

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-231)**

Overview and Legal and Fiscal Impact

The proposal alters requirements for coverage of telemedicine services under the Maryland Medical Assistance Program, in accordance with Chapters 141 and 426 of 2014.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies beyond that already anticipated under the fiscal and policy note for Chapters 141 and 426 of 2014 (SB 198/HB 802).

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Telemedicine Services:
COMAR 10.09.49.01-.07, .11, and .12

Legal Analysis

Background

Chapter 280 of 2013 required the Maryland Medical Assistance Program to reimburse a health care provider for certain health care services delivered by telemedicine in the same manner as the same health care service is reimbursed when delivered in person. Reimbursement is required only for a health care service that is medically necessary and is provided (1) for the treatment of cardiovascular disease or stroke; (2) in an emergency department setting; and (3) when an appropriate specialist is not available. Chapter 280 also required the Department of Health and Mental Hygiene to adopt regulations to carry out the law.

The department adopted regulations effective on September 30, 2013. The regulations implemented two Maryland Medical Assistance telemedicine programs – the Rural Access Telemedicine Program and the Cardiovascular Disease and Stroke Telemedicine Program. The regulations established coverage, participant eligibility, technical, reimbursement, and other requirements for services provided through telemedicine to Medicaid enrollees.

The regulations provided for reimbursement to a licensed provider at a distant site who provides medically necessary consultation services to the patient at the originating site via telemedicine upon request from the originating site provider. The “distant site” is a site approved by the department at which the consulting provider is located at the time the service is provided via technology-assisted communication. The “originating site” is the location of a

Medicaid enrollee at the time the service being furnished via technology-assisted communication occurs. By definition, an originating site must also be approved by the department and (1) for the Rural Telemedicine Access Program, located within a designated rural geographic area, or (2) for the Cardiovascular Disease and Stroke Telemedicine Program, located in an emergency room when an appropriate specialist is not available.

Chapters 141 and 426 of 2014 repealed limitations on reimbursement established in Chapter 280 of 2013. Chapters 141 and 426 of 2014 required, to the extent authorized by federal law, coverage of and reimbursement for health care services delivered through telemedicine to apply to Medicaid and managed care organizations in the same manner they apply to health insurance carriers. Subject to the limitations of the State budget and to the extent authorized by federal law, the department may authorize coverage of and reimbursement for health care services that are delivered through store and forward technology or remote patient monitoring. The department may specify by regulation the types of health care providers eligible to receive reimbursement for health care services provided to Medicaid recipients.

Summary of Regulations

The regulations repeal the Rural Access Telemedicine Program and the Cardiovascular Disease and Stroke Telemedicine Program, effective October 1, 2014. In accordance with Chapters 141 and 426 of 2014, the regulations require the Medicaid program to cover, without limitation by county:

- medically necessary services covered by the program rendered by an originating site provider that are distinct from the telemedicine services provided by a consulting provider;
- medically necessary consultation services covered by the program rendered by an approved consulting provider that can be delivered using technology-assisted communication;
- an approved originating site for the originating site transmission fee; and
- the professional fee for an approved consulting provider for initial telemedicine consultation for services furnished before, during, and after communicating with the Medical Assistance participant presenting in a hospital emergency department setting, not limited to cardiovascular disease and stroke, if:
 - the consulting provider is not the physician of record or the attending physician; and
 - the initial telemedicine consultation is distinct from the care provided by the physician of record or the attending physician.

Also under the regulations, the originating sites and the distant sites that could have been approved under the Rural Access Telemedicine Program may now be approved regardless of geographic location. Two new limitations on reimbursement are established: the program may

not reimburse for (1) home health monitoring services or (2) telemedicine services delivered by an originating and distant site provider located in different facilities in the same hospital campus.

Finally, the regulations make technical corrections and conforming changes.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites § 2-104(b) of the Health – General Article and Chapter 280 of 2013 as legal authority for the regulations. Section 2-104(b) of the Health – General Article authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out provisions of law that are within the jurisdiction of the Secretary. As discussed above, Chapter 280 of 2013 requires the Medicaid program to reimburse a health care provider for a health care service delivered by telemedicine in the same manner as the same health care service is reimbursed when delivered in person. Under Chapter 280, reimbursement is required only for a health care service that is medically necessary and is provided (1) for the treatment of cardiovascular disease or stroke; (2) in an emergency department setting; and (3) when an appropriate specialist is not available. Chapter 280 also requires the department to adopt regulations to carry out the requirements of legislation.

The department also should have cited Chapters 141 and 426 of 2014 as authority for the regulations. As discussed above, Chapters 141 and 426 of 2014 required, to the extent authorized by federal law, coverage of and reimbursement for health care services delivered through telemedicine to apply to Medicaid and managed care organizations in the same manner they apply to health insurance carriers.

With the addition noted, the statutory authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies beyond that already anticipated under the fiscal and policy note for Chapters 141 and 426 of 2014 (SB 198/HB 802).

Agency Estimate of Projected Fiscal Impact

The regulations implement Chapters 141 and 426 of 2014, which expanded Medicaid coverage of telemedicine statewide. The department advises that the regulations increase total Medicaid expenditures by \$12,660 in fiscal 2015 and that such costs may be offset by savings in fewer emergency room and specialist visits by Medicaid enrollees. The Department of Legislative Services disagrees and notes that the costs associated with expanding telemedicine coverage statewide have already been anticipated under the fiscal and policy note for Chapters 141 and 426 of 2014 (SB 198/HB 802).

Impact on Budget

There is no impact on the State operating or capital budget beyond that already anticipated under the fiscal and policy note for Chapters 141 and 426 of 2014 (SB 198/HB 802).

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses in the State. The Department of Legislative Services disagrees and notes that this impact has already been accounted for under the fiscal and policy note for Chapters 141 and 426 of 2014 (SB 198/HB 802), which indicated a meaningful impact.

Contact Information

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