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.


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

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

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

(1) “Asynchronous store and forward” means the transmission of a patient’s medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) “Distant site” means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

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

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

(5) “Telehealth” means the process of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patients’ health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) It is the intent of the Legislature to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical health care services from a health
care provider without person-to-person in-person contact with the provider.

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

(c) (1) Commencing July 1, 1997, face-to-face In-person contact between a health care provider and a patient shall not be required 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. The audio and visual telemedicine system used shall, at a minimum, have the capability of meeting the procedural definition of the Current Procedural Terminology Fourth Edition (CPT-4) codes which represent the service provided through telemedicine. The telecommunications equipment shall be of a level of quality to adequately complete all necessary components to document the level of service for the CPT-4 code billed. If a peripheral diagnostic scope is required to assess the patient, it shall provide adequate resolution or audio quality for decisionmaking telehealth.

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

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

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

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

(e) The reimbursement rate for Medi-Cal covered services provided by telehealth shall be the lower of the usual and
customary rate charged for that service or the fee schedule amount
the program pays for the same service when provided in an
in-person visit with the patient.
(f) The department shall not limit the type of setting where
services are provided for the patient or health care provider when
reimbursing the provider at both the distant site and the originating
site.
(g) Reimbursement for telehealth visits shall include reasonable
compensation to the health care provider at the originating site
for the transmission cost incurred during the delivery of health
care services.
(h) Notwithstanding Chapter 3.5 (commencing with Section
11340) of Part 1 of Division 3 of Title 2 of the Government Code,
the department may implement, interpret, and make specific this
section by means of all-county letters, provider bulletins, and
similar instructions.
SECTION 1. Section 2290.5 of the Business and Professions
Code is amended to read:
2290.5. (a) (1) For the purposes of this section, "telemedicine"
shall mean the practice of health care delivery, diagnosis,
consultation, treatment, transfer of medical data, and education
using interactive audio, video, or data communications. Neither a
telephone conversation nor an electronic mail message between a
health care practitioner and patient constitutes "telemedicine" for
purposes of this section:
(2) For purposes of this section, "interactive" means an audio;
video, or data communication involving a real time (synchronous)
or near real time (asynchronous) two-way transfer of medical data
and information.
(b) For the purposes of this section, "health care practitioner"
has the same meaning as "licentiate" as defined in paragraph (2)
of subdivision (a) of Section 805 and also includes a person
licensed as an optometrist pursuant to Chapter 7 (commencing
with Section 3000):
(c) Prior to the delivery of health care via telemedicine, the
health care practitioner 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. The informed consent procedure shall ensure that
at least all of the following information is given to the patient or
the patient’s legal representative verbally and in writing:

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

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

(3) All existing confidentiality protections apply.

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

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

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

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

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

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

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

(i) This section shall not apply in an emergency situation in
which a patient is unable to give informed consent and the
representative of that patient is not available in a timely manner.
(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

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