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March 18, 2025

TO: The Honorable Joseline A. Peña-Melnyk, Chair
Health and Government Operations Committee

FROM: Karen Valentine, Deputy Chief, Consumer Protection Division
Irnise F. Williams, Deputy Director, Health Education and Advocacy Unit

RE: Senate Bill 372 - Preserve Telehealth Access Act of 2025- **SUPPORT with Note of Concern**

The Consumer Protection Division (CPD) of the Office of the Attorney General and the Division's Health Education and Advocacy Unit (HEAU) supports Senate Bill 372, which repeals the limitation on the time period during which carriers are required to provide reimbursement for certain audio-only and video telehealth services at certain rates, subject to the Maryland Health Care Commission reviewing and reporting on the telehealth delivery system in two years and every four years thereafter.

The CPD and the HEAU stand in strong *opposition* to an Amendment that would repeal the prohibition on healthcare practitioners prescribing Schedule II substances for the treatment of pain through audio-only or video telehealth services, except in limited circumstances. That Amendment was accepted in the House version of this bill, HB869.

We oppose an Amendment that would allow all patients seeking pain management access to telehealth services to obtain a prescription for a Schedule II opiate through telehealth. Although telehealth access provides a valuable benefit to patients, allowing all patients seeking pain management access to telehealth services to obtain a prescription for a Schedule II controlled substance could subject Marylanders to unfair, abusive and deceptive trade practices and exacerbate the opioids crisis we are fighting so hard to mitigate, putting more Marylanders at risk of death or debilitating substance use disorders.

The opioids crisis, the extensive litigation, the over 27,000 Marylanders killed by opioids, and the approximately 5 Marylanders that die each day from opioids has taught us that licensing, the Maryland Prescription Drug Monitoring Program, and other laws and policies alone are not enough to prevent bad actors from over-prescribing and over-dispensing opioids and other controlled substances. Reducing the protections that are currently in place to protect consumers from unsafe over-prescribing and fraud would only make it much easier for bad actors to continue their harmful practices.

As amended, HB869 allows the prescribing of Schedule II controlled substances through audio-only telecommunication. This format of telehealth limits the health care practitioner's ability to fully consider warning signs for substance abuse disorder or overdose risk, such as confusion or sedation, as well as the patient's physical condition and appearance. The amendment added to the House bill, which is not present in the Senate version of the telehealth bill (SB372), is not narrowly tailored to address concerns raised by the hospital community such as caring for particularly vulnerable patient populations (*e.g.*, cancer or sickle cell patients with immune suppression conditions) or distinguish between the practice area of the prescribing physician. Unlike HB869, proposed federal rulemaking in the telehealth space would limit the prescribers who could prescribe Schedule II controlled substances to those who have a legitimate need, and only for the most compelling cases, ensuring that Schedule II prescribing via telemedicine is used only when necessary and would *only* permit the telehealth prescription of Schedule II controlled substances through audio-visual telecommunication.¹ It would be less than prudent for Maryland to get out ahead of the federal government on this life and death issue, potentially allowing for less stringent laws than the federal government finds advisable after substantial rulemaking, public listening sessions and more than 38,000 comments.

For these reasons we urge the Committee to retain the provision limiting telehealth prescribing of Schedule II substances for pain management and otherwise issue a favorable report.

¹ See Special Registrations for Telemedicine and Limited State Telemedicine Registrations, 90 Fed. Reg. 6541 (proposed Jan. 17, 2025) (to be codified at 21 CFR Parts 1300, 1301, 1304, and 1306), available at <https://www.federalregister.gov/documents/2025/01/17/2025-01099/special-registrations-for-telemedicine-and-limited-state-telemedicine-registrations>.