

STATE OF MARYLAND

Andrew N. Pollak  
CHAIR



Ben Steffen  
EXECUTIVE DIRECTOR

## MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

### 2021 SESSION POSITION PAPER

**BILL NO:** SB 3  
**COMMITTEE:** Finance Committee  
**POSITION:** SUPPORT WITH AMENDMENTS

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**TITLE:** Preserve Telehealth Access Act of 2021

#### **BILL ANALYSIS**

Senate Bill 3 (“SB 3”) requires health plans and Medicaid, subject to the limitations of the State budget, to provide health care services through telehealth and imposes as a condition of reimbursement that health care services be delivered through telehealth. The bill changes the existing definition of telehealth to include medically necessary somatic, dental, or behavior health services to a patient, and removes restrictions on the originating site and distant site for telehealth services. The bill also includes audio-only in the definition of telehealth. SB 3 requires health plans and Medicaid to reimburse for all telehealth services at the same rate as if the services were delivered in-person.

#### **POSITION AND RATIONALE**

The Maryland Health Care Commission (the “Commission”) supports SB 3 with amendments. The Commission has worked collaboratively with the many stakeholders, consumer and behavior health representatives, and the largest private payors to identify areas for compromise as it relates to bill mandates on payment parity for audio-only visits with in-person and audio-video visits as a permanent feature of health care reimbursement in Maryland.

Telehealth has shown great potential to improve access to care during the coronavirus public health emergency (PHE)<sup>1</sup>. The PHE triggered the rapid adoption of telehealth as many health

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<sup>1</sup> Data collected between mid-March and mid-October 2020 by the Centers for Medicare & Medicaid Services indicates over 24.5 million beneficiaries have received a Medicare telehealth service as compared to around 15,000 beneficiaries per week prior to the PHE.

*Note: The Maryland Health Care Commission is an independent State agency, and the position of the Commission may differ from the position of the Maryland Department of Health.*

care facilities were closed in April and May except for the most urgent in-person visits. Virtual visits of all types hosted on telehealth platforms and public facing platforms such as Facetime®, ZOOM®, and Facebook® surged. In addition, government and private payors have allowed telephone communications to be reimbursed as telehealth. Many stakeholders nationally have lauded the sweeping changes in regulation and payment across health care.<sup>2,3,4</sup>

The Commission believes that waivers allowing health care practitioners to use telehealth as a mode of care have been effective during the coronavirus pandemic. Assessing the effectiveness and benefit of these telehealth waivers is appropriate before permanently mandating coverage in Maryland law. Allowing the telehealth waivers that payers had in place on June 1, 2020 to continue through December 31, 2023 will provide stability while a thoughtful study is underway. The Commission recommends that the bill be amended as follows:

AMENDMENT NUMBER ONE: /\* Health General\*/

- Page 4, strike lines 19-20.
- Page 4, insert after line 18.  
2. AUDIO-ONLY CONVERSATION BETWEEN A HEALTH CARE PROVIDER AND A PATIENT USING TELECOMMUNICATIONS TECHNOLOGY IF THE COVERED AUDIO-ONLY SERVICE IS DELIVERED PRIOR TO DECEMBER 31, 2023.

AMENDMENT NUMBER TWO /\*Health General\*/

- Page 4, insert after line 22.  
(8) “VIRTUAL COMMUNICATION SERVICE” MEANS A COMMUNICATION SERVICES WHEN AT LEAST 5 MINUTES OF COMMUNICATION TECHNOLOGY-BASED SERVICES FURNISHED BY A HEALTH CARE PROVIDER THAT MEETS THE FOLLOWING REQUIREMENTS:  
  
(I) THE MEDICAL DISCUSSION OR REMOTE EVALUATION IS FOR A CONDITION NOT RELATED TO A SERVICE PROVIDED WITHIN THE PREVIOUS 7 DAYS, AND  
  
(II) THE MEDICAL DISCUSSION OR REMOTE EVALUATION DOES NOT LEAD TO A VISIT WITHIN THE NEXT 24 HOURS OR AT THE SOONEST AVAILABLE APPOINTMENT.

AMENDMENT NUMBER THREE /\* Health General\*/

- Page 5, after line 18, insert: 3) WHEN APPROPRIATELY PROVIDED THROUGH TELEHEALTH, AT A RATE NOT LOWER THAN THE RATE THE ENTITY REIMBURSED THE HEALTH CARE PROVIDER FOR THE COVERED

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<sup>2</sup> Bart M. Demaerschalk et al., “[American Telemedicine Association Telestroke Guidelines](#),” *Telemedicine and E-Health* 23, no. 5 (May 1, 2017).

<sup>3</sup> The Erisa Industry Committee, [Employers on Telemedicine: Government Standing in the Way](#) (June 17, 2020).

<sup>4</sup> American Society of Health-System Pharmacists, [COVID-19 and Telemedicine Changes](#) (April 9, 2020).

TELEHEALTH SERVICE PROVIDED BY A HEALTH PROVIDER TYPE  
AUTHORIZED BY THE ENTITY TO PROVIDE A TELEHEALTH SERVICE ON  
JUNE 1, 2020.

AMENDMENT NUMBER FOUR /\* Insurance Article\*

- Page 5, strike lines 32-33 and replace with:  
(II) AN AUDIO-ONLY CONVERSATION BETWEEN A HEALTH CARE PROVIDER AND A PATIENT USING TELECOMMUNICATIONS TECHNOLOGY IF THE COVERED AUDIO-ONLY SERVICE IS DELIVERED PRIOR TO DECEMBER 31, 2023.

AMENDMENT NUMBER FIVE : /\*Insurance Article \*/

- Page 6, after line 7, insert:  
  
(3) “VIRTUAL COMMUNICATION SERVICE” MEANS A COMMUNICATION SERVICES WHEN AT LEAST 5 MINUTES OF COMMUNICATION TECHNOLOGY-BASED SERVICES FURNISHED BY A HEALTH CARE PROVIDER THAT MEETS THE FOLLOWING REQUIREMENTS:  
  
(I) THE MEDICAL DISCUSSION OR REMOTE EVALUATION IS FOR A CONDITION NOT RELATED TO A SERVICE PROVIDED WITHIN THE PREVIOUS 7 DAYS, AND  
  
(II) THE MEDICAL DISCUSSION OR REMOTE EVALUATION DOES NOT LEAD TO A VISIT WITHIN THE NEXT 24 HOURS OR AT THE SOONEST AVAILABLE APPOINTMENT

AMENDMENT NUMBER SIX: /\* Insurance Article\*/

- Page 6, strike lines 28-30 and replace with:  
(II) WHEN APPROPRIATELY PROVIDED THROUGH TELEHEALTH, AT A RATE NO LOWER THAN THE RATE THE ENTITY REIMBURSED THE HEALTH CARE PROVIDER FOR THE COVERED TELEHEALTH SERVICE ON JUNE 1, 2020.

AMENDMENT NUMBER SEVEN:

- UNCODIFIED LANGUAGE:  
  
(A) Require the Commission to report to the General Assembly by October 1, 2023 on:
  - (I) Quality and costs of telehealth and audio-only services
    - (i) The impact of the transition from in-person to telehealth and audio-only visits on disparities in access to primary care and behavioral health services
    - (ii) The effect of differential uptake of telehealth and audio-only among different patient populations on health disparities

- (iii) The comparative effectiveness of telehealth, audio-only visits, and in-person visits on the total costs of care and patient outcomes of care
- (II) Alignment of telehealth and audio-audio only services with the new models of care
  - (i) Opportunities for using telehealth and audio-only to improve patient-centeredness of care
  - (ii) Services for which telehealth and audio-only can substitute for in-person care while maintaining the standard of care
  - (iii) The impact of alternative care delivery models on telehealth and audio-only coverage and reimbursement
- (III) Consumer and provider satisfaction with telehealth and audio-only services and the implementation options
  - (i) Consumer awareness and availability of telehealth and audio-only services
  - (ii) Practitioner assessment on the efficiency and effectiveness of telehealth, audio-only, and in-person visits
  - (iii) Small practices ability to implement telehealth and audio-only health care
  - (iv) Patent privacy risks and benefits of telehealth and audio-only care
- (IV) Any other issues of importance identified by MHCC
- (B) MHCC shall make recommendations on:
  - (I) Coverage of audio-only service as a telehealth service or virtual communication service
  - (II) Payment levels for audio-only and telehealth care relative to in-person care

AMENDMENT NUMBER EIGHT:

Page 8, after line 12, strike lines 13 and 14 and replace with:

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021. It shall remain effective for a period of 3 years and, at the end of September 30, 2024, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

For these reasons, the Commission recommends a favorable report on SB 3 with the proposed amendments.