

HB0123/786887/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 123

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, after “telehealth;” insert “requiring that certain services provided under the Program include counseling and treatment for certain disorders and conditions; prohibiting the Program from requiring a Program recipient to use telehealth under certain circumstances; requiring, for a certain time period, the Program to provide certain reimbursement for certain health care services provided through telehealth on a certain basis and at a certain rate; authorizing the Maryland Department of Health to adopt certain regulations relating to telehealth services provided to Program recipients; requiring the Department to include certain health care providers when specifying by regulation the types of health care providers eligible to receive certain reimbursement; repealing certain authorization of the Department relating to the coverage of and reimbursement for health care services that are delivered through store and forward technology or remote patient monitoring; establishing, for a certain purpose and certain standards, that a health care service provided through telehealth is equivalent to the same health care service when provided through an in-person consultation; prohibiting the Program or a certain organization from imposing as a condition of reimbursement of a health care service delivered through telehealth that the health care service be provided by a certain vendor;”; in the same line, strike “authorizing” and substitute “requiring”; in the same line, strike “Maryland”; in the same line, strike “of Health”; strike beginning with “apply” in line 7 down through “waivers” in line 8 and substitute “obtain certain federal authority necessary”; in line 8, after “Act;” insert “repealing certain authorization provided to the Department to require submission of a certain form to the Department;”; in line 12, after “General Assembly;” insert “establishing that a certain requirement relating to coverage of certain health care services delivered through telehealth include coverage for the treatment for substance use disorders and mental health conditions;”; in line 15, after “require” insert “certain”; in the same line, after “provided” insert “, for a certain time”

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period.”; in line 16, after “rate;” insert “prohibiting certain insurers, nonprofit health service plans, and health maintenance organizations from requiring an insured patient to use telehealth in lieu of in-person service delivery for certain services; repealing the requirement that the Department study and submit a certain report to the General Assembly;”; in line 19, strike “health care provider” and substitute “vendor; revising, restating, and recodifying certain provisions of law relating to the Program and coverage and reimbursement of services provided through telemedicine and telehealth”; in line 21, after “telehealth;” insert “requiring the Maryland Health Care Commission, in consultation with certain State agencies, to submit a certain report to certain committees of the General Assembly on or before a certain date; establishing certain requirements for the report; establishing certain requirements on the Commission when completing the report; declaring the intent of the General Assembly;”; and in line 22, after “Act;” insert “providing for the construction of certain provisions of this Act;”.

On page 2, in line 3, before “and” insert “, 15-105.2,”; after line 10, insert:

“BY repealing
Chapter 17 of the Acts of the General Assembly of 2020
Section 3”;

and after line 13, insert:

“BY repealing
Chapter 18 of the Acts of the General Assembly of 2020
Section 3”.

AMENDMENT NO. 2

On page 3, in line 14, strike “, subject to the limitations of the State budget,”; after line 16, insert:

“15-105.2.”

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[(a)] The Program shall reimburse health care providers in accordance with the requirements of Title 19, Subtitle 1, Part IV of this article.

[(b) (1) (i) In this subsection the following words have the meanings indicated.

(ii) “Health care provider” means a person who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care in the ordinary course of business or practice of a profession or in an approved education or training program.

(iii) 1. “Telemedicine” means, as it relates to the delivery of health care services, the use of interactive audio, video, or other telecommunications or electronic technology:

A. By a health care provider to deliver a health care service that is within the scope of practice of the health care provider at a site other than the site at which the patient is located; and

B. That enables the patient to see and interact with the health care provider at the time the health care service is provided to the patient.

2. “Telemedicine” does not include:

A. An audio-only telephone conversation between a health care provider and a patient;

B. An electronic mail message between a health care provider and a patient; or

C. A facsimile transmission between a health care provider and a patient.

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(2) To the extent authorized by federal law or regulation, the provisions of § 15–139(c) through (f) of the Insurance Article relating to coverage of and reimbursement for health care services delivered through telemedicine shall apply to the Program and managed care organizations in the same manner they apply to carriers.

(3) Subject to the limitations of the State budget and to the extent authorized by federal law or regulation, the Department may authorize coverage of and reimbursement for health care services that are delivered through store and forward technology or remote patient monitoring.

(4) (i) The Department may specify by regulation the types of health care providers eligible to receive reimbursement for health care services provided to Program recipients under this subsection.

(ii) If the Department specifies by regulation the types of health care providers eligible to receive reimbursement for health care services provided to Program recipients under this subsection, the types of health care providers specified shall include:

1. Primary care providers; and
2. Psychiatrists and psychiatric nurse practitioners, as defined in § 10–601 of this article, who are providing Assertive Community Treatment or mobile treatment services to Program recipients located in a home or community–based setting.

(iii) For the purpose of reimbursement and any fidelity standards established by the Department, a health care service provided through telemedicine by a psychiatrist or a psychiatric nurse practitioner described under subparagraph (ii)2 of

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this paragraph is equivalent to the same health care service when provided through an in-person consultation.

(5) The Department may require a health care provider to submit a registration form to the Department that includes information required for the processing of claims for reimbursement for health care services provided to Program recipients under this subsection.

(6) The Department shall adopt regulations to carry out this subsection.]”;

in lines 24 and 27, in each instance, strike “PRACTITIONER” and substitute “PROVIDER”; and strike in their entirety lines 30 through 32, inclusive, and substitute:

“(4) “HEALTH CARE PROVIDER” MEANS:

(I) A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING PROGRAM;

(II) A MENTAL HEALTH AND SUBSTANCE USE DISORDER PROGRAM LICENSED IN ACCORDANCE WITH § 7.5-401 OF THIS ARTICLE;

(III) A PERSON LICENSED UNDER TITLE 7, SUBTITLE 9 OF THIS ARTICLE TO PROVIDE SERVICES TO AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY OR A RECIPIENT OF INDIVIDUAL SUPPORT SERVICES; OR

(IV) A PROVIDER AS DEFINED UNDER § 16-201.4 OF THIS ARTICLE TO PROVIDE SERVICES TO AN INDIVIDUAL RECEIVING LONG-TERM CARE SERVICES.”.

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AMENDMENT NO. 3

On page 4, in line 6, after “MEDICAL” insert “, PATIENT-REPORTED,”; strike beginning with “AUDIO-ONLY” in line 18 down through “TECHNOLOGY” in line 19 and substitute “FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, 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 in line 23, strike beginning with the first opening bracket through “transmissions” and substitute “:

- 1. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)2 OF THIS PARAGRAPH, AN AUDIO-ONLY TELEPHONE CONVERSATION;**
- 2. AN E-MAIL MESSAGE; OR**
- 3. A FACSIMILE TRANSMISSION”.**

AMENDMENT NO. 4

On page 5, after line 17, insert:

“(C) THE SERVICES REQUIRED TO BE PROVIDED UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE COUNSELING AND TREATMENT FOR SUBSTANCE USE DISORDERS AND MENTAL HEALTH CONDITIONS.

(D) THE PROGRAM MAY NOT:

(1) EXCLUDE FROM COVERAGE A HEALTH CARE SERVICE SOLELY BECAUSE IT IS PROVIDED THROUGH TELEHEALTH AND IS NOT PROVIDED THROUGH AN IN-PERSON CONSULTATION OR CONTACT BETWEEN A HEALTH CARE PROVIDER AND A PATIENT; OR

(2) REQUIRE A PROGRAM RECIPIENT TO USE TELEHEALTH IN LIEU OF IN-PERSON SERVICE DELIVERY FOR BEHAVIORAL HEALTH SERVICES.

(E) THE PROGRAM MAY UNDERTAKE UTILIZATION REVIEW, INCLUDING PREAUTHORIZATION, TO DETERMINE THE APPROPRIATENESS OF ANY HEALTH CARE SERVICE WHETHER THE SERVICE IS DELIVERED THROUGH AN IN-PERSON CONSULTATION OR THROUGH TELEHEALTH IF THE APPROPRIATENESS OF THE HEALTH CARE SERVICE IS DETERMINED IN THE SAME MANNER.

(F) THE PROGRAM MAY NOT DISTINGUISH BETWEEN PROGRAM RECIPIENTS IN RURAL OR URBAN LOCATIONS IN PROVIDING COVERAGE UNDER THE PROGRAM FOR HEALTH CARE SERVICES DELIVERED THROUGH TELEHEALTH.

(G) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE PROGRAM SHALL REIMBURSE A HEALTH CARE PROVIDER FOR THE DIAGNOSIS, CONSULTATION, AND TREATMENT OF A PROGRAM RECIPIENT FOR A HEALTH CARE SERVICE COVERED BY THE PROGRAM THAT CAN BE APPROPRIATELY PROVIDED THROUGH TELEHEALTH.

(2) THIS SUBSECTION DOES NOT REQUIRE THE PROGRAM TO REIMBURSE A HEALTH CARE PROVIDER FOR A HEALTH CARE SERVICE DELIVERED IN PERSON OR THROUGH TELEHEALTH THAT IS:

(I) NOT A COVERED HEALTH CARE SERVICE UNDER THE PROGRAM; OR

(II) DELIVERED BY AN OUT-OF-NETWORK PROVIDER UNLESS THE HEALTH CARE SERVICE IS A SELF-REFERRED SERVICE AUTHORIZED UNDER THE PROGRAM.

(3) (I) FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, WHEN A HEALTH CARE SERVICE IS APPROPRIATELY PROVIDED THROUGH TELEHEALTH, THE PROGRAM SHALL PROVIDE REIMBURSEMENT IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION ON THE SAME BASIS

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

(II) THE REIMBURSEMENT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT INCLUDE:

1. CLINIC FACILITY FEES UNLESS THE HEALTH CARE SERVICE IS PROVIDED BY A HEALTH CARE PROVIDER NOT AUTHORIZED TO BILL A PROFESSIONAL FEE SEPARATELY FOR THE HEALTH CARE SERVICE; OR

2. ANY ROOM AND BOARD FEES.

(H) (1) THE DEPARTMENT MAY SPECIFY IN REGULATION THE TYPES OF HEALTH CARE PROVIDERS ELIGIBLE TO RECEIVE REIMBURSEMENT FOR HEALTH CARE SERVICES PROVIDED TO PROGRAM RECIPIENTS UNDER THIS SECTION.

(2) IF THE DEPARTMENT SPECIFIES BY REGULATION THE TYPES OF HEALTH CARE PROVIDERS ELIGIBLE TO RECEIVE REIMBURSEMENT FOR HEALTH CARE SERVICES PROVIDED TO PROGRAM RECIPIENTS UNDER THIS SUBSECTION, THE REGULATIONS SHALL INCLUDE ALL TYPES OF HEALTH CARE PROVIDERS THAT APPROPRIATELY PROVIDE TELEHEALTH SERVICES.

(3) FOR THE PURPOSE OF REIMBURSEMENT AND ANY FIDELITY STANDARDS ESTABLISHED BY THE DEPARTMENT, A HEALTH CARE SERVICE PROVIDED THROUGH TELEHEALTH IS EQUIVALENT TO THE SAME HEALTH CARE SERVICE WHEN PROVIDED THROUGH AN IN-PERSON CONSULTATION.

(I) SUBJECT TO SUBSECTION (G)(2) OF THIS SECTION, THE PROGRAM OR A MANAGED CARE ORGANIZATION THAT PARTICIPATES IN THE PROGRAM MAY NOT IMPOSE AS A CONDITION OF REIMBURSEMENT OF A COVERED HEALTH CARE SERVICE DELIVERED THROUGH TELEHEALTH THAT THE HEALTH CARE SERVICE BE PROVIDED BY A THIRD-PARTY VENDOR DESIGNATED BY THE PROGRAM.

(J) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THIS

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SECTION.”;

in line 18, strike “(C)” and substitute “(K)”; in the same line, strike “APPLY” and substitute “OBTAIN ANY FEDERAL AUTHORITY NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION, INCLUDING APPLYING”; in line 20, strike “NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION” and substitute “OR THE STATE PLAN”; after line 20, insert:

“(L) THIS SECTION MAY NOT BE CONSTRUED TO SUPERSEDE THE AUTHORITY OF THE HEALTH SERVICES COST REVIEW COMMISSION TO SET THE APPROPRIATE RATES FOR HOSPITALS, INCLUDING SETTING THE HOSPITAL FACILITY FEE FOR HOSPITAL-PROVIDED TELEHEALTH.”;

and strike beginning with the colon in line 28 down through “TECHNOLOGY” in line 32 and substitute “, FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, 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”.

AMENDMENT NO. 5

On page 6, in line 2, strike “[an” and substitute “EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN”; in lines 4 and 6, in each instance, strike the bracket; in line 6, strike “(II)”; in line 17, strike “and”; in line 20, after “patient” insert “; AND

(III) WHEN PROVIDING THE COVERAGE REQUIRED UNDER THIS SUBSECTION, MAY NOT REQUIRE AN INSURED PATIENT TO USE TELEHEALTH IN LIEU OF IN-PERSON SERVICE DELIVERY FOR BEHAVIORAL HEALTH SERVICES”;

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in line 22, after “counseling” insert “AND TREATMENT”; in the same line, after “disorders” insert “AND MENTAL HEALTH CONDITIONS”; in line 23, after “(d)” insert “(1)”; in the same line, strike “An” and substitute “SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN”; strike beginning with the colon in line 25 down through “(I)” in line 26; and strike beginning with “AND” in line 27 down through “(2)” in line 31 and substitute “(II)”.

AMENDMENT NO. 6

On page 7, in lines 1, 4, 6, 9, and 11, strike “(i)”, “(ii)”, “(i)”, “(ii)”, and “(iii)”, respectively, and substitute “1.”, “2.”, “1.”, “2.”, and “3.”, respectively; in line 6, strike “(3)” and substitute “(III)”; after line 11, insert:

“(2) (I) FROM JULY 1, 2021, TO JUNE 30, 2023, BOTH INCLUSIVE, WHEN A HEALTH CARE SERVICE IS APPROPRIATELY PROVIDED THROUGH TELEHEALTH, AN ENTITY SUBJECT TO THIS SECTION SHALL PROVIDE REIMBURSEMENT IN ACCORDANCE WITH PARAGRAPH (1)(I) OF THIS SUBSECTION ON THE SAME BASIS AND AT THE SAME RATE AS IF THE HEALTH CARE SERVICE WERE DELIVERED BY THE HEALTH CARE PROVIDER IN PERSON.

(II) THE REIMBURSEMENT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT INCLUDE:

1. CLINIC FACILITY FEES UNLESS THE HEALTH CARE SERVICE IS PROVIDED BY A HEALTH CARE PROVIDER NOT AUTHORIZED TO BILL A PROFESSIONAL FEE SEPARATELY FOR THE HEALTH CARE SERVICE; OR

2. ANY ROOM AND BOARD FEES.

(III) THIS PARAGRAPH MAY NOT BE CONSTRUED TO SUPERSEDE THE AUTHORITY OF THE HEALTH SERVICES COST REVIEW

COMMISSION TO SET THE APPROPRIATE RATES FOR HOSPITALS, INCLUDING
SETTING THE HOSPITAL FACILITY FEE FOR HOSPITAL-PROVIDED TELEHEALTH.”;

in line 12, strike “(D)(2)” and substitute “(D)(1)(II)”;

in line 13, after the second “A” insert “COVERED”;

in line 15, strike “HEALTH CARE PROVIDER” and substitute “THIRD PARTY VENDOR”;

after line 28, insert:

“[SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Department of Health shall study whether, under the Maryland Medical Assistance Program, substance use disorder services may be appropriately provided through telehealth to a patient in the patient’s home setting.

(b) On or before December 1, 2021, the Maryland Department of Health shall submit a report to the General Assembly, in accordance with § 2-1257 of the State Government Article, that includes any findings and recommendations from the study required under subsection (a) of this section, including:

(1) the types of substance use disorder services, if any, that may be appropriately provided through telehealth to a patient in the patient’s home setting; and

(2) any technological or other standards needed for the provision of appropriate and quality substance use disorder services to a patient in the patient’s home setting.]”;

and strike beginning with “[Sections” in line 32 down through “effect” in line 35.

AMENDMENT NO. 7

On page 8, after line 1, insert:

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“SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Department of Health shall study whether, under the Maryland Medical Assistance Program, substance use disorder services may be appropriately provided through telehealth to a patient in the patient’s home setting.

(b) On or before December 1, 2021, the Maryland Department of Health shall submit a report to the General Assembly, in accordance with § 2-1257 of the State Government Article, that includes any findings and recommendations from the study required under subsection (a) of this section, including:

(1) the types of substance use disorder services, if any, that may be appropriately provided through telehealth to a patient in the patient’s home setting; and

(2) any technological or other standards needed for the provision of appropriate and quality substance use disorder services to a patient in the patient’s home setting.]”;

strike beginning with “[Sections” in line 5 down through “effect” in line 8; after line 8, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before December 1, 2022, the Maryland Health Care Commission, in consultation with, as appropriate, the Maryland Health Services Cost Review Commission, the Maryland Department of Health, and the Maryland Insurance Administration, shall submit a report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2-1257 of the State Government Article, on the impact of providing telehealth services in accordance with the provisions of this Act.

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(b) Unless otherwise indicated in this section, the Maryland Health Care Commission shall consider both audio-only and audio-visual technologies for purposes of reporting on the impact of providing telehealth services as required by this section.

(c) The report shall include:

(1) an analysis of:

(i) the impact of the use of telehealth on disparities in access to health care services including primary care and behavioral health services;

(ii) whether different communities and patient populations have differences in take-up rates of telehealth services; and

(iii) the comparative effectiveness of telehealth and in-person visits on the total costs of care and patient outcomes of care;

(2) a study on the alignment of telehealth with new models of care that addresses:

(i) opportunities for using telehealth to improve patient-centered care;

(ii) health care services for which telehealth can substitute for in-person care while maintaining the standard of care, including the use of remote patient monitoring for somatic and behavioral health care services; and

(iii) the impact of alternative care delivery models on telehealth coverage and reimbursement;

(3) an assessment on the efficiency and effectiveness of telehealth and in-person visits that includes:

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(i) a review of peer-reviewed research on the impact of different communication technologies on patient health including patient retention rates and reduced barriers to care;

(ii) a survey of health care providers as defined under § 15-141.2 of the Health – General Article as enacted by this Act;

(iii) a review of the resources required to sustainably provide telehealth services for the continuum of health care providers, including private and small practices;

(4) an assessment of patient awareness of and satisfaction with telehealth coverage and care that includes:

(i) the availability and appropriate uses of telehealth services;

(ii) the privacy risks and benefits of telehealth services and the strategies needed to navigate privacy issues; and

(iii) barriers to care and levels of patient engagement that have been addressed by audio-only and audio-visual telehealth;

(5) a review of the appropriateness of:

(i) telehealth across the continuum of care ranging 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;

(ii) inclusion of clinic hospital facility fees in reimbursement for hospital-provided telehealth; and

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(iii) the use of telehealth to satisfy network access standards required under § 15–112(b) of the Insurance Article; and

(6) the study or analysis of any other issues identified by the Commission.

(d) The report shall include recommendations on:

(1) coverage of telehealth services; and

(2) payment levels for telehealth services relative to in–person care.

(e) (1) The Maryland Health Care Commission shall complete the report using research methods appropriate for the issues identified in this section and available funding.

(2) To carry out the health care provider survey required under subsection (c)(3)(ii) of this section, the Maryland Health Care Commission shall develop survey questions and work with the health occupations boards and other appropriate entities within the Maryland Department of Health to send out information regarding the survey by means of:

(i) renewal notices;

(ii) newsletters;

(iii) e–mail blasts;

(iv) website postings; or

(v) any combination thereof.

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SECTION 3, AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that:

(1) until and no later than June 30, 2023, while the Maryland Health Care Commission completes the study and submits the report required under Section 2 of this Act for consideration by the General Assembly for the adoption of comprehensive telehealth policies by the State:

(i) the Maryland Medical Assistance Program continue to reimburse health care providers for covered health care services provided through audio-only and audio-visual technology in accordance with the requirements of Sections 1 and 2 of this Act, and all applicable executive orders and waivers issued in accordance with Chapters 13 and 14 of the Acts of the General Assembly of 2020; and

(ii) insurers, nonprofit health service plans, and health maintenance organizations that are subject to § 15-139 of the Insurance Article, as enacted by Section 1 of this Act, continue to reimburse health care providers for covered health care services provided through audio-only and audio-visual technology in accordance with the requirements of Section 1 of this Act and all applicable accommodations made by the insurers, nonprofit health service plans, and health maintenance organizations during the Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19 issued on March 5, 2020, and its renewals;

(2) the Maryland Health Care Commission use the data collected from utilization and coverage of telehealth as provided for in item (1) of this section to complete the report required under Section 2 of this Act; and

(3) the State to use the report required under Section 2 of this Act to establish comprehensive telehealth policies for implementation after the Declaration of

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State of Emergency and Existence of Catastrophic Health Emergency – COVID–19 issued on March 5, 2020, and its renewals expire.”;

in lines 9 and 12, strike “2.” and “3.”, respectively, and substitute “4.” and “5.”, respectively; in line 11, strike “January 1, 2022” and substitute “July 1, 2021”; in line 13, strike “October 1, 2021” and substitute “July 1, 2021”.