

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 731 (The Speaker)(By Request - Administration)
 Health and Government Operations

Telehealth Services – Expansion

This Administration bill requires Medicaid to (1) provide health care services appropriately delivered through “telehealth” to program recipients regardless of their location and (2) allow a “distant site provider” to provide health care services to a recipient from any location at which the services may be appropriately delivered through telehealth. The bill expands the definitions of “telehealth” for Medicaid, health occupations, and private insurance. Insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) must reimburse for a covered service appropriately provided through telehealth on the same basis and at the same rate as if delivered in person. A carrier may not impose as a condition of reimbursement for a telehealth service that the service be provided by a provider designated by the carrier. The bill’s insurance provisions apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2022. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration in FY 2022 from the \$125 rate and form filing fee; review of form filings requires contractual assistance in FY 2022 only (not shown below). Medicaid expenditures increase by \$16.1 million (50% general funds, 50% federal funds) in FY 2022, and \$32.2 million annually thereafter, as discussed below; federal fund revenues increase accordingly. Any impact on the State Employee and Retiree Health and Welfare Benefits Program is not reflected. **This bill increases the cost of an entitlement program beginning in FY 2022.**

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
FF Revenue	\$8.1	\$16.1	\$16.1	\$16.1	\$16.1
GF/FF Exp.	\$16.1	\$32.2	\$32.2	\$32.2	\$32.2
Net Effect	(\$8.1)	(\$16.1)	(\$16.1)	(\$16.1)	(\$16.1)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in expenditures for some local governments to continue to reimburse for certain telehealth services. Revenues are not affected.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill removes language that requires Medicaid to provide telehealth services, *subject to the limitations of the State budget*.

For purposes of Medicaid, “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. “Telehealth” includes (1) synchronous and asynchronous interactions; (2) audio-only conversations between a health care practitioner and patient using telecommunications technology; and (3) remote patient monitoring (RPM) services.

The bill expands the definition of “telehealth” under the Health Occupations Article to include audio-only calls.

For purposes of private insurance, the definition of “telehealth” is expanded to include an audio-only conversation between a health care provider and a patient using telecommunications technology, as well as to include services provided by a health care provider licensed, certified, or otherwise authorized by law to deliver such a service (rather than only a *licensed* health care provider).

The Maryland Department of Health (MDH) must apply to the Centers for Medicare and Medicaid Services (CMS) for any waiver amendments necessary to implement the bill’s Medicaid provisions.

Current Law/Background:

Medicaid and Telehealth

Under § 15-103 of the Health-General Article, subject to the limitations of the State budget, Medicaid must provide mental health services appropriately delivered through *telehealth* to a patient in the patient’s home setting. “Telehealth” does not include the provision of health care services solely through audio-only telephone calls, electronic mail messages, or facsimile transmissions.

Under § 15-105.2 of the Health-General Article, to the extent authorized by federal law or regulation, coverage of and reimbursement for health care services delivered through *telemedicine* must apply to Medicaid and managed care organizations in the same manner they apply to carriers. Subject to the limitations of the State budget and to the extent authorized by federal law, MDH may authorize coverage of and reimbursement for health care services that are delivered through store-and-forward technology or RPM.

MDH may specify by regulation the types of health care providers eligible to receive reimbursement for telemedicine health care services provided to Medicaid recipients. If MDH does so, the types of providers must include primary care providers, and psychiatrists and psychiatric nurse practitioners who provide Assertive Community Treatment or mobile treatment services to Medicaid recipients in a home or community-based setting.

All Medicaid participants are eligible to receive telehealth services. Telehealth services are subject to the same program restrictions, requirements, and other limitations as services provided in person. Telehealth providers must be enrolled as a Medicaid provider to be reimbursed; however, certain originating site providers may participate even though they are not eligible to enroll as a Medicaid provider. Medicaid allows all distant site provider types to participate and provides coverage for RPM for chronic conditions.

Health Occupations and Telehealth

Under § 1-1001 of the Health Occupations Article, “telehealth” means a mode of delivering health care services through the use of telecommunications technologies by a health care practitioner (an individual licensed, certified, or otherwise authorized by law to provide health care services under the article to a patient at a different physical location than the health care practitioner). “Telehealth” includes synchronous and asynchronous interactions. “Telehealth” does not include the provision of health care services solely through audio-only calls, electronic mail messages, or facsimile transmissions.

Private Insurance Coverage and Telehealth

“Telehealth” means the use of interactive audio, video, or other telecommunications or electronic technology by a licensed health care provider to deliver a health care service at a location other than the location of the patient. “Telehealth” does not include audio-only telephone calls, electronic mail messages, or facsimile transmissions.

A carrier must provide coverage under a health insurance policy or contract for health care services appropriately delivered through telehealth (including counseling for substance use disorders). A carrier 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.

A carrier must reimburse a health care provider for a covered service provided through telehealth. A carrier is not required to reimburse a health care provider who is not a covered provider under the health insurance policy or contract.

A carrier may impose a deductible, copayment, or coinsurance amount on benefits for health care services delivered either through an in-person consultation or through telehealth. A decision by a carrier not to provide coverage for telehealth constitutes an adverse decision.

Telehealth Coverage during COVID-19

Emergency legislation, Chapters 13 and 14 of 2020, authorized the Governor, for the duration of the COVID-19 public health emergency (PHE) to, among other things, establish or waive telehealth protocols and order MDH to reimburse certain Medicaid telehealth services for COVID-19 patients.

Executive orders from the Governor and waivers from federal requirements increased Medicaid coverage for telehealth services, while the federal Coronavirus Aid, Relief, and Economic Security Act and federal regulatory changes increased Medicare coverage. Expanded coverage includes coverage for telehealth services (1) originating at a participant's home or other secure location; (2) delivered by audio-only technology, including by phone; and (3) delivered by technology that is not compliant with the federal Health Insurance Portability and Accountability Act (HIPAA). These expansions will terminate with the end of COVID-19 emergency orders unless extended through additional executive orders or legislation.

While State and federal law excludes audio-only (telephone call) telehealth visits from insurance coverage, these visits are currently covered under federal and State emergency health declarations. Carriers have expanded telehealth coverage to additional systems and platforms, additional provider and service types, and phone-only consultations. Additionally, carriers have waived cost-sharing for telehealth visits and provided reimbursement parity between virtual and in-person consultations. Accommodations have varied by carrier, however, and carriers have indicated that some expanded coverage will be terminated or reduced at the end of the federal and State PHEs.

State Fiscal Effect:

Audio-only Services for Dual-eligibles

Medicaid provides coverage for individuals who are dually eligible for both Medicare and Medicaid (dual-eligibles). During the PHE, Medicare has covered audio-only telehealth through waivers. However, this coverage is set to expire at the end of calendar 2021, as

Medicare is prohibited from covering a service that can be a substitute for an in-person visit after the pandemic. In the absence of Congressional action to make Medicare coverage for audio-only telehealth permanent, Medicaid must cover the full cost of any services delivered to dual-eligibles that are not covered by Medicare.

Thus, to the extent Medicare coverage of audio-only telehealth coverage ends, Medicaid expenditures increase by an estimated \$16.1 million (50% general funds, 50% federal funds) in fiscal 2022 to cover 100% of the cost of audio-only telehealth services for dual-eligibles (rather than 20%) effective January 1, 2022. Federal fund revenues increase accordingly. This estimate is based on the following information and assumptions:

- As Medicare is currently covering audio-only services, data is not available from the period of the PHE to specifically estimate potential costs; thus, a proxy is used.
- The total annual cost for services to dual-eligibles (including behavioral and somatic health services) that could be delivered via audio-only telehealth is estimated at \$805.3 million (this excludes inpatient services and other expenditures unlikely to be provided via audio-only).
- Approximately 5% of these services will be provided via audio-only and are estimated to cost 5% of the total for all services (\$40.3 million).
- Medicaid currently pays 20% of Medicare services (\$8.1 million).
- Thus, Medicaid incurs an additional 80% of these costs (\$32.2 million), as Medicare will no longer cover audio-only services.

Medicaid expenditures increase by \$32.2 million (50% general funds, 50% federal funds) on an annualized basis beginning in fiscal 2023.

Previous MDH estimates on telehealth legislation included projected impacts on utilization; however, no such information was provided for this analysis and any utilization impact has not been accounted for in the estimate.

Additional Considerations

Prior to the pandemic, hospitals were only permitted to bill for professional fees for services delivered via telehealth or on an audio-only basis. To the extent hospitals may bill for facility or clinic rates for telehealth services under the bill, substantial additional costs will be incurred by Medicaid.

Medicaid may also incur additional costs related to the delivery of telehealth services via federally qualified health centers (FQHCs). CMS has indicated that Medicaid must pay FQHCs their prospective payment rates when services are delivered through telehealth.

These rates range from \$160 to \$334 and would be the payment rate for FQHCs that deliver audio-only services.

MDH further advises that authority for certain telehealth services may not be permitted on an ongoing basis after the PHE. For example, authority to permit use of non-HIPAA compliant telehealth technology is based on a temporary waiver from the federal Office of Civil Rights (OCR). However, once that waiver ends, MDH must comply with OCR requirements governing the use of HIPAA compliant technology. Additionally, during the PHE, Maryland implemented a waiver to the “four walls” rule regarding clinics. Under this rule, Medicaid may not reimburse freestanding clinics (including local health departments, general clinics, family planning clinics, outpatient mental health centers, freestanding dialysis centers, and school-based health centers sponsored by these clinic types) if neither the practitioner nor patient is physically located within the clinic. CMS has indicated that this flexibility is unlikely to be granted after the PHE.

Additional Comments: The Maryland Health Care Commission convened a Telehealth Policy Workgroup in 2020 to discuss select telehealth policy changes temporarily implemented in response to COVID-19 PHE and consider policies that should continue beyond the PHE. The workgroup’s [draft general findings](#) include key categories of (1) removing telehealth restrictions on originating sites; (2) permitting audio only when the treating provider determines it to be safe, effective, and clinically appropriate; (3) removing telehealth restrictions on conditions that can be treated; (4) removing telehealth restrictions on provider types; (5) reducing or waiving cost-sharing through the later of the end of the PHE or December 31, 2021; and (6) reinstating technology standards that require providers to use HIPAA-compliant technology.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 567 (The President)(By Request - Administration) - Finance.

Information Source(s): Maryland Insurance Administration; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2021
rh/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Telehealth Services – Expansion**

BILL NUMBER: HB 731/SB 567

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

OR

WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS