

**ASSEMBLY BILL**

**No. 415**

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**Introduced by Assembly Member Logue**

February 14, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 415, as introduced, Logue. Healing arts: telemedicine.

Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications.

This bill would make a nonsubstantive change to that provision.

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 shall mean~~ the practice of health care delivery, diagnosis,  
5 consultation, treatment, transfer of medical data, and education  
6 using interactive audio, video, or data communications. Neither a  
7 telephone conversation nor an electronic mail message between a  
8 health care practitioner and patient constitutes “telemedicine” for  
9 purposes of this section.

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

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

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

17 (1) The patient or the patient’s legal representative retains the  
18 option to withhold or withdraw consent at any time without  
19 affecting the right to future care or treatment nor risking the loss  
20 or withdrawal of any program benefits to which the patient or the  
21 patient’s legal representative would otherwise be entitled.

22 (2) A description of the potential risks, consequences, and  
23 benefits of telemedicine.

24 (3) All existing confidentiality protections apply.

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

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

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

36 (e) The written consent statement signed by the patient or the  
37 patient’s legal representative shall become part of the patient’s  
38 medical record.

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

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

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

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

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

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

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