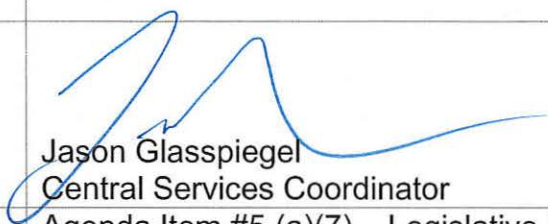


MEMORANDUM

DATE	March 30, 2016
TO	Policy and Advocacy Committee
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #5 (a)(7) – Legislative Update – AB 2507 (Gordon) Telehealth: Access

Background:

This bill adds video, telephone, and email communications, as well as text or chat conferencing, to the definition of telehealth. Prohibits a health care provider from requiring the use of telehealth when a patient prefers in-person services and requires health care service plans and insurers to include coverage for services provided to a patient through telehealth. Prohibits an insurer from interfering with the physician-patient relationship based on telehealth services.

Location: Assembly Health Committee

Status: To Assembly Committee on Health.

Hearing: 04/19/2016 1:30 pm, State Capitol, Room 4202

Action Requested:

The staff recommendation is to recommend the full Board take a "Support" position.

Attachment A is the analysis of AB 2507 (Gordon)

Attachment B is the language of AB 2507 (Gordon)

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 2507

VERSION: INTRODUCED: 2/19/2016

AUTHOR: GORDON (D)

SPONSOR: STANFORD HEALTH CARE

BOARD POSITION: NONE

SUBJECT: ACCESS TO TELEHEALTH

Summary:

This bill requires that a health care service plan or health insurer must cover patient services provided via telehealth to the same extent as services provided in-person. It also specifies various communications platforms that are acceptable for 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 shall inform the patient about the use of telehealth and obtain verbal or written consent. (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) Defines "distant site" as the site where the health care provider is located while providing the telehealth services. (BPC §2290.5)
- 5) States that this section shall not prevent patients from receiving in-person treatment after agreeing to receive services via telehealth. (BPC §2290.5)
- 6) States that a health care service plan or health insurer shall not require in-person contact between a health care provider and a patient before payment is made for covered services that are appropriately provided through telehealth. (This provision is subject to the terms and conditions of the contract with the health care service plan.) (Health and Safety Code (HSC) §1374.13(c), Insurance Code (IC) §10123.85(c))
- 7) States that a health care service plan or health insurer shall not limit the type of setting where services are provided before payment is made for covered services that are appropriately provided through telehealth. (This provision is subject to the terms and conditions of the contract with the health care service plan.) (HSC §1374.13(d), IC §10123.85(d))

- 8) States that a health care service plan or health insurer shall not require the use of telehealth when the health care provider has determined that it is not appropriate. (HSC §1374.13(f), IC §10123.85(e))

This Bill:

- 1) Specifies that definition of telehealth includes communication via video, telephone, email, text, or chat conferencing. (BPC §2290.5(a)(6))
- 2) Allows that patient consent for telehealth can be oral, written, or digital. (BPC §2290.5(b))
- 3) States that telehealth should be practitioner-guided and patient preferred, and that the law does not authorize a health care provider to require services be performed via telehealth when the patient prefers to be treated in-person. (HSC §1374.13(g), IC §10123.85(f))
- 4) States that a health care service plan or health insurer must cover patient services provided via telehealth to the same extent as services provided in-person. (HSC §1374.13(h), IC §10123.85(g))
- 5) Prohibits a health care service plan or health insurer from interfering with the physician-patient relationship based on the modality used for appropriately provided services through telehealth. (HSC §1374.13(i), IC §10123.85(h))

Comments:

- 1) **Author's Intent.** This bill aims to provide a viable telehealth reimbursement infrastructure in California in order to improve patient access.

The author notes that while a health insurer cannot limit the types of settings where services are provided, the law does not require health plans to include coverage and reimbursement for services provided via telehealth. Currently, these must be negotiated separately into each plan contract. They note that many other states require health plans to provide coverage for telehealth services to the same extent as in-person services. This is not currently the case in California.

Under this bill, providers will be able to offer telehealth services with a guarantee that they will receive health plan reimbursement.

- 2) **Mode of Delivery.** This bill clarifies that the definition of telehealth includes communication via video, telephone, email, text or chat.

There is debate regarding whether email, text, and chat are appropriate platforms for psychotherapeutic services.

There are safeguards built into the law to ensure that health plans cannot require the use of telehealth when the health care provider has determined it is not appropriate (HSC §1374.13(f), IC §10123.85(e))

- 3) **Physician-Patient Relationship.** This bill proposes adding a sentence to the Health and Safety Code (§1374.13(i)) and the Insurance Code (§10123.85(h)) prohibiting a health care service plan or health insurer from interfering with the physician-patient relationship based on the modality used for appropriately provided services through telehealth.

Given that the law regarding telehealth includes all healing arts practitioners, it may be appropriate to replace the term "physician-patient relationship" with the term "provider-patient relationship" or "practitioner-patient relationship."

4) Support and Opposition.

Support:

- Stanford Health Care (Sponsor)

Oppose:

- None at this time.

5) History

2016

03/08/16 Referred to Com. on HEALTH.

02/22/16 Read first time.

02/21/16 From printer. May be heard in committee March 22.

02/19/16 Introduced. To print.



California

LEGISLATIVE INFORMATION

AB-2507 Telehealth: access. (2015-2016)

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2290.5 of the Business and Professions Code is amended to read:

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

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

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

(3) "Health care provider" means either of the following:

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

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

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

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means 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~~ *transfers, including, but not limited to, video communications, telephone communications, email communications, and synchronous text or chat conferencing*.

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

(c) Nothing in this section shall preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via 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 through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.

(d) ~~No-A~~ health care service plan shall *not* limit 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 or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.

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

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

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

(h) A health care service plan shall include in its plan contract 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.

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

(2) A health care service plan may subject the coverage of services delivered via telehealth to copayments, coinsurance, or deductible provided that the amounts charged are at least as favorable to the enrollee as those established for the equivalent services when provided in person or by some other means.

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

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

10123.85. (a) For 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 health insurer shall require that in-person contact occur between a health care provider and a patient before payment is made for the services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the policyholder or contractholder and the insurer, and between the insurer and its participating providers or provider groups.

(d) No health insurer shall limit 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 by telehealth, subject to the terms and conditions of the contract between the policyholder or contract holder and the insurer, and between the insurer and its participating providers or provider groups.

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

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

(g) A health insurer shall include in its policy 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.

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

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

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

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