HOUSE BILL 123

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(PRE–FILED)

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CF SB 3

By: Delegates Pena–Melnyk, R. Lewis, Stein, and Wilson
Requested: October 13, 2020
Introduced and read first time: January 13, 2021
Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Preserve Telehealth Access Act of 2021

FOR the purpose of altering the health care services the Maryland Medical Assistance Program, subject to a certain limitation, is required to provide through telehealth; altering the circumstances under which the Program is required to provide health care services through telehealth; authorizing the Maryland Department of Health to apply to the Centers for Medicare and Medicaid Services for a certain amendment to certain waivers to implement certain requirements of this Act; repealing a certain requirement that the Department apply for a certain amendment to certain waivers to implement a certain pilot program relating to the provision of certain telehealth services; repealing a requirement that the Department administer the pilot program, collect certain data, and submit certain reports to the General Assembly; altering a provision of law requiring certain insurers, nonprofit health service plans, and health maintenance organizations to reimburse certain health care services provided through telehealth to require reimbursement to be provided in a certain manner and at a certain rate; prohibiting certain insurers, nonprofit health service plans, and health maintenance organizations from imposing, as a condition of reimbursement of a health care service delivered through telehealth, that the health care service be provided by a certain health care provider; repealing the termination date of certain provisions of law relating to the Maryland Medical Assistance Program and coverage for telehealth; defining certain terms; altering certain definitions; providing for the application of this Act; and generally relating to the coverage and reimbursement of health care services delivered through telehealth.

BY repealing and reenacting, without amendments,

Article – Health – General
Section 15–103(a)(1)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
BY repealing and reenacting, with amendments,
  Article – Health – General
  Section 15–103(a)(2)(xv) and 15–141.2
  Annotated Code of Maryland
  (2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
  Article – Insurance
  Section 15–139
  Annotated Code of Maryland
  (2017 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
  Chapter 17 of the Acts of the General Assembly of 2020
  Section 4

BY repealing and reenacting, with amendments,
  Chapter 18 of the Acts of the General Assembly of 2020
  Section 4

Preamble

WHEREAS, A state of emergency and catastrophic health emergency was
proclaimed on March 5, 2020 to control and prevent the spread of COVID–19 within the
State, and the state of emergency and catastrophic health emergency continue to exist; and

WHEREAS, To respond to the state of emergency and to continue to deliver care to
patients with ongoing conditions, health care practitioners were authorized to deliver
telehealth care services at sites at which patients are located; and

WHEREAS, The expansion of telehealth capabilities, including audio–only services,
was instrumental in maintaining patient care without the risk of infection and provided
ways for patients to receive care who were experiencing general difficulty in accessing
in–person care; and

WHEREAS, Telehealth was shown to be effective in reducing disparities in access to
those in underserved urban and rural areas by bridging communication gaps, allowing for
the continuation of care, and reducing patient and clinician exposure to the coronavirus;
and

WHEREAS, To enable the use of interactive audio telecommunications or electronic
technology to deliver health care services and protect the public health, welfare, and safety,
it is necessary to continue to preserve accommodations granted during the coronavirus
pandemic; and

WHEREAS, It is critical that health care practitioners licensed, certified, or
otherwise authorized by law to provide health care services be allowed in Maryland to
provide those services through telehealth, including audio–only calls, provided that they are held to the same standards of practice that are applicable to in–person health care settings; and

WHEREAS, To effectively advance health equity in Maryland, it is necessary to ensure that individuals with limited access to health care services can benefit from the expansion of telehealth; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

15–103.

(a) (1) The Secretary shall administer the Maryland Medical Assistance Program.

(2) The Program:

(xv) Shall provide, subject to the limitations of the State budget, [mental] health CARE services appropriately delivered through telehealth to a patient in [the patient’s home setting] ACCORDANCE WITH § 15–141.2 OF THIS SUBTITLE; and

15–141.2.

(a) [(1) In this section, “telehealth” means a mode of delivering health care services through the use of telecommunications technologies by a health care practitioner to a patient at a different physical location than the health care practitioner.]

(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DISTANT SITE” MEANS A SITE AT WHICH THE DISTANT SITE HEALTH CARE PRACTITIONER IS LOCATED AT THE TIME THE HEALTH CARE SERVICE IS PROVIDED THROUGH TELEHEALTH.

(3) “DISTANT SITE PROVIDER” MEANS THE HEALTH CARE PRACTITIONER WHO PROVIDES MEDICALLY NECESSARY SERVICES TO A PATIENT AT AN ORIGINATING SITE FROM A DIFFERENT PHYSICAL LOCATION THAN THE LOCATION OF THE PATIENT.

(4) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL WHO IS LICENSED OR CERTIFIED TO PROVIDE HEALTH CARE SERVICES UNDER THE HEALTH OCCUPATIONS ARTICLE.
(5) “ORIGINATING SITE” MEANS THE LOCATION OF THE PROGRAM RECIPIENT AT THE TIME THE HEALTH CARE SERVICE IS PROVIDED THROUGH TELEHEALTH.

(6) “REMOTE PATIENT MONITORING SERVICES” MEANS THE USE OF SYNCHRONOUS OR ASYNCHRONOUS DIGITAL TECHNOLOGIES THAT COLLECT OR MONITOR MEDICAL AND OTHER FORMS OF HEALTH CARE DATA FOR PROGRAM RECIPIENTS AT AN ORIGINATING SITE AND ELECTRONICALLY TRANSMIT THAT DATA TO A DISTANT SITE PROVIDER TO ENABLE THE DISTANT SITE PROVIDER TO ASSESS, DIAGNOSE, CONSULT, TREAT, EDUCATE, PROVIDE CARE MANAGEMENT, SUGGEST SELF–MANAGEMENT, OR MAKE RECOMMENDATIONS REGARDING THE PROGRAM RECIPIENT’S HEALTH CARE.

[(2)] (7) (I) “TELEHEALTH” MEANS THE DELIVERY OF MEDICALLY NECESSARY SOMATIC, DENTAL, OR BEHAVIORAL HEALTH SERVICES TO A PATIENT AT AN ORIGINATING SITE BY A DISTANT SITE PROVIDER THROUGH THE USE OF TECHNOLOGY–ASSISTED COMMUNICATION.

(II) “Telehealth” includes [synchronous]:

1. SYNCHRONOUS and asynchronous interactions;

2. AUDIO–ONLY CONVERSATIONS BETWEEN A HEALTH CARE PRACTITIONER AND PATIENT USING TELECOMMUNICATIONS TECHNOLOGY;

AND

3. REMOTE PATIENT MONITORING SERVICES.

[(3)] (III) “Telehealth” does not include the provision of health care services solely through [audio–only calls,] e–mail messages[,] or facsimile transmissions.

(b) (1) On or before December 1, 2020, the Department shall apply to the Centers for Medicare and Medicaid Services for an amendment to any of the State’s § 1115 waivers necessary to implement a pilot program to provide telehealth services to Program recipients regardless of the Program recipient’s location at the time telehealth services are provided.

(2) Telehealth services available under the pilot program shall be limited to chronic condition management services.

(c) If the amendment applied for under subsection (b) of this section is approved, the Department shall administer the pilot program.

(d) The Department shall collect outcomes data on recipients of telehealth
services under the pilot program to evaluate the effectiveness of the pilot program.

(e) On or before December 1, 2020, and every 6 months thereafter until the
application described under subsection (b) of this section is approved, the Department shall
submit a report to the General Assembly, in accordance with § 2–1257 of the State
Government Article, on the status of the application.

(f) If the amendment applied for under subsection (b) of this section is approved,
on or before December 1 each year following the approval, the Department shall submit a
report to the General Assembly, in accordance with § 2–1257 of the State Government
Article, on the status of the pilot program.]

(B) The Program shall:

(1) Provide health care services appropriately delivered
through telehealth to program recipients regardless of the location
of the program recipient at the time telehealth services are provided; and

(2) Allow a distant site provider to provide health care
services to a program recipient from any location at which the health
care services may be appropriately delivered through telehealth.

(C) The Department shall apply to the Centers for Medicare and
Medicaid Services for an amendment to any of the State’s § 1115 waivers
necessary to implement the requirements of this section.

Article – Insurance

15–139.

(a) (1) In this section, “telehealth” means, as it relates to the delivery of health
care services, the use of interactive audio, video, or other telecommunications or electronic
technology by a licensed health care provider to deliver a health care service within the
scope of practice of the health care provider at a location other than the location of the
patient.

(2) “Telehealth” includes:

(I) the delivery of mental health care services to a patient in the
patient’s home setting; and

(II) an audio–only conversation between a health care
provider and a patient using telecommunications technology.
“Telehealth” does not include:

(i) an audio–only telephone conversation between a health care provider and a patient;

(ii) an electronic mail message between a health care provider and a patient; or

(iii) a facsimile transmission between a health care provider and a patient.

(b) This section applies to:

(1) insurers and nonprofit health service plans that provide hospital, medical, or surgical benefits to individuals or groups on an expense–incurred basis under health insurance policies or contracts that are issued or delivered in the State; and

(2) health maintenance organizations that provide hospital, medical, or surgical benefits to individuals or groups under contracts that are issued or delivered in the State.

(c) (1) An entity subject to this section:

(i) shall provide coverage under a health insurance policy or contract for health care services appropriately delivered through telehealth; and

(ii) may not exclude from coverage a health care service solely because it is provided through telehealth and is not provided through an in–person consultation or contact between a health care provider and a patient.

(2) The health care services appropriately delivered through telehealth shall include counseling for substance use disorders.

(d) An entity subject to this section:

(1) shall reimburse a health care provider for the diagnosis, consultation, and treatment of an insured patient for a health care service:

(I) covered under a health insurance policy or contract that can be appropriately provided through telehealth; AND

(II) WHEN APPROPRIATELY PROVIDED THROUGH TELEHEALTH, ON THE SAME BASIS AND AT THE SAME RATE AS IF THE HEALTH CARE SERVICE WERE DELIVERED BY THE HEALTH CARE PROVIDER IN PERSON;

(2) is not required to:
(i) reimburse a health care provider for a health care service delivered in person or through telehealth that is not a covered benefit under the health insurance policy or contract; or

(ii) reimburse a health care provider who is not a covered provider under the health insurance policy or contract; and

(3) (i) may impose a deductible, copayment, or coinsurance amount on benefits for health care services that are delivered either through an in-person consultation or through telehealth;

(ii) may impose an annual dollar maximum as permitted by federal law; and

(iii) may not impose a lifetime dollar maximum.

(E) SUBJECT TO SUBSECTION (D)(2) OF THIS SECTION, AN ENTITY SUBJECT TO THIS SECTION MAY NOT IMPOSE AS A CONDITION OF REIMBURSEMENT OF A HEALTH CARE SERVICE DELIVERED THROUGH TELEHEALTH THAT THE HEALTH CARE SERVICE BE PROVIDED BY A HEALTH CARE PROVIDER DESIGNATED BY THE ENTITY.

[(e)] (F) An entity subject to this section may undertake utilization review, including preauthorization, to determine the appropriateness of any health care service whether the service is delivered through an in-person consultation or through telehealth if the appropriateness of the health care service is determined in the same manner.

[(f)] (G) A health insurance policy or contract may not distinguish between patients in rural or urban locations in providing coverage under the policy or contract for health care services delivered through telehealth.

[(g)] (H) A decision by an entity subject to this section not to provide coverage for telehealth in accordance with this section constitutes an adverse decision, as defined in § 15–10A–01 of this title, if the decision is based on a finding that telehealth is not medically necessary, appropriate, or efficient.

Chapter 17 of the Acts of 2020

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly. [Sections 2 and 3] SECTION 3 shall remain effective through June 30, 2025, and, at the end of June 30, 2025, [Sections 2 and 3] SECTION 3, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.
Chapter 18 of the Acts of 2020

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly. [Sections 2 and 3] SECTION 3 shall remain effective through June 30, 2025, and, at the end of June 30, 2025, [Sections 2 and 3] SECTION 3, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2022.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.