

SENATE BILL 3

J1, C3

(PRE-FILED)

11r0944
CF HB 123

By: **Senators Griffith, Augustine, Beidle, Eckardt, Elfreth, Ellis, Ferguson, Guzzone, Hershey, Kagan, Kelley, Ready, Washington, and West**

Requested: October 13, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Preserve Telehealth Access Act of 2021**

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

24 BY repealing and reenacting, without amendments,
25 Article – Health – General
26 Section 15–103(a)(1)
27 Annotated Code of Maryland
28 (2019 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Health – General
3 Section 15–103(a)(2)(xv) and 15–141.2
4 Annotated Code of Maryland
5 (2019 Replacement Volume and 2020 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Insurance
8 Section 15–139
9 Annotated Code of Maryland
10 (2017 Replacement Volume and 2020 Supplement)

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

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

17 Preamble

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

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

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

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

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

36 WHEREAS, It is critical that health care practitioners licensed, certified, or

1 otherwise authorized by law to provide health care services be allowed in Maryland to
2 provide those services through telehealth, including audio-only calls, provided that they
3 are held to the same standards of practice that are applicable to in-person health care
4 settings; and

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

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

10 **Article – Health – General**

11 15–103.

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

14 (2) The Program:

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

18 15–141.2.

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

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

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

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

31 (4) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL WHO IS
32 LICENSED OR CERTIFIED TO PROVIDE HEALTH CARE SERVICES UNDER THE HEALTH

1 OCCUPATIONS ARTICLE.

2 (5) "ORIGINATING SITE" MEANS THE LOCATION OF THE PROGRAM
 3 RECIPIENT AT THE TIME THE HEALTH CARE SERVICE IS PROVIDED THROUGH
 4 TELEHEALTH.

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

13 [(2)] (7) (I) "TELEHEALTH" MEANS THE DELIVERY OF
 14 MEDICALLY NECESSARY SOMATIC, DENTAL, OR BEHAVIORAL HEALTH SERVICES TO
 15 A PATIENT AT AN ORIGINATING SITE BY A DISTANT SITE PROVIDER THROUGH THE
 16 USE OF TECHNOLOGY-ASSISTED COMMUNICATION.

17 (II) "Telehealth" includes [synchronous]:

- 18 1. SYNCHRONOUS and asynchronous interactions;
- 19 2. AUDIO-ONLY CONVERSATIONS BETWEEN A HEALTH
 20 CARE PRACTITIONER AND PATIENT USING TELECOMMUNICATIONS TECHNOLOGY;
 21 AND
- 22 3. REMOTE PATIENT MONITORING SERVICES.

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

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

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

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

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

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

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

11 **(B) THE PROGRAM SHALL:**

12 **(1) PROVIDE HEALTH CARE SERVICES APPROPRIATELY DELIVERED**
13 **THROUGH TELEHEALTH TO PROGRAM RECIPIENTS REGARDLESS OF THE LOCATION**
14 **OF THE PROGRAM RECIPIENT AT THE TIME TELEHEALTH SERVICES ARE PROVIDED;**
15 **AND**

16 **(2) ALLOW A DISTANT SITE PROVIDER TO PROVIDE HEALTH CARE**
17 **SERVICES TO A PROGRAM RECIPIENT FROM ANY LOCATION AT WHICH THE HEALTH**
18 **CARE SERVICES MAY BE APPROPRIATELY DELIVERED THROUGH TELEHEALTH.**

19 **(C) THE DEPARTMENT SHALL APPLY TO THE CENTERS FOR MEDICARE AND**
20 **MEDICAID SERVICES FOR AN AMENDMENT TO ANY OF THE STATE’S § 1115 WAIVERS**
21 **NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION.**

22 **Article – Insurance**

23 15–139.

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

29 (2) “Telehealth” includes:

30 **(I) the delivery of mental health care services to a patient in the**
31 **patient’s home setting; AND**

32 **(II) AN AUDIO–ONLY CONVERSATION BETWEEN A HEALTH CARE**
33 **PROVIDER AND A PATIENT USING TELECOMMUNICATIONS TECHNOLOGY.**

1 (3) “Telehealth” does not include:

2 (i) [an audio-only telephone conversation between a health care
3 provider and a patient;

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

6 [(iii)] **(II)** a facsimile transmission between a health care provider
7 and a patient.

8 (b) This section applies to:

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

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

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

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

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

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

23 (d) An entity subject to this section:

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

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

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

1 (2) is not required to:

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

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

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

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

12 (iii) may not impose a lifetime dollar maximum.

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

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

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

25 **[(g)] (H)** A decision by an entity subject to this section not to provide coverage
26 for telehealth in accordance with this section constitutes an adverse decision, as defined in
27 § 15-10A-01 of this title, if the decision is based on a finding that telehealth is not medically
28 necessary, appropriate, or efficient.

29 **Chapter 17 of the Acts of 2020**

30 **SECTION 4. AND BE IT FURTHER ENACTED,** That this Act is an emergency
31 measure, is necessary for the immediate preservation of the public health or safety, has
32 been passed by a yea and nay vote supported by three-fifths of all the members elected to
33 each of the two Houses of the General Assembly. **[Sections 2 and 3] SECTION 3** shall
34 remain effective through June 30, 2025, and, at the end of June 30, 2025, **[Sections 2 and**
35 **3] SECTION 3**, with no further action required by the General Assembly, shall be abrogated

1 and of no further force and effect.

2 **Chapter 18 of the Acts of 2020**

3 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency
4 measure, is necessary for the immediate preservation of the public health or safety, has
5 been passed by a ye and nay vote supported by three-fifths of all the members elected to
6 each of the two Houses of the General Assembly. [Sections 2 and 3] SECTION 3 shall
7 remain effective through June 30, 2025, and, at the end of June 30, 2025, [Sections 2 and
8 3] SECTION 3, with no further action required by the General Assembly, shall be abrogated
9 and of no further force and effect.

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

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