

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2559

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 22, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2559 (1R), with committee amendments.

As amended by the committee, this bill revises the telemedicine and telehealth law, P.L.2017, c.117 (C.45:1-1 et al.), to require health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP), to provide expanded coverage for services provided using telemedicine and telehealth.

Specifically, the bill requires that reimbursement for telemedicine and telehealth services for physical and behavioral health care be equal to the reimbursement rate for the same services when they are provided in person, provided the services are otherwise covered when provided in person in New Jersey. Current law provides telemedicine and telehealth services may be reimbursed up to the amount at which the service would be reimbursed if provided in person.

The amended bill provides that, if a telemedicine or telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage parity requirements of the bill will not apply.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing "place of service" requirements on providers or on patients in connection with telemedicine and telehealth services.

The bill prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from placing restrictions on the electronic or technological platform used to provide telemedicine and telehealth if the federal Centers for Medicare and Medicaid Services has authorized the use of the platform to provide services using telemedicine and telehealth under the federal Medicare program.

The bill further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from denying coverage for or refusing to provide reimbursement for routine patient monitoring performed using telemedicine and telehealth, including remote monitoring of a patient's vital signs and routine check-ins with the patient to monitor the patient's status and condition, if coverage and

reimbursement would be provided if those services are provided in person. The bill as amended further prohibits health benefits plans, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on the provision of services using telemedicine and telehealth than apply when those services are provided in person.

The bill, as amended, provides for expanded use of asynchronous store-and-forward technologies, with or without the use of real-time, two-way audio, to provide services using telemedicine and telehealth. Current law provides that asynchronous store-and-forward technologies may generally be used to transmit diagnostics, data, and medical information, and may additionally be used in connection with interactive, real-time, two-way audio, without video capabilities, if, after accessing and reviewing the patient's medical records, the provider determines that the provider is able to meet the same standard of care as if the health care services were being provided in person. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

The bill revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies any time the provider determines that the in-person standard of care can be met using those technologies. The amended bill adds a requirement the provider inform the patient at the outset of the encounter that the provider has determined that the standard of care can be met.

As amended, the bill revises the current requirement that the health care provider provide the patient with the provider's identity, professional credentials, and contact information at the time services are provided, to require that this information be provided at the time the patient schedules the telemedicine or telehealth encounter, if the provider is known at that time. If the provider is not known, the information is to be provided at the time of the encounter, but the patient is to be informed at the time of scheduling that the provider may not be a physician. At the time the provider initiates the telemedicine or telehealth encounter, if the provider is not a physician and the patient requests that the encounter be with a physician, the provider will be required to assist the patient in scheduling a telemedicine or telehealth encounter with a physician.

Current law requires that the patient's medical information be forwarded to the patient's primary care provider or another health care provider, if so requested by the patient. As amended, the bill additionally requires that the patient's medical information be recorded in the patient's electronic health record.

As amended, the bill adds language clarifying that the provider is to assist the patient in finding a primary care provider if so requested by the patient, and clarifying that, when scheduling the patient for

appropriate follow-up services, follow-up services may include in-person services.

The bill provides that, in the event that a mental health screener, screening service, or screening psychiatrist determines that an in-person psychiatric evaluation is necessary to meet standard of care requirements, or in the event that a patient requests an in-person psychiatric evaluation in lieu of a psychiatric evaluation performed using telemedicine or telehealth, the mental health screener, screening service, or screening psychiatrist may nevertheless perform a psychiatric evaluation using telemedicine and telehealth if it is determined that the patient cannot be scheduled for an in-person psychiatric evaluation within the next 24 hours. Nothing in the bill will prevent a patient who receives a psychiatric evaluation using telemedicine and telehealth from receiving a subsequent, in-person psychiatric evaluation in connection with the same treatment event, provided that the subsequent in-person psychiatric evaluation is necessary to meet standard of care requirements for that patient.

As amended, the bill requires the Commissioner of Banking and Insurance to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to those requirements. The commissioner will be required to submit to the Governor and the Legislature, within one year after the effective date of the bill, a report that includes the commissioner's findings and recommendations.

As amended, the bill includes a \$5 million appropriation from the General Fund to the Department of Human Services to establish a program under which health care providers that provide telemedicine or telehealth services to patients who are enrolled in the State Medicaid program can be reimbursed for the costs of providing those patients with access, on a temporary or permanent basis, to appropriate devices, programs, and technologies necessary to enable patients who do not ordinarily have access to those devices, programs, or technologies. The Commissioner of Human Services will be required to establish standards and protocols for health care providers to apply for reimbursement under the program established pursuant to this section. The bill specifies that the appropriated funds may only be expended on acquiring electronic communication and information devices, programs, and technologies for use by patients, and in no case are the funds to be used to provide any form of direct reimbursement to an individual provider for physical or behavioral health care services provided to a patient using telemedicine or telehealth, or to provide reimbursement for any electronic communication or information device, program, or technology for which payment may be made or covered or for which reimbursement is provided by a health benefits plan or by any other State or federal program. As amended, the bill specifies that nothing in its provisions is to be construed to require a health benefits plan, the State Health Benefits Plan, or the

School Employees' Health Benefits plan to provide reimbursement for acquiring or providing access to any electronic communication or information device, program, or technology for which coverage would not ordinarily be provided under the plan or contract.

As amended, the provisions of the bill revising the coverage mandates for telemedicine and telehealth will not take effect until January 1, 2022, and will apply to all plans and contracts issued or renewed after that date. The remainder of the bill will take effect immediately.

COMMITTEE AMENDMENTS:

The committee amendments revise language requiring health benefits plans to provide coverage for "all forms of physical and behavioral health care services provided using telemedicine and telehealth" to remove the phrase "all forms of," and to clarify that coverage applies only to the extent that the services are otherwise covered when provided on an in-person basis in New Jersey.

The committee amendments add language clarifying that if telemedicine and telehealth organization does not provide a given service on an in-person basis, the coverage mandates set forth in the bill do not apply.

The committee amendments revise a provision prohibiting restrictions on the types of electronic or technological platforms used for telemedicine and telehealth to provide plans may not impose coverage restrictions on any electronic or technological program that the federal Centers for Medicare and Medicaid Services has approved for use with the federal Medicare program that allows the provider to meet standard of care requirements.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from imposing more stringent utilization management requirements on services provided using telemedicine and telehealth than would apply when those services are provided in person.

The committee amendments revise the requirements for providing services using asynchronous store-and-forward technologies to allow for the technologies to be used with or without real-time two-way audio.

The committee amendments revise a requirement that a provider using asynchronous store-and-forward technologies to provide services using telemedicine and telehealth obtain a written concurrence from the patient that standard of care requirements can be met, to instead just require the provider to advise the patient at the outset of the encounter that the provider has determined standard of care requirements can be met.

The committee amendments revise the requirement for providers to furnish the patient with the provider's identity, professional credentials, and contact information at the time services are provided

to instead require this information to be provided at the time services are scheduled, if the provider is known at that time. If the provider is not known, the patient is to be advised the provider may not be a physician. If the provider is not a physician, and the patient requests a telemedicine or telehealth visit with a physician, the provider will be required to assist the patient in scheduling a telemedicine or telehealth encounter with a physician. The committee amendments remove a requirement that non-physicians obtain a written acknowledgment and consent from the patient prior to proceeding with a telemedicine or telehealth encounter.

The committee amendments add a requirement that the patient's medical information be included in the patient's medical record at the end of the telemedicine encounter, and clarify that if the patient requests assistance with finding a primary care provider, the individual providing telemedicine or telehealth services is required to assist the patient in doing so. The committee amendments further clarify that appropriate follow-up services may include in-person services.

The committee amendments add a requirement for the Commissioner of Banking and Insurance to conduct a study as to whether telemedicine and telehealth may be used to satisfy network adequacy requirements for health benefits plans that are subject to network adequacy requirements.

The committee amendments revise the requirements for the appropriation being made under the bill to clarify that the appropriation may only be used to assist patients to acquire the devices, programs, or technologies they need to engage in a telemedicine or telehealth encounter, and that the appropriation is in no way to be used to provide direct reimbursements to providers for health care services provided using telemedicine or telehealth. The amendments further clarify that no reimbursement is to be provided if the devices, programs, or technologies are covered or otherwise reimbursed by any other source, including health insurance and other government programs. The amendments specify that nothing in the bill is to be construed to require health benefits plans to cover the cost of furnishing patients with electronic communication or information devices, programs, or technologies if coverage would not ordinarily be provided under the contract.

The committee amendments revise the effective date to provide that the revisions to the insurance coverage mandates for telemedicine and telehealth services will not take effect until January 1, 2022, and will apply to plans and contracts issued or renewed on or after that date.

FISCAL IMPACT:

Fiscal information is not currently available for this bill.