

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 421 (The Speaker, *et al.*) (By Request - Administration)
Health and Government Operations

Out-of-State Health Care Practitioners – Provision of Behavioral Health
Services via Telehealth – Authorization

This Administration bill authorizes a health care practitioner who is not licensed in the State to provide behavioral health services via telehealth to a patient located in the State, subject to specified requirements. A health occupations board may adopt regulations to implement the bill. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: The Maryland Department of Health (MDH) advises that the affected health occupations boards can implement the bill with existing budgeted resources. Revenues are not materially affected.

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: To provide behavioral health services via telehealth to a patient located in the State, a health care practitioner who is not licensed in the State must:

- hold a current, valid, and unrestricted license issued by an applicable health care licensing authority in a U.S. state, district, or territory;

- not be the subject of any past disciplinary action taken by or pending disciplinary proceeding of an applicable health care licensing authority, with the exception of an action related to the nonpayment of license fees;
- act in full compliance with all applicable laws, rules, and regulations in the State;
- act in compliance with any State requirements regarding the maintenance of liability insurance for the practice of the health care occupation of the health care practitioner;
- consent to the jurisdiction of the relevant health occupations board and the courts of the State; and
- if applicable, hold a controlled substance license or permit that has never been suspended or revoked by a U.S. state, district, or territory or the U.S. Drug Enforcement Administration.

An out-of-state health care practitioner who provides behavioral health services via telehealth to a patient located in the State is held to the same standards of practice that are applicable to in-person health care settings in the State. A health care practitioner who fails to comply with any applicable laws, rules, or regulations is subject to investigation and disciplinary action by the appropriate health occupations board in the State, including revocation of the health care practitioner's Maryland practice privileges and referral of the matter to licensing authorities in any U.S. state, district, or territory where the health care practitioner possesses a license to practice.

Venue for a civil or administrative action against an out-of-state health care practitioner by MDH, a health occupations board, or a patient who receives behavioral health services via telehealth from the health care practitioner must be in the patient's county of residence or any other county in the State where venue can be established pursuant to § 6-201 of the Courts and Judicial Proceedings Article.

Nothing in the bill may be construed to shield a health care practitioner from personal jurisdiction in the State or privacy safeguards under the federal Health Insurance Portability and Accountability Act of 1996.

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, which governs the Medicaid program, “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) from July 1, 2021, through June 30, 2023, 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. “Telehealth” does not include the provision of health care services solely through an audio-only telephone conversation (with the exception of the temporary provision for fiscal 2022 and 2023), an email message, or a facsimile transmission.

Medicaid must (1) provide health care services appropriately delivered through telehealth to program recipients regardless of their location at the time telehealth services are provided 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. Telehealth services provided to Medicaid recipients must include counseling and treatment for substance use disorders (SUDs) and mental health conditions.

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. However, from July 1, 2021, through June 30, 2023, “telehealth” includes 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.

A carrier must reimburse for health care services appropriately delivered through telehealth (including counseling and treatment for SUDs and mental health conditions) regardless of the location of the patient at the time telehealth services are provided. A carrier may not exclude from coverage or deny coverage for a behavioral health care service that is a covered benefit when provided in person solely because the behavioral health care service may also be provided through a covered telehealth benefit.

Health Occupations Licensure

With specified exceptions, an individual must be licensed by the respective health occupations board before the individual may practice in the State. 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. Five health occupations boards currently participate in national interstate licensure compacts: the State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists, and Music Therapists; the State Board of Nursing; the State Board of Physical Therapy Examiners; the State Board of Physicians; and the State Board of Examiners of Psychologists. Legislation has been enacted in Maryland for two additional compacts that have not yet met the threshold of participating states (Licensed Professional Counselors and Occupational Therapy). Compact legislation is typically contingent upon the adoption of similar legislation in a certain number of other states.

Background: 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 vary by state (for example, several states' licensure waivers apply only to mental health providers).

Additional Information

Prior Introductions: None.

Designated Cross File: SB 398 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - February 8, 2022
rh/jc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Out-of-State Health Care Practitioners – Provision of Behavioral Health Services via Telehealth – Authorization

BILL NUMBER: HB 421

PREPARED BY: Jake Whitaker

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS