

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 393
Finance

(Senator Augustine)

Maryland Medical Assistance Program and Health Insurance - Coverage and Reimbursement of Telehealth Services

This bill requires Medicaid to (1) provide health care services appropriately delivered through “telehealth” to program recipients regardless of their location at the time services are provided and (2) allow a “distant site provider” to provide health care services to a recipient from any location at which the services may be delivered through telehealth. The bill expands the definitions of “telehealth” for both Medicaid and private insurance. Insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) must provide coverage for health care services appropriately delivered through telehealth regardless of the location of the patient at the time the services are provided. A carrier must reimburse for services appropriately provided through telehealth on the same basis and at the same rate as if delivered in person. A carrier (1) must allow an insured to select the manner in which a service is delivered; (2) may not require an insured person to use telehealth in lieu of in-person service delivery; and (3) may use telehealth to satisfy network access standards under specified circumstances. The bill’s insurance provisions apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2022.

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration in FY 2022 from the \$125 rate and form filing fee. Review of form filings requires contractual assistance in FY 2022 only. **Sufficient information was not available in time to include an analysis of the fiscal impact of this legislation on Medicaid or the State Employee and Retiree Health and Welfare Benefit Plan.**

Local Effect: Potential increase in expenditures for some local governments to continue to reimburse certain telehealth services. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Medicaid Provisions

“Telehealth” means the delivery of medically necessary somatic or behavioral health services to a patient at an originating site by a distant site provider through the use of technology-assisted communication. “Telehealth” includes (1) synchronous and asynchronous interactions; (2) audio-only delivery of a health care service between a health care provider and patient using telecommunications technology; (3) store-and-forward communications; and (4) remote patient monitoring (RPM) services. The definition of “health care provider” is expanded to include a licensed mental health or substance use disorder (SUD) program.

If the Maryland Department of Health (MDH) specifies by regulation the types of health care providers eligible to receive Medicaid reimbursement for telehealth services, it must include providers who are licensed, certified, or otherwise authorized to provide mental health or SUD services and licensed mental health and SUD programs. A health care service provided through telehealth is equivalent to the same service when provided in person if provided by these providers.

MDH must apply to the Centers for Medicare and Medicaid Services for any waiver amendments necessary to implement the bill’s Medicaid provisions.

The bill repeals the requirement that MDH study and report by December 21, 2021, on whether SUD services may be appropriately provided through telehealth to a patient in the patient’s home setting.

By October 1, 2021, MDH must revise its regulations regarding telehealth reimbursed by Medicaid to ensure that requirements for reimbursement of mental health and SUD services delivered through telehealth comply with the federal Mental Health Parity and Equity Act.

Insurance Provisions

The definition of “telehealth” is expanded to include (1) synchronous and asynchronous interactions; (2) audio-only delivery of a health care service between a health care provider and patient using telecommunications technology; (3) store-and-forward communications; and (4) RPM services.

The health care services appropriately delivered through telehealth that a carrier is required to cover must include treatment for SUDs and mental health conditions. Any utilization review of telehealth services must comply with federal and State parity laws.

Current Law:

Medicaid and Telehealth

Under § 15-103 of the Health-General Article, subject to the limitations of the State budget, Medicaid must provide mental health services appropriately delivered through *telehealth* to a patient in the patient’s home setting. Telehealth does not include the provision of health care services solely through audio-only telephone calls, electronic mail messages, or facsimile transmissions.

Under § 15-105.2 of the Health-General Article, to the extent authorized by federal law or regulation, coverage of and reimbursement for health care services delivered through *telemedicine* must apply to Medicaid and managed care organizations in the same manner they apply to carriers. Subject to the limitations of the State budget and to the extent authorized by federal law, MDH may authorize coverage of and reimbursement for health care services that are delivered through store-and-forward technology or RPM.

MDH may specify by regulation the types of health care providers eligible to receive reimbursement for telemedicine health care services provided to Medicaid recipients. If MDH does so, the types of providers must include primary care providers, and psychiatrists and psychiatric nurse practitioners who provide Assertive Community Treatment or mobile treatment services to Medicaid recipients in a home or community-based setting.

All Medicaid participants are eligible to receive telehealth services. Telehealth services are subject to the same program restrictions, requirements, and other limitations as services provided in person. Telehealth providers must be enrolled as a Medicaid provider to be reimbursed; however, certain originating site providers may participate even though they are not eligible to enroll as a Medicaid provider. Medicaid allows all distant site provider types to participate and provides coverage for RPM for chronic conditions.

Private Insurance Coverage and Telehealth

“Telehealth” means the use of interactive audio, video, or other telecommunications or electronic technology by a licensed health care provider to deliver a health care service at a location other than the location of the patient. “Telehealth” does not include audio-only telephone calls, electronic mail messages, or facsimile transmissions.

Carriers must provide coverage under a health insurance policy or contract for health care services appropriately delivered through telehealth (including counseling for SUDs). Carriers may not 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.

A carrier must reimburse a health care provider for a covered service provided through telehealth. A carrier is not required to reimburse a health care provider who is not a covered provider under the health insurance policy or contract.

A carrier may impose a deductible, copayment, or coinsurance amount on benefits for health care services delivered either through an in-person consultation or through telehealth. A decision by a carrier not to provide coverage for telehealth constitutes an adverse decision.

Telehealth Coverage during COVID-19

Emergency legislation, Chapters 13 and 14 of 2020, authorized the Governor, for the duration of the COVID-19 public health emergency (PHE) to, among other things, establish or waive telehealth protocols and order MDH to reimburse certain Medicaid telehealth services for COVID-19 patients.

Executive orders from the Governor and waivers from federal requirements increased Medicaid coverage for telehealth services, while the federal Coronavirus Aid, Relief, and Economic Security Act and federal regulatory changes increased Medicare coverage. Expanded coverage includes coverage for telehealth services (1) originating at a participant's home or other secure location; (2) delivered by audio-only technology, including by phone; and (3) delivered by technology that is not compliant with the federal Health Insurance Portability and Accountability Act (HIPAA). These expansions will terminate with the end of COVID-19 emergency orders unless extended through additional executive orders or legislation.

While State and federal law excludes audio-only (telephone call) telehealth visits from insurance coverage, these visits are currently covered under federal and State emergency health declarations. Carriers have expanded telehealth coverage to additional systems and platforms, additional provider and service types, and phone-only consultations. Additionally, carriers have waived cost-sharing for telehealth visits and provided reimbursement parity between virtual and in-person consultations. Accommodations have varied by carrier, however, and carriers have indicated that some expanded coverage will be terminated or reduced at the end of the federal and State PHEs.

Small Business Effect: Health care providers can permanently receive reimbursement for telehealth services provided through audio-only conversations. Carriers must reimburse health care providers for telehealth services on the same basis and at the same rate as if the service were delivered in person. Providers of mental health and SUD services, including licensed mental health and SUD programs, are specifically eligible to provide and be reimbursed for Medicaid telehealth services under the bill.

Additional Comments: The Maryland Health Care Commission convened a Telehealth Policy Workgroup in 2020 to discuss select telehealth policy changes temporarily implemented in response to COVID-19 PHE and consider policies that should continue beyond the PHE. The workgroup's [draft general findings](#) include key categories of (1) removing telehealth restrictions on originating sites; (2) permitting audio only when the treating provider determines it to be safe, effective, and clinically appropriate; (3) removing telehealth restrictions on conditions that can be treated; (4) removing telehealth restrictions on provider types; (5) reducing or waiving cost-sharing through the later of the end of the PHE or December 31, 2021; and (6) reinstating technology standards that require providers to use HIPAA-compliant technology.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 551 (Delegate Bagnall) - Health and Government Operations.

Information Source(s): Maryland Health Benefit Exchange; Department of Legislative Services

Fiscal Note History: First Reader - January 24, 2021
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