SENATE BILL 402

J2, J1 EMERGENCY BILL (0lr1855)
ENROLLED BILL

— Education, Health, and Environmental Affairs/Health and Government Operations

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Introduced by **Senators Kagan and Lam**

Read and Examined by Proofreaders:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____M.

_____
President.

CHAPTER _____

AN ACT concerning

Health Care Practitioners – Telehealth and Shortage

FOR the purpose of authorizing certain health care practitioners to establish a practitioner–patient relationship through certain telehealth interactions under certain circumstances; requiring a health care practitioner providing telehealth services to be held to certain standards of practice and provide or refer a patient for certain services under certain circumstances; requiring a health care practitioner to perform a certain clinical evaluation before providing certain treatment or issuing a prescription through telehealth; prohibiting a health care practitioner from prescribing a ~~controlled dangerous substance~~ *certain opiate* through telehealth except under certain circumstances; providing that a health care practitioner who prescribes a controlled dangerous substance through telehealth is subject to certain laws under certain circumstances; requiring a health care practitioner to document certain information in a patient's medical record using certain documentation

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.
Italics indicate opposite chamber/conference committee amendments.

standards; providing that certain laws regarding confidentiality and a patient's right to health information apply to telehealth interactions in a certain manner; requiring a health care practitioner performing services through telehealth to be licensed, certified, or otherwise authorized by law to provide health care services in the State under certain circumstances; authorizing health occupations boards to adopt certain regulations; defining certain terms; stating the intent of the General Assembly; making this Act an emergency measure; and generally relating to ~~telehealth and~~ health care practitioners.

BY adding to
Article – Health Occupations
Section 1–1001 through 1–1006 to be under the new subtitle "Subtitle 10. Telehealth"
Annotated Code of Maryland
(2014 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 Occupations

SUBTITLE 10. TELEHEALTH.

1–1001.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ASYNCHRONOUS TELEHEALTH INTERACTION" MEANS AN EXCHANGE OF INFORMATION BETWEEN A PATIENT AND A HEALTH CARE PRACTITIONER THAT DOES NOT OCCUR IN REAL TIME, INCLUDING THE SECURE COLLECTION AND TRANSMISSION OF A PATIENT'S MEDICAL INFORMATION, CLINICAL DATA, CLINICAL IMAGES, LABORATORY RESULTS, AND SELF–REPORTED MEDICAL HISTORY.

(C) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PROVIDE HEALTH CARE SERVICES UNDER THIS ARTICLE.

(D) "SYNCHRONOUS TELEHEALTH INTERACTION" MEANS AN EXCHANGE OF INFORMATION BETWEEN A PATIENT AND A HEALTH CARE PRACTITIONER THAT OCCURS IN REAL TIME.

(E) (1) "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.

1–1002.

A HEALTH CARE PRACTITIONER MAY ESTABLISH A PRACTITIONER–PATIENT RELATIONSHIP THROUGH EITHER A SYNCHRONOUS TELEHEALTH INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION, IF THE HEALTH CARE PRACTITIONER:

(1) VERIFIES THE IDENTITY OF THE PATIENT RECEIVING HEALTH CARE SERVICES THROUGH TELEHEALTH;

(2) DISCLOSES TO THE PATIENT THE HEALTH CARE PRACTITIONER'S NAME, CONTACT INFORMATION, AND THE TYPE OF HEALTH OCCUPATION LICENSE HELD BY THE HEALTH CARE PRACTITIONER; AND

(3) OBTAINS ORAL OR WRITTEN CONSENT FROM THE PATIENT OR FROM THE PATIENT'S PARENT OR GUARDIAN IF STATE LAW REQUIRES THE CONSENT OF A PARENT OR GUARDIAN.

1–1003.

(A) A HEALTH CARE PRACTITIONER PROVIDING TELEHEALTH SERVICES SHALL ~~BE~~:

(1) BE HELD TO THE SAME STANDARDS OF PRACTICE THAT ARE APPLICABLE TO IN–PERSON HEALTH CARE SETTINGS; AND

(2) IF CLINICALLY APPROPRIATE FOR THE PATIENT, PROVIDE OR REFER A PATIENT TO IN–PERSON HEALTH CARE SERVICES OR ANOTHER TYPE OF TELEHEALTH SERVICE.

(B) (1) A HEALTH CARE PRACTITIONER SHALL PERFORM A CLINICAL EVALUATION THAT IS APPROPRIATE FOR THE PATIENT AND THE CONDITION WITH WHICH THE PATIENT PRESENTS BEFORE PROVIDING TREATMENT OR ISSUING A PRESCRIPTION THROUGH TELEHEALTH.

(2) A HEALTH CARE PRACTITIONER MAY USE A SYNCHRONOUS TELEHEALTH INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION TO PERFORM THE CLINICAL EVALUATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

~~**(C) (1) A A HEALTH CARE PRACTITIONER MAY NOT PRESCRIBE A CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE, THROUGH TELEHEALTH, UNLESS A DECLARED STATE OF EMERGENCY IS IN EFFECT.**~~

(C) (1) A HEALTH CARE PRACTITIONER MAY NOT PRESCRIBE AN OPIATE DESCRIBED IN THE LIST OF SCHEDULE II SUBSTANCES UNDER § 5–403 OF THE CRIMINAL LAW ARTICLE FOR THE TREATMENT OF PAIN THROUGH TELEHEALTH, UNLESS:

(I) THE INDIVIDUAL RECEIVING THE PRESCRIPTION IS A PATIENT IN A HEALTH CARE FACILITY, AS DEFINED IN § 19–114 OF THE HEALTH – GENERAL ARTICLE; OR

(II) THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY DUE TO A CATASTROPHIC HEALTH EMERGENCY.

(2) ~~**IF A DECLARED STATE OF EMERGENCY IS IN EFFECT**~~ ***SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION*****, A HEALTH CARE PRACTITIONER WHO THROUGH TELEHEALTH PRESCRIBES A CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE, IS SUBJECT TO ANY APPLICABLE REGULATION, LIMITATION, AND PROHIBITION IN FEDERAL AND STATE LAW RELATING TO THE PRESCRIPTION OF CONTROLLED DANGEROUS SUBSTANCES.**

1–1004.

(A) A HEALTH CARE PRACTITIONER SHALL DOCUMENT IN A PATIENT'S MEDICAL RECORD THE HEALTH CARE SERVICES PROVIDED THROUGH TELEHEALTH TO THE PATIENT ACCORDING TO THE SAME DOCUMENTATION STANDARDS USED FOR IN–PERSON HEALTH CARE SERVICES.

(B) ALL LAWS REGARDING THE CONFIDENTIALITY OF HEALTH INFORMATION AND A PATIENT'S RIGHT TO THE PATIENT'S HEALTH INFORMATION APPLY TO TELEHEALTH INTERACTIONS IN THE SAME MANNER AS THE LAWS APPLY TO IN–PERSON HEALTH CARE INTERACTIONS.

1–1005.

A HEALTH CARE PRACTITIONER PROVIDING HEALTH CARE SERVICES THROUGH TELEHEALTH MUST BE LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED BY LAW TO PROVIDE HEALTH CARE SERVICES IN THE STATE IF THE HEALTH CARE SERVICES ARE BEING PROVIDED TO A PATIENT LOCATED IN THE STATE.

1–1006.

(A) A HEALTH OCCUPATIONS BOARD MAY ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE.

(B) REGULATIONS ADOPTED BY A HEALTH OCCUPATIONS BOARD UNDER SUBSECTION (A) OF THIS SECTION:

(1) MAY NOT ESTABLISH A SEPARATE STANDARD OF CARE FOR TELEHEALTH; AND

(2) SHALL ALLOW FOR THE ESTABLISHMENT OF A PRACTITIONER–PATIENT RELATIONSHIP THROUGH A SYNCHRONOUS TELEHEALTH INTERACTION OR AN ASYNCHRONOUS TELEHEALTH INTERACTION PROVIDED BY A HEALTH CARE PRACTITIONER WHO IS COMPLYING WITH THE HEALTH CARE PRACTITIONER'S STANDARD OF CARE.

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Governor shall develop and implement a plan to facilitate the joining of the State with adjacent states and jurisdictions in interstate compacts regulating health care practitioners for the purpose of improving patient access to health care practitioners in State communities experiencing a health care practitioner shortage.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That 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, and shall take effect from the date it is enacted.