



MEMORANDUM

DATE	August 7, 2014
TO	Psychology Board Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	AB 809 (Logue): Healing Arts: Telehealth

Background:

Please see attached analysis for detail on this proposed legislation.

Action Requested:

The Board has a “support if amended” position on this bill.

Attachment A is the staff analysis of AB 809.

Attachment B is the current language proposed in AB 809.

Attachment C is the “support if amended” letter for AB 809

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 809 **VERSION:** AMENDED AUGUST 4, 2014

AUTHOR: LOGUE **SPONSOR:** AUTHOR

BOARD POSITION: **SUPPORT IF AMENDED**

SUBJECT: HEALING ARTS: TELEHEALTH

Existing Law:

- 1) Defines “telehealth” as a mode of delivering health care via information and communication technologies. The patient’s location is the originating site, and the health care provider’s location is the distant site. (Business and Professions Code (BPC) §2290.5)
- 2) States that prior to providing health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used. The patient must then provide a verbal consent, which must be documented. (BPC §2290.5)
- 3) Defines an “originating site” as the site where the patient is located at the time health care services are provided. (BPC §2290.5)
- 4) Makes licensee failure to obtain consent unprofessional conduct. (BPC §§ 2290.5, 2960)

This Bill:

- 1) Allows the verbal consent to telehealth given by the patient at its initial use to apply in any subsequent use of telehealth. (BPC §2290.5(b))

Comments:

- 1) **Background.** AB 415 (Logue, Chapter 547, Statutes of 2011) updated the law by removing the term “telemedicine,” and its corresponding outdated definition. In its place, the term “telehealth” was used, and telehealth was defined to include a broader, more up-to-date range of services.

Prior to AB 415 changing the telehealth law as of January 1, 2012, a practitioner performing telemedicine was required to obtain both a verbal and written informed consent from the patient. This consent was required to contain detailed information, including information about the patient’s ability to withhold or withdraw consent at any time, a description of the risks, consequences, and benefits of telemedicine, and a statement about confidentiality and existing laws regarding access to medical information. AB 415 deleted these provisions, and the law currently just requires a patient’s verbal consent to telehealth, which is documented in the medical record.

2) Intent of This Bill. Since AB 415 became effective, two unintended consequences have arisen:

- a) BPC §2290.5(b) states that “Prior to the delivery of health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use.”

The term “originating site” is defined as the location of the patient. This implies that if the health care provider does not physically go to the site where the patient is located to obtain the patient’s verbal consent, then he or she is guilty of unprofessional conduct and subject to disciplinary action on his or her license or registration. This runs counter to the purpose of telehealth, which is to use electronic means to make health care more accessible, especially for patients in rural areas.

- b) BPC §2290.5(b) is also written to require that a health care provider must obtain verbal consent for telehealth prior to every visit with the patient. Several physicians have complained that this requirement is burdensome to their treatment of patients.

This Bill.

- The bill corrects the problem of requiring consent prior to every instance of telehealth by making an amendment that states that the initial consent applies to subsequent instances of telehealth.
- The statute requires written or oral permission to have been received prior to beginning telehealth and that this is documented.

3) Urgency Measure. This bill is an urgency measure, which means it would become effective immediately upon signature by the Governor.

4) Support and Opposition.

Support:

- Association of California Healthcare Districts
- California Association of Physicians Groups
- California Academy of Physician Assistants
- Medical Board of California
- Occupational Therapy Association of California

Oppose:

- American Federation of State, County and Municipal Employees.

5) History

2014

- Aug. 04 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
- Jun. 23 In committee: Hearing postponed by committee.

May 19 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.

2013

Jul. 10 In committee: Set, first hearing. Hearing canceled at the request of author.

Jun. 25 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.

Jun. 18 From committee: Do pass and re-refer to Com. on HEALTH. (Ayes 10. Noes 0.) (June 17). Re-referred to Com. on HEALTH.

Jun. 10 In committee: Set, first hearing. Hearing canceled at the request of author.

May 23 Referred to Coms. on B., P. & E.D. and HEALTH.

May 13 In Senate. Read first time. To Com. on RLS. for assignment.

May 13 Read third time. Urgency clause adopted. Passed. Ordered to the Senate. (Ayes 74. Noes 0. Page 1383.).

May 8 Read second time. Ordered to third reading.

May 7 From committee: Do pass. (Ayes 12. Noes 0.) (May 7).

Apr. 30 Re-referred to Com. on B.,P. & C.P.

Apr. 29 Read second time and amended.

Apr. 25 From committee: Do pass as amended and re-refer to Com. on B.,P. & C.P. (Ayes 15. Noes 0.) (April 23).

Apr. 9 In committee: Set, first hearing. Hearing canceled at the request of author.

Apr. 4 Re-referred to Com. on HEALTH.

Apr. 3 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.

Mar. 4 Referred to Coms. on HEALTH and B.,P. & C.P.

Feb. 22 From printer. May be heard in committee March 24.

Feb. 21 Read first time. To print.

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE MAY 19, 2014

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

AMENDED IN ASSEMBLY APRIL 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 809

Introduced by Assembly Member Logue
(Coauthor: Senator Galgiani)

February 21, 2013

An act to amend Section 2290.5 of the Business and Professions Code, relating to telehealth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as amended, Logue. Healing arts: telehealth.

Existing law requires a health care provider, as defined, prior to the delivery of health care services via telehealth, as defined, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. Existing law also provides that failure to comply with this requirement constitutes unprofessional conduct.

This bill would require the health care provider initiating the use of telehealth at the originating site to obtain verbal or written consent from the patient for the use of telehealth, as specified. The bill would require that health care provider to document the consent in the patient's medical record *consent*.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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:

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

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

12 (3) “Health care provider” means a person who is licensed under
13 this division.

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

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

21 (6) “Telehealth” means the mode of delivering health care
22 services and public health via information and communication
23 technologies to facilitate the diagnosis, consultation, treatment,
24 education, care management, and self-management of a patient’s
25 health care while the patient is at the originating site and the health
26 care provider is at a distant site. Telehealth facilitates patient
27 self-management and caregiver support for patients and includes
28 synchronous interactions and asynchronous store and forward
29 transfers.

30 (b) Prior to the delivery of health care via telehealth, the health
31 care provider initiating the use of telehealth at the originating site
32 shall inform the patient about the use of telehealth and obtain verbal
33 or written consent from the patient for the use of telehealth as an

1 acceptable mode of delivering health care services and public
2 ~~health during a specified course of health care and treatment~~ *health*.
3 The consent shall be ~~documented in the patient's medical record~~
4 *documented*.

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

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

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

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

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

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

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

34 (3) For the purposes of this subdivision, "telehealth" shall
35 include "telemedicine" as the term is referenced in Sections 482.12,
36 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

37 SEC. 2. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety within
39 the meaning of Article IV of the Constitution and shall go into
40 immediate effect. The facts constituting the necessity are:

1 In order to protect the health and safety of the public due to a
2 lack of access to health care providers in rural and urban medically
3 underserved areas of California, the increasing strain on existing
4 providers that occurred with the implementation of the federal
5 Patient Protection and Affordable Care Act, and the assistance that
6 further implementation of telehealth can provide to help relieve
7 these burdens, it is necessary for this act to take effect immediately.

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June 18, 2014

The Honorable Ed Hernandez
Chair, Senate Health Committee
State Capitol, Room 2191
Sacramento, CA 95814

RE: AB 809 – **Support if amended**

Dear Senator Hernandez:

At its June 17, 2014 meeting, the Board of Psychology (Board) took a **support if amended** position on AB 809 (Logue).

The Board's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

The Board supports and agrees with author's intention to fix some of the unintended consequences of AB 415 (Logue, Chapter 547, Statutes of 2011). However, the proposed language does not completely address the Board's concerns with the statute.

As amended, Business and Professions Code §2290.5 (b) states that "Prior to the delivery of health care via telehealth, the health care provider initiating the use of telehealth at the originating site shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health during a specified course of health care and treatment."

The term "originating site" is defined as the location of the patient at the time health care services are provided. This implies that if the health care provider does not physically go to the site where the patient is located to obtain the patient's verbal or written consent, then he or she is guilty of unprofessional conduct and subject to disciplinary action on his or her license or registration. This runs counter to the purpose of telehealth, which is to use electronic means to make health care more accessible, especially for patients in rural areas.

The Board requests that the phrase "at the originating site" be deleted from Business and Professions Code §2290.5 (b). This amendment would allow the Board to adopt a support position to AB 809.

If you have any questions or concerns, please feel free to contact the Board's Administrative Services Coordinator, Jonathan Burke, at (916) 574-7137. Thank you.

Sincerely,



MICHAEL ERICKSON, PH.D.
President, Board of Psychology

cc: Senator Mike Morrell (Vice Chair)

Senator Jim Beall

Senator Kevin de León

Senator Mark DeSaulnier

Senator Noreen Evans

Senator Bill Monning

Senator Jim Nielsen

Senator Lois Wolk

Assembly Member Dan Logue

Board Members

Tracy Rhine, Deputy Director, Legislative and Policy Review, Department of Consumer
Affairs