

AB 809 (Logue) – Healing Arts: Telehealth

Introduced February 21, 2013, Amended April 29, 2013

This bill would require prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth at the originating site to verbally inform the patient about the use of telehealth and request the patient's verbal consent, which may apply in the present instance and for any subsequent use of telehealth. Provides that nothing in this bill precludes a patient from receiving in-person health care delivery services during a course of treatment after agreeing to receive services via telehealth.

Existing Law:

- 1) 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. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.
- 2) Requires prior to the delivery of health care via telehealth, the health care provider at the originating site to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Requires the verbal consent to be documented in the patient's medical record.
- 3) States that all laws regarding the confidentiality of health care information and a patient's rights to his or her medical information apply to telehealth interactions.
- 4) Exempts a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.
- 5) States notwithstanding any other provision of law and for purposes of 1) through 4) above that 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 federal regulations. States legislative intent to authorize a hospital to grant privileges to and verify and approve credentials for providers of telehealth.
- 6) States that "telehealth" includes "telemedicine," as specified.
- 7) Makes the failure of a health care provider to comply with 1) through 6) above unprofessional conduct.

8) Provides that 1) through 7) above 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.

This bill:

1) Deletes the requirement in existing law that prior to the delivery of health care via telehealth, the health care provider at the originating site verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Deletes the requirement for the verbal consent to be documented in the patient's medical record.

2) Replaces the requirement deleted in 1) with a requirement that prior to delivery of health care via telehealth, the health care provider at the originating site shall provide the patient with a waiver for the course of treatment involving telehealth services to obtain informed consent for the agreed upon course of treatment. Requires the signed waiver to be contained in the patient's medical record.

3) Provides that nothing in this bill precludes a patient from receiving in-person health care delivery services during a course of treatment after agreeing to receive services via telehealth.

4) Removes the unprofessional conduct provision cross reference from licensing laws related to various health care providers including dentists, marriage and family therapists, licensed educational psychologists, licensees of the Board of Behavioral Sciences, and Social Workers.

According to the author, this bill would address a problem in existing law amended by AB 415 (Logue), Chapter 547, Statutes of 2011, the Telemedicine Advancement Act of 2011. The author states that AB 415 replaced and updated the outdated terminology of "telemedicine" with "telehealth," to reflect the current use of telehealth in California's healthcare system, providing a broader range of services than contained in the outdated 1996 model statute. Under AB 415, in order to ensure that both physicians and patients understood that telehealth may be used to treat a patient, a physician is required to obtain verbal consent for each and every visit with the patient.

Within a year after implementation, physicians have reported that this constant requirement is onerous and burdensome on their ability to treat patients efficiently. This bill will allow the first instance of consent to serve as consent for subsequent telehealth uses.

The California Association of Physician Groups supports this bill because telehealth is a critical component of the strategy to expand access to health care across California and this provides important clean-up provisions to help this technology come into its own. The Association of California Healthcare Districts states that eliminating the need for health care workers to obtain oral consent to receive telehealth services during every visit, allows a patient to be comfortable with the standard, that telehealth may be used when receiving health care services.

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 958

Introduced by Assembly Member Jones

February 22, 2013

An act to amend Sections 3025.5 and 3111 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as amended, Jones. Child custody: evaluations and reports.

Existing law permits a court to appoint a child custody evaluator, who, except as specified, must be licensed as a physician, as a psychologist, as a marriage and family therapist, or as a clinical social worker, to conduct a child custody evaluation and file a written confidential report on his or her evaluation in any contested child custody or visitation rights proceeding. Existing law places limitations on the disclosure of the evaluator's written confidential report, specifying in what circumstances the written confidential report may be disclosed.

This bill would expand the circumstances in which the written confidential report may be disclosed by requiring a court to disclose the report to the licensing board governing the child custody evaluator upon receiving a written request from the board, and by allowing a person who is permitted to possess the written confidential report to provide a copy of the report to the child custody evaluator's licensing board in, order to assist the board in investigating allegations that the child custody evaluator engaged in unprofessional conduct. This bill would also specify in what circumstances the board may utilize the

report, the procedures the board must follow when utilizing the report, and to whom the board may disclose the report.

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

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

1 SECTION 1. Section 3025.5 of the Family Code is amended
2 to read:
3 3025.5. (a) In any proceeding involving child custody or
4 visitation rights, if a report containing psychological evaluations
5 of a child or recommendations regarding custody of, or visitation
6 with, a child is submitted to the court, including, but not limited
7 to, a report created pursuant to Chapter 6 (commencing with
8 Section 3110) of this part, a recommendation made to the court
9 pursuant to Section 3183, and a written statement of issues and
10 contentions pursuant to subdivision (b) of Section 3151, that
11 information shall be contained in a document that shall be placed
12 in the confidential portion of the court file of the proceeding, and
13 may not be disclosed, except to the following persons:
14 (1) A party to the proceeding and his or her attorney.
15 (2) A federal or state law enforcement officer, judicial officer,
16 court employee, or family court facilitator of the superior court of
17 the county in which the action was filed, or an employee or agent
18 of that facilitator, acting within the scope of his or her duties.
19 (3) Counsel appointed for the child pursuant to Section 3150.
20 (4) Any other person upon order of the court for good cause.
21 (b) Notwithstanding subdivision (a), upon receiving a written
22 request from an authorized representative of the licensing board
23 governing a child custody evaluator who prepared a report pursuant
24 to Section 3111, the court shall disclose a copy of the report in
25 order to assist the board in investigating allegations that the child
26 custody evaluator engaged in unprofessional conduct related to
27 the creation of the report. The confidential information contained
28 in the report shall remain confidential except for purposes of
29 investigating the alleged unprofessional conduct of the child
30 custody evaluator, or a criminal, civil, or administrative proceeding
31 in relation thereto. The confidential information may be used by
32 the licensing board in a criminal, civil, or administrative
33 proceeding. The confidential information shall be available only

1 to the judge or hearing officer and to the parties to the ~~case.~~ *case,*
2 *including, but not limited to, the licensing board and its witnesses.*
3 Names that are confidential shall be listed in attachments separate
4 from the general pleadings. The confidential information shall be
5 sealed after the conclusion of the criminal, civil, or administrative
6 hearing, and may not subsequently be released. If the confidential
7 information does not result in a criminal, civil, or administrative
8 proceeding, it shall be sealed after the licensing board decides that
9 no further action will be taken in the matter of suspected licensing
10 violations. ~~Except as otherwise provided in this subdivision,~~
11 ~~confidential information in the possession of the licensing board~~
12 ~~may not contain the name of the minor.~~

13 SEC. 2. Section 3111 of the Family Code is amended to read:

14 3111. (a) In any contested proceeding involving child custody
15 or visitation rights, the court may appoint a child custody evaluator
16 to conduct a child custody evaluation in cases where the court
17 determines it is in the best interests of the child. The child custody
18 evaluation shall be conducted in accordance with the standards
19 adopted by the Judicial Council pursuant to Section 3117, and all
20 other standards adopted by the Judicial Council regarding child
21 custody evaluations. If directed by the court, the court-appointed
22 child custody evaluator shall file a written confidential report on
23 his or her evaluation. At least 10 days before any hearing regarding
24 custody of the child, the report shall be filed with the clerk of the
25 court in which the custody hearing will be conducted and served
26 on the parties or their attorneys, and any other counsel appointed
27 for the child pursuant to Section 3150. The report may be
28 considered by the court.

29 (b) The report shall not be made available other than as provided
30 in subdivision (a) or (g), or as described in Section 204 of the
31 Welfare and Institutions Code or Section 1514.5 of the Probate
32 Code. Any information obtained from access to a juvenile court
33 case file, as defined in subdivision (e) of Section 827 of the Welfare
34 and Institutions Code, is confidential and shall only be disseminated
35 as provided by paragraph (4) of subdivision (a) of Section 827 of
36 the Welfare and Institutions Code.

37 (c) The report may be received in evidence on stipulation of all
38 interested parties and is competent evidence as to all matters
39 contained in the report.

1 (d) If the court determines that an unwarranted disclosure of a
2 written confidential report has been made, the court may impose
3 a monetary sanction against the disclosing party. The sanction
4 shall be in an amount sufficient to deter repetition of the conduct,
5 and may include reasonable attorney's fees, costs incurred, or both,
6 unless the court finds that the disclosing party acted with substantial
7 justification or that other circumstances make the imposition of
8 the sanction unjust. The court shall not impose a sanction pursuant
9 to this subdivision that imposes an unreasonable financial burden
10 on the party against whom the sanction is imposed. This
11 subdivision shall become operative on January 1, 2010.

12 (e) The Judicial Council shall, by January 1, 2010, do the
13 following:

14 (1) Adopt a form to be served with every child custody
15 evaluation report that informs the report recipient of the
16 confidentiality of the report and the potential consequences for the
17 unwarranted disclosure of the report.

18 (2) Adopt a rule of court to require that, when a court-ordered
19 child custody evaluation report is served on the parties, the form
20 specified in paragraph (1) shall be included with the report.

21 (f) For purposes of this section, a disclosure is unwarranted if
22 it is done either recklessly or maliciously, and is not in the best
23 interests of the child.

24 (g) (1) A party permitted to possess the report may provide a
25 copy of the report to an authorized representative of the licensing
26 board governing the child custody evaluator who prepared the
27 report in order to assist the board in investigating allegations that
28 the child custody evaluator engaged in unprofessional conduct
29 related to the creation of the report. The confidential information
30 contained in the report shall remain confidential except for
31 purposes of investigating the alleged unprofessional conduct of
32 the child custody evaluator, or a criminal, civil, or administrative
33 proceeding in relation thereto. The confidential information may
34 be used by the licensing board in a criminal, civil, or administrative
35 proceeding. The confidential information shall be available only
36 to the judge or hearing officer and to the parties to the ~~case~~: *case*,
37 *including, but not limited to, the licensing board and its witnesses*.
38 Names that are confidential shall be listed in attachments separate
39 from the general pleadings. The confidential information shall be
40 sealed after the conclusion of the criminal, civil, or administrative

1 hearing, and may not subsequently be released. If the confidential
2 information does not result in a criminal, civil, or administrative
3 proceeding, it shall be sealed after the licensing board decides that
4 no further action will be taken in the matter of suspected licensing
5 violations. ~~Except as otherwise provided in this subdivision,~~
6 ~~confidential information in the possession of the licensing board~~
7 ~~may not contain the name of the minor.~~

8 (2) For purposes of this section, a disclosure of the confidential
9 written report pursuant to this subdivision shall not be considered
10 unwarranted.