

ASSEMBLY BILL

No. 2507

Introduced by Assembly Member Gordon

February 19, 2016

An act to amend Section 2290.5 of the Business and Professions Code, to amend Section 1374.13 of the Health and Safety Code, and to amend Section 10123.85 of the Insurance Code, relating to telehealth.

LEGISLATIVE COUNSEL'S DIGEST

AB 2507, as introduced, Gordon. Telehealth: access.

(1) Existing law defines “telehealth” as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site, and that facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers. Existing law requires that prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth inform the patient about the use of telehealth and obtain documented verbal or written consent from the patient for the use of telehealth.

This bill would add video communications, telephone communications, email communications, and synchronous text or chat conferencing to the definition of telehealth. The bill would also provide that the required prior consent for telehealth services may be digital as well as oral or written.

(2) 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 also provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits health care service plans and health insurers from limiting the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee, insured, subscriber, or policyholder and the plan or insurer, and between the plan or insurer and its participating providers or provider groups.

This bill would also prohibit a health care provider from requiring the use of telehealth when a patient prefers to receive health care services in person and would require health care service plans and health insurers to include coverage and reimbursement for services provided to a patient through telehealth to the same extent as though provided in person or by some other means, as specified. The bill would prohibit a health care service plan or health insurer from limiting coverage or reimbursement based on a contract entered into between the plan or insurer and an independent telehealth provider. The bill would prohibit a health care service plan or a health insurer from interfering with the physician-patient relationship based on the modality utilized for services appropriately provided through telehealth.

Because a willful violation of the bill's provisions by a health care service plan would be a crime, it would impose a state-mandated local program.

(3) 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 2290.5 of the Business and Professions
- 2 Code is amended to read:
- 3 2290.5. (a) For purposes of this division, the following
- 4 definitions ~~shall~~ apply:

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

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

8 (3) “Health care provider” means either of the following:

9 (A) A person who is licensed under this division.

10 (B) A marriage and family therapist intern or trainee functioning
11 pursuant to Section 4980.43.

12 (4) “Originating site” means a site where a patient is located at
13 the time health care services are provided via a telecommunications
14 system or where the asynchronous store and forward service
15 originates.

16 (5) “Synchronous interaction” means a real-time interaction
17 between a patient and a health care provider located at a distant
18 site.

19 (6) “Telehealth” means the mode of delivering health care
20 services and public health via information and communication
21 technologies to facilitate the diagnosis, consultation, treatment,
22 education, care management, and self-management of a patient’s
23 health care while the patient is at the originating site and the health
24 care provider is at a distant site. Telehealth facilitates patient
25 self-management and caregiver support for patients and includes
26 synchronous interactions and asynchronous store and forward
27 ~~transfers.~~ *transfers, including, but not limited to, video*
28 *communications, telephone communications, email*
29 *communications, and synchronous text or chat conferencing.*

30 (b) Prior to the delivery of health care via telehealth, the health
31 care provider initiating the use of telehealth shall inform the patient
32 about the use of telehealth and obtain ~~verbal or written~~ *oral,*
33 *written, or digital* consent from the patient for the use of telehealth
34 as an acceptable mode of delivering health care services and public
35 health. The consent shall be documented.

36 (c) Nothing in this section shall preclude a patient from receiving
37 in-person health care delivery services during a specified course
38 of health care and treatment after agreeing to receive services via
39 telehealth.

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

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

(f) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(g) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(h) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

SEC. 2. Section 1374.13 of the Health and Safety Code is amended to read:

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

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

(c) ~~No~~A health care service plan shall *not* require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided

1 through telehealth, subject to the terms and conditions of the
2 contract entered into between the enrollee or subscriber and the
3 health care service plan, and between the health care service plan
4 and its participating providers or provider groups.

5 (d) ~~No~~ A health care service plan shall *not* limit the type of
6 setting where services are provided for the patient or by the health
7 care provider before payment is made for the covered services
8 appropriately provided through telehealth, subject to the terms and
9 conditions of the contract entered into between the enrollee or
10 subscriber and the health care service plan, and between the health
11 care service plan and its participating providers or provider groups.

12 (e) The requirements of this section shall also apply to health
13 care service plan and Medi-Cal managed care plan contracts with
14 the State Department of Health Care Services pursuant to Chapter
15 7 (commencing with Section 14000) or Chapter 8 (commencing
16 with Section 14200) of Part 3 of Division 9 of the Welfare and
17 Institutions Code.

18 (f) Notwithstanding any ~~other provision, law,~~ this section shall
19 not be interpreted to authorize a health care service plan to require
20 the use of telehealth when the health care provider has determined
21 that it is not appropriate.

22 (g) *Notwithstanding any law, this section shall not be interpreted*
23 *to authorize a health care provider to require the use of telehealth*
24 *when a patient prefers to be treated in an in-person setting.*
25 *Telehealth services should be physician- or practitioner-guided*
26 *and patient-preferred.*

27 (h) *A health care service plan shall include in its plan contract*
28 *coverage and reimbursement for services provided to a patient*
29 *through telehealth to the same extent as though provided in person*
30 *or by some other means.*

31 (1) *A health care service plan shall reimburse the health care*
32 *provider for the diagnosis, consultation, or treatment of the*
33 *enrollee when the service is delivered through telehealth at a rate*
34 *that is at least as favorable to the health care provider as those*
35 *established for the equivalent services when provided in person*
36 *or by some other means.*

37 (2) *A health care service plan may subject the coverage of*
38 *services delivered via telehealth to copayments, coinsurance, or*
39 *deductible provided that the amounts charged are at least as*

1 *favorable to the enrollee as those established for the equivalent*
2 *services when provided in person or by some other means.*

3 *(i) A health care service plan shall not limit coverage or*
4 *reimbursement based on a contract entered into between the health*
5 *care service plan and an independent telehealth provider or*
6 *interfere with the physician-patient relationship based on the*
7 *modality utilized for services appropriately provided through*
8 *telehealth.*

9 SEC. 3. Section 10123.85 of the Insurance Code is amended
10 to read:

11 10123.85. (a) For purposes of this section, the definitions in
12 subdivision (a) of Section 2290.5 of the Business and Professions
13 Code shall apply.

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

18 (c) No health insurer shall require that in-person contact occur
19 between a health care provider and a patient before payment is
20 made for the services appropriately provided through telehealth,
21 subject to the terms and conditions of the contract entered into
22 between the policyholder or contractholder and the insurer, and
23 between the insurer and its participating providers or provider
24 groups.

25 (d) No health insurer shall limit the type of setting where
26 services are provided for the patient or by the health care provider
27 before payment is made for the covered services appropriately
28 provided by telehealth, subject to the terms and conditions of the
29 contract between the policyholder or contract holder and the
30 insurer, and between the insurer and its participating providers or
31 provider groups.

32 (e) Notwithstanding any other provision, this section shall not
33 be interpreted to authorize a health insurer to require the use of
34 telehealth when the health care provider has determined that it is
35 not appropriate.

36 *(f) Notwithstanding any law, this section shall not be interpreted*
37 *to authorize a health care provider to require the use of telehealth*
38 *when a patient prefers to be treated in an in-person setting.*
39 *Telehealth services should be physician- or practitioner-guided*
40 *and patient-preferred.*

1 (g) A health insurer shall include in its policy coverage and
2 reimbursement for services provided to a patient through telehealth
3 to the same extent as though provided in person or by some other
4 means.

5 (1) A health insurer shall reimburse the health care provider
6 for the diagnosis, consultation, or treatment of the insured when
7 the service is delivered through telehealth at a rate that is at least
8 as favorable to the health care provider as those established for
9 the equivalent services when provided in person or by some other
10 means.

11 (2) A health insurer may subject the coverage of services
12 delivered via telehealth to copayments, coinsurance, or deductible
13 provided that the amounts charged are at least as favorable to the
14 insured as those established for the equivalent services when
15 provided in person or by some other means.

16 (h) A health insurer shall not limit coverage or reimbursement
17 based on a contract entered into between the health insurer and
18 an independent telehealth provider or interfere with the
19 physician-patient relationship based on the modality utilized for
20 services appropriately provided through telehealth.

21 SEC. 4. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.