LEGAL ACTION CENTER

Preserve Telehealth Access Act of 2023 (SB 534)
Finance Committee Hearing
February 22, 2023
FAVORABLE

Thank you for the opportunity to submit testimony **in support of SB 534** to extend the coverage of audio-only telehealth and payment parity for both audio-only and audio-visual telehealth in private and public insurance for two years pending a study on payment parity. This testimony is submitted on behalf of the Legal Action Center, a law and policy organization that fights discrimination, builds health equity and restores opportunities for individuals with substance use disorders, arrest and conviction records, and HIV or AIDs. In Maryland, we convene the Maryland Parity Coalition and work with our partners to ensure non-discriminatory access to mental health (MH) and substance use disorder (SUD) services through enforcement of the Mental Health Parity and Addiction Equity Act (Parity Act). **Continuation of existing telehealth standards is a top priority of the Maryland Parity Coalition.**

In 2021, the Maryland Parity Coalition advocated for comprehensive telehealth services, and members participated actively in the Maryland Health Care Commission's (MHCC) telehealth study, the basis of SB 534's recommendations. The MHCC's findings capture the on-the-ground experience of the Coalition's consumer and provider members. **The study highlights the critical importance of telehealth services for MH and SUD care and overwhelming support for "maintain[ing] a choice of care modalities, including audio-only, audio-visual, and in-person visits."**[1] Among Maryland's mental health and substance use disorder providers:

- The vast majority use audio-visual telehealth (98%) and audio-only telehealth (67%) and would like to increase their use of telehealth services.
- Virtually all – 97% - found that both modes of telehealth improve access to care, particularly for patients who might otherwise face access-related barriers.
- The vast majority believe that audio-visual (89%) and audio-only (60%) are as good as in-person services.[2]

Research reinforces the MHCC's findings that audio-only telehealth is effective for many MH and SUD services[3] and must be continued, pending infrastructure development, to ensure equity. Ending coverage of audio-only treatment would hinder access to care and exacerbate health disparities for rural, older, lower-income, non-English speaking, and Black and brown populations due to on-going structural gaps in accessing in-person and audio-visual telehealth services.[4]

Continuation of audio-only telehealth is also essential to align with federal standards for the treatment of opioid use disorder (OUD) in clinical settings. The Substance Abuse and Mental Health Services Administration (SAMHSA) has recently issued proposed rules for medications for opioid use disorder (MOUD) that would permit, *on a permanent basis*, initiation of buprenorphine treatment via audio-visual and

audio-only telehealth and methadone treatment via audio-visual telehealth.[5] The Drug Enforcement Administration (DEA), which issued a temporary exception to permit prescribing of controlled substances via telehealth during the federal COVID public health emergency, is expected to issue regulations to authorize the prescribing of MOUD via telehealth.

Continuing payment parity for both public and private payer is necessary to meet the cost of care delivery and ensure that telehealth remains available to all Marylanders without regard to income, race, or place of residence. As MHCC reported, for MH and SUD providers, "audio-only and audio-visual telehealth requires the same provider effort and fixed costs…as in-person costs,"[6] including office related expenses and administrative costs. Research supports the conclusion that clinical effort, malpractice expenses, and fixed costs for practitioners who deliver in-person and telehealth services remain the same across service delivery modes.[7] Small and solo practices – common in the MH and SUD care context – and those in underserved communities that are not highly resourced are least able to support telehealth without adequate reimbursement.[8] **Marylanders who do not have the financial resources, technical ability, or broadband availability to use audio-visual telehealth would have far more limited care access absent payment parity:** 70% of MH and SUD providers reported that low reimbursement from commercial payers is a barrier to providing audio-only services, and 40% indicated that lack of reimbursement would be a reason for discontinuing audio-only services.[9]

Finally, as the General Assembly moves forward to continue audio-only telehealth and payment parity in both public and private insurance until June 2025, **we urge the General Assembly to continue to protect the right of Marylanders to choose the mode of service delivery that is most appropriate for them – telehealth, in-person or a hybrid approach.** Maryland law protects this right for those seeking MH or SUD services (INS. § 15-139(c)(1)(iii); HEALTH GEN. § 15-141.2(d)(2)), and those protections should not be altered.

While telehealth is critically important for accessing MH and SUD care, the majority of MH and SUD outpatient care is still delivered in person. The share of MH and SUD outpatient visits delivered via telehealth reached a peak of 40% during the pandemic (at varying rates for different conditions).[10] Since that time, practitioners who treated patients with opioid use disorder reported a decline in telehealth use from December 2020 to March 2022 – going from 56.7% to 41.5% of all OUD visits.[11] Telehealth is an important complement to in-person care but will not replace in person care. **Adequate protections must remain in place to ensure robust availability of in-person MH and SUD services in public and private insurance.**

Thank you for considering our views. We urge the Committee to issue a favorable report on SB 534.

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[1] NORC, Technical Report of the Maryland Telehealth Study (Oct. 28, 2022) at 16. Finding that "[t]here was consensus that telehealth offered greater access to behavioral health, fostering immediate access to patients in crisis, reducing transportation barriers, improving ease of scheduling, and allowing increased flexibility for patients and providers. Provider organization participants further noted that telehealth decreased no-show rates and lapses in care for ongoing mental health treatment." https://mhcc.maryland.gov/mhcc/pages/hit/hit_telemedicine/documents/hit_norc_technical_rpt.pdf

[2] NORC at 18-20.

[3] *See* Madeline C. Frost et al., "Use of and Retention on Video, Telephone, and In-Person Buprenorphine Treatment for Opioid Use Disorder During the COVID-19 Pandemic," JAMA Network Open (Oct. 12, 2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2797201; Patricia V. Chen et al., "Evidence of Phone vs Video-Conferencing for Mental Health Treatments: A Review of the Literature," Curr. Psychiatry Rep. (Sept. 2, 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9437398/; Lauren Riedel et al., "Use of Telemedicine for Opioid Use Disorder Treatment – Perceptions and Experiences of Opioid Use Disorder Clinicians," Drug & Alcohol Dependence (Nov. 1, 2021), https://www.sciencedirect.com/science/article/abs/pii/S0376871621004944?dgcid=rss_sd_all.

[4] NORC, *supra* note 2 at 24; Impacts of Eliminating Audio-Only Care on Disparities in Telehealth Accessibility," J. Gen. Internal Med. (Apr. 11, 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8999992/pdf/11606_2022_Article_7570.pdf; and Sarah Bhatnager et al., "The Future of Telehealth after COVID-19: New Opportunities and Challenges," Bipartisan Policy Center (October 2022), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/09/BPC-The-Future-of-Telehealth-After-COVID-19-October-2022.pdf;

[5] Dept. of Health and Human Services, Medications for the Treatment of Opioid Use Disorder, 87 FED. REG. 77330, 77336-37 and Sec. 8.12(f)(2)(v) (Dec. 16, 2022).

[6] NORC at 46.

[7] Chad Ellimoottil, "Understanding the Case for Telehealth Payment Parity," Health Affairs Forefront (May 10, 2021), https://www.healthaffairs.org/do/10.1377/forefront.20210503.625394/full/

[8] Andrew C. Philip et al., "Getting Beyond Parity: Telehealth as a Best Practice in Health Equity," Telehealth & Medicine Today (Jan. 31, 2022), https://telehealthandmedicinetoday.com/index.php/journal/article/view/303/611; and Ellimoottil.

[9] NORC at 47-48.

[10] Justin Lo et al., "Telehealth Has Played an Outsized Role Meeting Mental Health Needs During the COVID-19 Pandemic," Kaiser Family Foundation (Mar. 15, 2022), https://www.kff.org/coronavirus-covid-19/issue-brief/telehealth-has-played-an-outsized-role-meeting-mental-health-needs-during-the-covid-19-pandemic/

[11] Lori Uscher-Pines, et al., "Many Clinicians Implement Digital Equity Strategies to Treat Opioid Use Disorder, 42 Health Affairs 182, 183 (Feb. 2023), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2022.00803.

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