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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 415

**Introduced by Assembly Member Logue
(Principal coauthors: Assembly Members Chesbro, Pan, and V.
Manuel Pérez)**

February 14, 2011

An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.

LEGISLATIVE COUNSEL'S DIGEST

AB 415, as amended, Logue. Healing arts: telehealth.

(1) Existing law provides for the licensure and regulation of various healing arts professions by various boards within the Department of Consumer Affairs. A violation of specified provisions is a crime. 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. Existing law requires a health

care practitioner, as defined, to ~~obtained~~ *obtain* verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing law provides that health care service plans and health insurers shall not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.

This bill would delete the provisions regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined. This bill would require a health care provider, as defined, to, prior to the delivery health care via telehealth, verbally inform the patient that telehealth may be used and obtain verbal consent from the patient. This bill would provide that failure to comply with this provision constitutes unprofessional conduct. This bill would also set forth provisions for the payment of telehealth services by health care service plans and health insurers. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.

(2) 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 appropriately provided by telehealth, as defined, and would make related changes.

(3) Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal program, teleophthalmology and teledermatology by store and forward, as defined.

This bill would delete the repeal of the above-described authorization.

(4)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 Telehealth Advancement Act of 2011.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) Lack of primary care providers, specialty providers, and
5 transportation continue to be significant barriers to access to health
6 services in medically underserved rural and urban areas.

7 (b) Parts of California have difficulty attracting and retaining
8 health professionals, as well as supporting local health facilities
9 to provide a continuum of health care.

10 (c) Many health care providers in medically underserved areas
11 are isolated from mentors, colleagues, and the information
12 resources necessary to support them personally and professionally.

13 (d) It is the intent of the Legislature to create a parity of
14 telehealth with other health care delivery modes, to actively
15 promote telehealth as a tool to advance stakeholders' goals
16 regarding health status and health system improvement, and to
17 create opportunities and flexibility for telehealth to be used in new
18 models of care and system improvements.

19 (e) Telehealth is a mode of delivering health care services and
20 public health utilizing information and communication technologies
21 to enable the diagnosis, consultation, treatment, education, care
22 management, and self-management of patients at a distance from
23 health care providers.

24 (f) Telehealth is part of a multifaceted approach to address the
25 problem of inadequate provider distribution and the development
26 of health systems in medically underserved areas by improving
27 communication capabilities and providing convenient access to
28 up-to-date information, consultations, and other forms of support.

29 (g) The use of information and telecommunication technologies
30 to deliver health services has the potential to reduce costs, improve

1 quality, change the conditions of practice, and improve access to
2 health care, particularly in rural and other medically underserved
3 areas.

4 (h) Telehealth will assist in maintaining or improving the
5 physical and economic health of medically underserved
6 communities by keeping the source of medical care in the local
7 area, strengthening the health infrastructure, and preserving health
8 care-related jobs.

9 (i) Consumers of health care will benefit from telehealth in
10 many ways, including expanded access to providers, faster and
11 more convenient treatment, better continuity of care, reduction of
12 lost work time and travel costs, and the ability to remain with
13 support networks.

14 (j) It is the intent of the Legislature that the fundamental health
15 care provider-patient relationship cannot only be preserved, but
16 can also be augmented and enhanced, through the use of telehealth
17 as a tool to be integrated into practices.

18 (k) Without the assurance of payment and the resolution of legal
19 and policy barriers, the full potential of telehealth will not be
20 realized.

21 SEC. 3. Section 2290.5 of the Business and Professions Code
22 is repealed.

23 SEC. 4. Section 2290.5 is added to the Business and Professions
24 Code, to read:

25 2290.5. (a) For purposes of this division, the following
26 definitions shall apply:

27 (1) "Asynchronous store and forward" means the transmission
28 of a patient's medical information from an originating site to the
29 health care provider at a distant site without the presence of the
30 patient.

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

34 (3) "Health care provider" means a person who is licensed under
35 this division.

36 (4) "Originating site" means a site where a patient is located at
37 the time health care services are provided via a telecommunications
38 system ~~or where the asynchronous store and forward transfer~~
39 ~~occurs.~~ *system or where the asynchronous store and forward*
40 *service originates.*

1 (5) “Synchronous interaction” means a real-time interaction
2 between a patient and a health care provider located at a distant
3 site.

4 ~~(5)~~

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

14 (b) Prior to the delivery of health care via telehealth, the health
15 care provider *at the originating site* shall verbally inform the patient
16 that telehealth may be used and obtain verbal consent from the
17 patient for this use. The verbal consent shall be documented in the
18 patient’s medical record.

19 (c) The failure of a health care provider to comply with this
20 section shall constitute unprofessional conduct. Section 2314 shall
21 not apply to this section.

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

26 (e) All laws regarding the confidentiality of health care
27 information and a patient’s rights to his or her medical information
28 shall apply to telehealth interactions.

29 SEC. 5. Section 1374.13 of the Health and Safety Code is
30 repealed.

31 SEC. 6. Section 1374.13 is added to the Health and Safety
32 Code, to read:

33 1374.13. (a) For the purposes of this section, the definitions
34 in subdivision (a) of Section 2290.5 of the Business and Professions
35 Code shall apply.

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

1 (c) No health care service plan shall require that in-person
 2 contact occur between a health care provider and a patient before
 3 payment is made for the covered services appropriately provided
 4 through telehealth, ~~and every health care service plan shall adopt~~
 5 ~~payment policies consistent with this section to compensate health~~
 6 ~~care providers who provide covered health care services through~~
 7 telehealth, subject to the terms and conditions of the contract
 8 entered into between the enrollee or subscriber and the health care
 9 service plan, *and between the health care service plan and its*
 10 *participating providers or provider groups.*

11 (d) For the purposes of payment for covered treatment or
 12 services provided through telehealth, the health care service plan
 13 shall not limit the type of setting where services are provided for
 14 the patient or by the health care provider.

15 (e) The requirements of this subdivision shall also be operative
 16 for health care service plan contracts with the department pursuant
 17 to Article 2.7 (commencing with Section 14087.3), Article 2.8
 18 (commencing with Section 14087.5), Article 2.81 (commencing
 19 ~~with Section 14089), or Chapter 8 (commencing with Section~~
 20 ~~14200); with Section 14087.96), or Article 2.91 (commencing with~~
 21 ~~Section 14089) of Chapter 7, or Chapter 8 (commencing with~~
 22 ~~Section 14200) of, Part 3 of Division 9 of the Welfare and~~
 23 ~~Institutions Code.~~

24 (f) Nothing in this section shall be interpreted to authorize a
 25 health care service plan to require the use of telehealth when the
 26 health care provider has determined that it is not appropriate.

27 SEC. 7. Section 10123.85 of the Insurance Code is repealed.

28 SEC. 8. Section 10123.85 is added to the Insurance Code, to
 29 read:

30 10123.85. (a) For purposes of this section, the definitions in
 31 subdivision (a) of Section 2290.5 of the Business and Professions
 32 Code shall apply.

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

37 (c) No health insurer shall require that in-person contact occur
 38 between a health care provider and a patient before payment is
 39 made for the services appropriately provided through telehealth,
 40 ~~and every health insurer shall adopt payment policies consistent~~

1 ~~with this section to compensate health care providers who provide~~
2 ~~covered health care services through telehealth~~, subject to the terms
3 and conditions of the contract entered into between the policyholder
4 or contractholder and the insurer, *and between the insurer and its*
5 *participating providers or provider groups.*

6 (d) For the purposes of payment for covered treatment or
7 services provided through telehealth, the health insurer shall not
8 limit the type of setting where services are provided for the patient
9 or by the health care provider.

10 (e) Nothing in this section shall be interpreted to authorize a
11 health insurer to require the use of telehealth when the health care
12 provider has determined that it is not appropriate.

13 SEC. 9. Section 14132.72 of the Welfare and Institutions Code
14 is amended to read:

15 14132.72. (a) For purposes of this section, the definitions in
16 subdivision (a) of Section 2290.5 of the Business and Professions
17 Code shall apply.

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

22 (c) In-person contact between a health care provider and a
23 patient shall not be required under the Medi-Cal program for
24 services appropriately provided through telehealth, subject to
25 reimbursement policies adopted by the department to compensate
26 a licensed health care provider who provides health care services
27 through telehealth that are otherwise reimbursed pursuant to the
28 Medi-Cal program. *Nothing in this section or the Telehealth*
29 *Advancement Act of 2011 shall be construed to conflict with or*
30 *supersede the provisions of Section 14091.3 of this code or any*
31 *other existing state laws or regulations related to reimbursement*
32 *for services provided by a noncontracted provider.*

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

36 (e) For the purposes of payment for covered treatment or
37 services provided through telehealth, the department shall not limit
38 the type of setting where services are provided for the patient or
39 by the health care provider.

1 (f) Nothing in this section shall be interpreted to authorize the
2 department to require the use of telehealth when the health care
3 provider has determined that it is not appropriate.

4 (g) Notwithstanding Chapter 3.5 (commencing with Section
5 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
6 the department may implement, interpret, and make specific this
7 section by means of all-county letters, provider bulletins, and
8 similar instructions.

9 SEC. 10. Section 14132.725 of the Welfare and Institutions
10 Code is amended to read:

11 14132.725. (a) Commencing July 1, 2006, to the extent that
12 federal financial participation is available, face-to-face contact
13 between a health care provider and a patient shall not be required
14 under the Medi-Cal program for teleophthalmology and
15 teledermatology by store and forward. Services appropriately
16 provided through the store and forward process are subject to
17 billing and reimbursement policies developed by the department.

18 (b) For purposes of this section, “teleophthalmology and
19 teledermatology by store and forward” means an asynchronous
20 transmission of medical information to be reviewed at a later time
21 by a physician at a distant site who is trained in ophthalmology or
22 dermatology or, for teleophthalmology, by an optometrist who is
23 licensed pursuant to Chapter 7 (commencing with Section 3000)
24 of Division 2 of the Business and Professions Code, where the
25 physician or optometrist at the distant site reviews the medical
26 information without the patient being present in real time. A patient
27 receiving teleophthalmology or teledermatology by store and
28 forward shall be notified of the right to receive interactive
29 communication with the distant specialist physician or optometrist,
30 and shall receive an interactive communication with the distant
31 specialist physician or optometrist, upon request. If requested,
32 communication with the distant specialist physician or optometrist
33 may occur either at the time of the consultation, or within 30 days
34 of the patient’s notification of the results of the consultation. If the
35 reviewing optometrist identifies a disease or condition requiring
36 consultation or referral pursuant to Section 3041 of the Business
37 and Professions Code, that consultation or referral shall be with
38 an ophthalmologist or other appropriate physician and surgeon, as
39 required.

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

6 (d) On or before January 1, 2008, the department shall report
7 to the Legislature the number and type of services provided, and
8 the payments made related to the application of store and forward
9 telemedicine as provided, under this section as a Medi-Cal benefit.

10 SEC. 11. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

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