

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 568 (The President)(By Request - Administration)
Education, Health, and Environmental Affairs

Health Care Practitioners – Telehealth – Out-of-State Health Care Practitioners

This Administration bill authorizes an “out-of-state health care practitioner” to provide telehealth services to a patient in Maryland if the practitioner registers with the appropriate Maryland health occupations board. A registered out-of-state health care practitioner must (1) register at least once every two years (or on another regular schedule); (2) update the registration if there are any specified changes within 30 days after the change occurs; (3) provide services within the applicable scope of practice established by Maryland law; (4) comply with all laws, rules, and regulations applicable to the provision of health care services in Maryland; and (5) consent to the jurisdiction of the State. A registered out-of-state health care practitioner may not establish an office or provide in-person services in the State, or prescribe or dispense a controlled dangerous substance to a patient in the State. Each health occupations board must publish information on each registered out-of-state health care practitioner. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: Indeterminate impact on special fund revenues and expenditures for the affected health occupations boards beginning in FY 2022, as discussed below. Minimal increase in Medicaid expenditures (75% federal funds, 25% general funds) beginning in FY 2022 due to provider enrollment fees. Federal fund revenues increase accordingly.

Local Effect: None.

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

Analysis

Bill Summary: The appropriate health occupations board must register an out-of-state health care practitioner to provide telehealth services if the practitioner (1) completes an application on a form provided by the board; (2) holds a current, valid, and unrestricted license, certification, or other legal authorization from another state and is not subject to any past or pending disciplinary action, with specified exceptions; (3) completes a criminal history records check; (4) designates a registered agent for service of process in the State; (5) agrees to cooperate with the board on any investigation; and (6) pays a registration fee.

A registered out-of-state health care practitioner providing telehealth services to a patient in the State must be held to the same standards of practice applicable to in-person health care services in the State and subject to any disciplinary action or sanction applicable to a health care practitioner licensed or otherwise authorized to practice in the State.

If an out-of-state health care practitioner fails to register before providing telehealth services to a patient located in the State, the practitioner may be subject to disciplinary action for practicing without a license. Disciplinary action may include summarily suspending the registration, imposing specified sanctions or a fine, and referring the matter to the appropriate licensing authority in another state.

The bill exempts out-of-state practitioners from the requirement to be licensed prior to practicing specified professions in the individual statutes for the following health occupations boards: Acupuncture; Audiology, Hearing Aid Dispensers, and Speech-Language Pathology; Chiropractors; Dentistry; Dietetic Practice; Massage Therapy; Nursing; Nursing Home Administrators; Occupational Therapy; Optometry; Pharmacy; Physical Therapy; Physicians; Podiatry; Professional Counselors and Therapists; Psychology; Social Work; and Residential Child Care Program Professionals.

Current Law:

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.

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. 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.

For purposes of private insurance, "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 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.

Health Occupations Licensure

With specified exceptions, an individual must be licensed by the respective health occupations board before the individual may practice the following professions included under the bill: acupuncture; audiology; hearing aid dispensing; speech-language pathology (or assist in the practice of speech-language pathology); chiropractic; dentistry; dietetics; massage therapy; nursing; occupational therapy or limited occupational therapy; optometry; pharmacy; physical therapy or limited physical therapy; medicine; podiatry; clinical alcohol and drug counseling; clinical marriage and family therapy; clinical professional art therapy; clinical professional counseling; psychology; social work; or as a nursing home administrator, physician assistant, residential child care program administrator, or residential child and youth care practitioner. Licensure requirements vary by profession, but typically require, among other things, specified education and experience, passage of a national and/or State examination, and a criminal history records check.

Interstate licensure compacts are intended to facilitate the practice of specific professions with the goal of improving access to services and simplifying the process for obtaining licensure in multiple states. Three health occupations boards currently participate in national interstate licensure compacts: the State Board of Physical Therapy Examiners; the State Board of Physicians; and the State Board of Nursing. Legislation for four additional interstate compacts (Audiology and Speech-Language Pathology, Licensed Professional Counselors, Psychology, and Occupational Therapy) is pending during the

2021 legislative session. Compact legislation is typically contingent upon the adoption of similar legislation in a certain number of other states.

Background: In 2019, Florida enacted [legislation](#) establishing a registration process for out-of-state health care professionals to deliver health care services to Florida residents via telehealth if they register with the appropriate board and meet certain eligibility criteria. An applicant must designate a registered agent for service of process.

During the COVID-19 pandemic, numerous states have issued emergency licensure waivers or emergency courtesy licenses to allow certain health care professionals licensed in other jurisdictions to practice temporarily in the state. Some states have also allowed individuals to practice via telehealth on temporary licenses during the duration of the public health emergency. The specific health occupations permitted to practice under these conditions varies by state (for example, several states' licensure waivers apply only to mental health providers).

State Revenues: The overall impact of the bill on special fund revenues for the affected health occupations boards is indeterminate. Under the bill, the boards may charge a registration fee for out-of-state health care practitioners, which increases special fund revenues by an indeterminate amount based on the number of applicants and the fee established by each board.

For some boards, current licensees that live out of state may choose not to renew their license and instead register as an out-of-state health care practitioner and provide only telehealth services to Maryland clients. Depending on the difference between the biennial renewal license fee currently paid and the new registration fee set by the board, special fund revenues for some boards may decline under the bill.

State Expenditures: To the extent registered out-of-state health care practitioners elect to enroll as Medicaid providers, Medicaid expenditures (75% federal funds, 25% general funds) increase by an indeterminate but minimal amount beginning in fiscal 2022 for provider enrollment fees. Medicaid pays a \$6.85 per provider per month fee to its provider enrollment vendor to enroll providers and maintain a network of provider files. Thus, for every 1,000 registered out-of-state health care practitioners that elect to enroll as Medicaid providers under the bill, Medicaid expenditures increase by \$82,200 annually (75% federal funds, 25% general funds). Federal fund revenues increase accordingly.

The affected health occupations boards incur an indeterminate amount of administrative expenses to register out-of-state health care practitioners. As all but two boards (Nursing Home Examiners and Residential Child Care Program Professionals) are special funded, this analysis assumes that those boards set registration fees sufficient to cover such costs. However, depending on the number of registered out-of-state health care practitioners, the

boards likely incur additional costs related to complaint investigations and potential disciplinary actions as the bill requires that a registered out-of-state health care practitioner be subject to any disciplinary action or sanction applicable to a health care practitioner licensed or otherwise authorized to practice in the State.

Additional Comments: It is unclear how several of the health occupations included in the bill (*i.e.*, acupuncturists, massage therapists, nursing home administrators, and residential child care program professionals) can provide services via telehealth. As noted earlier, three health occupations boards currently participate in interstate licensure compacts and legislation is pending for four additional boards. It is unclear how authorizing out-of-state health care practitioners to register to provide telehealth services to a patient in Maryland impacts existing or future compact processes.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 732 (The Speaker)(By Request - Administration) - Health and Government Operations.

Information Source(s): American Psychological Association; Florida Department of Health; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Care Practitioners - Telehealth - Out-of-State Health Care Practitioners

BILL NUMBER: HB 732/SB 568

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