



Telehealth Policy Workgroup

October 21, 2020 | 1:00pm-3:00pm EDT

Join Zoom Meeting by web:

<https://us02web.zoom.us/j/82680931631?pwd=dVlreEJUSDdPVm5weWJJRkpZS0dSUT09>

Meeting ID: 826 8093 1631 Passcode: 004160

Join by Phone: +1 301-715-8592 Enter Meeting ID (No Passcode)

Agenda

- I. INTRODUCTIONS**
- II. OPENING REMARKS**
- III. OVERVIEW OF DISCUSSION ITEMS**
- IV. POLICY DISCUSSION**
- V. NEXT STEPS**

For technical assistance during the meeting, please email:

Justine Springer: justine.springer@maryland.gov

Anene Onyeabo: anene.onyeabo@maryland.gov

To confirm your attendance if participating by phone, please email:

Christine Karayinopulos: christine.karayinopulos@maryland.gov

Telehealth Policy Workgroup

October 21, 2020

The Maryland Health Care Commission (MHCC) convened the Telehealth Policy Workgroup (workgroup) on September 30th to discuss the ongoing relevance of key telehealth policy changes as a result of Executive Orders issued by Governor Hogan and federal waivers implemented in response to the COVID-19 public health emergency. Workgroup members were requested to complete an online survey to rank policies for discussion. The table below summarizes leading responses.

Suggested Discussion Items (N=35)		
Count	Policy	Percent of Responses
1	Removing telehealth restrictions on originating sites	80
2	Permitting audio only when the treating provider determines it to be safe, effective, and appropriate	77
3	Removing telehealth restrictions on conditions that can be treated	69
4	Removing telehealth restrictions on provider types	66
5	Reducing or waiving cost sharing for telehealth services through the end of the public health emergency or until December 31, 2021, whichever occurs last	49
6	Reinstating technology standards that require providers to use HIPAA-compliant technology, which were relaxed by OCR during the federal public health emergency ¹	17

¹ Privacy and security policy six included by MHCC.

Telehealth Policy Workgroup

DISCUSSION ITEMS

1: Removing telehealth restrictions on originating sites	
BENEFITS • <div>1</div>	UNINTENDED CONSEQUENCES • <div>2</div>
PERMANENCY CONCERNS • <div>3</div>	OTHER • <div>4</div>
ADDITIONAL ITEMS/FEEDBACK <ul style="list-style-type: none">Consider Parity at 10 recommendation to authorize patients' homes and additional locations to meet patients' needs	
PARKING LOT	

2: Permitting audio only when the treating provider determines it to be safe, effective, and appropriate	
BENEFITS • <div>1</div>	UNINTENDED CONSEQUENCES • <div>2</div>
PERMANENCY CONCERNS • <div>3</div>	OTHER • <div>4</div>
ADDITIONAL ITEMS/FEEDBACK <ul style="list-style-type: none"> • Monitor federal guidance • Assess data on utilization, safety, effectiveness, patient/provider satisfaction, and impact on health care access 	
PARKING LOT	

3: Removing telehealth restrictions on conditions that can be treated

BENEFITS

-

1

UNINTENDED CONSEQUENCES

-

2

PERMANENCY CONCERNS

-

3

OTHER

-

4

ADDITIONAL ITEMS/FEEDBACK

-

PARKING LOT

4: Removing telehealth restrictions on provider types

BENEFITS

-

1

UNINTENDED CONSEQUENCES

-

2

PERMANENCY CONCERNS

-

3

OTHER

-

4

ADDITIONAL ITEMS/FEEDBACK

-

PARKING LOT

5: Reducing or waiving cost sharing for telehealth services through the end of the public health emergency or until December 31, 2021, whichever occurs last

BENEFITS <ul style="list-style-type: none">• <p>1</p>	UNINTENDED CONSEQUENCES <ul style="list-style-type: none">• <p>2</p>
PERMANENCY CONCERNS <ul style="list-style-type: none">• <p>3</p>	OTHER <ul style="list-style-type: none">• <p>4</p>
ADDITIONAL ITEMS/FEEDBACK <ul style="list-style-type: none">•	
PARKING LOT	

6: Reinstating technology standards that require providers to use HIPAA-compliant technology, which were relaxed by OCR during the federal public health emergency

BENEFITS <ul style="list-style-type: none">• <p>1</p>	UNINTENDED CONSEQUENCES <ul style="list-style-type: none">• <p>2</p>
PERMANENCY CONCERNS <ul style="list-style-type: none">• <p>3</p>	OTHER <ul style="list-style-type: none">• <p>4</p>
ADDITIONAL ITEMS/FEEDBACK <ul style="list-style-type: none">•	
PARKING LOT	

Chapter 16

(Senate Bill 402)

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 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.

Approved by the Governor, April 3, 2020.



Executive Department

ORDER OF THE GOVERNOR OF THE STATE OF MARYLAND

NUMBER 20-04-01-01

AMENDING AND RESTATING ORDER No. 20-03-20-01
TO FURTHER AUTHORIZE ADDITIONAL TELEHEALTH SERVICES

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency continue to exist;
- WHEREAS, The currently known and available scientific evidence and best practices support social distancing to prevent exposures to and transmissions of COVID-19, and to reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, Health care practitioners are needed to respond to the state of emergency and catastrophic health emergency;
- WHEREAS, To respond to the state of emergency and catastrophic health emergency, health care practitioners must be permitted to deliver health care services at sites other than the sites at which patients are located;
- WHEREAS, Marylanders require access to health care services during the catastrophic health emergency, but compliance with social distancing guidelines may make it difficult for Marylanders to safely obtain those health care services in-person;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19, and save lives, it is necessary to minimize the movement of individuals in Maryland, including those seeking health care services;

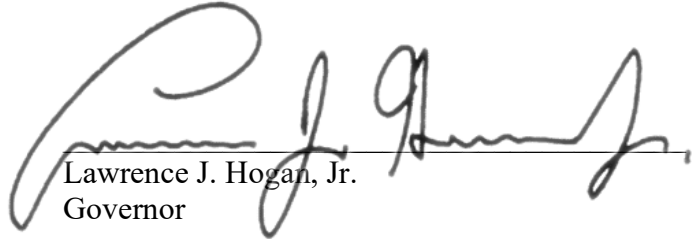
- WHEREAS, It is necessary that health care practitioners licensed, certified, or otherwise authorized by law to provide health care services be permitted in Maryland to provide those services through the use of telecommunications technologies (“telehealth”), including audio-only calls or conversations, while complying with the same standards of practice that are applicable to in-person health care settings;
- WHEREAS, To expand the use of telehealth and the delivery of health care services through audio-only calls and conversations, and protect the public health, welfare, and safety, it is necessary to suspend certain State and local statutes, rules, and regulations regarding confidentiality during use of various video and telecommunications applications and products;
- WHEREAS, It is necessary during the state of emergency and catastrophic health emergency that health care practitioners be authorized to, through telehealth and audio-only calls or conversations, perform clinical evaluations, refer patients to health care services, provide treatment, and issue prescriptions; and
- WHEREAS, Authorizing health care practitioners to use telehealth and audio-only calls or conversations under appropriate circumstances will help Marylanders continue to receive needed health care services during the catastrophic health emergency;
- NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:
- I. Order No. 20-03-20-01 of the Governor of the State of Maryland is further amended and restated in its entirety as set forth herein.
 - II. Subject to paragraphs III, IV, and V of this Order, the Secretary of Health may, through directives, rules, or guidelines, authorize a health care practitioner to deliver health care services through the use of telecommunications technologies (“telehealth”), as well as audio-only calls or conversations, to a patient at a different physical location than the health care practitioner, provided that:
 - a. The health care services delivered are:
 - i. Clinically appropriate; and
 - ii. Within the scope of practice of the health care practitioner; and
 - b. The health care practitioner:

- i. Is licensed, certified, or otherwise authorized by law to provide health care services in the state;
 - ii. Complies with the same standards of practice that are applicable to the provision of health care services in in-person health care settings;
 - iii. Documents in a patient's medical record the health care services provided through telehealth or audio-only calls or conversations, according to the same documentation standards used for in-patient health care services; and
 - iv. If using audio-only calls or conversations, can interact with the patient at the time the health care service is provided.
- III. A health care practitioner authorized to use telehealth or audio-only calls or conversations may establish a practitioner-patient relationship through an exchange of information between a patient and a health care practitioner, if:
 - a. The health care practitioner:
 - i. Verifies the identity of the patient receiving health care services through telehealth or audio-only calls or conversations;
 - ii. 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;
 - iii. 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; and
 - b. Any audio-only calls or conversation occur in real time.
- IV. Before providing treatment or issuing a prescription through telehealth or audio-only calls or conversations, the health care practitioner shall perform a clinical evaluation that is appropriate for the patient and the condition with which the patient presents.
- V. A health care practitioner who through telehealth or audio-only calls or conversations prescribes a controlled dangerous substance, as defined in § 5-101 of the Criminal Law article of the Maryland Code, is subject to any applicable regulation, limitation, and prohibition in federal and state law relating to the prescription of controlled dangerous substances.
- VI. The Maryland Medical Assistance Program shall not reimburse, in accordance with the requirements of Title 15, Subtitle 1 of the Health-General Article of the Maryland Code ("HG"), health care practitioners for health care services provided through telehealth or audio-only calls or conversations if the health care practitioner has violated this Order.
- VII. The Behavioral Health Administration shall not reimburse, in accordance with the requirements of HG Title 7.5, Subtitle 2, health care practitioners for health care services

provided through telehealth or audio-only calls or conversations if the health care practitioner has violated this Order.

- VIII. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order, including HG § 15-105.2, is hereby suspended.
- IX. The effect of HG §§ 4-301 to 4-309 is hereby suspended in connection with the provision of health care services through telehealth, audio-only calls or conversations, or telemedicine as defined in HG § 15-105.2.
- X. Subject to paragraphs VIII and IX of this Order, all others laws and regulations regarding the confidentiality of health information and a patient's right to the patient's health information apply to telehealth interactions or audio-only calls or conversations in the same manner as the laws apply to in-person health care interactions.
- XI. This Order remains effective until the state of emergency has been terminated and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

ISSUED UNDER MY HAND THIS 1ST DAY OF APRIL, 2020, AND
EFFECTIVELY IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor