RSA 329:9 by inserting after  
35 paragraph XX the following new paragraph:

36           XXI. A process for registering practitioners who have been granted a special registration to  
37 prescribe controlled substances via telemedicine pursuant to 21 U.S.C. section 831(h).

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1           14 Physicians and Surgeons. Amend RSA 329:1-d, I to read as follows:

2           I. "Telemedicine" means the use of audio, video, or other electronic media for the purpose of  
3 diagnosis, consultation, or treatment. [~~"Telemedicine" shall not include the use of audio-only~~  
4 ~~telephone or facsimile.~~]

5           15 Nurse Practice Act. Amend RSA 326-B:2, XII (a) to read as follows:

6           (a) "Telemedicine" means the use of audio, video, or other electronic media for the  
7 purpose of diagnosis, consultation, or treatment. [~~"Telemedicine" shall not include the use of audio-~~  
8 ~~only telephone or facsimile.~~]

9           16 New Section; Hearing Care Providers. Amend RSA 137-F by inserting after section 11 the  
10 following new section:

11           137-F:11-a Services Provided by Telemedicine. Persons licensed by the board shall be permitted  
12 to provide services through the use of telemedicine. "Telemedicine" means the use of audio, video, or  
13 other electronic media for the purpose of diagnosis, consultation, or treatment.

14           17 New Section; Podiatry. Amend RSA 315 by inserting after section 6 the following new  
15 section:

16           315:6-a Services Provided by Telemedicine. Persons licensed by the board shall be permitted to  
17 provide services through the use of telemedicine. "Telemedicine" means the use of audio, video, or  
18 other electronic media for the purpose of diagnosis, consultation, or treatment.

19           18 New Section; Chiropractic Examiners. Amend RSA 316-A by inserting after section 15 the  
20 following new section:

21           316-A:15-a Services Provided by Telemedicine. Persons licensed by the board shall be permitted  
22 to provide services through the use of telemedicine. "Telemedicine" means the use of audio, video, or  
23 other electronic media for the purpose of diagnosis, consultation, or treatment.

24           19 New Section; Midwifery. Amend RSA 326-D by inserting after section 12 the following new  
25 section:

26           326-D:12-a Telemedicine. A midwife certified under this chapter shall be permitted to provide  
27 services through the use of telemedicine. "Telemedicine" means the use of audio, video, or other  
28 electronic media for the purpose of diagnosis, consultation, or treatment.

29           20 Optometry; Definition of Telemedicine. Amend RSA 327:1, VI-a to read as follows:

30           VI-a. "Telemedicine" means the use of audio, video, or other electronic media for the purpose  
31 of diagnosis, consultation, or treatment. [~~"Telemedicine" shall not include the use of audio-only~~  
32 ~~telephone or facsimile.~~]

33           21 New Section; Optometry. Amend RSA 327 by inserting after section 25-b the following new  
34 section:

35           327:25-c Telemedicine. Persons licensed by the board shall be permitted to provide services  
36 through the use of telemedicine.

1           22 New Paragraph; Naturopathic Medicine; Scope of Practice; Telemedicine. Amend RSA 328-  
2 E:4 by inserting after paragraph V the following new paragraph:

3           VI. Doctors of naturopathic medicine shall be permitted to provide services through the use  
4 of telemedicine. "Telemedicine" means the use of audio, video, or other electronic media for the  
5 purpose of diagnosis, consultation, or treatment.

6           23 New Section; Allied Health Professionals; Telemedicine. Amend RSA 328-F by inserting  
7 after section 11-a the following new section:

8           328-F:11-b Telemedicine. Persons licensed by governing boards under this chapter shall be  
9 permitted to provide services through the use of telemedicine. "Telemedicine" means the use of  
10 audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment.

11           24 New Paragraph; Acupuncture; Telemedicine. Amend RSA 328-G:10 by inserting after  
12 paragraph IV the following new paragraph:

13           V. Persons licensed by the board to practice acupuncture shall be permitted to provide  
14 services through the use of telemedicine. "Telemedicine" means the use of audio, video, or other  
15 electronic media for the purpose of diagnosis, consultation, or treatment.

16           25 Psychologists; Telemedicine. Amend RSA 329-B:16 to read as follows:

17           329-B:16 Electronic Practice of Psychology, Tele-Health, Telemedicine.

18           ***I. Persons licensed by the board shall be permitted to provide services through the***  
19 ***use of telemedicine. "Telemedicine" means the use of audio, video, or other electronic***  
20 ***media for the purpose of diagnosis, consultation, or treatment.***

21           ***II.*** Persons licensed by the board who practice electronically shall be subject to standards of  
22 care for the practice of telemedicine and tele-health for psychology established by the board pursuant  
23 to rules adopted under RSA 541-A.

24           26 New Section; Mental Health Practice; Telemedicine. Amend RSA 330-A by inserting after  
25 section 15-a the following new section:

26           330-A:15-b Telemedicine. Persons licensed by the board shall be permitted to provide services  
27 through the use of telemedicine. "Telemedicine" means the use of audio, video, or other electronic  
28 media for the purpose of diagnosis, consultation, or treatment.

29           27 New Section; Alcohol and Other Drug Use Professionals; Telemedicine. Amend RSA 330-C  
30 by inserting after section 14 the following new section:

31           330-C:14-a Telemedicine. Persons licensed by the board shall be permitted to provide services  
32 through the use of telemedicine. "Telemedicine" means the use of audio, video, or other electronic  
33 media for the purpose of diagnosis, consultation, or treatment.

34           28 New Section; Ophthalmic Dispensers; Telemedicine. Amend RSA 327-A by inserting after  
35 section 12 the following new section:

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**- Page 13 -**

1       327-A:12-a Telemedicine. Registered ophthalmic dispensers shall be permitted to provide  
2 services through the use of telemedicine. "Telemedicine" means the use of audio, video, or other  
3 electronic media for the purpose of diagnosis, consultation, or treatment.

4       29 New Section; Licensed Pharmacists; Telemedicine. Amend RSA 318 by inserting after  
5 section 16-d the following new section:

6       318:16-e Telemedicine. Persons licensed by the board shall be permitted to provide services  
7 through the use of telemedicine. "Telemedicine" means the use of audio, video, or other electronic  
8 media for the purpose of diagnosis, consultation, or treatment.

9       30 New Section; Board of Registration of Medical Technicians; Telemedicine. Amend RSA 328-I  
10 by inserting after section 15 the following new section:

11       328-I:16 Telemedicine. Medical technicians registered by the board shall be permitted to  
12 provide services through the use of telemedicine. "Telemedicine" means the use of audio, video, or  
13 other electronic media for the purpose of diagnosis, consultation, or treatment.

14       31 New Section; Medical Imaging and Radiation Therapy; Telemedicine. Amend RSA 328-J by  
15 inserting after section 12 the following new section:

16       328-J:12-a Telemedicine. Persons licensed by the board shall be permitted to provide services  
17 through the use of telemedicine. "Telemedicine" means the use of audio, video, or other electronic  
18 media for the purpose of diagnosis, consultation, or treatment.

19       32 New Section; Dentists and Dentistry; Telemedicine. Amend RSA 317-A by inserting after  
20 section 7-a the following new section:

21       317-A:7-b Telemedicine. Persons licensed by the board shall be permitted to provide services  
22 through the use of telemedicine. "Telemedicine" means the use of audio, video, or other electronic  
23 media for the purpose of diagnosis, consultation, or treatment.

24       33 New Subparagraph; Medicaid to Schools for Medical Services Program; Telehealth Services  
25 Added. Amend RSA 167:3-k, III by inserting after subparagraph (b) the following new  
26 subparagraph:

27               (c) Include services delivered through telehealth, as defined in RSA 167:4-d.

28       34 New Subparagraph; Medicaid to Schools Program Established; Telehealth Services Added.  
29 Amend RSA 186-C:25, II by inserting after subparagraph (d) the following new subparagraph:

30               (e) Services delivered through telehealth, as defined in RSA 167:4-d.

31       35 Managed Care Law; Reasonable Value of Health Care Services. Amend RSA 420-J:8-e to  
32 read as follows:

33       420-J:8-e Reasonable Value of Health Care Services. In the event of a dispute between a health  
34 care provider and an insurance carrier relative to the reasonable value of a service under RSA  
35 329:31-b *or RSA 415-J:3*, the commissioner shall have exclusive jurisdiction to determine if the fee  
36 is commercially reasonable. Either the provider or the insurance carrier may petition for a hearing  
37 under RSA 400-A:17. The petition shall include the appealing party's evidence and methodology for

1 asserting that the fee is reasonable, and shall detail the efforts made by the parties to resolve the  
2 dispute prior to petitioning the commissioner for review. The department may require the parties to  
3 engage in mediation prior to rendering a decision.

4 36 Applicability. Sections 1-3 of this act shall take effect 60 days after passage of this act or  
5 upon the expiration of the Governor's Emergency Order #8 Pursuant to Executive Order 2020-04  
6 entitled "Temporary expansion of access to Telehealth Services to protect the public and health care  
7 providers," whichever comes sooner.

8 37 Effective Date.

9 I. Sections 1-3 of this act shall take effect as provided in section 36 of this act.

10 II. The remainder of this act shall take effect upon its passage.

**HB 1623-FN- FISCAL NOTE**  
AS AMENDED BY THE SENATE (AMENDMENTS #2020-1345s and #2020-1530s)

AN ACT relative to telemedicine.

**FISCAL IMPACT:**     State             County             Local             None

| STATE:                 | Estimated Increase / (Decrease)   |                |                |                |
|------------------------|---|----------------|----------------|----------------|
|                        | FY 2020   | FY 2021        | FY 2022        | FY 2023        |
| <b>Appropriation</b>   | \$0   | \$0            | \$0            | \$0            |
| <b>Revenue</b>         | \$0   | Indeterminable | Indeterminable | Indeterminable |
| <b>Expenditures</b>    | \$0   | Indeterminable | Indeterminable | Indeterminable |
| <b>Funding Source:</b> | <input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other -<br>Federal Medicaid Funds |                |                |                |

**METHODOLOGY:**

**Sections 1-2, 4, and 12-36, relative to telemedicine and telehealth services:**

These sections functionally codify Emergency Order #8, issued by the governor on March 18, 2020. The Department of Health and Human Services states in general terms that the fiscal impact of these sections is indeterminable.

**Section 3, relative to coverage for telemedicine services:**

The Insurance Department states that these sections require health plans to provide reimbursement for telehealth services on the same coverage and reimbursement terms as for similar in-person services, and further require that such reimbursement shall include facility fees if the provider is authorized to bill for the same. The bill further prohibits any coverage limitations for telehealth services that do not exist for similar in person services. As a result, the bill may increase claims costs and premium rates. To the extent that premium rates increase, the bill may also increase state revenues from the insurance premium tax.

**Sections 5-11, relative to telemedicine and substance use disorder:**

These sections amend Medicaid coverage of telehealth services by removing the prerequisite to establish care via face-to-face contact, provided the physician or other health care provider holds a special registration pursuant to 21 U.S.C. section 831(h), or is exempt from such registration. The Department of Health and Human Services anticipates that while telehealth services are already covered under Medicaid, the bill may result in increased utilization and hence increased costs. Nonetheless, the Department expects the extent of any such increase to be minimal.

In addition, these sections amend RSA 167:4-d by (1) adding a definition of "doorways" within the context of Medicaid coverage of telehealth services, and (2) requiring that notification of medication assisted treatment (MAT) via telehealth services be provided by a health care provider to the appropriate regional doorway, when a patient has consented to such. The sections also amend RSA 329:1-d to (1) allow for the prescription of controlled drugs classified in schedule II-IV for the purposes of MAT for substance use treatment, and (2) remove references to prescribers treating patients at state-designated community mental health centers or state opioid treatment programs certified by the Substance Abuse and Mental Health Services Administration (SAMHSA). The Department of Health and Human Services expects that the proposed changes may increase utilization for telemedicine services, resulting in a potential increase in state Medicaid costs. However, the Department also expects the changes to result in an indeterminable long-term cost savings as a result of individuals receiving MAT for substance use treatment. The net result is an indeterminable impact on state expenditures.

**AGENCIES CONTACTED:**

Departments of Insurance and Health and Human Services