

BRIAN E. FROSH
Attorney General

WILLIAM D. GRUHN
Chief
Consumer Protection Division

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

Writer's Direct Fax No.
(410) 576-6571

Writer's Direct Email:
poconnor@oag.state.md.us



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Direct Dial No.
(410) 576-6515

March 3, 2022

To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: The Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 398 (Out-of-State Health Care Practitioners – Provision of Behavioral Health Services via Telehealth – Authorization): Concern

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports the goal of expanding access to behavioral health services for Marylanders, but is concerned by the apparent lack of patient safeguards and consumer protections in Senate Bill 398. We believe these deficits must be corrected before Maryland authorizes the delivery of healthcare services, including behavioral health services, via telehealth by out-of-state providers, which is why the HEAU is supporting House Bill 670 (no cross-file), which calls for a study of all interstate telehealth services ("Requiring the Maryland Health Care Commission, in consultation with certain State agencies and stakeholders, to study ways that interstate telehealth can be expanded to allow State residents to use telehealth to receive health services from out-of-state practitioners; and requiring the Commission to submit a report on its findings and recommendations to the Senate Finance Committee and the House Health and Government Operations Committee on or before December 1, 2023"). We believe a comprehensive study is required to ensure access to care doesn't compromise quality of care, or the State's ability to address violations of laws established to protect Marylanders. A comprehensive study will allow for a thoughtful way to correct the deficits we have spotted in this bill, and to identify and correct other potential risks for patients inherent in the delivery of healthcare services by out-of-state providers.

Currently, a provider delivering health care services through telehealth must be licensed, certified, or otherwise authorized by law to provide health care services in the

State if the health care services are being provided to a patient located in the State. A web of patient safety, financial, privacy, consumer protection, and other regulatory safeguards protect Maryland patients as a result. This bill would allow a provider who is not licensed in the State of Maryland to provide behavioral health services via telehealth to a patient located in the State.

We are concerned that behavioral health services are not defined; that states have variable laws regarding the licensing and regulation of a variety of licensees who are allowed to deliver behavioral health services and the bill does not address the issue of conflicts of laws between the laws of Maryland and other states; we have the same concern regarding billing and collection of fees for services, and the enforceability of our consumer protections for health insurance enrollees in disputes with out-of-state providers or with their carriers relating to claims; lack of clear language including consent to the jurisdiction of administrative tribunals;; and limitations on the scope of authority of Health Occupations boards in Maryland.

While we are unsure how many Maryland law protections patients would lose if Senate Bill 398 becomes law, our concern is heightened because this is not a compact bill which would typically preserve or build in necessary safeguards, increasing the need for a comprehensive study.

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