SENATE DOCKET, NO. 920 FILED ON: 1/16/2019

SENATE . . . . . No. 612

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act advancing and expanding access to telemedicine services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Jason M. Lewis	*Fifth Middlesex*	
Mike Connolly	*26th Middlesex*	*1/24/2019*
Michael F. Rush	*Norfolk and Suffolk*	*1/25/2019*
William N. Brownsberger	*Second Suffolk and Middlesex*	*1/28/2019*
Angelo J. Puppolo, Jr.	*12th Hampden*	*1/28/2019*
Mathew J. Muratore	*1st Plymouth*	*1/28/2019*
Steven Ultrino	*33rd Middlesex*	*1/28/2019*
Thomas M. Stanley	*9th Middlesex*	*1/29/2019*
Michael J. Barrett	*Third Middlesex*	*1/29/2019*
Bradley H. Jones, Jr.	*20th Middlesex*	*1/29/2019*
Jennifer E. Benson	*37th Middlesex*	*1/30/2019*
Kay Khan	*11th Middlesex*	*1/30/2019*
Dean A. Tran	*Worcester and Middlesex*	*1/30/2019*
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*	*1/31/2019*
Brendan P. Crighton	*Third Essex*	*1/31/2019*
Patricia D. Jehlen	*Second Middlesex*	*1/31/2019*
Jack Patrick Lewis	*7th Middlesex*	*1/31/2019*

Michael O. Moore	*Second Worcester*	*1/31/2019*
Jonathan D. Zlotnik	*2nd Worcester*	*1/31/2019*
Elizabeth A. Poirier	*14th Bristol*	*1/31/2019*
Michael S. Day	*31st Middlesex*	*2/1/2019*
Susannah M. Whipps	*2nd Franklin*	*2/1/2019*
John F. Keenan	*Norfolk and Plymouth*	*2/1/2019*
Joan B. Lovely	*Second Essex*	*2/1/2019*
Mary S. Keefe	*15th Worcester*	*2/1/2019*
Mark C. Montigny	*Second Bristol and Plymouth*	*2/1/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*2/1/2019*
Nick Collins	*First Suffolk*	*2/4/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/7/2019*
Patrick M. O'Connor	*Plymouth and Norfolk*	*2/7/2019*
Julian Cyr	*Cape and Islands*	*2/7/2019*
Michelle L. Ciccolo	*15th Middlesex*	*8/7/2019*
Ryan C. Fattman	*Worcester and Norfolk*	*10/4/2019*

SENATE DOCKET, NO. 920 FILED ON: 1/16/2019

SENATE . . . . . No. 612

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 612) of Jason M. Lewis, Mike Connolly, Michael F. Rush, William N. Brownsberger and other members of the General Court for legislation to advance and expand access to telemedicine services. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *549* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act advancing and expanding access to telemedicine services.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 32A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding at the end the following new section:

Section 28. Notwithstanding any general or special law or rule or regulation to the contrary, the Group Insurance Commission and any carrier, as defined in Section 1 of Chapter 176O of the general laws or other entity which contracts with the Commission to provide health benefits to eligible Employees and Retirees and their eligible dependents, shall not decline to provide coverage for health care services solely on the basis that those services were delivered through the use of telemedicine by a contracted health care provider; provided, that a carrier shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-

person services in a timely manner, upon request. Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in-person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit prior to utilizing telemedicine, nor shall the type of setting where such telemedicine is provided be limited; provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, “telemedicine” shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this paragraph shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 2. Section 2 of Chapter 112 of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following:

Notwithstanding any other provision of this chapter, the board shall promulgate regulations to allow licensees to obtain proxy credentialing and privileging for telemedicine with other healthcare providers as defined in section 1 of chapter 111 of the general laws or facilities consistent with federal Medicare Conditions of Participation telemedicine standards. Said regulations shall ensure that licensees using telemedicine to provide services are done within a provider to patient relationship which includes the provider agreeing to affirmatively diagnose, treat and prescribe to the patient, or affirmatively agreeing to participate in the patient's diagnosis and treatment. Said regulations shall allow for the establishment of the physician-patient relationship via telemedicine. Said regulations shall direct healthcare providers to provide information to patients about follow-up health care services that are available to the patient; this requirement may be fulfilled through the use of a website identifying available services in the community. Such regulations shall be promulgated six months after the effective date of this act. For the purposes of this section, "telemedicine" shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health, and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in-person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. For the purposes of this paragraph, nothing herein shall modify any law or regulation related to the requirements for

Massachusetts licensure for individual providers delivering services through telemedicine to consumers in the Commonwealth; provided further, that this paragraph shall not change the prevailing standard of care for healthcare services whether delivered in-person or through telemedicine.

SECTION 3. Chapter 118E of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new section:

Section 13C1/2. Notwithstanding any general or special law or rule or regulation to the contrary, the Executive Office of Health and Human Services shall provide coverage under its Medicaid contracted health insurers, health plans, health maintenance organizations, behavioral health management firms and third party administrators under contract to a Medicaid managed care organization, the Medicaid primary care clinician plan, or an accountable care organization for health care services provided through telemedicine by a contracted provider; provided, however, that Medicaid contracted health insurers, health plans, health maintenance organizations, behavioral health management firms and third party administrators under contract to a Medicaid managed care organization, the Medicaid primary care clinician plan, or a Medicaid accountable care organization shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-person services in a timely manner, upon request. Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service

provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in-person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit prior to utilizing telemedicine, nor shall the type of setting where such telemedicine is provided be limited; provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, "telemedicine" shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health, and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this section shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 4. Section 47BB of chapter 175 of the General Laws, is hereby amended by striking subsections (a)-(d) and adding at the end of the existing paragraph the following new paragraph:

Notwithstanding any general or special law or rule or regulation to the contrary, an insurer shall provide for coverage for health care services under an individual, group, or general

policy of accident and sickness insurance to an insured through the use of telemedicine by a contracted health care provider; provided however, that an insurer shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-person services in a timely manner, upon request. Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in- person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit prior to utilizing telemedicine, nor shall the type of setting where such telemedicine is provided be limited; provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, “telemedicine” shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health, and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online

adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this paragraph shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 5. Chapter 176A of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new section:

Section 38: Notwithstanding any general or special law or rule or regulation to the contrary, any contract between a subscriber and the corporation under an individual or group hospital service plan shall provide for coverage for health care services to a subscriber through the use of telemedicine by a contracted health care provider; provided, however, that the corporation shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-person services in a timely manner, upon request. Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in-person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit prior to utilizing telemedicine, nor shall the type of setting where such telemedicine is provided be limited;

provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, "telemedicine" shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this paragraph shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 6. Chapter 176B of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new section:

Section 25: Notwithstanding any general or special law or rule or regulation to the contrary, any contract between a subscriber and the medical service corporation shall provide for coverage for health care services to a subscriber through the use of telemedicine by a contracted health care provider; provided, however, that the medical service corporation shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-person services in a timely manner, upon request. Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-

person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in- person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit prior to utilizing telemedicine, nor shall the type of setting where such telemedicine is provided be limited; provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, “telemedicine” shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this section shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 7. Chapter 176G of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new section:

Section 33: Notwithstanding any general or special law or rule or regulation to the contrary, any contract between a member and a carrier shall provide for coverage for health services to a subscriber through the use of telemedicine by a contracted health care provider; provided however, a carrier shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-person services in a timely manner, upon request. Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in-person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit prior to utilizing telemedicine, nor shall the type of setting where such telemedicine is provided be limited; provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, “telemedicine” shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of diagnosis, evaluation, consultation, prescribing, and treatment of a patient's medical, oral, mental health and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided

during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this section shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 8. Chapter 176I of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new section:

Section 13: Notwithstanding any general or special law or rule or regulation to the contrary, any contract between a covered person and an organization shall provide for coverage for health care services to a subscriber through the use of telemedicine by a contracted health care provider; provided, however, an organization shall not meet network adequacy through significant reliance on telemedicine providers and shall not be considered to have an adequate network if patients are not able to access appropriate in-person services in a timely manner, upon request.

Health care services delivered by way of telemedicine shall be covered to the same extent as if they were provided via in-person consultation or in-person delivery, nor shall the rates of payments for otherwise covered services be reduced on the grounds that those services were delivered through telemedicine. A contract that provides coverage for telemedicine may contain a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telemedicine as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to an in-person consultation or in-

person delivery of the same health care services. For health care services provided through telemedicine, a health care provider shall not be required to document a barrier to an in-person visit, nor shall the type of setting where such telemedicine is provided be limited; provided further, a patient may decline receiving services via telemedicine in order to receive in person services and shall not incur costs that exceed the deductible, copayment or co-insurance applicable for the same services provided via telemedicine. For the purposes of this section, "telemedicine" shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. Nothing in this section shall be interpreted as changing the prevailing standard of care for healthcare services whether delivered in person or through telemedicine.

SECTION 9. Notwithstanding any general or special law or rule or regulation to the contrary, the Bureau of Health Professions Licensure within the Department of Public Health and the Division of Professional Licensure within the Office of Consumer Affairs and Business Regulation shall, respectively, promulgate regulations to allow licensees to obtain proxy credentialing and privileging for telemedicine with other healthcare providers as defined in section 1 of chapter 111 of the general laws, allied health professionals as defined in section 23A of chapter 112 of the general laws, and allied mental health or human service professionals as

defined in section 163 of chapter 112 of the general laws or facilities consistent with federal Medicare Conditions of Participation telemedicine standards. Said regulations shall ensure that providers using telemedicine to provide services are done within a provider to patient relationship, which includes the provider agreeing to affirmatively diagnose and treat the patient, including prescriptions when appropriate, or affirmatively agreeing to participate in the patient's diagnosis and treatment. Said regulations shall also allow for the establishment of the provider-patient relationship via telemedicine. Said regulations shall direct healthcare providers to provide information to patients about follow-up health care services that are available to the patient; this requirement may be fulfilled through the use of a website identifying available services in the community. Such regulations shall be promulgated six months after the effective date of this act. For the purposes of this section, "telemedicine" shall mean the use of synchronous or asynchronous audio, video or other electronic media for the purpose of evaluation, diagnosis, consultation, prescribing, and treatment of a patient's medical, oral, mental health and substance use disorder condition that meets applicable health information privacy and security standards similar to those provided during an in- person visit. Telemedicine shall not include audio-only telephone or facsimile machine communications, but may include an online adaptive interview. Telemedicine may also include text only email when it occurs for the purpose of patient management in the context of a pre-existing physician patient relationship. For the purposes of this paragraph, nothing herein shall modify any law or regulation related to the requirements for Massachusetts licensure for individual providers delivering services through telemedicine services to consumers in the Commonwealth; provided further, that this paragraph shall not change the prevailing standard of care for healthcare services whether delivered in-person or through telemedicine.

SECTION 10. Notwithstanding any general or special law to the contrary, the Division of Insurance and the Executive Office of Health and Human Services shall annually issue a joint report with data collected from carriers as well as contracted health insurers, health plans, health maintenance organizations, behavioral health management firms and third party administrators under contract to a Medicaid managed care organization, the Medicaid primary care clinician plan, or Medicaid accountable care organizations which indicates the percentage of services provided through telemedicine to patients by: (1) modality, including in-person visits and telemedicine visits; (2) provider specialty; and (3) patient age. Said report shall be publicly available and delivered to the joint committee on health care financing, the joint committee on mental health, substance use and recovery, the joint committee on public health, the clerk of the house of representatives, and the clerk of the Senate not later than January 1, 2021, and annually thereafter for the next 5 years.

SECTION 11. The provisions of this Act shall be effective for all contracts which are entered into, renewed, or amended one year after its effective date.