STATE OF MARYLAND

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2021 SESSION
POSITION PAPER

BILL NO: **SB 567**

COMMITTEE: **Finance Committee**

POSITION: **SUPPORT WITH AMENDMENTS**

TITLE: Telehealth Services – Expansion

BILL ANALYSIS

Senate Bill 567 ("SB 567") requires health plans and Medicaid to provide health care services through telehealth and imposes as a condition of reimbursement that health care services be delivered through telehealth. The bill changes the existing definition of telehealth to include medically necessary somatic, dental, or behavior health services to a patient, and removes restrictions on the originating site and distant site for telehealth services. The bill also includes audio-only in the definition of telehealth. SB 567 requires health plans and Medicaid to reimburse for all telehealth services at the same rate as if the services were delivered in-person.

POSITION AND RATIONALE

The Maryland Health Care Commission (the "Commission") supports SB 567 with amendments. The Commission has worked collaboratively with the many stakeholders, consumer and behavior health representatives, and the largest private payors to identify areas for compromise as it relates to bill mandates on payment parity for audio-only visits with in-person and audio-video visits as a permanent feature of health care reimbursement in Maryland.

Telehealth has shown great potential to improve access to care during the coronavirus public health emergency (PHE)[1]. The PHE triggered the rapid adoption of telehealth as many health care facilities were closed in April and May except for the most urgent in-person visits. Virtual

[1] Data collected between mid-March and mid-October 2020 by the Centers for Medicare & Medicaid Services indicates over 24.5 million beneficiaries have received a Medicare telehealth service as compared to around 15,000 beneficiaries per week prior to the PHE.

Note: The Maryland Health Care Commission is an independent State agency, and the position of the Commission may differ from the position of the Maryland Department of Health.

visits of all types hosted on telehealth platforms and public facing platforms such as Facetime®, ZOOM®, and Facebook® surged. In addition, government and private payors have allowed telephone communications to be reimbursed as telehealth. Many stakeholders nationally have lauded the sweeping changes in regulation and payment across health care.[2,3,4]

The Commission believes that waivers allowing health care practitioners to use telehealth as a mode of care have been effective during the coronavirus pandemic. Assessing the effectiveness and benefit of these telehealth waivers is appropriate before permanently mandating coverage in Maryland law. Allowing the telehealth waivers that payers had in place on March, 2020 to continue through June 30, 2023 will provide stability while a thoughtful study is underway. The Commission recommends that the bill be amended as follows:

AMENDMENTS

AMENDMENT NUMBER ONE /* Health General*/

- Page 5, after line 18, insert:

  3) WHEN APPROPRIATELY PROVIDED THROUGH TELEHEALTH:

  (I) AT A RATE THAT EXCLUDES CLINIC FACILITY FEES UNLESS THE SERVICE IS PROVIDED BY A HEALTH CARE PRACTITIONER NOT AUTHORIZED TO BILL A PROFESSIONAL FEE SEPARATELY;

  (II) CONFORMS TO THE SPECIFIC CURRENT PROCEDURE TERMINOLOGY OR HEALTH CARE PROCEDURE CODE SYSTEM REQUIREMENTS UNDER WHICH THE SERVICE IS BILLED;

  (III) IS BILLED USING THE HEALTH CARE ENTITY'S CODING REQUIREMENTS FOR DISTINGUISHING THAT THE SERVICE IS DELIVERED VIA TELEHEALTH; AND

  (IV) NOTHING HEREIN SHALL SUPERSEDE THE AUTHORITY OF THE HEALTH SERVICES COST REVIEW COMMISSION TO SET THE APPROPRIATE RATE FOR HOSPITALS.

AMENDMENT NUMBER TWO: /* Insurance Article*/

Page 6, strike lines 28 – 30 and replace with:

(II) SUBJECT TO SUBPARAGRAPHS (III)-(VI), WHEN APPROPRIATELY PROVIDED THROUGH TELEHEALTH, ON THE SAME BASIS AND AT THE

[2] Bart M. Demaerschalk et al., "American Telemedicine Association Telestroke Guidelines," *Telemedicine and E-Health* 23, no. 5 (May 1, 2017).
[3] The Erisa Industry Committee, *Employers on Telemedicine: Government Standing in the Way* (June 17, 2020).
[4] American Society of Health-System Pharmacists, *COVID-19 and Telemedicine Changes* (April 9, 2020).

SAME RATE AS IF THE HEALTH CARE SERVICE WERE DELIVERED BY THE HEALTH CARE PROVIDER IN PERSON.

(III) THE RATE EXCLUDES CLINIC FACILITY FEES UNLESS THE SERVICE IS PROVIDED BY A HEALTH CARE PRACTITIONER NOT AUTHORIZED TO BILL A PROFESSIONAL FEE SEPARATELY;

(IV) CONFORMS TO THE SPECIFIC CURRENT PROCEDURE TERMINOLOGY OR HEALTH CARE PROCEDURE CODE SYSTEM REQUIREMENTS UNDER WHICH THE SERVICE IS BILLED;

(V) IS BILLED USING THE HEALTH CARE ENTITY'S CODING REQUIREMENTS FOR DISTINGUISHING THAT THE SERVICE IS DELIVERED VIA TELEHEALTH; AND

(VI**)** NOTHING HEREIN SHALL SUPERSEDE THE AUTHORITY OF THE HEALTH SERVICES COST REVIEW COMMISSION TO SET THE APPROPRIATE RATE FOR HOSPITALS.

AMENDMENT NUMBER THREE:

- *UNCODIFIED LANGUAGE*:

(A) Require the Commission to report to the General Assembly by DECEMBER 1, 2022 on:

(I) Quality and costs of telehealth and audio-only services

(i) The impact of the transition from in-person to telehealth and audio-only visits on disparities in access to primary care and behavioral health services

(ii) The effect of differential uptake of telehealth and audio-only among different patient populations on health disparities

(iii) The comparative effectiveness of telehealth, audio-only visits, and in-person visits on the total costs of care and patient outcomes of care

(II) Alignment of telehealth and audio-audio only services with the new models of care

(i) Opportunities for using telehealth and audio-only to improve patient-centeredness of care

(ii) Services for which telehealth and audio-only can substitute for in-person care while maintaining the standard of care

(iii) The impact of alternative care delivery models on telehealth and audio-only coverage and reimbursement

(III) Consumer and provider satisfaction with telehealth and audio-only services and the implementation options

(i) Consumer awareness and availability of telehealth and audio-only service

(ii) Practitioner assessment on the efficiency and effectiveness of telehealth, audio-only, and in-person visits

(iii) Small practices ability to implement telehealth and audio-only health care

(iv) Patent privacy risks and benefits of telehealth and audio-only care

(V) **APPROPRIATENESS OF AUDIO-ONLY SERVICE ACROSS THE CONTINUUM OF CARE 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.**

(IV) Any other issues of importance identified by MHCC

(B) MHCC shall make recommendations on:

(I) Coverage of audio-only service as a telehealth service or virtual communication service

(II) Payment levels for audio-only and telehealth care relative to in-person care

AMENDMENT NUMBER FOUR:

Page 8, after line 12, strike lines 13 and 14 and replace with:

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect **JULY 1, 2021.** It shall remain effective for a period of **2 years** and, at the end of **JUNE 30, 2023**, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

For these reasons, the Commission recommends a favorable report on SB 3 with the proposed amendments.