SENATE BILL 502

C3, J1 EMERGENCY BILL 0lr1742

By: **Senators Hershey and Ferguson**
Introduced and read first time: January 29, 2020
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: March 8, 2020

CHAPTER _____

AN ACT concerning

~~Health Insurance –~~ Telehealth – ~~Delivery of~~ Mental Health and Chronic Condition Management Services – Coverage ~~for Home Settings~~ and Pilot Program

FOR the purpose of requiring the Maryland Medical Assistance Program, subject to a certain limitation, to provide mental health services appropriately delivered through telehealth to a patient in a certain setting; altering the definition of telehealth as it applies to certain provisions of law governing coverage of telehealth by certain insurers, nonprofit health service plans, and health maintenance organizations to include the delivery of mental health care services to a patient in a certain setting; requiring the Maryland Department of Health to apply to the Centers for Medicare and Medicaid Services for an amendment to certain waivers to implement a pilot program to provide certain telehealth services to recipients under the Maryland Medical Assistance Program; limiting the telehealth services available under the pilot program; requiring the Department to administer the pilot program under certain circumstances; requiring the Department to report to the General Assembly on the status of a certain application on or before a certain date and with certain frequency thereafter; requiring the Department to report to the General Assembly on the status of the pilot program on or before a certain date each year under certain circumstances; requiring the Department to conduct a certain study and submit a certain report, on or before a certain date, to the General Assembly; defining a certain term; ~~providing for the application of certain provisions of this Act; providing for a delayed effective date for certain provisions of this Act; providing for the termination of certain provisions of this Act~~ making this Act an emergency measure; and generally relating to coverage for telehealth ~~and mental health care services~~.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 15–103(a)(1)
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 15–103(a)(2)(xiii) and (xiv)
Annotated Code of Maryland
(2019 Replacement Volume)

BY adding to
Article – Health – General
Section 15–103(a)(2)(xv) and 15–141.2
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 15–139
Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

15–103.

(a) (1) The Secretary shall administer the Maryland Medical Assistance Program.

(2) The Program:

(xiii) Beginning on January 1, 2019, may provide, subject to the limitations of the State budget, and as permitted by federal law, dental services for adults whose annual household income is at or below 133 percent of the poverty level; **[**and**]**

(xiv) Shall provide, subject to the limitations of the State budget, medically appropriate drugs that are approved by the United States Food and Drug Administration for the treatment of hepatitis C, regardless of the fibrosis score, and that are determined to be medically necessary**; AND**

(XV) SHALL PROVIDE, SUBJECT TO THE LIMITATIONS OF THE STATE BUDGET, MENTAL HEALTH SERVICES APPROPRIATELY DELIVERED THROUGH TELEHEALTH TO A PATIENT IN THE PATIENT'S HOME SETTING.

Article – Insurance

15–139.

(a) (1) In this section, "telehealth" means, as it relates to the delivery of health care services, the use of interactive audio, video, or other telecommunications or electronic technology by a licensed health care provider to deliver a health care service within the scope of practice of the health care provider at a location other than the location of the patient.

(2) "TELEHEALTH" INCLUDES THE DELIVERY OF MENTAL HEALTH CARE SERVICES TO A PATIENT IN THE PATIENT'S HOME SETTING.

[(2)**] (3)** "Telehealth" does not include:

(i) an audio–only telephone conversation between a health care provider and a patient;

(ii) an electronic mail message between a health care provider and a patient; or

(iii) a facsimile transmission between a health care provider and a patient.

(b) This section applies to:

(1) insurers and nonprofit health service plans that provide hospital, medical, or surgical benefits to individuals or groups on an expense–incurred basis under health insurance policies or contracts that are issued or delivered in the State; and

(2) health maintenance organizations that provide hospital, medical, or surgical benefits to individuals or groups under contracts that are issued or delivered in the State.

(c) (1) An entity subject to this section:

(i) shall provide coverage under a health insurance policy or contract for health care services appropriately delivered through telehealth; and

(ii) 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.

(2) The health care services appropriately delivered through telehealth shall include counseling for substance use disorders.

(d) An entity subject to this section:

(1) shall reimburse a health care provider for the diagnosis, consultation, and treatment of an insured patient for a health care service covered under a health insurance policy or contract that can be appropriately provided through telehealth;

(2) is not required to:

(i) reimburse a health care provider for a health care service delivered in person or through telehealth that is not a covered benefit under the health insurance policy or contract; or

(ii) reimburse a health care provider who is not a covered provider under the health insurance policy or contract; and

(3) (i) may impose a deductible, copayment, or coinsurance amount on benefits for health care services that are delivered either through an in–person consultation or through telehealth;

(ii) may impose an annual dollar maximum as permitted by federal law; and

(iii) may not impose a lifetime dollar maximum.

(e) An entity subject to this section 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) A health insurance policy or contract may not distinguish between patients in rural or urban locations in providing coverage under the policy or contract for health care services delivered through telehealth.

(g) A decision by an entity subject to this section not to provide coverage for telehealth in accordance with this section constitutes an adverse decision, as defined in § 15–10A–01 of this title, if the decision is based on a finding that telehealth is not medically necessary, appropriate, or efficient.

<u>SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:</u>

<u>Article – Health – General</u>

15–141.2.

(A) (1) IN THIS SECTION, "TELEHEALTH" MEANS A MODE OF DELIVERING HEALTH CARE SERVICES THROUGH THE USE OF TELECOMMUNICATIONS TECHNOLOGIES BY A HEALTH CARE PRACTITIONER TO A PATIENT AT A DIFFERENT PHYSICAL LOCATION THAN THE HEALTH CARE PRACTITIONER.

(2) "TELEHEALTH" INCLUDES SYNCHRONOUS AND ASYNCHRONOUS INTERACTIONS.

(3) "TELEHEALTH" DOES NOT INCLUDE THE PROVISION OF HEALTH CARE SERVICES SOLELY THROUGH AUDIO–ONLY CALLS, E–MAIL MESSAGES, OR FACSIMILE TRANSMISSIONS.

(B) (1) ON OR BEFORE DECEMBER 1, 2020, THE DEPARTMENT SHALL APPLY TO THE CENTERS FOR MEDICARE AND MEDICAID SERVICES FOR AN AMENDMENT TO ANY OF THE STATE'S § 1115 WAIVERS NECESSARY TO IMPLEMENT A PILOT PROGRAM TO PROVIDE TELEHEALTH SERVICES TO PROGRAM RECIPIENTS REGARDLESS OF THE PROGRAM RECIPIENT'S LOCATION AT THE TIME TELEHEALTH SERVICES ARE PROVIDED.

(2) TELEHEALTH SERVICES AVAILABLE UNDER THE PILOT PROGRAM SHALL BE LIMITED TO CHRONIC CONDITION MANAGEMENT SERVICES.

(C) IF THE AMENDMENT APPLIED FOR UNDER SUBSECTION (B) OF THIS SECTION IS APPROVED, THE DEPARTMENT SHALL ADMINISTER THE PILOT PROGRAM.

(D) THE DEPARTMENT SHALL COLLECT OUTCOMES DATA ON RECIPIENTS OF TELEHEALTH SERVICES UNDER THE PILOT PROGRAM TO EVALUATE THE EFFECTIVENESS OF THE PILOT PROGRAM.

(E) ON OR BEFORE DECEMBER 1, 2020, AND EVERY 6 MONTHS THEREAFTER UNTIL THE APPLICATION DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION IS APPROVED, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, ON THE STATUS OF THE APPLICATION.

(F) IF THE AMENDMENT APPLIED FOR UNDER SUBSECTION (B) OF THIS SECTION IS APPROVED, ON OR BEFORE DECEMBER 1 EACH YEAR FOLLOWING THE APPROVAL, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, ON THE STATUS OF THE PILOT PROGRAM.

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.

~~SECTION 2.~~ 4. ~~AND BE IT FURTHER ENACTED, That~~ Section 1 of ~~this Act shall apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after January 1, 2021.~~

~~SECTION 3.~~ 5. ~~AND BE IT FURTHER ENACTED, That~~ Sections 1 and 4 of ~~this Act shall take effect January 1, 2021.~~

SECTION ~~6.~~ 4. AND BE IT FURTHER ENACTED, That~~, except as provided in Section 5 of this Act,~~ this Act ~~shall take effect July 1, 2020~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly. Sections 2 and 3 shall remain effective ~~for a period of 5 years~~ through June 30, 2025, and, at the end of June 30, 2025, Sections 2 and 3, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.