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Governor

BOYD K. RUTHERFORD
Lt. Governor



Maryland

INSURANCE ADMINISTRATION

KATHLEEN A. BIRRANE
Commissioner

JAY COON
Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2408 Fax: 410-468-2020
Email: Michael.paddy@maryland.gov
www.insurance.maryland.gov

TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE COMMITTEE

JANUARY 27, 2021

SENATE BILL 3 - PRESERVE TELEHEALTH ACCESS ACT OF 2021

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments regarding Senate Bill 3. Senate Bill 3, among other things, amends §15–103 of the Health General Article and §15–139 of the Insurance Article to alter the scope of what constitutes the delivery of telehealth care services, including audio—only calls, provided that the services are held to the same standards of practice that are applicable to in-person health care settings. The Maryland Insurance Administration (MIA) believes the bill, as drafted, should be technically amended to clarify certain parts and to allow the MIA to better enforce the provisions of the bill.

In the sections of the bill amending the Health General Article, the bill defines a health care practitioner (who can perform the services) as someone licensed or “certified” under the Health Occupations Article. Currently, the law in the Insurance Article limits the scope of who may be paid for telehealth services to “licensed health care providers.” This provision is unchanged in this bill and could lead to those providers who have certifications not being paid by carriers in the commercial market. For consistency purposes, the Committee may wish to include “or certified” in §15-139(a) of the Insurance Article.

Section 15-139(d)(2) of the existing law allows carriers to refuse to reimburse “a health care provider who is not a covered provider under the health insurance policy or contract.” Senate Bill 3 also adds a new subsection §15-139(e) which states that, subject to existing (d)(2), carriers may not require that telehealth services be provided by a health care provider “designated by the entity.” The term “designated” is not defined and this new language is open to multiple interpretations. On the one hand, it could be construed as a prohibition on a carrier limiting reimbursement to only participating providers. It should be noted that this interpretation

would be inconsistent with the fundamental product design of certain exclusion provider organization and health maintenance organization contracts, which, except for very limited circumstances (such as the existence of an emergency medical condition), are permitted under existing Maryland law to limit benefits to services performed by in-network providers.

Alternatively, the language in subsection (e) could be read as prohibiting a carrier from limiting telehealth coverage to a small subset of designated telehealth vendors or providers within the carrier's overall network of providers. In this second scenario, it appears the goal would be to ensure that every provider with the capability to provide telehealth services who is eligible for reimbursement of in-person services under the health plan is also eligible for reimbursement of telehealth services, regardless of whether the carrier has "designated" that provider as a telehealth provider. If this second reading is consistent with the legislative intent, it appears the new language is simply a clarification of the existing requirements, because the MIA interprets the current law as already requiring this. Given these alternative interpretations, the Committee may wish to add language to define the term "designated" or otherwise clarify its intent.

While the MIA does not have a policy position on the substance of Senate Bill 3, the MIA believes that the bill should be technically amended to allow the MIA to better enforce the provisions of Senate Bill 3.