

ASSEMBLY BILL

No. 1224

Introduced by Assembly Member Hernandez

February 23, 2007

An act to amend Section 2290.5 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1224, as introduced, Hernandez. Telemedicine: optometrists.

Existing law, the Medical Practice Act, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law requires that, prior to the delivery of health care via telemedicine, the health care practitioner, as defined, who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. A violation of the provisions governing telemedicine is unprofessional conduct.

This bill would include a licensed optometrist in the definition of health care practitioner for purposes of the telemedicine provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2290.5 of the Business and Professions
- 2 Code is amended to read:
- 3 2290.5. (a) (1) For the purposes of this section, "telemedicine"
- 4 means the practice of health care delivery, diagnosis, consultation,

1 treatment, transfer of medical data, and education using interactive
2 audio, video, or data communications. Neither a telephone
3 conversation nor an electronic mail message between a health care
4 practitioner and patient constitutes “telemedicine” for purposes of
5 this section.

6 (2) For purposes of this section, “interactive” means an audio,
7 video, or data communication involving a real time (synchronous)
8 or near real time (asynchronous) two-way transfer of medical data
9 and information.

10 (b) For the purposes of this section, “health care practitioner”
11 has the same meaning as “licentiate” as defined in paragraph (2)
12 of subdivision (a) of Section 805, *and also includes a person*
13 *licensed as an optometrist pursuant to Chapter 7 (commencing*
14 *with Section 3000).*

15 (c) Prior to the delivery of health care via telemedicine, the
16 health care practitioner who has ultimate authority over the care
17 or primary diagnosis of the patient shall obtain verbal and written
18 informed consent from the patient or the patient’s legal
19 representative. The informed consent procedure shall ensure that
20 at least all of the following information is given to the patient or
21 the patient’s legal representative verbally and in writing:

22 (1) The patient or the patient’s legal representative retains the
23 option to withhold or withdraw consent at any time without
24 affecting the right to future care or treatment nor risking the loss
25 or withdrawal of any program benefits to which the patient or the
26 patient’s legal representative would otherwise be entitled.

27 (2) A description of the potential risks, consequences, and
28 benefits of telemedicine.

29 (3) All existing confidentiality protections apply.

30 (4) All existing laws regarding patient access to medical
31 information and copies of medical records apply.

32 (5) Dissemination of any patient identifiable images or
33 information from the telemedicine interaction to researchers or
34 other entities shall not occur without the consent of the patient.

35 (d) A patient or the patient’s legal representative shall sign a
36 written statement prior to the delivery of health care via
37 telemedicine, indicating that the patient or the patient’s legal
38 representative understands the written information provided
39 pursuant to subdivision (a), and that this information has been
40 discussed with the health care practitioner, or his or her designee.

1 (e) The written consent statement signed by the patient or the
2 patient's legal representative shall become part of the patient's
3 medical record.

4 (f) The failure of a health care practitioner to comply with this
5 section shall constitute unprofessional conduct. Section 2314 shall
6 not apply to this section.

7 (g) All existing laws regarding surrogate decisionmaking shall
8 apply. For purposes of this section, "surrogate decisionmaking"
9 means any decision made in the practice of medicine by a parent
10 or legal representative for a minor or an incapacitated or
11 incompetent individual.

12 (h) Except as provided in paragraph (3) of subdivision (c), this
13 section shall not apply when the patient is not directly involved in
14 the telemedicine interaction, for example when one health care
15 practitioner consults with another health care practitioner.

16 (i) This section shall not apply in an emergency situation in
17 which a patient is unable to give informed consent and the
18 representative of that patient is not available in a timely manner.

19 (j) This section shall not apply to a patient under the jurisdiction
20 of the Department of Corrections or any other correctional facility.

21 (k) This section shall not be construed to alter the scope of
22 practice of any health care provider or authorize the delivery of
23 health care services in a setting, or in a manner, not otherwise
24 authorized by law.