

ASSEMBLY BILL

No. 744

Introduced by Assembly Member Aguiar-Curry

February 19, 2019

An act to amend Section 2290.5 of the Business and Professions Code, to amend Section 1374.13 of, and to add Sections 1341.46 and 1374.14 to, the Health and Safety Code, to amend Section 10123.85 of, and to add Section 10123.855 to, the Insurance Code, and to amend Section 14132.725 of the Welfare and Institutions Code, relating to healthcare coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 744, as introduced, Aguiar-Curry. Healthcare coverage: telehealth. Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive healthcare services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Under existing law, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teleophthalmology, teledermatology, and teledentistry by store and forward. Existing law requires a Medi-Cal patient receiving teleophthalmology, teledermatology, or teledentistry by store and forward to be notified of the right to receive interactive communication with a distant specialist physician, optometrist, or dentist, and authorizes a patient to request that interactive communication.

This bill would delete those interactive communication provisions.

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 provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits a health care service plan or health insurer from requiring that in-person contact occur between a healthcare provider and a patient, and from limiting the type of setting where services are provided, before payment is made for covered services provided appropriately through telehealth services.

This bill would require a contract issued, amended, or renewed on or after January 1, 2020, between a health care service plan and a healthcare provider for the provision of healthcare services to an enrollee or subscriber, or a contract issued, amended, or renewed on or after January 1, 2020, between a health insurer and a healthcare provider for an alternative rate of payment to specify that the health care service plan or health insurer reimburse a healthcare provider for the diagnosis, consultation, or treatment of an enrollee, subscriber, insured, or policyholder delivered through telehealth services on the same basis and to the same extent that the health care service plan or health insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment. The bill would authorize a health care service plan or health insurer to offer a contract or policy containing a deductible, copayment, or coinsurance requirement for a healthcare service delivered through telehealth services, subject to specified limitations. The bill would prohibit a health care service plan contract or policy or health insurance issued, amended, or renewed on or after January 1, 2020, from imposing an annual or lifetime dollar maximum for telehealth services, and would prohibit those contracts and policies from imposing a deductible, copayment, or coinsurance, or a plan year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services that is not equally imposed on all terms and services covered under the contract.

This bill would authorize the Director of the Department of Managed Health Care or the Insurance Commissioner to assess an administrative penalty by order, after appropriate notice and opportunity for hearing, if the director or commissioner determines that a health care service plan or health insurer has failed to comply with those provisions. The bill would create the Managed Care Penalty Account, within the Managed Care Administrative Fines and Penalties Fund, subject to appropriation by the Legislature, into which administrative penalties for a health care service plan's violations of those provisions would be

deposited. The bill would specify that administrative penalties assessed against a health insurer be deposited into the Insurance Fund. Because a willful violation of the bill’s requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

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:

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)
10 (1) “Distant site” means a site where a ~~health care~~ *healthcare*
11 ~~provider who provides health care~~ *healthcare* services is located
12 while providing these services via a telecommunications system.

13 (3) ~~“Health care~~

14 (2) “*Healthcare* provider” means either of the following:
15 (A) A person who is licensed under this division.

16 (B) An associate marriage and family therapist or marriage and
17 family therapist trainee functioning pursuant to Section 4980.43.3.

18 (4)

19 (3) “Originating site” means a site where a patient is located at
20 the time ~~health care~~ *healthcare* services are provided via a
21 telecommunications system or where the ~~asynchronous~~ store and
22 forward service originates.

23 (4) “*Store and forward*” means the transmission of a patient’s
24 *medical information from an originating site to the healthcare*
25 *provider at a distant site.*

1 (5) “Synchronous interaction” means a real-time interaction
2 between a patient and a ~~health care~~ *healthcare* provider located at
3 a distant site.

4 (6) “Telehealth” means the mode of delivering ~~health care~~
5 *healthcare* services and public health via information and
6 communication technologies to facilitate the diagnosis,
7 consultation, treatment, education, care management, and
8 self-management of a patient’s ~~health care~~ while the patient is at
9 the originating site and the ~~health care~~ provider is at a distant site.
10 *healthcare*. Telehealth facilitates patient self-management and
11 caregiver support for patients and includes synchronous interactions
12 and asynchronous store and forward transfers.

13 (b) ~~Prior to~~ *Before* the delivery of ~~health care~~ *healthcare* via
14 telehealth, the ~~health care~~ *healthcare* provider initiating the use of
15 telehealth shall inform the patient about the use of telehealth and
16 obtain verbal or written consent from the patient for the use of
17 telehealth as an acceptable mode of delivering ~~health care~~
18 *healthcare* services and public health. The consent shall be
19 documented.

20 (c) ~~Nothing in this section shall~~ *This section does not* preclude
21 a patient from receiving in-person ~~health care~~ *healthcare* delivery
22 services during a specified course of ~~health care~~ *healthcare* and
23 treatment after agreeing to receive services via telehealth.

24 (d) The failure of a ~~health care~~ *healthcare* provider to comply
25 with this section shall constitute unprofessional conduct. Section
26 2314 shall not apply to this section.

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

31 (f) All laws regarding the confidentiality of ~~health care~~
32 *healthcare* information and a patient’s rights to ~~his or her~~ *the*
33 *patient’s* medical information shall apply to telehealth interactions.

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

37 (h) (1) Notwithstanding any other ~~provision of~~ law and for
38 purposes of this section, the governing body of the hospital whose
39 patients are receiving the telehealth services may grant privileges
40 to, and verify and approve credentials for, providers of telehealth

1 services based on its medical staff recommendations that rely on
2 information provided by the distant-site hospital or telehealth
3 entity, as described in Sections 482.12, 482.22, and 485.616 of
4 Title 42 of the Code of Federal Regulations.

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

9 (3) For the purposes of this subdivision, “telehealth” shall
10 include “telemedicine” as the term is referenced in Sections 482.12,
11 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

12 SEC. 2. Section 1341.46 is added to the Health and Safety
13 Code, to read:

14 1341.46. (a) There is hereby created the Managed Care Penalty
15 Account within the Managed Care Administrative Fines and
16 Penalties Fund.

17 (b) Moneys in the Managed Care Penalty Account shall be
18 subject to appropriation by the Legislature.

19 (c) Notwithstanding Section 1341.45, fines and administrative
20 penalties collected pursuant to this chapter shall be deposited into
21 the Managed Care Penalty Account.

22 SEC. 3. Section 1374.13 of the Health and Safety Code is
23 amended to read:

24 1374.13. (a) For the purposes of this section, the definitions
25 in subdivision (a) of Section 2290.5 of the Business and Professions
26 Code ~~shall~~ apply.

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

32 (c) ~~No~~ A health care service plan shall *not* require that in-person
33 contact occur between a ~~health care~~ *healthcare* provider and a
34 patient before payment is made for the covered services
35 appropriately provided through telehealth, subject to the terms and
36 conditions of the contract entered into between the enrollee or
37 subscriber and the health care service plan, and between the health
38 care service plan and its participating providers or provider ~~groups~~.
39 *groups, and pursuant to Section 1374.14.*

1 (d) ~~No~~A health care service plan shall *not* limit the type of
 2 setting where services are provided for the patient or by the ~~health~~
 3 ~~care~~ *healthcare* provider before payment is made for the covered
 4 services appropriately provided through telehealth, subject to the
 5 terms and conditions of the contract entered into between the
 6 enrollee or subscriber and the health care service plan, and between
 7 the health care service plan and its participating providers or
 8 ~~provider groups; groups, and pursuant to Section 1374.14.~~

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

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

19 SEC. 4. Section 1374.14 is added to the Health and Safety
 20 Code, to read:

21 1374.14. (a) A contract issued, amended, or renewed on or
 22 after January 1, 2020, between a health care service plan and a
 23 healthcare provider for the provision of healthcare services to an
 24 enrollee or subscriber shall specify that the health care service plan
 25 shall reimburse the treating or consulting healthcare provider for
 26 the diagnosis, consultation, or treatment of an enrollee or subscriber
 27 delivered through telehealth services on the same basis and to the
 28 same extent that the health care service plan is responsible for
 29 reimbursement for the same service through in-person diagnosis,
 30 consultation, or treatment.

31 (b) (1) A health care service plan contract issued, amended, or
 32 renewed on or after January 1, 2020, shall specify that the health
 33 care service plan shall provide coverage for the cost of healthcare
 34 services delivered through telehealth services on the same basis
 35 and to the same extent that the health care service plan is
 36 responsible for coverage for the same service through in-person
 37 diagnosis, consultation, or treatment. Coverage shall not be limited
 38 only to services delivered by select third-party corporate telehealth
 39 providers.

1 (2) A health care service plan contract issued, amended, or
2 renewed on or after January 1, 2020, shall not exclude coverage
3 for a healthcare service solely because the service is delivered
4 through telehealth services and not through in-person consultation
5 or contact between a physician and a patient, if the service is
6 appropriately delivered through telehealth services.

7 (c) A health care service plan may offer a contract containing
8 a deductible, copayment, or coinsurance requirement for a
9 healthcare service delivered through telehealth services, provided
10 that the deductible, copayment, or coinsurance does not exceed
11 the deductible, copayment, or coinsurance applicable if the same
12 services were delivered through in-person diagnosis, consultation,
13 or treatment.

14 (d) (1) A health care service plan contract issued, amended, or
15 renewed on or after January 1, 2020, shall not impose an annual
16 or lifetime dollar maximum for telehealth services, other than an
17 annual or lifetime dollar maximum that applies in the aggregate
18 to all items and services covered under the contract.

19 (2) A health care service plan contract issued, amended, or
20 renewed on or after January 1, 2020, shall not impose a deductible,
21 copayment, or coinsurance, or a plan year, calendar year, lifetime,
22 or other durational benefit limitation or maximum for benefits or
23 services that is not equally imposed on all terms and services
24 covered under the contract.

25 (e) (1) The director shall, after appropriate notice and
26 opportunity for hearing in accordance with the Administrative
27 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
28 Part 1 of Division 3 of Title 2 of the Government Code), assess
29 an administrative penalty by order if the director determines that
30 a health care service plan has failed to comply with this section.

31 (2) Notwithstanding Section 1341.45, an administrative penalty
32 collected pursuant to paragraph (1) shall be deposited into the
33 Managed Care Penalty Account.

34 (f) The definitions in subdivision (a) of Section 2290.5 of the
35 Business and Professions Code apply to this section.

36 SEC. 5. Section 10123.85 of the Insurance Code is amended
37 to read:

38 10123.85. (a) For purposes of this section, the definitions in
39 subdivision (a) of Section 2290.5 of the Business and Professions
40 Code shall apply.

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

6 (c) ~~No~~A health insurer shall *not* require that in-person contact
7 occur between a ~~health care~~ *healthcare* provider and a patient
8 before payment is made for the services appropriately provided
9 through telehealth, subject to the terms and conditions of the
10 contract entered into between the policyholder or contractholder
11 and the insurer, and between the insurer and its participating
12 providers or provider ~~groups~~: *groups, and pursuant to Section*
13 *10123.855.*

14 (d) ~~No~~A health insurer shall *not* limit the type of setting where
15 services are provided for the patient or by the ~~health care~~ *healthcare*
16 provider before payment is made for the covered services
17 appropriately provided by telehealth, subject to the terms and
18 conditions of the contract between the policyholder or contract
19 holder and the insurer, and between the insurer and its participating
20 providers or provider ~~groups~~: *groups, and pursuant to Section*
21 *10123.855.*

22 (e) Notwithstanding any other ~~provision, law~~, this section ~~shall~~
23 ~~not be interpreted to~~ *does not* authorize a health insurer to require
24 the use of telehealth ~~when if the~~ ~~health care~~ *healthcare* provider
25 has determined that it is not appropriate.

26 SEC. 6. Section 10123.855 is added to the Insurance Code, to
27 read:

28 10123.855. (a) A contract issued, amended, or renewed on or
29 after January 1, 2020, between a health insurer and a healthcare
30 provider for an alternative rate of payment pursuant to Section
31 10133 shall specify that the health insurer shall reimburse the
32 treating or consulting healthcare provider for the diagnosis,
33 consultation, or treatment of an insured or policyholder delivered
34 through telehealth services on the same basis and to the same extent
35 that the health insurer is responsible for reimbursement for the
36 same service through in-person diagnosis, consultation, or
37 treatment.

38 (b) (1) A policy of health insurance issued, amended, or
39 renewed on or after January 1, 2020, that provides benefits through
40 contracts with providers at alternative rates of payment shall

1 specify that the health insurer shall provide coverage for the cost
2 of healthcare services delivered through telehealth services on the
3 same basis and to the same extent that the health insurer is
4 responsible for coverage for the same service through in-person
5 diagnosis, consultation, or treatment. Coverage shall not be limited
6 only to services delivered by select third-party corporate telehealth
7 providers.

8 (2) A policy of health insurance issued, amended, or renewed
9 on or after January 1, 2020, that provides benefits through contracts
10 with providers at alternative rates of payment shall not exclude
11 coverage for a healthcare service solely because the service is
12 delivered through telehealth services and not through in-person
13 consultation or contact between a physician and a patient, if the
14 service is appropriately delivered through telehealth services.

15 (c) A health insurer may offer a policy containing a deductible,
16 copayment, or coinsurance requirement for a healthcare service
17 delivered through telehealth services, provided that the deductible,
18 copayment, or coinsurance does not exceed the deductible,
19 copayment, or coinsurance applicable if the same services were
20 delivered through in-person diagnosis, consultation, or treatment.

21 (d) (1) A policy of health insurance issued, amended, or
22 renewed on or after January 1, 2020, shall not impose an annual
23 or lifetime dollar maximum for telehealth services, other than an
24 annual or lifetime dollar maximum that applies in the aggregate
25 to all items and services covered under the policy.

26 (2) A policy of health insurance issued, amended, or renewed
27 on or after January 1, 2020, shall not impose a deductible,
28 copayment, or coinsurance, or a policy year, calendar year, lifetime,
29 or other durational benefit limitation or maximum for benefits or
30 services that is not equally imposed on all terms and services
31 covered under the policy.

32 (e) (1) The commissioner shall, after appropriate notice and
33 opportunity for hearing in accordance with the Administrative
34 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
35 Part 1 of Division 3 of Title 2 of the Government Code), assess
36 an administrative penalty by order if the commissioner determines
37 that a health insurer has failed to comply with this section.

38 (2) An administrative penalty collected pursuant to paragraph
39 (1) shall be deposited into the Insurance Fund.

1 (f) The definitions in subdivision (a) of Section 2290.5 of the
2 Business and Professions Code apply to this section.

3 SEC. 7. Section 14132.725 of the Welfare and Institutions
4 Code is amended to read:

5 14132.725. (a) To the extent that federal financial participation
6 is available, face-to-face contact between a health care provider
7 and a patient is not required under the Medi-Cal program for
8 teleophthalmology, teledermatology, and teledentistry by store
9 and forward. Services appropriately provided through the store
10 and forward process are subject to billing and reimbursement
11 policies developed by the department.

12 (b) For purposes of this section, “teleophthalmology,
13 teledermatology, and teledentistry by store and forward” means
14 ~~an asynchronous~~ transmission of medical or dental information to
15 be reviewed ~~at a later time~~ by a physician at a distant site who is
16 trained in ophthalmology or dermatology or, for teleophthalmology,
17 by an optometrist who is licensed pursuant to Chapter 7
18 (commencing with Section 3000) of Division 2 of the Business
19 and Professions Code, or a dentist, where the physician,
20 optometrist, or dentist at the distant site reviews the medical or
21 dental information ~~without the patient being present in real time.~~
22 ~~A patient receiving teleophthalmology, teledermatology, or~~
23 ~~teledentistry by store and forward shall be notified of the right to~~
24 ~~receive interactive communication with the distant specialist~~
25 ~~physician, optometrist, or dentist and shall receive an interactive~~
26 ~~communication with the distant specialist physician, optometrist,~~
27 ~~or dentist, upon request. If requested, communication with the~~
28 ~~distant specialist physician, optometrist, or dentist may occur either~~
29 ~~at the time of the consultation, or within 30 days of the patient’s~~
30 ~~notification of the results of the consultation. If the reviewing~~
31 ~~optometrist identifies a disease or condition requiring consultation~~
32 ~~or referral pursuant to Section 3041 of the Business and Professions~~
33 ~~Code, that consultation or referral shall be with an ophthalmologist~~
34 ~~or other appropriate physician and surgeon, as required.~~
35 *information.*

36 (c) Notwithstanding Chapter 3.5 (commencing with Section
37 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
38 the department may implement, interpret, and make specific this
39 section by means of all-county letters, provider bulletins, and
40 similar instructions.

1 SEC. 8. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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