

Chapter 70

(House Bill 123)

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; requiring that certain services provided under the Program include counseling and treatment for certain disorders and conditions; prohibiting the Program from requiring a Program recipient to use telehealth under certain circumstances; prohibiting the Program from excluding from coverage a certain health care service provided to a Program recipient in person for a certain reason; requiring, for a certain time period, the Program to provide certain reimbursement for certain health care services provided through telehealth on a certain basis and at a certain rate; authorizing the Maryland Department of Health to adopt certain regulations relating to telehealth services provided to Program recipients; requiring the Department to include certain health care providers when specifying by regulation the types of health care providers eligible to receive certain reimbursement; repealing certain authorization of the Department relating to the coverage of and reimbursement for health care services that are delivered through store and forward technology or remote patient monitoring; establishing, for a certain purpose and certain standards, that a health care service provided through telehealth is equivalent to the same health care service when provided through an in-person consultation; prohibiting the Program or a certain organization 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 vendor; authorizing requiring the Maryland Department of Health to apply to the Centers for Medicare and Medicaid Services for a certain amendment to certain waivers obtain certain federal authority necessary to implement certain requirements of this Act; repealing certain authorization provided to the Department to require submission of a certain form to the Department; 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; requiring certain insurers, nonprofit health service plans, and health maintenance organizations to provide certain coverage for certain services delivered through telehealth regardless of the location of the patient at the time the services are provided; establishing that a certain requirement relating to coverage of certain health care services delivered through telehealth include coverage for the treatment for substance use disorders and mental health conditions; 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 certain reimbursement to be provided, for a

certain time period, in a certain manner and at a certain rate; prohibiting certain insurers, nonprofit health service plans, and health maintenance organizations from requiring an insured patient to use telehealth in lieu of in-person service delivery for certain services excluding from coverage or denying coverage for certain services provided in a certain manner for a certain reason; repealing the requirement that the Department study and submit a certain report to the General Assembly; requiring the Department to revise certain regulations for a certain purpose on or before a certain date; requiring the Maryland Insurance Administration to study a certain matter and provide certain findings and recommendations from the study to the Maryland Health Care Commission for inclusion in a certain report; requiring the Maryland Insurance Administration to consider the requirements of this Act when proposing certain revisions to certain regulations; 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 vendor; revising, restating, and recodifying certain provisions of law relating to the Program and coverage and reimbursement of services provided through telemedicine and telehealth; repealing the termination date of certain provisions of law relating to the Maryland Medical Assistance Program and coverage for telehealth; requiring the Maryland Health Care Commission, in consultation with certain State agencies, to submit a certain report to certain committees of the General Assembly on or before a certain date; establishing certain requirements for the report; establishing certain requirements on the Commission when completing the report; declaring the intent of the General Assembly; defining certain terms; altering certain definitions; providing for the application of this Act; providing for the construction of certain provisions 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)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 15–103(a)(2)(xv), 15–105.2, 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

Chapter 17 of the Acts of the General Assembly of 2020
Section 3

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

BY repealing

Chapter 18 of the Acts of the General Assembly of 2020
Section 3

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***, ~~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

15–105.2.

[(a)] The Program shall reimburse health care providers in accordance with the requirements of Title 19, Subtitle 1, Part IV of this article.

[(b) (1) (i) In this subsection the following words have the meanings indicated.

(ii) “Health care provider” means a person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program.

(iii) 1. “Telemedicine” means, as it relates to the delivery of health care services, the use of interactive audio, video, or other telecommunications or electronic technology:

A. By a health care provider to deliver a health care service that is within the scope of practice of the health care provider at a site other than the site at which the patient is located; and

B. That enables the patient to see and interact with the health care provider at the time the health care service is provided to the patient.

2. "Telemedicine" does not include:

- A. An audio-only telephone conversation between a health care provider and a patient;
- B. An electronic mail message between a health care provider and a patient; or
- C. A facsimile transmission between a health care provider and a patient.

(2) To the extent authorized by federal law or regulation, the provisions of § 15-139(c) through (f) of the Insurance Article relating to coverage of and reimbursement for health care services delivered through telemedicine shall apply to the Program and managed care organizations in the same manner they apply to carriers.

(3) Subject to the limitations of the State budget and to the extent authorized by federal law or regulation, the Department may authorize coverage of and reimbursement for health care services that are delivered through store and forward technology or remote patient monitoring.

(4) (i) The Department may specify by regulation the types of health care providers eligible to receive reimbursement for health care services provided to Program recipients under this subsection.

(ii) If the Department specifies by regulation the types of health care providers eligible to receive reimbursement for health care services provided to Program recipients under this subsection, the types of health care providers specified shall include:

1. Primary care providers; and

2. Psychiatrists and psychiatric nurse practitioners, as defined in § 10-601 of this article, who are providing Assertive Community Treatment or mobile treatment services to Program recipients located in a home or community-based setting.

(iii) For the purpose of reimbursement and any fidelity standards established by the Department, a health care service provided through telemedicine by a psychiatrist or a psychiatric nurse practitioner described under subparagraph (ii)2 of this paragraph is equivalent to the same health care service when provided through an in-person consultation.

(5) The Department may require a health care provider to submit a registration form to the Department that includes information required for the processing of claims for reimbursement for health care services provided to Program recipients under this subsection.

(6) The Department shall adopt regulations to carry out this subsection.]

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~~ PROVIDER IS LOCATED AT THE TIME THE HEALTH CARE SERVICE IS PROVIDED THROUGH TELEHEALTH.

(3) “DISTANT SITE PROVIDER” MEANS THE HEALTH CARE ~~PRACTITIONER~~ PROVIDER 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.~~

(4) “HEALTH CARE PROVIDER” MEANS:

(I) A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING PROGRAM;

(II) A MENTAL HEALTH AND SUBSTANCE USE DISORDER PROGRAM LICENSED IN ACCORDANCE WITH § 7.5-401 OF THIS ARTICLE;

(III) A PERSON LICENSED UNDER TITLE 7, SUBTITLE 9 OF THIS ARTICLE TO PROVIDE SERVICES TO AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY OR A RECIPIENT OF INDIVIDUAL SUPPORT SERVICES; OR

(IV) A PROVIDER AS DEFINED UNDER § 16-201.4 OF THIS ARTICLE TO PROVIDE SERVICES TO AN INDIVIDUAL RECEIVING LONG-TERM CARE SERVICES.

(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, ~~PATIENT-REPORTED~~, 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 FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, AN AUDIO-ONLY TELEPHONE CONVERSATION BETWEEN A HEALTH CARE PROVIDER AND A PATIENT THAT RESULTS IN THE DELIVERY OF A BILLABLE, COVERED HEALTH CARE SERVICE;~~ 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:~~

1. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)2 OF THIS PARAGRAPH, AN AUDIO-ONLY TELEPHONE CONVERSATION;

2. AN E-MAIL MESSAGE; OR

3. A FACSIMILE TRANSMISSION.

[(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 SERVICES REQUIRED TO BE PROVIDED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE COUNSELING AND TREATMENT FOR SUBSTANCE USE DISORDERS AND MENTAL HEALTH CONDITIONS.

(D) THE PROGRAM MAY NOT:

(1) 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; OR

(2) ~~REQUIRE A PROGRAM RECIPIENT TO USE TELEHEALTH IN LIEU OF IN-PERSON SERVICE DELIVERY FOR BEHAVIORAL HEALTH SERVICES EXCLUDE FROM COVERAGE A BEHAVIORAL HEALTH CARE SERVICE PROVIDED TO A PROGRAM RECIPIENT IN PERSON SOLELY BECAUSE THE SERVICE MAY ALSO BE PROVIDED THROUGH TELEHEALTH.~~

(E) THE PROGRAM 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) THE PROGRAM MAY NOT DISTINGUISH BETWEEN PROGRAM RECIPIENTS IN RURAL OR URBAN LOCATIONS IN PROVIDING COVERAGE UNDER THE PROGRAM FOR HEALTH CARE SERVICES DELIVERED THROUGH TELEHEALTH.

(G) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE PROGRAM SHALL REIMBURSE A HEALTH CARE PROVIDER FOR THE DIAGNOSIS, CONSULTATION, AND TREATMENT OF A PROGRAM RECIPIENT FOR A HEALTH CARE SERVICE COVERED BY THE PROGRAM THAT CAN BE APPROPRIATELY PROVIDED THROUGH TELEHEALTH.

(2) THIS SUBSECTION DOES NOT REQUIRE THE PROGRAM TO REIMBURSE A HEALTH CARE PROVIDER FOR A HEALTH CARE SERVICE DELIVERED IN PERSON OR THROUGH TELEHEALTH THAT IS:

(I) NOT A COVERED HEALTH CARE SERVICE UNDER THE PROGRAM; OR

(II) DELIVERED BY AN OUT-OF-NETWORK PROVIDER UNLESS THE HEALTH CARE SERVICE IS A SELF-REFERRED SERVICE AUTHORIZED UNDER THE PROGRAM.

(3) (I) FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, WHEN A HEALTH CARE SERVICE IS APPROPRIATELY PROVIDED THROUGH TELEHEALTH, THE PROGRAM SHALL PROVIDE REIMBURSEMENT IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION ON THE SAME BASIS AND AT THE SAME RATE AS IF THE HEALTH CARE SERVICE WERE DELIVERED BY THE HEALTH CARE PROVIDER IN PERSON.

(II) THE REIMBURSEMENT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT INCLUDE:

1. CLINIC FACILITY FEES UNLESS THE HEALTH CARE SERVICE IS PROVIDED BY A HEALTH CARE PROVIDER NOT AUTHORIZED TO BILL A PROFESSIONAL FEE SEPARATELY FOR THE HEALTH CARE SERVICE; OR

2. ANY ROOM AND BOARD FEES.

(H) (1) THE DEPARTMENT MAY SPECIFY IN REGULATION THE TYPES OF HEALTH CARE PROVIDERS ELIGIBLE TO RECEIVE REIMBURSEMENT FOR HEALTH CARE SERVICES PROVIDED TO PROGRAM RECIPIENTS UNDER THIS SECTION.

(2) IF THE DEPARTMENT SPECIFIES BY REGULATION THE TYPES OF HEALTH CARE PROVIDERS ELIGIBLE TO RECEIVE REIMBURSEMENT FOR HEALTH CARE SERVICES PROVIDED TO PROGRAM RECIPIENTS UNDER THIS SUBSECTION, THE REGULATIONS SHALL INCLUDE ALL TYPES OF HEALTH CARE PROVIDERS THAT APPROPRIATELY PROVIDE TELEHEALTH SERVICES.

(3) FOR THE PURPOSE OF REIMBURSEMENT AND ANY FIDELITY STANDARDS ESTABLISHED BY THE DEPARTMENT, A HEALTH CARE SERVICE PROVIDED THROUGH TELEHEALTH IS EQUIVALENT TO THE SAME HEALTH CARE SERVICE WHEN PROVIDED THROUGH AN IN-PERSON CONSULTATION.

(I) SUBJECT TO SUBSECTION (G)(2) OF THIS SECTION, THE PROGRAM OR A MANAGED CARE ORGANIZATION THAT PARTICIPATES IN THE PROGRAM MAY NOT IMPOSE AS A CONDITION OF REIMBURSEMENT OF A COVERED HEALTH CARE SERVICE DELIVERED THROUGH TELEHEALTH THAT THE HEALTH CARE SERVICE BE PROVIDED BY A THIRD-PARTY VENDOR DESIGNATED BY THE PROGRAM.

(J) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

~~(K)~~ (K) THE DEPARTMENT SHALL ~~APPLY~~ OBTAIN ANY FEDERAL AUTHORITY NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION, INCLUDING APPLYING 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~~ OR THE STATE PLAN.

(L) THIS SECTION MAY NOT BE CONSTRUED TO SUPERSEDE THE AUTHORITY OF THE HEALTH SERVICES COST REVIEW COMMISSION TO SET THE APPROPRIATE RATES FOR HOSPITALS, INCLUDING SETTING THE HOSPITAL FACILITY FEE FOR HOSPITAL-PROVIDED TELEHEALTH.

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, FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, AN AUDIO-ONLY TELEPHONE CONVERSATION BETWEEN A HEALTH CARE PROVIDER AND A PATIENT THAT RESULTS IN THE DELIVERY OF A BILLABLE, COVERED HEALTH CARE SERVICE.~~

(3) “Telehealth” does not include:

(i) ~~an~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, 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)~~ ~~(ii)~~ 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 REGARDLESS

OF THE LOCATION OF THE PATIENT AT THE TIME THE TELEHEALTH SERVICES ARE PROVIDED; 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; **AND**

(III) WHEN PROVIDING THE COVERAGE REQUIRED UNDER THIS SUBSECTION, MAY NOT REQUIRE AN INSURED PATIENT TO USE TELEHEALTH IN LIEU OF IN-PERSON SERVICE DELIVERY FOR BEHAVIORAL HEALTH SERVICES MAY NOT EXCLUDE FROM COVERAGE OR DENY COVERAGE FOR A BEHAVIORAL HEALTH CARE SERVICE THAT IS A COVERED BENEFIT UNDER A HEALTH INSURANCE POLICY OR CONTRACT WHEN PROVIDED IN PERSON SOLELY BECAUSE THE BEHAVIORAL HEALTH CARE SERVICE MAY ALSO BE PROVIDED THROUGH A COVERED TELEHEALTH BENEFIT.

(2) The health care services appropriately delivered through telehealth shall include counseling **AND TREATMENT** for substance use disorders **AND MENTAL HEALTH CONDITIONS**.

(d) **(1) ~~As~~ SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN** entity subject to this section:

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

~~(1)~~ 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)~~ **(II)** is not required to:

~~(i)~~ **1.** 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)~~ **2.** reimburse a health care provider who is not a covered provider under the health insurance policy or contract; and

~~(3)~~ ~~(iii)~~ ~~(i)~~ **1.** 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)~~ **2.** may impose an annual dollar maximum as permitted by federal law; and

~~(iii)~~ **3.** may not impose a lifetime dollar maximum.

(2) (I) FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, WHEN A HEALTH CARE SERVICE IS APPROPRIATELY PROVIDED THROUGH TELEHEALTH, AN ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE REIMBURSEMENT IN ACCORDANCE WITH PARAGRAPH (1)(I) OF THIS SUBSECTION ON THE SAME BASIS AND AT THE SAME RATE AS IF THE HEALTH CARE SERVICE WERE DELIVERED BY THE HEALTH CARE PROVIDER IN PERSON.

(II) THE REIMBURSEMENT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT INCLUDE:

1. CLINIC FACILITY FEES UNLESS THE HEALTH CARE SERVICE IS PROVIDED BY A HEALTH CARE PROVIDER NOT AUTHORIZED TO BILL A PROFESSIONAL FEE SEPARATELY FOR THE HEALTH CARE SERVICE; OR

2. ANY ROOM AND BOARD FEES.

(III) THIS PARAGRAPH MAY NOT BE CONSTRUED TO SUPERSEDE THE AUTHORITY OF THE HEALTH SERVICES COST REVIEW COMMISSION TO SET THE APPROPRIATE RATES FOR HOSPITALS, INCLUDING SETTING THE HOSPITAL FACILITY FEE FOR HOSPITAL-PROVIDED TELEHEALTH.

(E) SUBJECT TO SUBSECTION ~~(D)(2)~~ (D)(1)(II) OF THIS SECTION, AN ENTITY SUBJECT TO THIS SECTION MAY NOT IMPOSE AS A CONDITION OF REIMBURSEMENT OF A COVERED HEALTH CARE SERVICE DELIVERED THROUGH TELEHEALTH THAT THE HEALTH CARE SERVICE BE PROVIDED BY A ~~HEALTH CARE PROVIDER~~ THIRD PARTY THIRD-PARTY VENDOR 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 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Department of Health shall study whether, under the Maryland Medical Assistance Program, substance use disorder services may be appropriately provided through telehealth to a patient in the patient’s home setting.

(b) On or before December 1, 2021, the Maryland Department of Health shall submit a report to the General Assembly, in accordance with § 2–1257 of the State Government Article, that includes any findings and recommendations from the study required under subsection (a) of this section, including:

(1) the types of substance use disorder services, if any, that may be appropriately provided through telehealth to a patient in the patient’s home setting; and

(2) any technological or other standards needed for the provision of appropriate and quality substance use disorder services to a patient in the patient’s home setting.]

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 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Department of Health shall study whether, under the Maryland Medical Assistance Program, substance use disorder services may be appropriately provided through telehealth to a patient in the patient’s home setting.

(b) On or before December 1, 2021, the Maryland Department of Health shall submit a report to the General Assembly, in accordance with § 2–1257 of the State

Government Article, that includes any findings and recommendations from the study required under subsection (a) of this section, including:

(1) the types of substance use disorder services, if any, that may be appropriately provided through telehealth to a patient in the patient's home setting; and

(2) any technological or other standards needed for the provision of appropriate and quality substance use disorder services to a patient in the patient's home setting.]

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 ye 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, on or before October 1, 2021, the Maryland Department of Health shall revise its regulations regarding telehealth reimbursed by the Maryland Medical Assistance Program to ensure that requirements for reimbursement of mental health and substance use disorder services delivered through telehealth comply with the federal Mental Health Parity and Addiction Equity Act.

SECTION 3. AND BE IT FURTHER ENACTED, That the Maryland Insurance Administration shall:

(1) (i) study how telehealth can support efforts to ensure health care provider network sufficiency;

(ii) study the impact of changes in access to and coverage of telehealth services under health benefit plans offered by health insurance carriers on the ability of consumers to choose in-person care versus telehealth care as the modality of receiving a covered service; and

(iii) provide any findings and recommendations from its study to the Maryland Health Care Commission for inclusion in the report required under Section 4 of this Act; and

(2) consider the requirements of this Act when proposing any revisions to regulations relating to network adequacy.

SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That:

(a) On or before December 1, 2022, the Maryland Health Care Commission, in consultation with, as appropriate, the Maryland Health Services Cost Review Commission,

the Maryland Department of Health, and the Maryland Insurance Administration, shall submit a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1257 of the State Government Article, on the impact of providing telehealth services in accordance with the provisions of this Act.

(b) Unless otherwise indicated in this section, the Maryland Health Care Commission shall consider both audio–only and audio–visual technologies for purposes of reporting on the impact of providing telehealth services as required by this section.

(c) The report shall include:

(1) an analysis of:

(i) the impact of the use of telehealth on disparities in access to health care services including primary care and behavioral health services;

(ii) whether different communities and patient populations have differences in take–up rates of telehealth services; and

(iii) the comparative effectiveness of telehealth and in–person visits on the total costs of care and patient outcomes of care;

(2) a study on the alignment of telehealth with new models of care that addresses:

(i) opportunities for using telehealth to improve patient–centered care;

(ii) health care services for which telehealth can substitute for in–person care while maintaining the standard of care, including the use of remote patient monitoring for somatic and behavioral health care services; and

(iii) the impact of alternative care delivery models on telehealth coverage and reimbursement;

(3) an assessment on the efficiency and effectiveness of telehealth and in–person visits that includes:

(i) a review of peer–reviewed research on the impact of different communication technologies on patient health, including patient retention rates and reduced barriers to care;

(ii) a survey of health care providers, as defined under § 15–141.2 of the Health – General Article, as enacted by *Section 1 of this Act*; and

(iii) a review of the resources required to sustainably provide telehealth services for the continuum of health care providers, including private and small practices;

(4) an assessment of patient awareness of and satisfaction with telehealth coverage and care that includes:

(i) the availability and appropriate uses of telehealth services;

(ii) the privacy risks and benefits of telehealth services and the strategies needed to navigate privacy issues; and

(iii) barriers to care and levels of patient engagement that have been addressed by audio-only and audio-visual telehealth;

(5) a review of the appropriateness of:

(i) telehealth across the continuum of care, ranging from virtual telecommunications services used for patient check-ins to in-person evaluation and management services as defined in the Berenson-Eggers type of service typology for somatic and behavioral health services;

(ii) inclusion of clinic hospital facility fees in reimbursement for hospital-provided telehealth; and

(iii) the use of telehealth to satisfy network access standards required under § 15-112(b) of the Insurance Article, as specified in Section 3 of this Act; and

(6) the study or analysis of any other issues identified by the Commission.

(d) The report shall include recommendations on:

(1) coverage of telehealth services; and

(2) payment levels for telehealth services relative to in-person care.

(e) (1) The Maryland Health Care Commission shall complete the report using research methods appropriate for the issues identified in this section and available funding.

(2) To carry out the health care provider survey required under subsection (c)(3)(ii) of this section, the Maryland Health Care Commission shall develop survey questions and work with the health occupations boards and other appropriate entities within the Maryland Department of Health to send out information regarding the survey by means of:

(i) renewal notices;

- (ii) newsletters;
- (iii) e-mail blasts;
- (iv) website postings; or
- (v) any combination thereof.

SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that:

(1) until and no later than June 30, 2023, while the Maryland Health Care Commission completes the study and submits the report required under Section ~~2~~ 4 of this Act for consideration by the General Assembly for the adoption of comprehensive telehealth policies by the State:

(i) the Maryland Medical Assistance Program continue to reimburse health care providers for covered health care services provided through audio-only and audio-visual technology in accordance with the requirements of ~~Sections 1 and 2~~ Section 1 of this Act, and all applicable executive orders and waivers issued in accordance with Chapters 13 and 14 of the Acts of the General Assembly of 2020; and

(ii) insurers, nonprofit health service plans, and health maintenance organizations that are subject to § 15-139 of the Insurance Article, as enacted by Section 1 of this Act, continue to reimburse health care providers for covered health care services provided through audio-only and audio-visual technology in accordance with the requirements of Section 1 of this Act and all applicable accommodations made by the insurers, nonprofit health service plans, and health maintenance organizations during the Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 issued on March 5, 2020, and its renewals;

(2) the Maryland Health Care Commission use the data collected from utilization and coverage of telehealth as provided for in item (1) of this section to complete the report required under Section ~~2~~ 4 of this Act; and

(3) the State to use the report required under Section ~~2~~ 4 of this Act to establish comprehensive telehealth policies for implementation after the Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 issued on March 5, 2020, and its renewals expire.

SECTION ~~2~~ ~~4~~ 6. 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~~ July 1, 2021.

SECTION ~~3~~ 5 7. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2021~~ July 1, 2021.

Approved by the Governor, April 13, 2021.