F I S C A L I M P A C T R E P O R T

SPONSOR Picraux **ORIGINAL DATE** 03/02/11 **LAST UPDATED** **HB** 591

SHORT TITLE Required Coverage for Telemedicine Services **SB**

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	GF/OSF/FF--Public Employees' Health Insurance Premiums

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Human Services Department (HSD)
Department of Health (DOH)
Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 591 would add a new section to the Health Care Purchasing Act (Section 13-71-1 NMSA 1978) that would require health care coverage of telemedicine services by group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act.

HB591 would also add new sections to the Insurance Code (Chapter 59A Articles 22 & 23 NMSA 1978) extending the same requirement for coverage of telemedicine services for any individual or group health insurance policy, health care plan or certificate of health insurance, individual or group health maintenance organization contract, or a blanket or group insurance, that is delivered, issued for delivery or renewed in the state.

Each of these specific plans will be subject to utilization review, administrative review and appeal of adverse utilization review decisions.

HB591 will not apply in the event that federal law requires the state to make payments on behalf of enrollees to cover the costs of implementing telemedicine services.

"Telemedicine" is defined as the use of interactive audio, video or other telecommunications technology by a health care provider to deliver health care services within the scope of the provider's practice at a site other than the site where the patient is located, including the use of electronic media for consultation relating to the health care diagnosis or treatment of the patient.

FISCAL IMPLICATIONS

HB591 would require health insurers to provide coverage for telemedicine services. This increase in benefits may have an impact on the premiums charged to policy holders and beneficiaries.

SIGNIFICANT ISSUES

The bill would not apply to the HSD Medicaid Program because Medicaid does not fall under the Insurance Code or the Health Care Purchasing Act. Under the definitions for the Health Care Purchasing Act, the following would be affected: (1) state employees/Risk Management Division and the group benefits committee of the General Services Department; (2) Retiree Health Care Authority; (3) Public School Insurance Authority; and (4) publicly funded health care programs of any public school district with a student enrollment in excess of sixty thousand students.

The Human Services Department (HSD) indicates the bill differs substantially from the Medicare and Medicaid models for payment of telemedicine services. Unlike Medicare and Medicaid, this bill does not state any limitations on the types of providers, covered services, the provider or the recipient locations, or who else must be present at the recipient site. Just because a provider may render services within a scope of practice in a face-to-face encounter, it may not always be medically appropriate to render that service via telemedicine. However, under this bill, such coverage would be required because of the lack of any specificity or limitations in the bill.

There would likely be additional legal implications related to malpractice insurance coverage related to services provided through telemedicine. This is particularly an issue because again, unlike Medicare or Medicaid, there is no requirement for the health care professional to be of a certain level or even a requirement for a health professional to be at the site where the patient is located. Medicare, and Medicaid, since it is based on the Medicare model, both describe the level of health care professional that must be in attendance at the originating site. This is done for patient safety and clarity and so another health professional can continue to treat the recipient according to the provider's instructions.

Unlike Medicare and Medicaid, HB591's definition of telemedicine does not require the interaction to consist of both audio and video components. It appears that even a telephone call to the recipient would qualify as telemedicine. The Medicaid and Medicare telemedicine definition stipulates telemedicine should include interactive audio AND video and be delivered in real time.

HB591 is unclear on the use of "store and forward" telecommunications technology, such as a radiologist receiving by e-mail a x-ray to read. While the definition of telemedicine in the bill

states that telemedicine must be in real time, the part of the definition that says "including the use of electronic media for consultation relating to the health care diagnosis or treatment of the patient" appears to contradict or add to the definition of telemedicine. This example would not be considered telemedicine under Medicare or Medicaid.

PERFORMANCE IMPLICATIONS

The Department of Health indicates New Mexico is experiencing significant shortages of health professionals, especially in rural areas. According to the State of New Mexico 2008 Comprehensive Strategic Health Plan, all of New Mexico's counties except Los Alamos have at least one type of designation as a Health Professional Shortage Area (HPSA). These shortages especially affect the quality and frequency of health care in rural and frontier areas. Telehealth is an evolving strategy for providing quality healthcare to rural and frontier residents in their home communities.

DOH currently funds several Telehealth programs, including Project ECHO, which involves hepatitis C, diabetes, cardiology and opiate treatment, and the school-based health center telehealth program. The department's Office of School and Adolescent Health received one-time grant funding to equip school-based health centers (SBHCs) with telehealth equipment. The majority of these SBHCs are located in rural, frontier areas of the state. The telehealth equipment has been used to serve school-aged children, primarily students in grades 6-12. Services included clinical consultation, training, education, and case conferencing. Telehealth activities in SBHCs were targeted toward adolescent primary and behavioral health care assessment and intervention and obesity prevention and intervention.

Perhaps HB591 could be strengthened by identifying the services provided by telemedicine that would be covered or add a rule making process for identifying the services provided by telemedicine that will be covered. The Centers for Medicare and Medicaid Studies (CMS) has authority to identify the telemedicine services covered by Medicare through a rule making process. The Human Services Department has the authority to identify telemedicine services covered by Medicaid through a rule making process within the State. HB591 would require insurance coverage for telemedicine services.

ADMINISTRATIVE IMPLICATIONS

The Public Regulation Commission indicates the Division of Insurance will have to modify its filing instructions to enforce the telemedicine coverage.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Two other bills, SB161 and HB266, are attempting to require reasonable health and safety studies, testimony by experts in the field of telemedicine, and other provisions prior to expanding the scope of telemedicine practices. The Human Services Department indicates it would seem the provisions in HB591 should only be enacted after such studies as proposed in SB161 and HB266 are completed in order to avoid any unanticipated impacts from this change in recipient safety, as well as the financial impact on insurers in the state, and issues associated with malpractice insurance.

TECHNICAL ISSUES

Lines 18-21 of the bill appear to be duplicative of lines 7-10.

HSD indicates HB591 does not state limitations of the provider types, covered services or the originating and distant site locations. While a provider may render a service within her scope of practice in a face-to-face encounter, it may not be appropriate to render that service via telehealth.

The Health Policy Commission suggests the following changes to HB591:

- Delete Subsection E of Section 1 as it duplicates Subsection C of this section.
- On page 3, line 6, strike "is" and replace with "are".
- On page 4, line 3, strike "is" and replace with "are".
- On page 5, line 2, strike "is" and replace with "are".
- On page 5, line 25, strike "is" and replace with "are".

OTHER SUBSTANTIVE ISSUES

The Health Policy Commission indicates the federal Patient Protection and Affordable Care Act (PPACA) contains several advances for telemedicine that are listed below. There are numerous other provisions, such as those addressing health information technologies, that may contain additional opportunities for telemedicine.

For Medicare—

- Directs the new Center for Medicare and Medicaid Innovation (CMI), to explore as a care model how to, "Facilitate inpatient care, including intensive care, of hospitalized applicable individuals at their local hospital through the use of electronic monitoring by specialists, including intensivists and critical care specialists, based at integrated health systems;"
- Allows CMI, in developing new care models, to explore whether the model utilizes technology, such patient-based remote monitoring systems to coordinate care over time and across settings;
- Directs CMI to study the use of entities located in medically underserved areas and facilities of the Indian Health Service to provide telehealth services in treating behavioral health problems (such as post-traumatic stress disorder) and stroke and to study ways to improve the capacity of non-medical providers and non-specialized medical providers to provide health services for patients with chronic conditions;
- Requires new "accountable care organizations" to create ways to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care, such as through the use of telehealth, remote patient monitoring, and other such enabling technologies;
- Includes use of remote monitoring for eligible medical practices in the Independence at Home Demonstration Program;
- Allows physicians to use telehealth to certify the need for home health services or durable medical equipment; and
- Allows telehealth technologies to be used by a pharmacist or other qualified provider in performing an annual comprehensive medication review of Medicare drug plan medication therapy management programs as well as needed follow-up interventions.

- For the new Community-Based Collaborative Care Network Program, the legislation recognizes the role of telehealth to expanding the program's capacity.

For Medicaid –
The legislation provides states a "health home" option for chronic conditions that includes "a proposal for the use of health information technology in providing health home services…and improving service delivery and coordination across the care continuum (including the use of wireless patient technology to improve coordination and management of care and patient adherence to recommendations made by their provider)"

(Source: American Telemedicine Association. http://www.americantelemed.org/files/public/policy/Telemedicine%20in%20National%20Health%20Reform.pdf)

The American Telemedicine Association presents several areas of the PPACA that may affect telemedicine as well as explanations of how these areas could be used to support telemedicine. Some of the areas presented include:

Changes taking effect in 2010

- Expanded Coverage - By the end of June, a temporary national high-risk pool will provide coverage to adults with pre-existing conditions. *(Many of the potential individuals qualifying for the high risk pool will have multiple, long-term complications and may be an incentive for the use of telemedicine.)*
- Insurance Regulation - By the end of September, health plans will be barred from placing lifetime limits on coverage; from rescinding coverage, except in cases of fraud; and from excluding coverage for children who have pre-existing conditions. *(This regulation will place an increasing burden on health insurers to provide coverage for chronically ill patients and may serve as an added incentive to use remote monitoring in order to reduce hospitalization)*
- Health Care Quality - By the end of September, a nonprofit Patient-Centered Outcomes Research Institute is to be created, managed by a board whose members are mostly appointed by the Comptroller General. The institute is to conduct research into the comparative effectiveness of medical treatments, and it will be financed by fees on health insurance policies. *(Telemedicine and related applications are logical priorities for comparative effectiveness investigations. The outcomes of this research could have a significant effect on reimbursement.)*
- Medical Workforce - By the end of September the Comptroller General is to appoint a commission to advise Congress on future health care workforce needs. *(Telemedicine has repeatedly been looked to as one part of the solution to making specialists available to a wider segment and to help close the workforce gap.)*

Changes taking effect in 2011

- Health Care Quality - By Jan. 1, 2011, the HHS secretary is to submit to Congress a plan to establish a national strategy for improving health care delivery, patient outcomes and overall population health. *(Telemedicine should be one component in any national strategy to increase access, improve quality and lower the costs of healthcare.)*
- Health Care Quality - The HHS secretary is authorized to make grants to community-based networks of hospitals and health centers to improve coordination of services to

low-income people. *(Telecommunications among health providers regarding services is a critical component of building any community-based network.)*

- Wellness - In an effort to improve preventive medicine, Medicare is to begin paying only for proven preventive services and to increase payments for certain preventive medical treatments. *(There is a rapidly growing array of wellness applications available over wireless devices.)*

Changes taking effect in 2014

- Insurance Exchanges - All new policies are required to conform with essential benefits standards determined by the HHS secretary. *(One added benefit for all insurers, nationally, should be paying for telemedicine services.)*

(Source: American Telemedicine Association.
http://media.americantelemed.org/policy/HealthReformTimelineAndTelemedicine.pdf)

ALTERNATIVES

An alternative to HB591 is to follow the Medicare model and definitions for telemedicine services.

RAE/bym