

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### [Second Reprint] **SENATE, No. 2559**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Senate Bill No. 2559 (2R), with committee amendments.

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. Similarly, the pay parity requirements will not apply to physical health care services provided using telemedicine or telehealth utilizing an audio-only platform; the pay parity requirements will continue to apply to behavioral health care services regardless of the platform used.

The bill also prohibits health benefits plans, Medicaid and NJ FamilyCare, and the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (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, including, but not limited to, interactive, real-time, two-way audio, which may be used in combination with asynchronous store-and-forward technology without video capabilities, that: 1) allows the provider to meet standard of care requirements; and 2) is compliant with federal health privacy rules.

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, and from limiting

coverage only to services provided by select third party telemedicine or telehealth providers.

As amended, the bill 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 and from imposing other requirements for the use of telemedicine or telehealth that are more restrictive than the requirements that apply when the service is provided in person.

As amended, the bill prohibits health benefits plans, the SHBP, and the SEHBP from using telemedicine and telehealth to meet network adequacy requirements for physical health care services.

As amended, the bill specifies that nothing in the telemedicine law is to be construed to restrict the right of a patient to receive health care services on an in-person basis upon request, and no patient may be required to engage in a telemedicine or telehealth encounter to receive health care services if those same services are available, in person, from a provider that is reasonably accessible to the patient.

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 revises these requirements to provide that telemedicine and telehealth may be provided using asynchronous store-and-forward technologies, with or without real-time, two-way audio, 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. The bill further provides that no medications may be prescribed based solely on responses included in an online static questionnaire.

As amended, the bill requires that, at the time the patient requests health care services to be provided using telemedicine or telehealth, the patient shall be clearly advised that the telemedicine or telehealth encounter may be with a health care provider who is not a physician, and that the patient may specifically request that the telemedicine or telehealth encounter be scheduled with a physician. If the patient requests that the telemedicine or telehealth encounter be with a physician, the encounter is to be scheduled with a physician.

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, or upon confirmation of the scheduled telemedicine or telehealth encounter.

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 requires that the patient's medical information be recorded in the patient's medical record, whether it is a physical record, electronic record, or both. Additionally, if so requested by the patient, the record is to be forwarded to the patient's primary care provider, health care provider of record, or another provider specified by the patient; the record would no longer be automatically transmitted to the patient's primary care provider or health care provider of 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 repeals P.L.2020, c.3 and P.L.2020, c.7. P.L.2020, c.3 established certain requirements concerning the expanded use of telemedicine and telehealth to provide services during the coronavirus disease 2019 (COVID-19) pandemic; P.L.2020, c.7 established insurance coverage requirements for certain services, including telemedicine and telehealth, during the COVID-19 pandemic. Absent repeal, P.L.2020, c.3 and P.L.2020, c.7, would each have expired 90 days after the end of both the state of emergency and the public health emergency declared in response to the COVID-19 pandemic.

As amended, the bill establishes a new section, similar to what is currently provided in P.L.2020, c.7, requiring health benefits plans to

cover practitioner-ordered testing for COVID-19 and items and services that result in an order for a COVID-19 test. These requirements will expire upon the end of the federal state of emergency declared in response to the COVID-19 pandemic.

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. 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. 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 bill provides that the revised coverage mandates for telemedicine and telehealth will apply to all plans and contracts issued or renewed after that date.

As amended and reported by the committee, Senate Bill No. 2559 (2R) is identical to Assembly Bill Nos. 4179/4200 (ACS), which the committee also amended and reported on this date.

#### COMMITTEE AMENDMENTS:

The committee amendments add language clarifying that if telemedicine and telehealth organization does not provide a given service on an in-person basis in New Jersey, the coverage mandates set forth in the bill do not apply. The amendments also provide that the coverage mandates will not apply to physical health care services provided using audio-only platforms.

The committee amendments revise language prohibiting restrictions on the types of electronic or technological platforms used

for telemedicine and telehealth, including interactive, real-time, two-way audio, which may be combined with asynchronous store-and-forward technologies without video capabilities, to include any platform that: 1) allows the provider to meet standard of care requirements; and 2) is compliant with federal health privacy laws. The amendments remove language that would have applied the requirement to platforms approved for use with the federal Medicare program.

The committee amendments prohibit health benefits plan carriers, Medicaid and NJ FamilyCare, and the SHBP and SEHBP from limiting coverage only to service delivered by select third party telemedicine or telehealth organizations.

The committee amendments prohibit health benefits plan carriers, the SHBP, and the SEHBP from using telemedicine and telehealth to meet network adequacy requirements.

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

The committee amendments provide that nothing in the telemedicine and telehealth law is to be construed to restrict the right of a patient to receive health care services on an in-person basis upon request or to require a patient to engage in a telemedicine or telehealth encounter to receive health care services if those same services are reasonably available in person.

The committee amendments add language requiring patients be expressly told that the telemedicine or telehealth encounter may be with a provider who is not a physician, and specifying that the patient has the right to request and have the encounter scheduled with a physician.

The committee amendments revise the requirements for provider information to be provided to patients to require it be provided to patients at the time the telemedicine or telehealth encounter is scheduled, if known at that time, or at the time the scheduled encounter is confirmed.

The committee amendments revise a restriction on issuing prescriptions using telemedicine and telehealth solely based on the responses provided in an online questionnaire to provide that the restriction applies to online static questionnaires.

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, including physical records, electronic health records, or both.

The committee amendments repeal P.L.2020, c.3 and P.L.2020, c.7, which established certain requirements for the expanded provision of services using telemedicine and telehealth and insurance coverage

for certain services provided during the COVID-19 pandemic. The amendments add a new section, similar to what was provided in P.L.2020, c.7, requiring health benefits plans to cover practitioner-ordered testing for COVID-19 and items and services that result in an order for a COVID-19 test. This requirement will expire upon the end of the federal state of emergency declared in response to the COVID-19 pandemic.

The committee amendments remove a section that would require the Commissioner of Banking and Insurance to conduct a study to determine whether telemedicine and telehealth can be appropriately used to satisfy network adequacy requirements.

The committee amendments revise the effective date to provide that the revisions to the insurance coverage mandates for telemedicine and telehealth services will apply to plans and contracts issued or renewed on or after the effective date of the bill.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) finds that State expenditures for monthly capitation payments made to State-contracted Medicaid managed care organizations (MCOs) for the cost of services provided to New Jersey FamilyCare beneficiaries will increase by an indeterminate amount due to the bill's requirement that New Jersey FamilyCare reimburse for telemedicine and telehealth services on the same basis as, and at a provider reimbursement rate that equals, the rate paid when these services are delivered in person, provided the services are otherwise covered when provided in person in New Jersey. However, increased State expenditures for NJ FamilyCare capitation payments will be eligible for additional federal Medicaid matching funds, thereby increasing State revenues, albeit by an indeterminate amount.

The bill additionally appropriates \$5 million from the State General Fund to the Department of Human Services (DHS) to establish a program under which healthcare providers who provide telemedicine or telehealth services to NJ FamilyCare enrollees can be reimbursed for the cost of providing temporary or ongoing access to the devices, technologies, and programs that enable those patients, who would not otherwise have access to such technology, to receive telemedicine or telehealth services.

Although it is not possible to precisely estimate the impact of the bill's requirements on the School Employees' Health Benefits Program and the State Health Benefits Program (SEHBP/SHBP), the Department of the Treasury projects that, by increasing the cost of each telemedicine visit and broadening telemedicine coverage, this bill will increase annual costs to the SEHBP and the SHBP in a range between \$5 million and \$50 million.