

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1733**

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**Introduced by Assembly Member Logue**

February 16, 2012

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An act to amend Sections 2028.5, 3041, and 4999.90 of, and to add Section 686 to, the Business and Professions Code, to amend Sections 78910.10 and 101041 of the Education Code, to amend Sections 1367, 1374.13, 1375.1, 123149.5, and 127620 of the Health and Safety Code, to amend Sections 10123.13 and 10123.147 of the Insurance Code, and to amend Sections 14132.725 and 14132.73 of, and to add Section 14594 to, the Welfare and Institutions Code, relating to ~~telehealth~~ *health*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1733, as amended, Logue. ~~Telehealth~~-*Health*.

*(1) Existing law provides for the licensure and regulation of optometrists by the State Board of Optometry, and requires certification by the board for a licensed optometrist to use therapeutic pharmaceutical agents. Existing law authorizes a licensed optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions.*

*This bill would authorize a licensed optometrist certified to use therapeutic pharmaceutical agents to additionally perform specified clinical laboratory tests or examinations classified as waived under the*

*federal Clinical Laboratory Improvement Amendments of 1988 that are necessary for the diagnosis of conditions and diseases of the eye or adnexa, which the bill would define to mean ocular adnexa.*

*(2) Existing law, the Licensed Professional Clinical Counselor Act, provides for the licensure and regulation of the practice of professional clinical counseling by the Board of Behavioral Sciences.*

*Existing law authorizes the board to refuse to issue any registration or license, or to suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct that includes, but is not limited to, the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of specified substances, or any combination thereof.*

*This bill would delete the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of specified substances, or any combination thereof, from the list of what constitutes professional conduct. The bill would make it unprofessional conduct to willfully violate specified provisions governing patient access to health care records.*

**Existing**

*(3) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law prohibits a health care service plan from requiring in-person contact between a health care provider and a patient before payment is made for covered services appropriately provided through telehealth, as specified. Existing law specifies that this requirement applies to certain Medi-Cal managed care plans, including county organized health systems and entities contracting with the department to provide services pursuant to 2-plan models and geographic managed care.*

*Existing law establishes the California Program of All-Inclusive Care for the Elderly (PACE) and provides that the State Department of Health Care Services may enter into contracts with public or private nonprofit organizations for implementation of the PACE program.*

*This bill would specify that the prohibition on requiring in-person contact also applies to other health care service plan contracts with the State Department of Health Care Services for services under the Medi-Cal program, and publicly supported programs other than*

Medi-Cal, as well as to the organizations implementing the PACE program. By expanding the scope of a crime, the bill would impose a state-mandated local program. The bill would also make various related conforming changes, including requiring health care practitioners providing telehealth services to practice according to the regulations regarding their profession *and receive reimbursements under the Medicaid state plan.*

*(4) This bill would incorporate additional changes in Section 1367 of the Health and Safety Code made by AB 1800 that would become operative if both this bill and AB 1800 are enacted and this bill becomes effective after AB 1800.*

~~The~~

*(5) 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. Section 686 is added to the Business and  
2 Professions Code, to read:

3 686. A health care practitioner licensed under Division 2  
4 (commencing with Section 500) providing services via telehealth  
5 shall be subject to the requirements and definitions set forth in  
6 Section 2290.5, to the practice act relating to his or her licensed  
7 profession, and to the regulations adopted by a board pursuant to  
8 that practice act.

9 SEC. 2. Section 2028.5 of the Business and Professions Code  
10 is amended to read:

11 2028.5. (a) The board may establish a pilot program to expand  
12 the practice of telehealth in this state.

13 (b) To implement this pilot program, the board may convene a  
14 working group of interested parties from the public and private  
15 sectors, including, but not limited to, state health-related agencies,  
16 health care providers, health plan administrators, information  
17 technology groups, and groups representing health care consumers.

1 (c) The purpose of the pilot program shall be to develop  
2 methods, using a telehealth model, to deliver throughout the state  
3 health care to persons with chronic diseases as well as information  
4 on the best practices for chronic disease management services and  
5 techniques and other health care information as deemed  
6 appropriate.

7 (d) The board shall make a report with its recommendations  
8 regarding its findings to the Legislature within one calendar year  
9 of the commencement date of the pilot program. The report shall  
10 include an evaluation of the improvement and affordability of  
11 health care services and the reduction in the number of  
12 complications achieved by the pilot program.

13 SEC. 3. Section 3041 of the Business and Professions Code is  
14 amended to read:

15 3041. (a) The practice of optometry includes the prevention  
16 and diagnosis of disorders and dysfunctions of the visual system,  
17 and the treatment and management of certain disorders and  
18 dysfunctions of the visual system, as well as the provision of  
19 rehabilitative optometric services, and is the doing of any or all of  
20 the following:

21 (1) The examination of the human eye or eyes, or its or their  
22 appendages, and the analysis of the human vision system, either  
23 subjectively or objectively.

24 (2) The determination of the powers or range of human vision  
25 and the accommodative and refractive states of the human eye or  
26 eyes, including the scope of its or their functions and general  
27 condition.

28 (3) The prescribing or directing the use of, or using, any optical  
29 device in connection with ocular exercises, visual training, vision  
30 training, or orthoptics.

31 (4) The prescribing of contact and spectacle lenses for, or the  
32 fitting or adaptation of contact and spectacle lenses to, the human  
33 eye, including lenses that may be classified as drugs or devices by  
34 any law of the United States or of this state.

35 (5) The use of topical pharmaceutical agents for the purpose of  
36 the examination of the human eye or eyes for any disease or  
37 pathological condition.

38 (b) (1) An optometrist who is certified to use therapeutic  
39 pharmaceutical agents, pursuant to Section 3041.3, may also

1 diagnose and treat the human eye or eyes, or any of its or their  
2 appendages, for all of the following conditions:

3 (A) Through medical treatment, infections of the anterior  
4 segment and adnexa, excluding the lacrimal gland, the lacrimal  
5 drainage system, and the sclera in patients under 12 years of age.

6 (B) Ocular allergies of the anterior segment and adnexa.

7 (C) Ocular inflammation, nonsurgical in cause except when  
8 comanaged with the treating physician and surgeon, limited to  
9 inflammation resulting from traumatic iritis, peripheral corneal  
10 inflammatory keratitis, episcleritis, and unilateral nonrecurrent  
11 nongranulomatous idiopathic iritis in patients over 18 years of age.  
12 Unilateral nongranulomatous idiopathic iritis recurring within one  
13 year of the initial occurrence shall be referred to an  
14 ophthalmologist. An optometrist shall consult with an  
15 ophthalmologist or appropriate physician and surgeon if a patient  
16 has a recurrent case of episcleritis within one year of the initial  
17 occurrence. An optometrist shall consult with an ophthalmologist  
18 or appropriate physician and surgeon if a patient has a recurrent  
19 case of peripheral corneal inflammatory keratitis within one year  
20 of the initial occurrence.

21 (D) Traumatic or recurrent conjunctival or corneal abrasions  
22 and erosions.

23 (E) Corneal surface disease and dry eyes.

24 (F) Ocular pain, nonsurgical in cause except when comanaged  
25 with the treating physician and surgeon, associated with conditions  
26 optometrists are authorized to treat.

27 (G) Pursuant to subdivision (f), glaucoma in patients over 18  
28 years of age, as described in subdivision (j).

29 (2) For purposes of this section, “treat” means the use of  
30 therapeutic pharmaceutical agents, as described in subdivision (c),  
31 and the procedures described in subdivision (e).

32 (c) In diagnosing and treating the conditions listed in subdivision  
33 (b), an optometrist certified to use therapeutic pharmaceutical  
34 agents pursuant to Section 3041.3 may use all of the following  
35 therapeutic pharmaceutical agents:

36 (1) Pharmaceutical agents as described in paragraph (5) of  
37 subdivision (a), as well as topical miotics.

38 (2) Topical lubricants.

39 (3) Antiallergy agents. In using topical steroid medication for  
40 the treatment of ocular allergies, an optometrist shall consult with

1 an ophthalmologist if the patient's condition worsens 21 days after  
2 diagnosis.

3 (4) Topical and oral ~~antiinflammatories~~ *anti-inflammatories*. In  
4 using steroid medication for:

5 (A) Unilateral nonrecurrent nongranulomatous idiopathic iritis  
6 or episcleritis, an optometrist shall consult with an ophthalmologist  
7 or appropriate physician and surgeon if the patient's condition  
8 worsens 72 hours after the diagnosis, or if the patient's condition  
9 has not resolved three weeks after diagnosis. If the patient is still  
10 receiving medication for these conditions six weeks after diagnosis,  
11 the optometrist shall refer the patient to an ophthalmologist or  
12 appropriate physician and surgeon.

13 (B) Peripheral corneal inflammatory keratitis, excluding  
14 Moorens and Terriens diseases, an optometrist shall consult with  
15 an ophthalmologist or appropriate physician and surgeon if the  
16 patient's condition worsens 72 hours after diagnosis.

17 (C) Traumatic iritis, an optometrist shall consult with an  
18 ophthalmologist or appropriate physician and surgeon if the  
19 patient's condition worsens 72 hours after diagnosis and shall refer  
20 the patient to an ophthalmologist or appropriate physician and  
21 surgeon if the patient's condition has not resolved one week after  
22 diagnosis.

23 (5) Topical antibiotic agents.

24 (6) Topical hyperosmotics.

25 (7) Topical and oral antiglaucoma agents pursuant to the  
26 certification process defined in subdivision (f).

27 (A) The optometrist shall refer the patient to an ophthalmologist  
28 if requested by the patient or if angle closure glaucoma develops.

29 (B) If the glaucoma patient also has diabetes, the optometrist  
30 shall consult with the physician treating the patient's diabetes in  
31 developing the glaucoma treatment plan and shall inform the  
32 physician in writing of any changes in the patient's glaucoma  
33 medication.

34 (8) Nonprescription medications used for the rational treatment  
35 of an ocular disorder.

36 (9) Oral antihistamines.

37 (10) Prescription oral nonsteroidal ~~antiinflammatory~~  
38 *anti-inflammatory* agents.

39 (11) Oral antibiotics for medical treatment of ocular disease.

1 (A) If the patient has been diagnosed with a central corneal ulcer  
2 and the central corneal ulcer has not improved 48 hours after  
3 diagnosis, the optometrist shall refer the patient to an  
4 ophthalmologist.

5 (B) If the patient has been diagnosed with preseptal cellulitis  
6 or dacryocystitis and the condition has not improved 48 hours after  
7 diagnosis, the optometrist shall refer the patient to an  
8 ophthalmologist.

9 (12) Topical and oral antiviral medication for the medical  
10 treatment of the following: herpes simplex viral keratitis, herpes  
11 simplex viral conjunctivitis, and periocular herpes simplex viral  
12 dermatitis; and varicella zoster viral keratitis, varicella zoster viral  
13 conjunctivitis, and periocular varicella zoster viral dermatitis.

14 (A) If the patient has been diagnosed with herpes simplex  
15 keratitis or varicella zoster viral keratitis and the patient's condition  
16 has not improved seven days after diagnosis, the optometrist shall  
17 refer the patient to an ophthalmologist. If a patient's condition has  
18 not resolved three weeks after diagnosis, the optometrist shall refer  
19 the patient to an ophthalmologist.

20 (B) If the patient has been diagnosed with herpes simplex viral  
21 conjunctivitis, herpes simplex viral dermatitis, varicella zoster  
22 viral conjunctivitis, or varicella zoster viral dermatitis, and if the  
23 patient's condition worsens seven days after diagnosis, the  
24 optometrist shall consult with an ophthalmologist. If the patient's  
25 condition has not resolved three weeks after diagnosis, the  
26 optometrist shall refer the patient to an ophthalmologist.

27 (13) Oral analgesics that are not controlled substances.

28 (14) Codeine with compounds and hydrocodone with  
29 compounds as listed in the California Uniform Controlled  
30 Substances Act (Division 10 (commencing with Section 11000)  
31 of the Health and Safety Code) and the United States Uniform  
32 Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use  
33 of these agents shall be limited to three days, with a referral to an  
34 ophthalmologist if the pain persists.

35 (d) In any case where this chapter requires that an optometrist  
36 consult with an ophthalmologist, the optometrist shall maintain a  
37 written record in the patient's file of the information provided to  
38 the ophthalmologist, the ophthalmologist's response, and any other  
39 relevant information. Upon the consulting ophthalmologist's

- 1 request and with the patient's consent, the optometrist shall furnish  
2 a copy of the record to the ophthalmologist.
- 3 (e) An optometrist who is certified to use therapeutic  
4 pharmaceutical agents pursuant to Section 3041.3 may also perform  
5 all of the following:
- 6 (1) Corneal scraping with cultures.
  - 7 (2) Debridement of corneal epithelia.
  - 8 (3) Mechanical epilation.
  - 9 (4) Venipuncture for testing patients suspected of having  
10 diabetes.
  - 11 (5) Suture removal, with prior consultation with the treating  
12 physician and surgeon.
  - 13 (6) Treatment or removal of sebaceous cysts by expression.
  - 14 (7) Administration of oral fluorescein to patients suspected as  
15 having diabetic retinopathy.
  - 16 (8) Use of an auto-injector to counter anaphylaxis.
  - 17 (9) Ordering of smears, cultures, sensitivities, complete blood  
18 count, mycobacterial culture, acid fast stain, urinalysis, *tear fluid*  
19 *analysis*, and X-rays necessary for the diagnosis of conditions or  
20 diseases of the eye or adnexa. An optometrist may order other  
21 types of images subject to prior consultation with an  
22 ophthalmologist or appropriate physician and surgeon.
  - 23 (10) *A clinical laboratory test or examination classified as*  
24 *waived under CLIA and as designated in paragraph (9) necessary*  
25 *for the diagnosis of conditions and diseases of the eye or adnexa,*  
26 *or if otherwise specifically authorized by this chapter.*
  - 27 ~~(10)~~
  - 28 (11) Punctal occlusion by plugs, excluding laser, diathermy,  
29 cryotherapy, or other means constituting surgery as defined in this  
30 chapter.
  - 31 ~~(11)~~
  - 32 (12) The prescription of therapeutic contact lenses, including  
33 lenses or devices that incorporate a medication or therapy the  
34 optometrist is certified to prescribe or provide.
  - 35 ~~(12)~~
  - 36 (13) Removal of foreign bodies from the cornea, eyelid, and  
37 conjunctiva with any appropriate instrument other than a scalpel  
38 or needle. Corneal foreign bodies shall be nonperforating, be no  
39 deeper than the midstroma, and require no surgical repair upon  
40 removal.

1     ~~(13)~~

2     (14) For patients over 12 years of age, lacrimal irrigation and  
3 dilation, excluding probing of the nasal lacrimal tract. The board  
4 shall certify any optometrist who graduated from an accredited  
5 school of optometry before May 1, 2000, to perform this procedure  
6 after submitting proof of satisfactory completion of 10 procedures  
7 under the supervision of an ophthalmologist as confirmed by the  
8 ophthalmologist. Any optometrist who graduated from an  
9 accredited school of optometry on or after May 1, 2000, shall be  
10 exempt from the certification requirement contained in this  
11 paragraph.

12     (f) The board shall grant a certificate to an optometrist certified  
13 pursuant to Section 3041.3 for the treatment of glaucoma, as  
14 described in subdivision (j), in patients over 18 years of age after  
15 the optometrist meets the following applicable requirements:

16     (1) For licensees who graduated from an accredited school of  
17 optometry on or after May 1, 2008, submission of proof of  
18 graduation from that institution.

19     (2) For licensees who were certified to treat glaucoma under  
20 this section prior to January 1, 2009, submission of proof of  
21 completion of that certification program.

22     (3) For licensees who have substantially completed the  
23 certification requirements pursuant to this section in effect between  
24 January 1, 2001, and December 31, 2008, submission of proof of  
25 completion of those requirements on or before December 31, 2009.  
26 “Substantially completed” means both of the following:

27     (A) Satisfactory completion of a didactic course of not less than  
28 24 hours in the diagnosis, pharmacological, and other treatment  
29 and management of glaucoma.

30     (B) Treatment of 50 glaucoma patients with a collaborating  
31 ophthalmologist for a period of two years for each patient that will  
32 conclude on or before December 31, 2009.

33     (4) For licensees who completed a didactic course of not less  
34 than 24 hours in the diagnosis, pharmacological, and other  
35 treatment and management of glaucoma, submission of proof of  
36 satisfactory completion of the case management requirements for  
37 certification established by the board pursuant to Section 3041.10.

38     (5) For licensees who graduated from an accredited school of  
39 optometry on or before May 1, 2008, and not described in  
40 paragraph (2), (3), or (4), submission of proof of satisfactory

1 completion of the requirements for certification established by the  
2 board pursuant to Section 3041.10.

3 (g) Other than for prescription ophthalmic devices described in  
4 subdivision (b) of Section 2541, any dispensing of a therapeutic  
5 pharmaceutical agent by an optometrist shall be without charge.

6 (h) The practice of optometry does not include performing  
7 surgery. "Surgery" means any procedure in which human tissue  
8 is cut, altered, or otherwise infiltrated by mechanical or laser  
9 means. "Surgery" does not include those procedures specified in  
10 subdivision (e). Nothing in this section shall limit an optometrist's  
11 authority to utilize diagnostic laser and ultrasound technology  
12 within his or her scope of practice.

13 (i) An optometrist licensed under this chapter is subject to the  
14 provisions of Section 2290.5 for purposes of practicing telehealth.

15 (j) For purposes of this chapter, "glaucoma" means either of the  
16 following:

- 17 (1) All primary open-angle glaucoma.
- 18 (2) Exfoliation and pigmentary glaucoma.

19 (k) *For purposes of this chapter, "adnexa" means ocular*  
20 *adnexa.*

21 ~~(l)~~

22 (l) In an emergency, an optometrist shall stabilize, if possible,  
23 and immediately refer any patient who has an acute attack of angle  
24 closure to an ophthalmologist.

25 SEC. 4. Section 4999.90 of the Business and Professions Code  
26 is amended to read:

27 4999.90. The board may refuse to issue any registration or  
28 license, or may suspend or revoke the registration or license of  
29 any intern or licensed professional clinical counselor, if the  
30 applicant, licensee, or registrant has been guilty of unprofessional  
31 conduct. Unprofessional conduct includes, but is not limited to,  
32 the following:

33 (a) The conviction of a crime substantially related to the  
34 qualifications, functions, or duties of a licensee or registrant under  
35 this chapter. The record of conviction shall be conclusive evidence  
36 only of the fact that the conviction occurred. The board may inquire  
37 into the circumstances surrounding the commission of the crime  
38 in order to fix the degree of discipline or to determine if the  
39 conviction is substantially related to the qualifications, functions,  
40 or duties of a licensee or registrant under this chapter. A plea or

1 verdict of guilty or a conviction following a plea of nolo contendere  
2 made to a charge substantially related to the qualifications,  
3 functions, or duties of a licensee or registrant under this chapter  
4 shall be deemed to be a conviction within the meaning of this  
5 section. The board may order any license or registration suspended  
6 or revoked, or may decline to issue a license or registration when  
7 the time for appeal has elapsed, or the judgment of conviction has  
8 been affirmed on appeal, or, when an order granting probation is  
9 made suspending the imposition of sentence, irrespective of a  
10 subsequent order under Section 1203.4 of the Penal Code allowing  
11 the person to withdraw a plea of guilty and enter a plea of not  
12 guilty, or setting aside the verdict of guilty, or dismissing the  
13 accusation, information, or indictment.

14 (b) Securing a license or registration by fraud, deceit, or  
15 misrepresentation on any application for licensure or registration  
16 submitted to the board, whether engaged in by an applicant for a  
17 license or registration, or by a licensee in support of any application  
18 for licensure or registration.

19 (c) Administering to himself or herself any controlled substance  
20 or using any of the dangerous drugs specified in Section 4022, or  
21 any alcoholic beverage to the extent, or in a manner, as to be  
22 dangerous or injurious to the person applying for a registration or  
23 license or holding a registration or license under this chapter, or  
24 to any other person, or to the public, or, to the extent that the use  
25 impairs the ability of the person applying for or holding a  
26 registration or license to conduct with safety to the public the  
27 practice authorized by the registration or license, ~~or the conviction~~  
28 ~~of more than one misdemeanor or any felony involving the use,~~  
29 ~~consumption, or self-administration of any of the substances~~  
30 ~~referred to in this subdivision, or any combination thereof~~ license.  
31 The board shall deny an application for a registration or license or  
32 revoke the license or registration of any person, other than one  
33 who is licensed as a physician and surgeon, who uses or offers to  
34 use drugs in the course of performing licensed professional clinical  
35 counseling services.

36 (d) Gross negligence or incompetence in the performance of  
37 licensed professional clinical counseling services.

38 (e) Violating, attempting to violate, or conspiring to violate any  
39 of the provisions of this chapter or any regulation adopted by the  
40 board.

- 1 (f) Misrepresentation as to the type or status of a license or  
2 registration held by the person, or otherwise misrepresenting or  
3 permitting misrepresentation of his or her education, professional  
4 qualifications, or professional affiliations to any person or entity.
- 5 (g) Impersonation of another by any licensee, registrant, or  
6 applicant for a license or registration, or, in the case of a licensee  
7 or registrant, allowing any other person to use his or her license  
8 or registration.
- 9 (h) Aiding or abetting, or employing, directly or indirectly, any  
10 unlicensed or unregistered person to engage in conduct for which  
11 a license or registration is required under this chapter.
- 12 (i) Intentionally or recklessly causing physical or emotional  
13 harm to any client.
- 14 (j) The commission of any dishonest, corrupt, or fraudulent act  
15 substantially related to the qualifications, functions, or duties of a  
16 licensee or registrant.
- 17 (k) Engaging in sexual relations with a client, or a former client  
18 within two years following termination of therapy, soliciting sexual  
19 relations with a client, or committing an act of sexual abuse, or  
20 sexual misconduct with a client, or committing an act punishable  
21 as a sexually related crime, if that act or solicitation is substantially  
22 related to the qualifications, functions, or duties of a licensed  
23 professional clinical counselor.
- 24 (l) Performing, or holding oneself out as being able to perform,  
25 or offering to perform, or permitting any ~~clinical counselor trainee~~  
26 ~~or intern~~ *trainee, applicant, or registrant* under supervision to  
27 perform, any professional services beyond the scope of the license  
28 authorized by this chapter.
- 29 (m) Failure to maintain confidentiality, except as otherwise  
30 required or permitted by law, of all information that has been  
31 received from a client in confidence during the course of treatment  
32 and all information about the client which is obtained from tests  
33 or other means.
- 34 (n) Prior to the commencement of treatment, failing to disclose  
35 to the client or prospective client the fee to be charged for the  
36 professional services, or the basis upon which that fee will be  
37 computed.
- 38 (o) Paying, accepting, or soliciting any consideration,  
39 compensation, or remuneration, whether monetary or otherwise,  
40 for the referral of professional clients. All consideration,

1 compensation, or remuneration shall be in relation to professional  
2 clinical counseling services actually provided by the licensee.  
3 Nothing in this subdivision shall prevent collaboration among two  
4 or more licensees in a case or cases. However, no fee shall be  
5 charged for that collaboration, except when disclosure of the fee  
6 has been made in compliance with subdivision (n).

7 (p) Advertising in a manner that is false, fraudulent, misleading,  
8 or deceptive, as defined in Section 651.

9 (q) Reproduction or description in public, or in any publication  
10 subject to general public distribution, of any psychological test or  
11 other assessment device, the value of which depends in whole or  
12 in part on the naivete of the subject, in ways that might invalidate  
13 the test or device.

14 (r) Any conduct in the supervision of a registered intern,  
15 associate clinical social worker, or clinical counselor trainee by  
16 any licensee that violates this chapter or any rules or regulations  
17 adopted by the board.

18 (s) Performing or holding oneself out as being able to perform  
19 professional services beyond the scope of one's competence, as  
20 established by one's education, training, or experience. This  
21 subdivision shall not be construed to expand the scope of the  
22 license authorized by this chapter.

23 (t) Permitting a clinical counselor trainee or intern under one's  
24 supervision or control to perform, or permitting the clinical  
25 counselor trainee or intern to hold himself or herself out as  
26 competent to perform, professional services beyond the clinical  
27 counselor trainee's or intern's level of education, training, or  
28 experience.

29 (u) The violation of any statute or regulation of the standards  
30 of the profession, and the nature of the services being rendered,  
31 governing the gaining and supervision of experience required by  
32 this chapter.

33 (v) Failure to keep records consistent with sound clinical  
34 judgment, the standards of the profession, and the nature of the  
35 services being rendered.

36 (w) Failure to comply with the child abuse reporting  
37 requirements of Section 11166 of the Penal Code.

38 (x) Failing to comply with the elder and dependent adult abuse  
39 reporting requirements of Section 15630 of the Welfare and  
40 Institutions Code.

1 (y) Repeated acts of negligence.

2 (z) (1) Engaging in an act described in Section 261, 286, 288a,  
3 or 289 of the Penal Code with a minor or an act described in  
4 Section 288 or 288.5 of the Penal Code regardless of whether the  
5 act occurred prior to or after the time the registration or license  
6 was issued by the board. An act described in this subdivision  
7 occurring prior to the effective date of this subdivision shall  
8 constitute unprofessional conduct and shall subject the licensee to  
9 refusal, suspension, or revocation of a license under this section.

10 (2) The Legislature hereby finds and declares that protection of  
11 the public, and in particular minors, from sexual misconduct by a  
12 licensee is a compelling governmental interest, and that the ability  
13 to suspend or revoke a license for sexual conduct with a minor  
14 occurring prior to the effective date of this section is equally  
15 important to protecting the public as is the ability to refuse a license  
16 for sexual conduct with a minor occurring prior to the effective  
17 date of this section.

18 (aa) Engaging in any conduct that subverts or attempts to subvert  
19 any licensing examination or the administration of an examination  
20 as described in Section 123.

21 (ab) Revocation, suspension, or restriction by the board of a  
22 license, certificate, or registration to practice as a professional  
23 clinical counselor, clinical social worker, educational psychologist,  
24 or marriage and family therapist.

25 (ac) Failing to comply with the procedures set forth in Section  
26 2290.5 when delivering health care via telehealth.

27 (ad) *Willful violation of Chapter 1 (commencing with Section*  
28 *123100) of Part 1 of Division 106 of the Health and Safety Code.*

29 SEC. 5. Section 78910.10 of the Education Code is amended  
30 to read:

31 78910.10. (a) (1) The California Virtual Campus, pursuant  
32 to funding provided to the Board of Governors of the California  
33 Community Colleges for this purpose in the annual Budget Act,  
34 may pursue all of the following purposes, to the extent funding is  
35 available:

36 (A) To enrich formal and informal educational experiences and  
37 improve students' academic performance by supporting the  
38 development of highly engaging, research-based innovations in  
39 teaching and learning in K–12 public schools and the California

1 Community Colleges, the California State University, and the  
2 University of California.

3 (B) To enhance the awareness of, and access to, highly engaging  
4 online courses of study, emphasizing courses of study that support  
5 a diverse and highly skilled science, technology, engineering, and  
6 mathematics workforce.

7 (C) To support education research, the implementation of  
8 research-based practices, and promote economic development  
9 through the use of next generation advanced network infrastructure,  
10 services, and network technologies that enable collaboration and  
11 resource sharing between formal and informal educators in K-12  
12 public schools, the California Community Colleges, the California  
13 State University, the University of California, independent colleges  
14 and universities, public libraries, and community-based  
15 organizations at locations across the state.

16 (D) To increase access to next generation Internet services, 21st  
17 century workforce development programs, and e-government  
18 services for students and staff served or employed by education  
19 entities and students served primarily online through partnerships  
20 with public libraries and community-based organizations.

21 (E) To enhance access to health care education and training  
22 programs to current or future health care workers.

23 (F) To manage digital assets and develop contracts for services  
24 necessary to provide the technical and management support needed  
25 to maximize the benefits of the high-speed, high-bandwidth  
26 network infrastructure available to public higher education entities  
27 in California.

28 (G) Through the aggregation of demand for network enabled  
29 technologies and related services from public education entities,  
30 and through partnerships with the private sector, to provide  
31 education entities with access to technical support and staff who  
32 can facilitate statewide efforts that support innovations in teaching  
33 and learning that are necessary to provide for a well-educated  
34 citizenry, and economic and 21st century workforce development.

35 (2) To accomplish the purposes of paragraph (1), the California  
36 Virtual Campus may partner with local educational agencies, the  
37 State Department of Education, the 11 regional California  
38 Technology Assistance Projects, the California Community  
39 Colleges, the California State University, the University of  
40 California, independent colleges and universities, public libraries,

1 and community-based organizations to facilitate ongoing  
2 collaboration and joint efforts relating to the use of technology  
3 resources and high-speed Internet connectivity to support teaching,  
4 learning, workforce development, and research.

5 (3) Efforts conducted as a result of this chapter shall not prohibit  
6 or otherwise exclude the ability of existing or new educational  
7 technology programs from being developed, expanded, or  
8 enhanced.

9 (b) For purposes of this article, the following terms have the  
10 following meanings:

11 (1) “Online courses of study” means any of the following:

12 (A) Online teaching, learning, and research resources, including,  
13 but not necessarily limited to, books, course materials, video  
14 materials, interactive lessons, tests, or software, the copyrights of  
15 which have expired, or have been released with an intellectual  
16 property license that permits their free use or repurposing by others  
17 without the permission of the original authors or creators of the  
18 learning materials or resources.

19 (B) Professional development opportunities for formal and  
20 informal educators who desire to use the resources in subparagraph  
21 (A).

22 (C) Online instruction.

23 (2) “Online instruction” means technology enabled online real  
24 time (synchronous) interaction between the instructor and the  
25 student, near time (asynchronous) interaction between the instructor  
26 and the student, or any combination thereof.

27 (c) The California Virtual Campus grant recipient may  
28 accomplish all of the following:

29 (1) Convene at least four leadership stakeholder group meetings  
30 annually comprised of representatives from the State Department  
31 of Education, the California Technology Assistance Project, and  
32 other related programs administered through the department, local  
33 education agencies, including adult education, the California  
34 Community Colleges, the California State University, the  
35 University of California, independent colleges and universities,  
36 the California State Library, and representatives from  
37 community-based organizations to ensure the efforts affecting  
38 segments represented are appropriately meeting the needs of those  
39 segments. The leadership stakeholder group shall also coordinate  
40 and obtain assistance with the implementation of efforts delineated

1 in this article, to identify and maintain an up-to-date list of the  
2 technology resources and tools that are necessary to support  
3 innovation in teaching and learning, and to identify opportunities  
4 for leveraging resources and expertise for meeting those needs in  
5 an efficient and cost-effective manner.

6 (2) Lead efforts to make online courses of study available across  
7 the state that include, but are not limited to, the following:

8 (A) Developing online courses of study that are pedagogically  
9 sound and fully accessible, in compliance with the federal  
10 Americans with Disabilities Act (Public Law 101-336), by students  
11 with varying learning styles and disabilities.

12 (i) The development of K–12 online courses pursuant to this  
13 subparagraph shall be achieved in partnership with local education  
14 agencies and the California Technology Assistance Project.

15 (ii) Online courses developed for grades K–12 pursuant to this  
16 subparagraph shall be aligned to the California academic content  
17 standards and guidelines for online courses.

18 (B) Overseeing the development of at least 12 model online  
19 courses of study that, collectively, would allow students to meet  
20 the requirements of the Intersegmental General Education Transfer  
21 Curriculum (IGETC) and at least two courses that support basic  
22 skills education courses in English, English as a second language,  
23 or mathematics.

24 (C) Encouraging the entities listed in paragraph (1) to do both  
25 of the following:

26 (i) Make accessible to each other their courses of study that are  
27 funded by the state.

28 (ii) Allow their courses of study to be accessible to the general  
29 public if they determine access would not inhibit their ability to  
30 provide appropriate protection of the state’s intellectual property  
31 rights.

32 (3) Ensure that the learning objects created as part of the  
33 California Virtual Campus online courses of study with state  
34 General Fund revenues are linked to digital content libraries that  
35 include information about course content freely available to  
36 California educators and students.

37 (4) Develop formal partnership agreements between the entities  
38 listed in paragraph (1) and the California Virtual Campus, including  
39 course articulation agreements that allow qualified high school  
40 students to accelerate the completion of requirements for a high

1 school diploma and a two-year or four-year degree and agreements  
2 that provide opportunities for part-time faculty teaching online to  
3 obtain full-time employment teaching online.

4 (5) Develop formal partnership agreements with the entities  
5 listed in paragraph (1) and others to enhance access to professional  
6 development courses that introduce faculty, teachers, staff, and  
7 college course developers to the conceptual development, creation,  
8 and production methodologies that underlie the development of  
9 online courses of study and support students' successful completion  
10 of those courses. The professional development opportunities may  
11 include, but not necessarily be limited to, all of the following:

12 (A) Addressing issues relating to copyright, permission for the  
13 use or reuse of material, use of resources in the public domain,  
14 and other intellectual property concepts.

15 (B) Accessibility for students with disabilities.

16 (C) Factors to ensure that content is culturally relevant to a  
17 diverse student body.

18 (D) Delivery options that incorporate multiple learning styles  
19 and strategies.

20 (6) Develop formal partnership agreements with entities,  
21 including, but not limited to, those listed in paragraph (1), to ensure  
22 access to online professional learning communities that incorporate  
23 the use of Internet-based collaboration tools and to support joint  
24 discussions between K–12 educators, higher education faculty and  
25 staff, and others to examine student performance data, student  
26 learning objectives, curriculum, and other issues that relate to  
27 students' academic success and preparation for the workforce.

28 (7) In partnership with entities, including those listed in  
29 paragraph (1), develop an e-portfolio system that allows  
30 participating students to demonstrate their attainment of academic  
31 learning objectives, skills and knowledge that relate to their career  
32 interests, and completion of prerequisites for participation in  
33 courses or training programs. The e-portfolio system may do all  
34 of the following:

35 (A) Ensure that student privacy is protected in accordance with  
36 existing law.

37 (B) Comply with accessibility laws for students with disabilities.

38 (C) Be designed in a manner that supports the use of e-portfolio  
39 content in the accreditation requirements of schools, colleges, and  
40 universities.

1 (8) In partnership with entities, including those listed in  
2 paragraph (1), identify opportunities to enhance students' access  
3 to medical education and medical services through the use of  
4 high-speed Internet connections to the campuses, and opportunities  
5 for education programs and services to support the telehealth efforts  
6 taking place within the state.

7 (d) The lead agency for the California Virtual Campus, in  
8 consultation with the leadership stakeholder group described in  
9 paragraph (1) of subdivision (c) if that group is convened by the  
10 California Virtual Campus grant recipient, shall contract with an  
11 independent third party with expertise in online teaching, learning,  
12 and the development of online courses of study, as approved by  
13 the board, to evaluate the California Virtual Campus. The  
14 evaluation shall include, but not be limited to, an assessment of  
15 the number of faculty, teachers, consortia, informal educators, and  
16 students that use the online courses of study, the quality of students'  
17 experiences, student grades earned, and the cost of the online  
18 course content, comparing the online course content with traditional  
19 textbooks. The board may require additional information that it  
20 determines to be necessary to evaluate the effectiveness and  
21 viability of the California Virtual Campus. This evaluation shall  
22 be submitted to the Legislature no later than three years of the  
23 enactment of this act.

24 SEC. 6. Section 101041 of the Education Code is amended to  
25 read:

26 101041. (a) From the proceeds of bonds issued and sold  
27 pursuant to Article 4 (commencing with Section 101050), the sum  
28 of eight hundred ninety million dollars (\$890,000,000) shall be  
29 deposited in the 2006 University Capital Outlay Bond Fund for  
30 the purposes of this article. When appropriated, these funds shall  
31 be available for expenditure for the purposes of this article.

32 (b) The purposes of this article include assisting in meeting the  
33 capital outlay financing needs of the University of California and  
34 the Hastings College of the Law.

35 (c) Of the amount made available under subdivision (a), the  
36 amount of two hundred million dollars (\$200,000,000) shall be  
37 used for capital improvements that expand and enhance medical  
38 education programs with an emphasis on telehealth aimed at  
39 developing high-tech approaches to health care.

1 (d) Proceeds from the sale of bonds issued and sold for the  
2 purposes of this article may be used to fund construction on  
3 existing campuses, including the construction of buildings and the  
4 acquisition of related fixtures, construction of facilities that may  
5 be used by more than one segment of public higher education  
6 (intersegmental), the renovation and reconstruction of facilities,  
7 site acquisition, the equipping of new, renovated, or reconstructed  
8 facilities, which equipment shall have an average useful life of 10  
9 years; and to provide funds for the payment of preconstruction  
10 costs, including, but not limited to, preliminary plans and working  
11 drawings for facilities of the University of California and the  
12 Hastings College of the Law.

13 SEC. 7. Section 1367 of the Health and Safety Code is amended  
14 to read:

15 1367. A health care service plan and, if applicable, a specialized  
16 health care service plan shall meet the following requirements:

17 (a) Facilities located in this state including, but not limited to,  
18 clinics, hospitals, and skilled nursing facilities to be utilized by  
19 the plan shall be licensed by the State Department of Health  
20 Services, where licensure is required by law. Facilities not located  
21 in this state shall conform to all licensing and other requirements  
22 of the jurisdiction in which they are located.

23 (b) Personnel employed by or under contract to the plan shall  
24 be licensed or certified by their respective board or agency, where  
25 licensure or certification is required by law.

26 (c) Equipment required to be licensed or registered by law shall  
27 be so licensed or registered, and the operating personnel for that  
28 equipment shall be licensed or certified as required by law.

29 (d) The plan shall furnish services in a manner providing  
30 continuity of care and ready referral of patients to other providers  
31 at times as may be appropriate consistent with good professional  
32 practice.

33 (e) (1) All services shall be readily available at reasonable times  
34 to each enrollee consistent with good professional practice. To the  
35 extent feasible, the plan shall make all services readily accessible  
36 to all enrollees consistent with Section 1367.03.

37 (2) To the extent that telehealth services are appropriately  
38 provided through telehealth, as defined in subdivision (a) of Section  
39 2290.5 of the Business and Professions Code, these services shall

1 be considered in determining compliance with Section 1300.67.2  
2 of Title 28 of the California Code of Regulations.

3 (3) The plan shall make all services accessible and appropriate  
4 consistent with Section 1367.04.

5 (f) The plan shall employ and utilize allied health manpower  
6 for the furnishing of services to the extent permitted by law and  
7 consistent with good medical practice.

8 (g) The plan shall have the organizational and administrative  
9 capacity to provide services to subscribers and enrollees. The plan  
10 shall be able to demonstrate to the department that medical  
11 decisions are rendered by qualified medical providers, unhindered  
12 by fiscal and administrative management.

13 (h) (1) Contracts with subscribers and enrollees, including  
14 group contracts, and contracts with providers, and other persons  
15 furnishing services, equipment, or facilities to or in connection  
16 with the plan, shall be fair, reasonable, and consistent with the  
17 objectives of this chapter. All contracts with providers shall contain  
18 provisions requiring a fast, fair, and cost-effective dispute  
19 resolution mechanism under which providers may submit disputes  
20 to the plan, and requiring the plan to inform its providers upon  
21 contracting with the plan, or upon change to these provisions, of  
22 the procedures for processing and resolving disputes, including  
23 the location and telephone number where information regarding  
24 disputes may be submitted.

25 (2) A health care service plan shall ensure that a dispute  
26 resolution mechanism is accessible to noncontracting providers  
27 for the purpose of resolving billing and claims disputes.

28 (3) On and after January 1, 2002, a health care service plan shall  
29 annually submit a report to the department regarding its dispute  
30 resolution mechanism. The report shall include information on the  
31 number of providers who utilized the dispute resolution mechanism  
32 and a summary of the disposition of those disputes.

33 (i) A health care service plan contract shall provide to  
34 subscribers and enrollees all of the basic health care services  
35 included in subdivision (b) of Section 1345, except that the director  
36 may, for good cause, by rule or order exempt a plan contract or  
37 any class of plan contracts from that requirement. The director  
38 shall by rule define the scope of each basic health care service that  
39 health care service plans are required to provide as a minimum for  
40 licensure under this chapter. Nothing in this chapter shall prohibit

1 a health care service plan from charging subscribers or enrollees  
2 a copayment or a deductible for a basic health care service or from  
3 setting forth, by contract, limitations on maximum coverage of  
4 basic health care services, provided that the copayments,  
5 deductibles, or limitations are reported to, and held unobjectionable  
6 by, the director and set forth to the subscriber or enrollee pursuant  
7 to the disclosure provisions of Section 1363.

8 (j) A health care service plan shall not require registration under  
9 the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.)  
10 as a condition for participation by an optometrist certified to use  
11 therapeutic pharmaceutical agents pursuant to Section 3041.3 of  
12 the Business and Professions Code.

13 Nothing in this section shall be construed to permit the director  
14 to establish the rates charged subscribers and enrollees for  
15 contractual health care services.

16 The director's enforcement of Article 3.1 (commencing with  
17 Section 1357) shall not be deemed to establish the rates charged  
18 subscribers and enrollees for contractual health care services.

19 The obligation of the plan to comply with this section shall not  
20 be waived when the plan delegates any services that it is required  
21 to perform to its medical groups, independent practice associations,  
22 or other contracting entities.

23 *SEC. 7.5. Section 1367 of the Health and Safety Code is*  
24 *amended to read:*

25 1367. A health care service plan and, if applicable, a specialized  
26 health care service plan shall meet the following requirements:

27 (a) Facilities located in this state including, but not limited to,  
28 clinics, hospitals, and skilled nursing facilities to be utilized by  
29 the plan shall be licensed by the State Department of ~~Health~~  
30 ~~Services~~ *Public Health*, where licensure is required by law.  
31 Facilities not located in this state shall conform to all licensing  
32 and other requirements of the jurisdiction in which they are located.

33 (b) Personnel employed by or under contract to the plan shall  
34 be licensed or certified by their respective board or agency, where  
35 licensure or certification is required by law.

36 (c) Equipment required to be licensed or registered by law shall  
37 be so licensed or registered, and the operating personnel for that  
38 equipment shall be licensed or certified as required by law.

39 (d) The plan shall furnish services in a manner providing  
40 continuity of care and ready referral of patients to other providers

1 at times as may be appropriate consistent with good professional  
2 practice.

3 (e) (1) All services shall be readily available at reasonable  
4 times to each enrollee consistent with good professional practice.  
5 To the extent feasible, the plan shall make all services readily  
6 accessible to all enrollees consistent with Section 1367.03.

7 (2) To the extent that ~~telemedicine~~ *telehealth* services are  
8 appropriately provided through ~~telemedicine~~, *telehealth*, as defined  
9 in subdivision (a) of Section 2290.5 of the Business and Professions  
10 Code, these services shall be considered in determining compliance  
11 with Section 1300.67.2 of Title 28 of the California Code of  
12 Regulations.

13 (3) The plan shall make all services accessible and appropriate  
14 consistent with Section 1367.04.

15 (f) The plan shall employ and utilize allied health manpower  
16 for the furnishing of services to the extent permitted by law and  
17 consistent with good medical practice.

18 (g) The plan shall have the organizational and administrative  
19 capacity to provide services to subscribers and enrollees. The plan  
20 shall be able to demonstrate to the department that medical  
21 decisions are rendered by qualified medical providers, unhindered  
22 by fiscal and administrative management.

23 (h) (1) Contracts with subscribers and enrollees, including  
24 group contracts, and contracts with providers, and other persons  
25 furnishing services, equipment, or facilities to or in connection  
26 with the plan, shall be fair, reasonable, and consistent with the  
27 objectives of this chapter. All contracts with providers shall contain  
28 provisions requiring a fast, fair, and cost-effective dispute  
29 resolution mechanism under which providers may submit disputes  
30 to the plan, and requiring the plan to inform its providers upon  
31 contracting with the plan, or upon change to these provisions, of  
32 the procedures for processing and resolving disputes, including  
33 the location and telephone number where information regarding  
34 disputes may be submitted.

35 (2) A health care service plan shall ensure that a dispute  
36 resolution mechanism is accessible to noncontracting providers  
37 for the purpose of resolving billing and claims disputes.

38 (3) On and after January 1, 2002, a health care service plan  
39 shall annually submit a report to the department regarding its  
40 dispute resolution mechanism. The report shall include information

1 on the number of providers who utilized the dispute resolution  
2 mechanism and a summary of the disposition of those disputes.

3 (i) A health care service plan contract shall provide to  
4 subscribers and enrollees all of the basic health care services  
5 included in subdivision (b) of Section 1345, except that the director  
6 may, for good cause, by rule or order exempt a plan contract or  
7 any class of plan contracts from that requirement. The director  
8 shall by rule define the scope of each basic health care service that  
9 health care service plans are required to provide as a minimum for  
10 licensure under this chapter. Nothing in this chapter shall prohibit  
11 a health care service plan from charging subscribers or enrollees  
12 a copayment or a deductible for a basic health care service ~~or from~~  
13 ~~setting forth, by contract, limitations on maximum coverage of~~  
14 ~~basic health care services, consistent with Section 1367.005,~~  
15 ~~provided that the copayments, deductibles, or limitations~~  
16 ~~copayments or deductibles~~ are reported to, and held  
17 unobjectionable by, the director and set forth to the subscriber or  
18 enrollee pursuant to the disclosure provisions of Section 1363.

19 (j) A health care service plan shall not require registration under  
20 the *federal* Controlled Substances Act of 1970 (21 U.S.C. Sec.  
21 801 et seq.) as a condition for participation by an optometrist  
22 certified to use therapeutic pharmaceutical agents pursuant to  
23 Section 3041.3 of the Business and Professions Code.

24 Nothing in this section shall be construed to permit the director  
25 to establish the rates charged subscribers and enrollees for  
26 contractual health care services.

27 The director's enforcement of Article 3.1 (commencing with  
28 Section 1357) shall not be deemed to establish the rates charged  
29 subscribers and enrollees for contractual health care services.

30 The obligation of the plan to comply with this ~~section~~ *chapter*  
31 shall not be waived when the plan delegates any services that it is  
32 required to perform to its medical groups, independent practice  
33 associations, or other contracting entities.

34 SEC. 8. Section 1374.13 of the Health and Safety Code is  
35 amended to read:

36 1374.13. (a) For the purposes of this section, the definitions  
37 in subdivision (a) of Section 2290.5 of the Business and Professions  
38 Code shall apply.

39 (b) It is the intent of the Legislature to recognize the practice  
40 of telehealth as a legitimate means by which an individual may

1 receive health care services from a health care provider without  
2 in-person contact with the health care provider.

3 (c) No health care service plan shall require that in-person  
4 contact occur between a health care provider and a patient before  
5 payment is made for the covered services appropriately provided  
6 through telehealth, subject to the terms and conditions of the  
7 contract entered into between the enrollee or subscriber and the  
8 health care service plan, and between the health care service plan  
9 and its participating providers or provider groups.

10 (d) No health care service plan shall limit the type of setting  
11 where services are provided for the patient or by the health care  
12 provider before payment is made for the covered services  
13 appropriately provided through telehealth, subject to the terms and  
14 conditions of the contract entered into between the enrollee or  
15 subscriber and the health care service plan, and between the health  
16 care service plan and its participating providers or provider groups.

17 (e) The requirements of this section shall also apply to health  
18 care service plan and Medi-Cal managed care plan contracts with  
19 the State Department of Health Care Services pursuant to Chapter  
20 7 (commencing with Section 14000) or Chapter 8 (commencing  
21 with Section 14200) of Part 3 of Division 9 of the Welfare and  
22 Institutions Code.

23 (f) Notwithstanding any other provision, this section shall not  
24 be interpreted to authorize a health care service plan to require the  
25 use of telehealth when the health care provider has determined  
26 that it is not appropriate.

27 SEC. 9. Section 1375.1 of the Health and Safety Code is  
28 amended to read:

29 1375.1. (a) Every plan shall have and shall demonstrate to the  
30 director that it has all of the following:

31 (1) A fiscally sound operation and adequate provision against  
32 the risk of insolvency.

33 (2) Assumed full financial risk on a prospective basis for the  
34 provision of covered health care services, except that a plan may  
35 obtain insurance or make other arrangements for the cost of  
36 providing to any subscriber or enrollee covered health care services,  
37 the aggregate value of which exceeds five thousand dollars (\$5,000)  
38 in any year, for the cost of covered health care services provided  
39 to its members other than through the plan because medical  
40 necessity required their provision before they could be secured

1 through the plan, and for not more than 90 percent of the amount  
2 by which its costs for any of its fiscal years exceed 115 percent of  
3 its income for that fiscal year.

4 (3) A procedure for prompt payment or denial of provider and  
5 subscriber or enrollee claims, including those telehealth services,  
6 as defined in subdivision (a) of Section 2290.5 of the Business and  
7 Professions Code, covered by the plan. Except as provided in  
8 Section 1371, a procedure meeting the requirements of Subchapter  
9 G of the regulations (29 C.F.R. Part 2560) under Public Law  
10 93-406 (88 Stats. 829-1035, 29 U.S.C. Secs. 1001 et seq.) shall  
11 satisfy this requirement.

12 (b) In determining whether the conditions of this section have  
13 been met, the director shall consider, but not be limited to, the  
14 following:

15 (1) The financial soundness of the plan's arrangements for health  
16 care services and the schedule of rates and charges used by the  
17 plan.

18 (2) The adequacy of working capital.

19 (3) Agreements with providers for the provision of health care  
20 services.

21 (c) For the purposes of this section, "covered health care  
22 services" means health care services provided under all plan  
23 contracts.

24 SEC. 10. Section 123149.5 of the Health and Safety Code is  
25 amended to read:

26 123149.5. (a) It is the intent of the Legislature that all medical  
27 information transmitted during the delivery of health care via  
28 telehealth, as defined in subdivision (a) of Section 2290.5 of the  
29 Business and Professions Code, become part of the patient's  
30 medical record maintained by the licensed health care provider.

31 (b) This section shall not be construed to limit or waive any of  
32 the requirements of Chapter 1 (commencing with Section 123100)  
33 of Part 1 of Division 106 of the Health and Safety Code.

34 SEC. 11. Section 127620 of the Health and Safety Code is  
35 amended to read:

36 127620. (a) The Office of Statewide Health Planning and  
37 Development, in conjunction with the State Department of Health  
38 Services, shall act as the coordinating agency to develop a strategic  
39 plan that would assist rural California to prepare for health care  
40 reform. The plan shall assist in the coordination and integration

1 of all rural health care services on the birth to death continuum  
2 and serve as an infrastructure for rural communities to establish  
3 priorities and develop appropriate programs.

4 (b) The office shall designate representatives from provider  
5 groups including rural hospitals, clinics, physicians, other rural  
6 providers including psychologists, counties, beneficiaries, and  
7 other entities directly affected by the plan. The office shall convene  
8 meetings with the objectives of doing all of the following:

9 (1) Assessing the current status of health care in rural  
10 communities.

11 (2) Assembling and reviewing data related to available programs  
12 and resources for rural California.

13 (3) Assembling and reviewing data related to other states'  
14 strategic plans for rural communities.

15 (4) Reviewing and integrating the office's rural work plan, as  
16 appropriate.

17 (5) Making assumptions about the future of health care and  
18 developing a strategic plan based on these assumptions.

19 (c) The rural health care strategic plan shall address all of the  
20 following:

21 (1) The special needs of the elderly and of ethnic populations.

22 (2) Elimination of barriers in planning and coordinating health  
23 services.

24 (3) The lack of primary and specialty providers.

25 (4) Access to emergency services.

26 (5) The role of new technologies, including, but not limited to,  
27 telehealth.

28 SEC. 12. Section 10123.13 of the Insurance Code is amended  
29 to read:

30 10123.13. (a) Every insurer issuing group or individual policies  
31 of health insurance that covers hospital, medical, or surgical  
32 expenses, including those telehealth services covered by the insurer  
33 as defined in subdivision (a) of Section 2290.5 of the Business and  
34 Professions Code, shall reimburse claims or any portion of any  
35 claim, whether in state or out of state, for those expenses as soon  
36 as practical, but no later than 30 working days after receipt of the  
37 claim by the insurer unless the claim or portion thereof is contested  
38 by the insurer, in which case the claimant shall be notified, in  
39 writing, that the claim is contested or denied, within 30 working  
40 days after receipt of the claim by the insurer. The notice that a

1 claim is being contested or denied shall identify the portion of the  
2 claim that is contested or denied and the specific reasons including  
3 for each reason the factual and legal basis known at that time by  
4 the insurer for contesting or denying the claim. If the reason is  
5 based solely on facts or solely on law, the insurer is required to  
6 provide only the factual or the legal basis for its reason for  
7 contesting or denying the claim. The insurer shall provide a copy  
8 of the notice to each insured who received services pursuant to the  
9 claim that was contested or denied and to the insured's health care  
10 provider that provided the services at issue. The notice shall advise  
11 the provider who submitted the claim on behalf of the insured or  
12 pursuant to a contract for alternative rates of payment and the  
13 insured that either may seek review by the department of a claim  
14 that the insurer contested or denied, and the notice shall include  
15 the address, Internet Web site address, and telephone number of  
16 the unit within the department that performs this review function.  
17 The notice to the provider may be included on either the  
18 explanation of benefits or remittance advice and shall also contain  
19 a statement advising the provider of its right to enter into the  
20 dispute resolution process described in Section 10123.137. The  
21 notice to the insured may also be included on the explanation of  
22 benefits.

23 (b) If an uncontested claim is not reimbursed by delivery to the  
24 claimant's address of record within 30 working days after receipt,  
25 interest shall accrue and shall be payable at the rate of 10 percent  
26 per annum beginning with the first calendar day after the  
27 30-working day period.

28 (c) For purposes of this section, a claim, or portion thereof, is  
29 reasonably contested when the insurer has not received a completed  
30 claim and all information necessary to determine payer liability  
31 for the claim, or has not been granted reasonable access to  
32 information concerning provider services. Information necessary  
33 to determine liability for the claims includes, but is not limited to,  
34 reports of investigations concerning fraud and misrepresentation,  
35 and necessary consents, releases, and assignments, a claim on  
36 appeal, or other information necessary for the insurer to determine  
37 the medical necessity for the health care services provided to the  
38 claimant. If an insurer has received all of the information necessary  
39 to determine payer liability for a contested claim and has not  
40 reimbursed a claim determined to be payable within 30 working

1 days of receipt of that information, interest shall accrue and be  
2 payable at a rate of 10 percent per annum beginning with the first  
3 calendar day after the 30-working day period.

4 (d) The obligation of the insurer to comply with this section  
5 shall not be deemed to be waived when the insurer requires its  
6 contracting entities to pay claims for covered services.

7 SEC. 13. Section 10123.147 of the Insurance Code is amended  
8 to read:

9 10123.147. (a) Every insurer issuing group or individual  
10 policies of health insurance that covers hospital, medical, or  
11 surgical expenses, including those telehealth services covered by  
12 the insurer as defined in subdivision (a) of Section 2290.5 of the  
13 Business and Professions Code, shall reimburse each complete  
14 claim, or portion thereof, whether in state or out of state, as soon  
15 as practical, but no later than 30 working days after receipt of the  
16 complete claim by the insurer. However, an insurer may contest  
17 or deny a claim, or portion thereof, by notifying the claimant, in  
18 writing, that the claim is contested or denied, within 30 working  
19 days after receipt of the complete claim by the insurer. The notice  
20 that a claim, or portion thereof, is contested shall identify the  
21 portion of the claim that is contested, by revenue code, and the  
22 specific information needed from the provider to reconsider the  
23 claim. The notice that a claim, or portion thereof, is denied shall  
24 identify the portion of the claim that is denied, by revenue code,  
25 and the specific reasons for the denial, including the factual and  
26 legal basis known at that time by the insurer for each reason. If  
27 the reason is based solely on facts or solely on law, the insurer is  
28 required to provide only the factual or legal basis for its reason to  
29 deny the claim. The insurer shall provide a copy of the notice  
30 required by this subdivision to each insured who received services  
31 pursuant to the claim that was contested or denied and to the  
32 insured's health care provider that provided the services at issue.  
33 The notice required by this subdivision shall include a statement  
34 advising the provider who submitted the claim on behalf of the  
35 insured or pursuant to a contract for alternative rates of payment  
36 and the insured that either may seek review by the department of  
37 a claim that was contested or denied by the insurer and the address,  
38 Internet Web site address, and telephone number of the unit within  
39 the department that performs this review function. The notice to  
40 the provider may be included on either the explanation of benefits

1 or remittance advice and shall also contain a statement advising  
2 the provider of its right to enter into the dispute resolution process  
3 described in Section 10123.137. An insurer may delay payment  
4 of an uncontested portion of a complete claim for reconsideration  
5 of a contested portion of that claim so long as the insurer pays  
6 those charges specified in subdivision (b).

7 (b) If a complete claim, or portion thereof, that is neither  
8 contested nor denied, is not reimbursed by delivery to the  
9 claimant’s address of record within the 30 working days after  
10 receipt, the insurer shall pay the greater of fifteen dollars (\$15)  
11 per year or interest at the rate of 10 percent per annum beginning  
12 with the first calendar day after the 30-working day period. An  
13 insurer shall automatically include the fifteen dollars (\$15) per  
14 year or interest due in the payment made to the claimant, without  
15 requiring a request therefor.

16 (c) For the purposes of this section, a claim, or portion thereof,  
17 is reasonably contested if the insurer has not received the completed  
18 claim. A paper claim from an institutional provider shall be deemed  
19 complete upon submission of a legible emergency department  
20 report and a completed UB 92 or other format adopted by the  
21 National Uniform Billing Committee, and reasonable relevant  
22 information requested by the insurer within 30 working days of  
23 receipt of the claim. An electronic claim from an institutional  
24 provider shall be deemed complete upon submission of an  
25 electronic equivalent to the UB 92 or other format adopted by the  
26 National Uniform Billing Committee, and reasonable relevant  
27 information requested by the insurer within 30 working days of  
28 receipt of the claim. However, if the insurer requests a copy of the  
29 emergency department report within the 30 working days after  
30 receipt of the electronic claim from the institutional provider, the  
31 insurer may also request additional reasonable relevant information  
32 within 30 working days of receipt of the emergency department  
33 report, at which time the claim shall be deemed complete. A claim  
34 from a professional provider shall be deemed complete upon  
35 submission of a completed HCFA 1500 or its electronic equivalent  
36 or other format adopted by the National Uniform Billing  
37 Committee, and reasonable relevant information requested by the  
38 insurer within 30 working days of receipt of the claim. The provider  
39 shall provide the insurer reasonable relevant information within  
40 15 working days of receipt of a written request that is clear and

1 specific regarding the information sought. If, as a result of  
2 reviewing the reasonable relevant information, the insurer requires  
3 further information, the insurer shall have an additional 15 working  
4 days after receipt of the reasonable relevant information to request  
5 the further information, notwithstanding any time limit to the  
6 contrary in this section, at which time the claim shall be deemed  
7 complete.

8 (d) This section shall not apply to claims about which there is  
9 evidence of fraud and misrepresentation, to eligibility  
10 determinations, or in instances where the plan has not been granted  
11 reasonable access to information under the provider's control. An  
12 insurer shall specify, in a written notice to the provider within 30  
13 working days of receipt of the claim, which, if any, of these  
14 exceptions applies to a claim.

15 (e) If a claim or portion thereof is contested on the basis that  
16 the insurer has not received information reasonably necessary to  
17 determine payer liability for the claim or portion thereof, then the  
18 insurer shall have 30 working days after receipt of this additional  
19 information to complete reconsideration of the claim. If a claim,  
20 or portion thereof, undergoing reconsideration is not reimbursed  
21 by delivery to the claimant's address of record within the 30  
22 working days after receipt of the additional information, the insurer  
23 shall pay the greater of fifteen dollars (\$15) per year or interest at  
24 the rate of 10 percent per annum beginning with the first calendar  
25 day after the 30-working day period. An insurer shall automatically  
26 include the fifteen dollars (\$15) per year or interest due in the  
27 payment made to the claimant, without requiring a request therefor.

28 (f) An insurer shall not delay payment on a claim from a  
29 physician or other provider to await the submission of a claim from  
30 a hospital or other provider, without citing specific rationale as to  
31 why the delay was necessary and providing a monthly update  
32 regarding the status of the claim and the insurer's actions to resolve  
33 the claim, to the provider that submitted the claim.

34 (g) An insurer shall not request or require that a provider waive  
35 its rights pursuant to this section.

36 (h) This section shall apply only to claims for services rendered  
37 to a patient who was provided emergency services and care as  
38 defined in Section 1317.1 of the Health and Safety Code in the  
39 United States on or after September 1, 1999.

1 (i) This section shall not be construed to affect the rights or  
2 obligations of any person pursuant to Section 10123.13.

3 (j) This section shall not be construed to affect a written  
4 agreement, if any, of a provider to submit bills within a specified  
5 time period.

6 SEC. 14. Section 14132.725 of the Welfare and Institutions  
7 Code is amended to read:

8 14132.725. (a) Commencing July 1, 2006, to the extent that  
9 federal financial participation is available, face-to-face contact  
10 between a health care provider and a patient shall not be required  
11 under the Medi-Cal program for teleophthalmology and  
12 teledermatology by store and forward. Services appropriately  
13 provided through the store and forward process are subject to  
14 billing and reimbursement policies developed by the department.

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

37 (c) Notwithstanding Chapter 3.5 (commencing with Section  
38 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
39 the department may implement, interpret, and make specific this

1 section by means of all-county letters, provider bulletins, and  
2 similar instructions.

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

7 ~~SEC. 15. Section 14132.73 of the Welfare and Institutions~~  
8 ~~Code is amended to read:~~

9 ~~14132.73. The State Department of Health Services shall allow~~  
10 ~~psychiatrists to receive fee-for-service Medi-Cal reimbursement~~  
11 ~~for services provided through telehealth until June 30, 2004, or~~  
12 ~~until the State Department of Mental Health and mental health~~  
13 ~~plans, in collaboration with stakeholders, develop a method for~~  
14 ~~reimbursing psychiatric services provided through telehealth that~~  
15 ~~is administratively feasible for the mental health plans, primary~~  
16 ~~care providers, and psychiatrists providing the services, whichever~~  
17 ~~occurs later.~~

18 *SEC. 15. Section 14132.73 of the Welfare and Institutions Code*  
19 *is amended to read:*

20 14132.73. The State Department of Health Care Services shall  
21 allow psychiatrists to receive fee-for-service Medi-Cal  
22 reimbursement for services provided through telemedicine  
23 telehealth in accordance with the Medicaid state plan.

24 SEC. 16. Section 14594 is added to the Welfare and Institutions  
25 Code, to read:

26 14594. (a) For the purposes of this section, the definitions in  
27 subdivision (a) of Section 2290.5 of the Business and Professions  
28 Code shall apply.

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

33 (c) No PACE organization shall require that in-person contact  
34 occur between a health care provider and a patient before payment  
35 is made for the covered services appropriately provided through  
36 telehealth, subject to the terms and conditions of the contract  
37 entered into between the enrollee or subscriber and the PACE  
38 organization, and between the PACE organization and its  
39 participating providers or provider groups.

1 (d) No PACE organization shall limit the type of setting where  
2 services are provided for the patient or by the health care provider  
3 before payment is made for the covered services appropriately  
4 provided through telehealth, subject to the terms and conditions  
5 of the contract entered into between the enrollee or subscriber and  
6 the PACE organization, and between the PACE organization and  
7 its participating providers or provider groups.

8 (e) Notwithstanding any other provision, this section shall not  
9 be interpreted to authorize a PACE organization to require the use  
10 of telehealth when the health care provider has determined that it  
11 is not appropriate.

12 *SEC. 17. Section 7.5 of this bill incorporates amendments to*  
13 *Section 1367 of the Health and Safety Code proposed by both this*  
14 *bill and Assembly Bill 1800. It shall only become operative if (1)*  
15 *both bills are enacted and become effective on or before January*  
16 *1, 2013, (2) each bill amends Section 1367 of the Health and Safety*  
17 *Code, and (3) this bill is enacted after Assembly Bill 1800, in which*  
18 *case Section 7 of this bill shall not become operative.*

19 ~~SEC. 17.~~

20 *SEC. 18.* No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.