

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1663 (The Speaker)
Health and Government Operations

**State Government - State of Emergency and Catastrophic Health Emergency -
Authority of Governor (COVID-19 Public Health Emergency Protection Act of
2020)**

This emergency bill authorizes the Governor to take specified actions relating to health insurance, Medicaid, retailer profits, and employer actions as a result of the March 5, 2020 proclamation declaring a state of emergency and the existence of a catastrophic health emergency (or any other specified proclamation). **The bill terminates April 30, 2021.**

Fiscal Summary

State Effect: Maryland Department of Health (MDH) expenditures increase by an indeterminate but potentially significant amount in FY 2020 and 2021 to cover disease testing and associated costs and to reimburse for additional Medicaid telehealth services. Federal Medicaid expenditures and matching revenues increase accordingly. Specified funds may be available to cover or reimburse for these expenses, as discussed below. **This bill increases the cost of an entitlement program in FY 2020 and 2021.**

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill establishes a series of protections for individuals who are either directly affected by the coronavirus disease 2019 (COVID-19) or more broadly affected due to difficulties obtaining health care or specified goods and services under the state of emergency and the catastrophic health emergency.

Health Insurance and Medicaid

The bill authorizes the Governor to take a series of actions that would facilitate access to health care and provision of that care (regardless of whether the care is specifically for COVID-19) and mitigate costs to individuals for COVID-19 diagnosis and treatment. Specifically, the Governor may:

- prohibit cost-sharing by an insurer, nonprofit health service plan, or health maintenance organization (collectively known as carriers) for disease testing (and associated costs) conducted based on testing protocols recommended by the Secretary of Health;
- order MDH to cover the cost of disease testing and associated costs if the costs would not otherwise be paid for by a carrier or another third party;
- require carriers and Medicaid to cover a COVID-19 immunization (should one be determined to prevent the disease) and any associated costs, without cost-sharing, if the patient belongs to a category of individuals to whom MDH has determined cost-sharing should not apply;
- establish or waive telehealth protocols, including authorizing health care professionals licensed out-of-state to provide telehealth to patients in the State;
- order MDH to reimburse synchronous and asynchronous telehealth services provided to a patient, without regard to whether the patient is at a clinical site, if the service is covered by Medicaid, provided by a participating Medicaid provider, and authorized under the health care provider's scope of practice; and
- consult, as appropriate, with MDH, the Maryland Insurance Commissioner, and the Maryland Health Benefit Exchange to develop and implement orders to minimize disruption in enrollment in health insurance and Medicaid, facilitate reimbursement by carriers of telehealth services provided to patients in the State, and facilitate reimbursement of essential services to minimize the risk to public health.

Retail Profits

For the duration of the emergency, the Governor may prohibit a retailer from increasing the sale or rental price of any good or service to a price that increases the retailer's value of profit by more than 10%, including food, fuel, water and ice, medicine, medical supplies and equipment, cleaning products, building supplies and equipment, energy sources, and storage space. The Governor may publish a list of goods and services to which this prohibition applies.

Employer Actions

The Governor may prohibit an employer from terminating an employee solely on the basis that the employee has been required to be isolated or quarantined.

Current Law:

Governor's Health Emergency Powers

Under Title 14, Subtitle 3A of the Public Safety Article, a “catastrophic health emergency” is a situation in which extensive loss of life or serious disability is threatened imminently because of exposure to a deadly agent, which includes a viral agent capable of causing extensive loss of life or serious disability.

After issuing a proclamation that a catastrophic health emergency exists, the Governor may, among other things, order the Secretary of Health or other designated official to control, restrict, or regulate the use, sale, dispensing, distribution, or transportation of anything needed to respond to the medical consequences of the catastrophic health emergency by rationing or using quotas, creating and distributing stockpiles, prohibiting shipments, setting prices, or taking other appropriate actions.

The Governor may also order the Secretary of Health or other designated official to require individuals to go to and remain in places of isolation or quarantine until the individuals no longer pose a substantial risk of transmitting the disease to the public. A specified directive must be issued to require isolation or quarantine. An individual or group of individuals isolated or quarantined may request a hearing in circuit court to contest the isolation or quarantine.

A person who fails to comply with an order, requirement, or directive related to a catastrophic health emergency is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$5,000.

Maryland Healthy Working Families Act

Under the Maryland Healthy Working Families Act, an employer with 15 or more employees (with specified exceptions) must have a sick and safe leave policy under which an employee earns at least 1 hour of *paid* sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least have a sick and safe leave policy that provides an employee with at least 1 hour of *unpaid* sick and safe leave for every 30 hours an employee works.

An employer must allow an employee to use earned sick and safe leave to care for or treat the employee's mental or physical illness, injury, or condition. An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at

any time, or use earned sick and safe leave during the first 106 calendar days the employee works for the employer.

Background:

Coronavirus Disease 2019

In December 2019, Chinese health officials announced they were investigating a pneumonia outbreak of unknown etiology (cause) in the city of Wuhan, China. At that time, it was reported that many of the cases were linked to a seafood and animal market in Wuhan. Since then, health officials have reported that the outbreak was caused by a novel coronavirus, and the illness has been named “coronavirus disease 2019.”

According to the [World Health Organization \(daily situation report\)](#), as of March 10, 2020, 113,702 cases had been reported globally, and 4,012 cases were fatal; in the United States, 472 cases had been reported, and 19 cases were fatal. According to MDH, as of March 10, 2020, Maryland had 9 confirmed cases of coronavirus infections. Updated information on COVID-19 testing and confirmed cases can be found on the MDH [website](#).

Maryland’s State Public Health Laboratory has been approved for testing for COVID-19. COVID-19 testing can only be conducted with prior authorization from MDH physician-epidemiologists and is restricted to patients who meet the current U.S. Centers for Disease Control and Prevention [Criteria to Guide Evaluation of Patients Under Investigation for COVID-19](#) case definition.

MDH advises that, as COVID-19 is a new disease, there is currently no vaccine. While many experts are at work developing one, it may take more than a year for a vaccine to become readily available. There is also no specific antiviral treatment for COVID-19.

Maryland’s Response to Date

On March 5, 2020, Governor Hogan [declared a state of emergency](#) to mobilize all available State resources in response to COVID-19. The declaration officially authorized and directed MDH and the Maryland Emergency Management Agency (MEMA) to ramp up coordination among all State and local agencies. The declaration also enables MDH and MEMA to fast track coordination with State and local health departments and emergency management teams. The Governor has directed State agencies to take every precaution to prepare and mobilize whatever resources are necessary to address COVID-19.

Insurance Commissioner Actions

On March 6, 2020, the Insurance Commissioner issued [Bulletin 20-05](#), which requires carriers to waive any time restrictions on prescription refills and authorize payments to pharmacies for at least a 30-day supply of any prescription medication regardless of when the prescription has been most recently filled to allow individuals to obtain medication in advance of any quarantine. Carriers are asked to (1) consider removing cost barriers to testing, such as waiving cost-sharing for in-network provider office visits, urgent care center visits, and emergency department visits that result in testing for COVID-19 and (2) encourage the use of telehealth services to reduce the likelihood of exposure to and transmission of COVID-19.

Also on March 6, 2020, the Insurance Commissioner submitted emergency regulations to the Joint Committee on Administrative, Executive, and Legislative Review Committee that require carriers to:

- waive any cost-sharing for any visit to diagnose or test for COVID-19, regardless of the setting of the testing;
- waive any cost-sharing for laboratory fees to diagnose or test for COVID-19;
- waive any cost-sharing for vaccination for COVID-19;
- make a claims payment for treatment for COVID-19 that a carrier has denied as experimental;
- evaluate a request to use an out-of-network provider to perform diagnostic testing of COVID-19 solely on the basis of medical necessity;
- limit prior authorization requirements for testing for COVID-19; and
- treat an adverse decision on a request for coverage of diagnostic services for COVID-19 as an emergency case for an expedited grievance procedure.

Funding Actions

Chapter 12 of 2020 (Senate Bill 1079), signed by Governor Hogan on March 9, 2020, authorizes the Governor to transfer up to \$50.0 million from the State Rainy Day Fund to cover State agency costs associated with COVID-19. The transfer is subject to review and comment by the Legislative Policy Committee and subsequent reporting.

Governor Hogan also requested \$10.0 million in general funds as an emergency funding request for MDH as part of Supplemental Budget No. 1 to support emergency COVID-19 preparedness expenses. Funds may be transferred within MDH and to other State agencies to support the State's emergency COVID-19 preparedness.

State Fiscal Effect: Under the bill, the Governor may order MDH to cover the cost of disease testing and associated costs if those costs would not otherwise be paid for by a carrier or another third party. MDH must also reimburse for synchronous and asynchronous telehealth services for Medicaid enrollees, regardless of whether the patient is at a clinical site (or whether the reason for obtaining services was related to COVID-19). Thus, MDH expenditures increase by an indeterminate but potentially significant amount in fiscal 2020 and 2021 to provide coverage for these services. Federal Medicaid expenditures and matching revenues increase accordingly for telehealth services.

Funding transferred from the State Rainy Day Fund to cover State agency costs associated with COVID-19 and emergency funding requested through Supplemental Budget No. 1 may be available to cover these expenditures.

Additional Comments: Carrier costs increase due to the prohibition on cost-sharing by carriers for COVID-19 testing and associated costs and likely increase due to the provision of additional telehealth services. These costs are indeterminate and cannot be quantified at this time.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 1080 (The President and Senator Lam) - Finance.

Information Source(s): World Health Organization; U.S. Centers for Disease Control and Prevention; Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

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rh/ljm

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