

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**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.~~ *An act to amend Section 14132.72 of the Welfare and Institutions Code, relating to telehealth.*

LEGISLATIVE COUNSEL'S DIGEST

AB 415, as amended, Logue. Healing arts: ~~telemedicine.~~ *telehealth.*

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.~~

*Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.*

*This bill would, instead, prohibit a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is provided by telehealth, as defined. The bill would prescribe the rate of reimbursement for covered services provided by telehealth and would provide that reimbursement for telehealth interactions would*

include reasonable compensation to the health care provider at the originating site for the transmission cost incurred during the delivery of health care services.

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

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

1 SECTION 1. Section 14132.72 of the Welfare and Institutions  
2 Code is amended to read:

3 14132.72. (a) ~~It~~ For purposes of this section, the following  
4 definitions shall apply:

5 (1) "Asynchronous store and forward" means the transmission  
6 of a patient's medical information from an originating site to the  
7 health care provider at a distant site without the presence of the  
8 patient.

9 (2) "Distant site" means a site where a health care provider  
10 who provides health care services is located while providing these  
11 services via a telecommunications system.

12 (3) "Health care provider" has the same meaning as  
13 "licentiate," as defined in paragraph (2) of subdivision (a) of  
14 Section 805 of the Business and Professions Code, and also  
15 includes a person licensed as an optometrist pursuant to Chapter  
16 7 (commencing with Section 3000) of the Business and Professions  
17 Code.

18 (4) "Originating site" means a site where a patient is located  
19 while a synchronous store and forward occurs and health care  
20 services are provided via a telecommunications system.

21 (5) "Telehealth" means the process of delivering health care  
22 services via information and communication technologies to  
23 facilitate the diagnosis, consultation, treatment, education, care  
24 management, and self-management of a patients' health care while  
25 the patient is at the originating site and the health care provider  
26 is at a distant site. Telehealth facilitates patient self-management  
27 and caregiver support for patients and includes synchronous  
28 interactions and asynchronous store and forward transfers.

29 (b) It is the intent of the Legislature to recognize the practice  
30 of ~~telemedicine~~ telehealth as a legitimate means by which an  
31 individual may receive ~~medical~~ health care services from a health

1 care provider without ~~person-to-person~~ *in-person* contact with the  
2 provider.

3 (b) ~~For the purposes of this section, “telemedicine” and~~  
4 ~~“interactive” are defined as those terms are defined in subdivision~~  
5 ~~(a) of Section 2290.5 of the Business and Professions Code.~~

6 (c) ~~(1) Commencing July 1, 1997, face-to-face~~ *In-person* contact  
7 between a health care provider and a patient shall not be required  
8 under the Medi-Cal program for services appropriately provided  
9 through telemedicine, subject to reimbursement policies developed  
10 by the Medi-Cal program to compensate licensed health care  
11 providers who provide health care services, that are otherwise  
12 covered by the Medi-Cal program, through telemedicine. The audio  
13 and visual telemedicine system used shall, at a minimum, have the  
14 capability of meeting the procedural definition of the Current  
15 Procedural Terminology Fourth Edition (CPT-4) codes which  
16 represent the service provided through telemedicine. The  
17 telecommunications equipment shall be of a level of quality to  
18 adequately complete all necessary components to document the  
19 level of service for the CPT-4 code billed. If a peripheral diagnostic  
20 scope is required to assess the patient, it shall provide adequate  
21 resolution or audio quality for decisionmaking *telehealth*.

22 (2) ~~The department shall report to the appropriate committees~~  
23 ~~of the Legislature, by January 1, 2000, on the application of~~  
24 ~~telemedicine to provide home health care; emergency care; critical~~  
25 ~~and intensive care, including neonatal care; psychiatric evaluation;~~  
26 ~~psychotherapy; and medical management as potential Medi-Cal~~  
27 ~~benefits.~~

28 (d) ~~The Medi-Cal program shall not be required to pay for~~  
29 ~~consultation provided by the health care provider by telephone or~~  
30 ~~facsimile machines.~~

31 (e) ~~The Medi-Cal program shall pursue private or federal~~  
32 ~~funding to conduct an evaluation of the cost-effectiveness and~~  
33 ~~quality of health care provided through telemedicine by those~~  
34 ~~providers who are reimbursed for telemedicine services by the~~  
35 ~~program.~~

36 (d) *The department shall not require a health care provider to*  
37 *document a barrier to an in-person visit for Medi-Cal coverage*  
38 *of services provided via telehealth.*

39 (e) *The reimbursement rate for Medi-Cal covered services*  
40 *provided by telehealth shall be the lower of the usual and*

1 *customary rate charged for that service or the fee schedule amount*  
2 *the program pays for the same service when provided in an*  
3 *in-person visit with the patient.*

4 *(f) The department shall not limit the type of setting where*  
5 *services are provided for the patient or health care provider when*  
6 *reimbursing the provider at both the distant site and the originating*  
7 *site.*

8 *(g) Reimbursement for telehealth visits shall include reasonable*  
9 *compensation to the health care provider at the originating site*  
10 *for the transmission cost incurred during the delivery of health*  
11 *care services.*

12 *(h) Notwithstanding Chapter 3.5 (commencing with Section*  
13 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*  
14 *the department may implement, interpret, and make specific this*  
15 *section by means of all-county letters, provider bulletins, and*  
16 *similar instructions.*

17 ~~SECTION 1. Section 2290.5 of the Business and Professions~~  
18 ~~Code is amended to read:~~

19 ~~2290.5. (a) (1) For the purposes of this section, “telemedicine”~~  
20 ~~shall mean the practice of health care delivery, diagnosis,~~  
21 ~~consultation, treatment, transfer of medical data, and education~~  
22 ~~using interactive audio, video, or data communications. Neither a~~  
23 ~~telephone conversation nor an electronic mail message between a~~  
24 ~~health care practitioner and patient constitutes “telemedicine” for~~  
25 ~~purposes of this section.~~

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

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

35 ~~(c) Prior to the delivery of health care via telemedicine, the~~  
36 ~~health care practitioner who has ultimate authority over the care~~  
37 ~~or primary diagnosis of the patient shall obtain verbal and written~~  
38 ~~informed consent from the patient or the patient’s legal~~  
39 ~~representative. The informed consent procedure shall ensure that~~

1 at least all of the following information is given to the patient or  
2 the patient's legal representative verbally and in writing:  
3 (1) ~~The patient or the patient's legal representative retains the~~  
4 ~~option to withhold or withdraw consent at any time without~~  
5 ~~affecting the right to future care or treatment nor risking the loss~~  
6 ~~or withdrawal of any program benefits to which the patient or the~~  
7 ~~patient's legal representative would otherwise be entitled.~~  
8 (2) ~~A description of the potential risks, consequences, and~~  
9 ~~benefits of telemedicine.~~  
10 (3) ~~All existing confidentiality protections apply.~~  
11 (4) ~~All existing laws regarding patient access to medical~~  
12 ~~information and copies of medical records apply.~~  
13 (5) ~~Dissemination of any patient identifiable images or~~  
14 ~~information from the telemedicine interaction to researchers or~~  
15 ~~other entities shall not occur without the consent of the patient.~~  
16 (d) ~~A patient or the patient's legal representative shall sign a~~  
17 ~~written statement prior to the delivery of health care via~~  
18 ~~telemedicine, indicating that the patient or the patient's legal~~  
19 ~~representative understands the written information provided~~  
20 ~~pursuant to subdivision (a), and that this information has been~~  
21 ~~discussed with the health care practitioner, or his or her designee.~~  
22 (e) ~~The written consent statement signed by the patient or the~~  
23 ~~patient's legal representative shall become part of the patient's~~  
24 ~~medical record.~~  
25 (f) ~~The failure of a health care practitioner to comply with this~~  
26 ~~section shall constitute unprofessional conduct. Section 2314 shall~~  
27 ~~not apply to this section.~~  
28 (g) ~~All existing laws regarding surrogate decisionmaking shall~~  
29 ~~apply. For purposes of this section, "surrogate decisionmaking"~~  
30 ~~means any decision made in the practice of medicine by a parent~~  
31 ~~or legal representative for a minor or an incapacitated or~~  
32 ~~incompetent individual.~~  
33 (h) ~~Except as provided in paragraph (3) of subdivision (e), this~~  
34 ~~section shall not apply when the patient is not directly involved in~~  
35 ~~the telemedicine interaction, for example when one health care~~  
36 ~~practitioner consults with another health care practitioner.~~  
37 (i) ~~This section shall not apply in an emergency situation in~~  
38 ~~which a patient is unable to give informed consent and the~~  
39 ~~representative of that patient is not available in a timely manner.~~

- 1     ~~(j) This section shall not apply to a patient under the jurisdiction~~
- 2     ~~of the Department of Corrections or any other correctional facility.~~
- 3     ~~(k) This section shall not be construed to alter the scope of~~
- 4     ~~practice of any health care provider or authorize the delivery of~~
- 5     ~~health care services in a setting, or in a manner, not otherwise~~
- 6     ~~authorized by law.~~