LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

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FISCAL IMPACT STATEMENT

LS 6855
BILL NUMBER: SB 3

NOTE PREPARED: Mar 18, 2021
BILL AMENDED: Mar 18, 2021

SUBJECT: Telehealth Matters.

FIRST AUTHOR: Sen. Charbonneau
FIRST SPONSOR: Rep. Lindauer

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Medicaid* - This bill prohibits the Medicaid program from specifying originating sites and distant sites for purposes of Medicaid reimbursement.

Prohibited Services - The bill prohibits the use of telemedicine to provide any abortion, including the writing or filling of a prescription for any purpose that is intended to result in an abortion.

Telehealth Definitions and Practitioners - The bill changes the use of the term "telemedicine" to "telehealth". The bill specifies certain activities that are considered to be health care services for purposes of the telehealth laws. The bill also expands the application of the telehealth statute to additional licensed practitioners instead of applying only to prescribers. It amends the definition of "prescriber" and "telehealth". It provides that a practitioner who directs an employee to perform a specified health service is held to the same standards of appropriate practice as those standards for health care services provided at an in-person setting.

Medical Records and Confidentiality - The bill requires that the telehealth medical records be created and maintained under the same standards of appropriate practice for medical records for patients in an in-person setting. The bill also specifies that a patient waives confidentiality of medical information concerning individuals in the vicinity when the patient is using telehealth.

Practitioner Contracts - The bill provides that a contract, employment agreement, or policy may not require or negatively affect the performance of a practitioner who refuses to provide healthcare services via telehealth. The bill provides that an applicable contract, employment agreement, or policy to provide telehealth services must explicitly provide that a practitioner may refuse at any time to provide healthcare services if in the practitioner's sole discretion the practitioner believes:

(1) that health quality may be negatively impacted; or

(2) the practitioner would be unable to provide the same standards of appropriate practice as those provided in an in-person setting.

Prescribing - The bill amends requirements for a prescriber issuing a prescription to a patient via telehealth services.

Veterinarians - The bill requires a veterinarian to have a veterinarian-client-patient relationship when performing a health care service if a veterinarian-client-patient relationship is required for the same service in an in-person setting.

Telepsychology - The bill repeals the law concerning telepsychology.

Insurance Policies - The bill prohibits certain insurance policies and individual and group contracts from mandating the use of certain technology applications in the provision of telehealth services.

Effective Date: Upon passage.

Explanation of State Expenditures: *Summary - Family and Social Services Agency (FSSA):* The bill could result in a greater volume of claims for telehealth services paid by the state Medicaid program and Children's Health Insurance Program (CHIP). This could result in additional state expenditures to the extent that enhanced availability of telehealth reimbursement leads to additional services being rendered by Medicaid providers, rather than replacing services that otherwise would have been rendered in person. Total additional Medicaid and CHIP spending as a result of the bill is indeterminable, but likely to be small. The FSSA may experience an increase in routine administrative workload to promulgate rule changes to conform with the bill.

State Employee Health Plans: The bill could also result in additional telehealth claims within the State Employee Health Plans. Any increase in General Fund or dedicated fund spending for employee benefits as a result of additional claims is expected to be minimal.

Professional Licensing Agency (PLA) and Department of Insurance (IDOI): PLA and IDOI may experience an increase in workload to notify license holders of the changes made by the bill, promulgate conforming rules as necessary, and take disciplinary action if violations of the bill's requirements are committed by license holders. These actions are within the agencies' routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Additional Information -

Medicaid and CHIP: During the COVID-19 emergency, FSSA removed certain restrictions on Medicaid telehealth similar to the requirements under the bill. Between April and September 2020, telehealth claims and payments increased by 68% and 53% respectively compared to the same months in 2019, based on information from the Medicaid claims and encounter database. However, total Medicaid claims and payments during these months remained comparable to 2019 levels, displaying growth consistent with projections made in the December 2019 Medicaid forecast. Therefore, it appears that the growth in telehealth spending largely offset spending that otherwise would have occurred for in-person services. Additionally, a reduction in non-emergency medical transportation claims and payments has occurred as telehealth claims have increased.

After the state pubic health emergency expires, any continuation of reimbursement for telehealth services that became newly reimbursable during the emergency period would be largely dependent on administrative decisions by the FSSA.

[Medicaid and CHIP are jointly funded between the state and federal governments. The standard state share of costs for most Medicaid medical services for FFY 2021 is 34%, or 10% for the age 19 to 64 expansion population within the Healthy Indiana Plan. The standard state share of CHIP costs is 24%. The state share of administrative costs is 50%. Under federal COVID-19 relief legislation, the state share of costs is decreased to 28% for traditional Medicaid enrollees and 20% for CHIP enrollees for the duration of the federally declared public health emergency.]

State Employee Health Plans: Costs for the state health plans are shared between the state and state employees covered by the plan as determined in the plans' designs, including premiums, coinsurance, copayments, and deductibles. An increase in premiums cost may be mitigated with adjustments to other benefits or to employee compensation packages, or through the division of premium costs between the state and state employees.

Explanation of State Revenues: *Summary* - The bill could potentially result in an increase in General Fund revenue if fines or civil penalties are assessed against licensed practitioners for violations of the bills requirements for telehealth services. Additionally, an increase in private insurance claims for telehealth services may create upward pressure on premiums collected in the state. Any increase in insurance company premiums will increase General Fund revenue from either insurance premium tax collections or Adjusted Gross Income (AGI) tax collections. Any impact to revenue as a result of this bill would likely be small.

Additional Information -

Disciplinary Action: If a violation of the bill's requirements by a practitioner occurs, PLA may take an action that could impact state revenue. If the violator has a license denied or revoked, fee revenue would decrease to the General Fund. Health care practitioner license fees typically range between $40 and $200 biennially. PLA may also impose a fine of up to $1,000, which would be deposited in the General Fund.

Penalty Provision: The bill imposes a Class B infraction on employers or contractors of practitioners for certain violations. The maximum judgment for a Class B infraction is $1,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

Explanation of Local Expenditures: *County-Owned Facilities* - County-owned health care facilities could experience an increase in workload or administrative costs to comply with the bill's requirements for providing telehealth services.

Health Plans - The bill potentially impacts local units of government that offer health insurance coverage for employees. Added local health coverage costs may be mitigated with adjustments to other benefits or to the total employee compensation packages, or through the division of costs between the local unit and employees.

Explanation of Local Revenues: *County-Owned Facilities* - County-owned health care facilities could experience an increase in revenue if they receive reimbursement from Medicaid and private payers for a greater volume of services as a result of the bill.

Penalty Provision - If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small.

State Agencies Affected: Family and Social Services Administration; State Personnel Department; Professional Licensing Agency; Department of Insurance.

Local Agencies Affected: County-owned health care facilities; local government units offering employee health plans; trial courts; local law enforcement agencies.

Information Sources: FSSA Claims and Encounter Database; IC 25-1-9-9; Legislative Services Agency, *Indiana Handbook of Taxes, Revenues, and Appropriations*, FY 2020.

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