AB 415 (Logue) – Healing Arts: Telehealth

Introduced February 14, 2011, Chaptered October 7, 2011

This bill enacts the Telehealth Advancement Act of 2011. This bill repeals and recasts existing laws related to the delivery of health care services via telemedicine and replaces the term telemedicine with telehealth.

Background

Telehealth is a mode of delivering health care services and public health using information and communication technologies that enable the diagnosis, consultation, treatment, education, care management, and self-management of patients. It includes telemedicine, which is the diagnosis and treatment of illness or injury, and telehealth services can range from diagnosis, treatment, assessment, monitoring, communications, and education.

Currently, telehealth services are primarily delivered in three ways: Video conferencing, which is used for real-time patient-provider consultations, provider-to-provider discussions, and language translation services; Patient monitoring, in which electronic devices transmit patient health information to health care providers; and Store and forward technologies, which electronically transmit pre-recorded videos and digital images, such as X-rays, video clips, and photos, between primary care providers and medical specialists.

Telehealth is commonly used to address the problems of inadequate provider distribution and is used in the development of health systems in rural and medically underserved areas. It has the potential to reduce costs, improve quality, change the conditions of practice and improve access to health care services.

In February 2011, the Center for Connected Health Policy (CCHP) issued a report with 13 recommendations to update California's TDA. The revisions to existing law that this bill contemplates are based on the following recommendations from the CCHP report:

Update the term "telemedicine" used in current law to "telehealth," to reflect changes in technologies, settings, and applications for medical and other purposes; Include the asynchronous application of technologies in the definition of telehealth and remove the 2013 sunset date for Medi-Cal reimbursement of teledermatology, teleophthalmology, and teleoptometry services; Remove restrictions in the current telemedicine definition that prohibit telehealth-delivered services provided via email and telephone; Eliminate the current Medi-Cal requirement to document a barrier to an in-person visit for coverage of services provided using telehealth; Require private health care payers and Medi-Cal to cover encounters between licensed health practitioners and enrollees irrespective of the setting of the enrollee and providers; and Remove the requirement necessitating an additional informed consent waiver be obtained prior to any telehealth services being rendered.

The CCHP indicates that telehealth is a mode of providing services, not a treatment or procedure, but is treated in California law in the same manner as highly invasive procedures. The report states that by eliminating the duplicative required written informed consent, more patients can make more expedient choices regarding their care.

According to the author, in 1996 California was the first state to pass legislation that, among other things, established telemedicine as a legitimate means of receiving health care services, and provided parameters for reimbursement in both private and public health coverage plans. The provisions are outdated and may inhibit the full adoption of telehealth in this state and the potential benefits (e.g., reducing costs, increasing access and improving the quality of care it can offer).

Existing law:

1. Establishes the Medical Board of California to exercise licensing, regulation and disciplinary functions in accordance with the Medical Practice Act. Defines, in the Medical Practice Act, telemedicine as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications.

2. Establishes the Telemedicine Development Act of 1996 (TDA), which broadly defines telemedicine as the use of information technology to deliver medical services and information from one location to another, and imposes several requirements governing the delivery of health care services through telemedicine.

3. Requires the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient to obtain verbal and written informed consent from the patient or the patient's legal representative prior to the delivery of health care via telemedicine, except when the patient is not directly involved in the telemedicine interaction (e.g., health care practitioners consulting with one another), in an emergency situation when a patient is unable to give informed consent, and the patient is under the jurisdiction of the California Department of Corrections and Rehabilitation or any other correctional facility.

4. Establishes an informed consent procedure (specifically for telemedicine) that requires at least all of the following information be given to the patient or the patient's legal representative verbally and in writing: a) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment or program benefits; b) A description of the potential risks, consequences, and benefits of telemedicine; c) All existing confidentiality protections apply; d) All existing laws regarding patient access to medical information and copies of medical information and copies of medical records apply; and, e) Prohibits dissemination

of any patient identifiable images or information from the telemedicine interactions to researchers or other entities from occurring without consent.

5. Requires a patient or the patient's legal representative to sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to 4) above and that this information has been discussed with the health care practitioner, or his or her designee.

6. Makes the patient's written consent statement part of the patient's medical record.

7. Makes failure to comply with #3 to #6 above unprofessional conduct, but not a misdemeanor, as specified.

8. Establishes procedures for physicians to obtain verbal and/or written informed consent for specified treatments and procedures, such as hysterectomies, psychosurgery, electroconvulsive therapy, and assisted oocyte production.

9. Prohibits health plans and health insurers from requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to all terms and conditions of the contract agreed upon between the enrollee or subscriber and the plan or insurer. Applies this prohibition to health plan contracts with the Medi-Cal Managed Care Program only to the extent telemedicine services are covered by and reimbursed under the Medi-Cal fee-for-service program, and Medi-Cal contracts with health plans are amended to add coverage of telemedicine services and make any appropriate capitation rate adjustments.

10. Prohibits health plans and health insurers from being required to pay for consultation provided by the health care provider by telephone or facsimile machines.

11. Defines, for the purposes of Medi-Cal, "teleophthalmology and teledermatology by store and forward" as transmission of medical information to be reviewed at a later time and at a distant site by a physician who is trained in ophthalmology or dermatology, where the physician at the distant site reviews the medical information without the patient being present in real time.

12. Prohibits, under the Confidentiality of Medical Information Act, licensed or certified health care professionals, clinics and health facilities, health plans, and contracting entities, as defined, from disclosing or using a patient's medical information for any purpose not necessary to provide health care services to the patient and related administrative functions, without first obtaining authorization from the patient or the patient's representative, as specified, with exceptions.

This bill, effective January 1, 2012:

1. Removes various requirements imposed by health care service plans, health insurers, and Medi-Cal for patients to receive health care services through telehealth and would amend the informed consent requirements prior to the delivery of health care via telehealth.

2. Repeals the definition of telemedicine, which means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications, not including by means of a telephone conversation nor an electronic mail message between a health care practitioner and patient.

3. 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.

4. Repeals the requirement that prior to the delivery of health care via telemedicine, the health care practitioner must obtain verbal and written informed consent from the patient, as specified, and the requirement that a patient must sign a written statement prior to the delivery of health care via telemedicine. The written statement is made part of the patient's medical record. Instead, this bill would require a health care practitioner to obtain verbal consent from the patient prior to the provision of health care services via telehealth and to document that verbal consent was given in the medical record.

5. Prohibits the department from requiring that a health care provider document a barrier to an in-person visit prior to paying for services provided via telehealth to a Medi-Cal beneficiary.

6. Repeals the prohibition for paying for a service provided by telephone or facsimile and would instead prohibit the department from limiting the type of setting where services are provided for the patient.

7. Prohibits health plans and insurers from requiring 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 of the relevant contract.

8. Repeals the prohibition for paying for a service provided by telephone or facsimile and would instead prohibit them from limiting the type of setting where services are provided for the patient or by the health care provider. These provisions would apply to plans contracting with DHCS to provide Medi-Cal managed care and would repeal the requirements that telemedicine could only

be used (a) for telemedicine services that are reimbursed by the Medi-Cal fee-for-service program and (b) that Medi-Cal contracts with health plans are amended to add coverage of telemedicine services and to make any appropriate capitation rate adjustment.

9. Repeals the existing January 1, 2013, sunset date on the use of teleopthalmology and teledermatology by store and forward technology and would update and define terminology related to telehealth and current practice.

10. Allows the governing body of a hospital whose patients are receiving telehealth services to 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, pursuant to federal regulations, as specified.

11. States legislative intent to allow hospitals to grant privileges to, and verify and approve credentials for, providers of telehealth services.

Assembly Bill No. 415

CHAPTER 547

An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.

[Approved by Governor October 7, 2011. Filed with Secretary of State October 7, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 415, Logue. Healing arts: telehealth.

(1) Existing law provides for the licensure and regulation of various healing arts professions by various boards within the Department of Consumer Affairs. A violation of specified provisions is a crime. Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law requires a health care practitioner, as defined, to obtain verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing federal regulations, for the purposes of participation in the Medicare and Medicaid programs, authorize the governing body of a hospital whose patients are receiving telemedicine services to grant privileges based on its medical staff recommendations that rely on information provided by the distant-site hospital. Existing state regulations require medical staff, appointed by the governing body of a hospital, to adopt procedures for the evaluation of staff applications for credentials and privileges. Existing law provides that health care service plans and health insurers shall not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.

This bill would delete the provisions of state law regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined. This bill would require a health care provider, as defined, prior to the delivery of health care via telehealth, to verbally inform the patient that telehealth may be used and obtain verbal consent from the

patient. This bill would provide that failure to comply with this provision constitutes unprofessional conduct. This bill would, subject to contract terms and conditions, also preclude health care service plans and health insurers from imposing prior to payment, certain requirements regarding the manner of service delivery. This bill would establish procedures for granting privileges to, and verifying and approving credentials for, providers of telehealth services. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.

(2) Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

This bill would, instead, prohibit a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is appropriately provided by telehealth, as defined, and would make related changes.

(3) Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal program, teleophthalmology and teledermatology by store and forward, as defined.

This bill would delete the repeal of the above-described authorization.

(4) 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.

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

SECTION 1. This act shall be known, and may be cited, as the Telehealth Advancement Act of 2011.

SEC. 2. The Legislature finds and declares all of the following:

(a) Lack of primary care providers, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.

(b) Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care.

(c) Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.

(d) It is the intent of the Legislature to create a parity of telehealth with other health care delivery modes, to actively promote telehealth as a tool to

advance stakeholders' goals regarding health status and health system improvement, and to create opportunities and flexibility for telehealth to be used in new models of care and system improvements.

(e) Telehealth is a mode of delivering health care services and public health utilizing information and communication technologies to enable the diagnosis, consultation, treatment, education, care management, and self-management of patients at a distance from health care providers.

(f) Telehealth is part of a multifaceted approach to address the problem of inadequate provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations, and other forms of support.

(g) The use of information and telecommunication technologies to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice, and improve access to health care, particularly in rural and other medically underserved areas.

(h) Telehealth will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of medical care in the local area, strengthening the health infrastructure, and preserving health care-related jobs.

(i) Consumers of health care will benefit from telehealth in many ways, including expanded access to providers, faster and more convenient treatment, better continuity of care, reduction of lost work time and travel costs, and the ability to remain with support networks.

(j) It is the intent of the Legislature that the fundamental health care provider-patient relationship cannot only be preserved, but can also be augmented and enhanced, through the use of telehealth as a tool to be integrated into practices.

(k) Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telehealth will not be realized.

SEC. 3. Section 2290.5 of the Business and Professions Code is repealed.

SEC. 4. Section 2290.5 is added to the Business and Professions Code, 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 a person who is licensed under this division.

(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.

(b) 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 verbal consent shall be documented in the patient's medical record.

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

(d) 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.

(e) 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.

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

(g) (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. 5. Section 1374.13 of the Health and Safety Code is repealed.

SEC. 6. Section 1374.13 is added to the Health and Safety Code, 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 health care service plan shall 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 health care service plan 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 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 subdivision shall also be operative for health care service plan contracts with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.

(f) Notwithstanding any other provision, 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.

SEC. 7. Section 10123.85 of the Insurance Code is repealed.

SEC. 8. Section 10123.85 is added to the Insurance Code, 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.

SEC. 9. Section 14132.72 of the Welfare and Institutions Code is amended to read:

14132.72. (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 provider.

(c) In-person contact between a health care provider and a patient shall not be required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by the department to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program. Nothing in this section or the Telehealth Advancement Act of 2011 shall be construed to conflict with or supersede the provisions of Section 14091.3 of this code or any other existing state laws or regulations related to reimbursement for services provided by a noncontracted provider.

(d) The department shall not require a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.

(e) For the purposes of payment for covered treatment or services provided through telehealth, the department shall not limit the type of setting where services are provided for the patient or by the health care provider.

(f) Nothing in this section shall be interpreted to authorize the department to require the use of telehealth when the health care provider has determined that it is not appropriate.

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.

SEC. 10. Section 14132.725 of the Welfare and Institutions Code is amended to read:

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

(b) For purposes of this section, "teleophthalmology and teledermatology by store and forward" means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with

Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.

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

SEC. 11. 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.

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