

SENATE BILL NO. 2559
(Fourth Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 2559 (Fourth Reprint) with my recommendations for reconsideration.

Senate Bill No. 2559 (Fourth Reprint) would require telehealth pay parity for health care services covered by (1) a carrier offering a health benefits plan in New Jersey, (2) the State Medicaid program, and (3) the State Health Benefits and School Employee Health Benefits Programs (collectively, "carriers"). Pay parity prohibits carriers from reimbursing health care providers for a service delivered via telemedicine or telehealth at a lower reimbursement rate than the reimbursement rate for that service delivered in person. Under the bill, pay parity would be required for all services that are covered and provided in-person in New Jersey. Pay parity would not apply to audio-only physical telemedicine or telehealth care services, as such services would be required to be reimbursed at no less than 50 percent of the reimbursement rate for the equivalent in-person service, but pay parity would apply to audio-only behavioral health services. The bill also prohibits restricting the locations from which services are provided or the technological platforms used, imposes restrictions on carriers related to coverage and utilization management, and establishes certain notice obligations on health care providers when delivering telehealth or telemedicine services. Finally, the bill repeals and replaces statutes related to the provision of tests and health care during the Coronavirus disease 2019 ("COVID-19") emergency.

I commend the bill's sponsors for their commitment to expanding access to telehealth and telemedicine and for their support of New Jersey health care providers, who have heroically

cared for New Jerseyans during the COVID-19 pandemic. The pandemic has sparked massive investments in telehealth and telemedicine capabilities over the past 18 months as in-person contact was limited and utilization of telehealth and telemedicine increased exponentially. To ensure the continuity of care for patients and revenue stability for providers, the Department of Banking and Insurance ("DOBI") acted quickly to issue a bulletin instituting pay parity for telemedicine and telehealth. DOBI's pay parity requirement will expire on January 11, 2022, unless the Legislature and I agree to extend it 90 more days. See P.L.2021, c.103.

There are many ways in which the recent shift towards telehealth and telemedicine has been overwhelmingly positive. Telehealth provides patients flexibility regarding when and from whom they receive care, thereby expanding access and, in many cases, improving outcomes. This is particularly true for patients living in underserved communities. Those who support making pay parity permanent argue that the policy is necessary to preserve and continue this progress because New Jersey providers do not see cost savings from telehealth and will be disincentivized from offering it if it is reimbursed at a lower rate than in-person care.

While I wholeheartedly support expanding telehealth and telemedicine access and believe that New Jersey should be a national leader in innovative health care policy, I have reservations about making permanent a measure that was intended as a stopgap to preserve public health during an unprecedented emergency. To start, approving this bill would amount to a very heavy thumb on the scale in favor of providers vis-à-vis carriers, in an area traditionally left to private negotiations. Moreover, the cost to carriers - which would be felt both by those paying

premiums and taxpayers alike - could be substantial. And, while the cost of providing telehealth may be the same as or higher than the cost of providing in-person care in the short term, providers could realize significant cost savings over the long term, as expanding telehealth options might bring reductions in clinical space, support staff, and other expenses.

I am also concerned about the bill's restrictions on cost containment measures, which include prohibiting more restrictive utilization management techniques for telehealth. These restrictions may eliminate the flexibility needed to adjust to the challenges of new technologies and methods of care.

Most importantly, we do not yet have a full understanding of whether or how pay parity could negatively affect patients. Notably, the federal Centers for Medicare & Medicaid Services has not yet taken a permanent position on pay parity. And, although providers must meet the same standard of care for telehealth as for in-person care, the quality of care could be impacted. In the short term, the flexibility afforded by expanded access to telehealth has greatly benefited New Jersey residents who may not have the time or resources to receive in-person care when local in-network options are limited. But I am concerned that in the long term, pay parity could over-incentivize telehealth, further limiting in-person options. This could be especially detrimental for those in underserved communities.

After careful consideration, I am not confident that this bill achieves the necessary equilibrium between continuing to prioritize in-person care and incentivizing telehealth when it will increase access and improve outcomes for patients. To be sure, we are presented with a pivotal opportunity for the State to enter the next generation of health care. But we must rigorously

evaluate the consequences of pay parity before enacting a permanent change. I am thus recommending that Senate Bill No. 2559 (Fourth Reprint) be amended to require the Department of Health ("DOH") to, within the next 18 months, assess pay parity and make a policy recommendation as to whether and under what circumstances pay parity should continue, taking into account the considerations discussed above. DOH may utilize a qualified and neutral vendor for this assessment and report if it chooses.

To continue to support providers and patients as we emerge from the pandemic, I am recommending that pay parity remain in place through the end of 2023 in order to give policymakers ample time to review the results of the study and make revisions to the law, as appropriate. This approach will support both patients who may remain hesitant to receive in-person care, as well as providers who have made and will continue to make substantial investments in telehealth technology. I am also recommending amendments to remove some of the restrictions placed on carriers in order to ensure that carriers continue to have the flexibility they need to adapt to changing circumstances.

I once again commend the bill's sponsors for their commitment to increasing access to care for all New Jerseyans. I look forward to continuing to work with the Legislature, stakeholders, and advocacy groups as we develop innovative policies for affordable and equitable health care.

Therefore, I herewith return Senate Bill No. 2559 (Fourth Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 10:</u>	Delete "(1)"
<u>Page 2, Section 1, Line 12:</u>	Delete "physical and behavioral"
<u>Page 2, Section 1, Line 14:</u>	Delete "equals" and insert "does not exceed"
<u>Page 2, Section 1, Lines 27-44:</u>	Delete in their entirety

Page 3, Section 1, Lines 1-10: Delete in their entirety

Page 3, Section 1, Line 22: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 3, Section 1, Line 47: After "person" insert ", and the provider is able to meet the same standard of care as would be provided if the services were provided in person"

Page 3, Section 1, Line 47: After ";" insert "or"

Page 4, Section 1, Lines 1-2: Delete in their entirety

Page 4, Section 1, Line 3: Delete "(5)" and insert "(4)"

Page 4, Section 1, Line 11: Delete ";" and insert "."

Page 4, Section 1, Lines 12-19: Delete in their entirety

Page 4, Section 2, Line 47: Delete "(1)"

Page 4, Section 2, Line 48: Delete "physical"

Page 5, Section 2, Line 1: Delete "and behavioral"

Page 5, Section 2, Line 3: Delete "equals" and insert "does not exceed"

Page 5, Section 2, Lines 16-43: Delete in their entirety

Page 6, Section 2, Line 9: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 6, Section 2, Line 34: After "person" insert ", and the provider is able to meet the same standard of care as would be provided if the services were provided in person"

Page 6, Section 2, Line 45: Delete ";" and insert "."

Page 6, Section 2, Lines 46-47: Delete in their entirety

Page 7, Section 2, Lines 1-7: Delete in their entirety

Page 8, Section 3, Line 39: After "al.)" insert "'Telemedicine' does not include the use, in isolation, of electronic mail, instant

messaging, phone text, or facsimile transmission."

Page 9, Section 4, Line 28: Delete "if either the patient or the" and insert "."

Page 9, Section 4, Line 29: Delete in its entirety

Page 13, Section 5, Line 29: Delete "(1)"

Page 13, Section 5, Line 32: Delete "physical and behavioral"

Page 13, Section 5, Line 35: Delete "equals" and insert "does not exceed"

Page 14, Section 5, Lines 1-28: Delete in their entirety

Page 14, Section 5, Line 42: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 15, Section 5, Line 20: After "person" insert ", and the provider is able to meet the same standard of care as would be provided if the services were provided in person"

Page 15, Section 5, Line 20: After ";" insert "or"

Page 15, Section 5, Lines 21-24: Delete in their entirety

Page 15, Section 5, Line 25: Delete "(5)" and insert "(4)"

Page 15, Section 5, Line 34: Delete ";" and insert "."

Page 15, Section 5, Lines 35-44: Delete in their entirety

Page 16, Section 6, Line 20: Delete "(1)"

Page 16, Section 6, Lines 23-24: Delete "physical and behavioral"

Page 16, Section 6, Line 26: Delete "equals" and insert "does not exceed"

Page 16, Section 6, Lines 39-47: Delete in their entirety

Page 17, Section 6, Lines 1-20: Delete in their entirety

Page 17, Section 6, Line 35: After "telehealth" insert ", except to ensure that the services provided using telemedicine and telehealth meet the same standard of care as would be provided if the services were provided in person"

Page 18, Section 6, Line 13: After "person" insert ", and the provider is able to meet the same standard of care as

would be provided if the services were provided in person"

- Page 18, Section 6, Line 13: After ";" insert "or"
- Page 18, Section 6, Lines 14-17: Delete in their entirety
- Page 18, Section 6, Line 18: Delete "(5)" and insert "(4)"
- Page 18, Section 6, Line 27: Delete ";" and insert "."
- Page 18, Section 6, Lines 28-37: Delete in their entirety
- Page 19, Section 7, Line 36: After "COVID-19" insert ", but only to the extent that the items and services relate to the furnishing or administration of the test for COVID-19 or to the evaluation of the individual for purposes of determining the need of the individual for that test"
- Page 20, Section 9, Lines 1-30: Delete in their entirety
- Page 20, Line 31: Insert new section:
- "9. a. The Commissioner of Health shall conduct a study to assess whether or to what extent coverage and payment for health care services delivered to a covered person through telemedicine or telehealth should be reimbursed at a provider reimbursement rate that equals the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, as well as to assess whether telemedicine and telehealth may be appropriately used to satisfy network adequacy requirements applicable to health benefits plans in New Jersey. In conducting the study, the commissioner shall consider the effect of the availability and provision of health care services delivered through telemedicine or telehealth upon utilization, access to care, patient outcomes, and patient satisfaction; whether the delivery of services through telemedicine or telehealth affects the standard, quality, or cost of care; whether different or more stringent utilization management requirements should be adopted for coverage and payment for health care services delivered

through telehealth or telemedicine; how the incentivization of the provision of telehealth and telemedicine services impacts underserved populations; and any other consideration the commissioner deems relevant. As part of the study, the commissioner may also consider the adoption and impact of reimbursement requirements for telehealth and telemedicine in other jurisdictions. Nothing herein shall preclude the commissioner, in the commissioner's discretion, from engaging, contracting, or entering into an agreement with one or more third-party vendors to conduct all or part of the study required by this subsection. Such vendor may consider or analyze any additional factors or information the vendor deems relevant to the study, as approved by the commissioner. The commissioner or such vendor shall consult with the Commissioner of Banking and Insurance, the State Treasurer, and the Commissioner of Human Services in conducting the study.

b. The commissioner shall prepare and submit a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, no later than the first day of the eighteenth month next following the effective date of P.L. , c. (pending before the Legislature as this bill) outlining the commissioner's findings and any recommendations for legislation, administrative action, or other actions as the commissioner deems appropriate. Such recommendations shall not on their own be binding on any health benefits plan in New Jersey, State Medicaid and NJ FamilyCare, the State Health Benefits Plan, or the School Employees' Health Benefits Plan. Nothing herein shall preclude the commissioner, in the commissioner's discretion, from engaging, contracting, or entering into an agreement with one or more third-party

vendors to prepare the report required by this subsection.

c. There is appropriated from the General Fund to the Department of Health the sum of \$500,000 to effectuate the provisions of this section."

Page 20, Line 33:

Insert new section:

"11. a. For the period beginning on the effective date of P.L. , c. (pending before the Legislature as this bill) and ending on December 31, 2023, a health benefits plan in this State shall provide coverage and payment for health care services delivered to a covered person through telemedicine or telehealth at a provider reimbursement rate that equals the provider reimbursement rate that is applicable, when the services are delivered through in-person contact and consultation in New Jersey, provided the services are otherwise covered by the health benefits plan when delivered through in-person contact and consultation in New Jersey. The requirements of this paragraph shall not apply to:

(1) a health care service provided by a telemedicine or telehealth organization that does not provide the health care service on an in-person basis in New Jersey; or

(2) a physical health care service that was provided through real-time, two-way audio without a video component, whether or not utilized in combination with asynchronous store-and-forward technology, including through audio-only telephone conversation. The reimbursement rate for a physical health care service that is subject to this paragraph shall be determined under the contract with the provider; provided that the reimbursement rate for a physical health care service when provided through audio-only telephone conversation shall be at least 50 percent of the reimbursement rate for the

service when provided in person.

(3) The provisions of paragraph (2) of this subsection shall not apply to a behavioral health service that was provided through real-time, two-way audio without a video component, whether or not utilized in combination with asynchronous store-and-forward technology, including audio-only telephone conversation. A behavioral health care service described in this paragraph shall be reimbursed at a rate that equals the provider reimbursement rate for the service when provided in person.

b. For the purposes of this section:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State.

"Covered person" means the same as that term is defined under section 2 of P.L.1997, c.192 (C.26:2S-2); a "benefits recipient" as that term is defined under section 7 of P.L.2017, c.117 (C.30:4D-6k); and a person covered under a contract purchased by the State Health Benefits Commission or the School Employees' Health Benefits Commission.

"Health benefits plan" means a benefits plan which pays hospital or medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier or a contract purchased by the State Health Benefits Commission or the School Employees' Health Benefits Commission. The term shall include the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and the NJ FamilyCare program established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.)."

Page 20, Section 11, Line 38:

[seal]

Delete "6" and insert "7"

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor