

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 402

(Senators Kagan and Lam)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Care Practitioners – Telehealth and Shortage

This emergency bill authorizes a health care practitioner (an individual licensed, certified, or otherwise authorized by law to provide health care services under the Health Occupations Article) to establish a practitioner-patient relationship through a telehealth interaction under specified circumstances. A health care practitioner providing telehealth services must (1) be held to the same standards of practice applicable to in-person health care settings; (2) provide or refer a patient to in-person health care services or another type of telehealth service, if clinically appropriate; (3) perform a clinical evaluation before providing treatment or issuing a prescription through telehealth; (4) document in a patient’s medical record the health care services provided through telehealth; and (5) be licensed, certified, or otherwise authorized by law to provide health care services in the State if the health care services are being provided to a patient located in the State. A health care practitioner may not prescribe a Schedule II opiate for the treatment of pain through telehealth unless the individual receiving the prescription is in a specified health care facility or the Governor has declared a state of emergency due to a catastrophic health emergency. A health occupations board may adopt regulations to implement the bill.

Fiscal Summary

State Effect: The bill is not anticipated to affect the Medicaid program or other State finances or operations.

Local Effect: Local revenues increase, potentially significantly, to the extent more treatment is provided at local health departments (LHDs), as discussed below. LHD expenditures are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Asynchronous telehealth interaction” means an exchange of information between a patient and a health care practitioner that does not occur in real time, including the secure collection and transmission of a patient’s medical information, clinical data, clinical images, laboratory results, and self-reported medical history. “Synchronous telehealth interaction” means an exchange of information between a patient and a health care practitioner that occurs in real time.

A health care practitioner may establish a practitioner-patient relationship through either a synchronous telehealth interaction or an asynchronous telehealth interaction, if the health care practitioner (1) verifies the identity of the patient receiving health care services through telehealth; (2) discloses to the patient the health care practitioner’s name, contact information, and the type of health occupation license held by the health care practitioner; and (3) obtains oral or written consent from the patient (or the patient’s parent or guardian if required).

A health care practitioner must perform a clinical evaluation (which can be through a synchronous or an asynchronous telehealth interaction) that is appropriate for the patient and the condition with which the patient presents before providing treatment or issuing a prescription through telehealth.

A health care practitioner who through telehealth prescribes a controlled dangerous substance (CDS) is subject to any applicable regulation, limitation, and prohibition in federal and State law relating to the prescription of CDS.

All laws regarding the confidentiality of health information and a patient’s right to the patient’s health information apply to telehealth interactions in the same manner as the laws apply to in-person health care interactions.

Regulations adopted by a health occupations board may not establish a separate standard of care for telehealth. They must allow for the establishment of a practitioner-patient relationship through a synchronous or an asynchronous telehealth interaction provided by a health care practitioner who is complying with the health care practitioner’s standard of care.

Uncodified language expresses the intent of the General Assembly that the Governor must develop and implement a plan to facilitate the joining of the State with adjacent states and jurisdictions in interstate compacts regulating health care practitioners for the purpose of improving patient access to health care practitioners in State communities experiencing a health care practitioner shortage.

Current Law/Background:

Federal Law and Other States – In-person Examinations

Federal law restricts health care practitioners' ability to prescribe CDS without an in-person examination.

States may require that a physical exam be administered prior to a prescription being written, but not all states require an in-person examination, and some specifically allow the use of telehealth to conduct the exam.

Telehealth in Maryland

Effective October 7, 2019, the Maryland Medicaid Telehealth Program expanded telehealth to allow any and all provider types to receive reimbursement for services rendered under Medicaid telehealth regulations as long as the provider's licensing board allows telehealth under the provider's scope of practice.

State Board of Physicians regulations (COMAR 10.32.05.05) pertain to telehealth provided by physicians or licensed allied health practitioners performing telehealth services within their respective scope of practice. In general, a telehealth practitioner may practice telehealth if one or both of the following occurs: (1) the individual practicing telehealth is physically located in Maryland; or (2) the patient is in Maryland. In general, a telehealth practitioner must perform a *synchronous (real-time)*, audio-visual patient evaluation adequate to establish diagnoses and identify underlying conditions or contraindications to recommend treatment options before providing treatment or prescribing medication. This requirement does not apply to (1) interpretive services where a prior patient evaluation was performed by another provider; (2) remote patient monitoring; and (3) asynchronous telehealth services for a patient who has had a prior synchronous or an in-person patient evaluation that meets certain requirements.

COMAR also includes telehealth regulations pertaining to nurses, professional counselors and therapists, psychologists, social workers, audiologists, hearing aid dispensers, and speech-language pathologists. State Board of Examiners of Psychologists regulations (COMAR 10.36.10.05) similarly include a provision regarding client evaluations and require a psychologist or psychology associate to perform a client evaluation at an initial in-person session, unless the psychologist or psychology associate documents in the record the reason for not meeting in person.

Facilitation of Telehealth during the COVID-19 Public Health Emergency

In response to the coronavirus known as COVID-19 public health emergency, Medicare temporarily expanded coverage of telehealth services. The expanded services enable Medicare enrollees to have access to care from more places (including the enrollee's home) and with a wider range of communication tools (including smartphones). Enrollees can receive a specific set of services through telehealth, including evaluation and management visits, mental health counseling, and preventative health screenings.

Also in response to COVID-19, many states have taken action to further enable telehealth services. In Maryland, the definition of a telehealth originating site under COMAR 10.09.49.06 was temporarily expanded to include a participant's home or any other secure location as approved by the participant and provider for purpose of delivery of services covered by Medicaid.

Local Revenues: Revenues for LHDs increase to the extent the bill's provision allowing asynchronous telehealth interactions to serve as the required clinical evaluation before providing treatment or issuing a prescription expands treatment provided by health care practitioners at LHDs.

Small Business Effect: Revenues increase, potentially significantly, for small business health care practitioners who can provide additional treatment based on an asynchronous telehealth interaction under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 448 (Delegate Rosenberg, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Center for Connected Health Policy; Medicare.gov; Department of Legislative Services

Fiscal Note History:
rh/jc

First Reader - February 12, 2020
Third Reader - March 15, 2020
Revised - Amendment(s) - March 15, 2020
Enrolled - March 31, 2020
Revised - Amendment(s) - March 31, 2020

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