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To: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

From: The Office of the Attorney General

Re: House Bill 551 (Maryland Medical Assistance Program and Health Insurance – Coverage and Reimbursement of Telehealth Services): Support

The Office of the Attorney General (the Office) supports House Bill 551 for many of the same reasons we support House Bill 123 (Preserve Telehealth Access Act of 2021), subject to emerging considerations described below. Preserving COVID-related expansions of telehealth access is one of the priority actions recommended by the Attorney General's COVID-19 Access to Justice Task Force. To build health equity and increase health care services for historically underserved populations that are being disproportionately affected by COVID-19, the Task Force recommended making permanent telehealth and audio services that have been shown to be effective during the pandemic and to have helped address an increased demand for services generally. The Report of the Senate President's Advisory Workgroup on Equity and Inclusion recognized the benefits of expanding telehealth access, as did the Maryland Health Care Commission's Telehealth Policy Workgroup (Commission's Workgroup) that was convened in 2020.

Their combined recommendations reflect a need for permanent telehealth provisions that maintain quality of care and are cost-effective, with protections against fraud, waste and abuse in order to conserve funds urgently needed for other health equity initiatives. However, because preliminary data from the ongoing pandemic suggests telehealth delivery of some services reduces the quality of care, and that some hospitals imposed facility fees for telehealth visits prior to regulatory intervention, the Office urges caution regarding permanent changes that do not adequately account for risks of decreased quality of care or the imposition of inappropriate fees.

The strongest protection against such unintended consequences could be reconsidering permanent provisions after the General Assembly has been provided an

analysis of the pandemic data which should reveal the strengths and weaknesses of the emergency-related telehealth delivery of services. For example, the Commission has proposed amendments to other telehealth bills that would require the Commission to report to the General Assembly by December 1, 2022 on (1) the quality and costs of telehealth and audio-only services; (2) the alignment of telehealth and audio-audio only services with the new models of care; (3) consumer and provider satisfaction with telehealth and audio-only services and the implementation options; (4) the appropriateness of audio-only service across the continuum of care; and (5) any other issues of importance identified by the Commission's Workgroup, including patient privacy risks and benefits of telehealth and audio-only care. The Commission would also be required to make recommendations on (1) coverage of audio-only service as a telehealth service or virtual communication service and (2) payment levels for audio-only and telehealth care relative to in-person care. The Office believes the state's interests would be best served by ensuring that an antifraud enforcement subject matter expert be consulted and weigh in on permanent telehealth provisions before they are recommended by the Commission to the General Assembly. The Commission has suggested an effective date of July 1, 2021, to remain in effect for a period of 2 years, with a sunset date of June 30, 2023. We believe that proposed timeline would balance the ongoing need for telehealth delivery of services with the health care system's goal of standard care for all, delivered cost-effectively.

The Office particularly supports this bill's focus on expanding access to mental health services and providers and primary care providers for the remainder of the catastrophic health emergency, and beyond, subject to the provisos in the previous paragraph. We would urge caution against undue expansion of the types of providers and services that would be allowed under other proposed legislation because of the unjustifiable increase in (1) privacy and security risks and (2) the risk of waste, fraud and abuse.

The Office also supports this bill's protection of patient choice. Express protections provide that an insured patient may select in-person or telehealth delivery of services and may not be required to use telehealth instead of in-person services. The Office has advocated for improved network adequacy standards that would afford consumers access to in-network providers, and recognizes that telehealth delivery may qualify under the right circumstances. This bill would apply telehealth services toward adequacy standards but only if the patient chooses telehealth delivery rather than in-person services, and the telehealth delivery is clinically appropriate, available and accessible.

Continuing pandemic-expanded telehealth services would allow Marylanders to access care without risk of infection as the pandemic continues, help to eliminate long-standing racial disparities in the health care system and improve health outcomes for Marylanders. The long-term interests of patients would be served best by requiring a sunset or other implementing provision that would postpone adopting permanent provisions until after the Commission's Workgroup has conducted its proposed pandemic data analysis, so that the results may guide formulation of permanent telehealth provisions in Maryland.

We urge the Committee to give House Bill 551 a favorable report.

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