ASSEMBLY THIRD READING
AB 2164 (Robert Rivas and Salas)
As Amended June 4, 2020
Majority vote

SUMMARY:

Prohibits face-to-face contact between a health care provider and a Medi-Cal eligible patient from being required for a federally qualified health center (FQHC) or rural health clinic (RHC) to establish a patient at any time, including during an initial telehealth visit, or to render and bill for services by telehealth, subject to specified requirements.

Major Provisions

1) Requires, if FQHC services and RHC services involve telehealth by synchronous real time or asynchronous store and forward, all of the following to apply:

2) Prohibits face-to-face contact between a health care provider and a Medi-Cal eligible patient, from being required for the FQHC or RHC to establish the patient at any time, including during an initial telehealth visit by synchronous real time or asynchronous store and forward, as a patient of record of the FQHC or RHC or to render and bill for services by telehealth synchronous real time or asynchronous store and forward services, if all of the following requirements are met: a) a licensed non-billable Medi-Cal provider, who is employed by the billing FQHC or RHC, is physically present with the patient at the originating site, as defined in existing law; b) the billing provider is also an employee of the FQHC or RHC; c) the patient is at an originating site that is a licensed FQHC or RHC or an intermittent clinic site of the FQHC or RHC, and is located within the FQHC's or RHC's federally designated service area; and, d) a billable provider in the Medi-Cal program, and who is employed by the FQHC or RHC, supervises or provides the health services for that patient via telehealth by synchronous real time or asynchronous store and forward.

3) Permits a patient relationship with the FQHC or RHC to be established at any time, including during an initial visit that includes telehealth by synchronous real time or asynchronous store and forward.

4) Defines, for purposes of FQHC and RHC reimbursement provisions under what is known as the Prospective Payment System (PPS), an FQHC or RHC "visit" to include a visit using telehealth by synchronous real time or asynchronous store and forward.

5) Defines a "patient" as an individual enrolled in the Medi-Cal program who may or may not have an established patient of record relationship with the FQHC or RHC.

6) Permits the Department of Health Care Services (DHCS) to implement, interpret, and make specific the Medi-Cal telehealth provisions of this bill by means of all-county letters, provider bulletins, and similar instructions.

COMMENTS:

FQHCs and RHCs are federally designated clinics that are required to serve medically underserved populations that provide primary care services. There are over 1,000 FQHCs and approximately 283 RHCs in California. Medi-Cal reimbursement to FQHCs and RHCs is

governed by state and federal law. FQHCs and RHCs are reimbursed by Medi-Cal on a cost-based per-visit rate under the PPS. For Medi-Cal managed care plan patients, DHCS reimburses FQHCs and RHCs for the difference between its per-visit PPS rate and the payment made by the plan. The mean and median PPS rate paid to an FQHC and an RHC is considerably higher than the most common primary care visit fee-for-service reimbursement rates in Medi-Cal.

DHCS considers telehealth a cost-effective alternative to health care provided in-person, particularly to underserved areas. Telehealth is not a distinct service, but a way that providers deliver health care to their patients that approximates in-person care. The standard of care is the same whether the patient is seen in-person or through telehealth. DHCS's coverage and reimbursement policies for telehealth align with the California Telehealth Advancement Act of 2011 and federal regulations. State 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." Medi-Cal complies with federal regulations for telehealth, which are the same for Medicaid as they are for Medicare. Medicaid regulations authorize telehealth using "interactive communications" and asynchronous store and forward technologies. Interactive telecommunications must include, at a minimum, audio and video equipment permitting real-time two-way communication, according to the Centers for Medicare and Medicaid Services (CMS). DHCS recently revised the Medi-Cal telehealth policy to allow providers increased flexibility in their use of telehealth as a modality for delivering medically necessary services to their patients. The policy is effective July 1, 2019, and fee-for-service providers must submit claims for services provided via telehealth according to the new policy. However, DHCS has a more restrictive telehealth policy for FQHC and RHCs, as described below.

In February 2020, DHCS revised its Medi-Cal FQHC and RHC reimbursement policies in its Provider Manual for telehealth, with separate telehealth guidance for FQHCs and RHCs. For FQHCs and RHCs, the policies define what is an "established patient" for purposes of telehealth policy as one or more of the following:

1) The patient must have a health record with the FQHC or RHC that was created or updated during a visit that occurred in the clinic or during a synchronous telehealth visit in a patient's residence or home with a clinic provider and a billable provider at the clinic. The patient's health record must have been created or updated within the previous three years.

2) The patient is homeless, homebound or a migratory or seasonal worker (HHMS) and has an established health record that was created from a visit occurring within the last three years that was provided outside the originating site clinic, but within the FQHC's or RHC's service area. A consent for telehealth services for these patients must be documented.

3) The patient is assigned to the FQHC or RHC by their Medi-Cal managed care plan pursuant to a written agreement between the plan and the FQHC or RHC.

DHCS guidance prohibits a patient from being "established" on an asynchronous store and forward service, with the exception of HHMS. This bill would change this and instead permit an FQHC or RHC to establish a patient at any time, including during an initial telehealth visit by synchronous real time or asynchronous store and forward, or to render and bill for services by telehealth synchronous real time or asynchronous store and forward services, subject to specified

requirements, thereby over-riding several DHCS telehealth policy restrictions for both asynchronous store and forward and synchronous interactions.

As described below, DHCS has requested a waiver of the "established patient" requirements via a Social Security Act Section 1135 waiver and State Plan Amendment (SPA). This telehealth policy change would enable the Virtual Dental Home program to be used for patients who are not established patients of the FQHC. Under the Virtual Dental Home, a registered dental assistant (RDA), registered dental hygienist (RDH) or RDH in alternative practice (RDHAP) used portable imaging equipment and an internet-based dental record system to collect electronic dental records such as X-rays, photographs, charts of dental findings, and dental and medical histories, and uploads the information to a secure website, where they are reviewed by a collaborating dentist. The dentist reviews the patient's information and creates a tentative dental treatment plan. The RDHAP, RDH or RDA then carries out the aspects of the treatment plan that can be conducted in the community setting. After the dentist reviews the electronic dental records, the RDHAP, RDH or RDA refers patients to dental offices for procedures that require the skills of a dentist. However, the allied dental professionals in the HWPP 172 demonstration project were allowed to place interim therapeutic restorations (ITRs are temporary fillings) under general supervision of dentists. When these visits occur, the patient arrives with health history and consent arrangements completed, a diagnosis and treatment plan already determined, preventive practices in place and preventive procedures having been performed. AB 1174 (Bocanegra), Chapter 662, Statutes of 2014 codified the scope of practice expansion of certain allied dental professionals and prohibited Medi-Cal from requiring a face-to-face visit between a patient and provider before allowing for teledentistry services as a Medi-Cal billable service. However, the established patient requirement for FQHCs limits the use of teledentistry as dental hygienists performing x-rays and transmitting them via "store and forward" and treating children in a school-based setting is not reimbursable if they are not an established patient of the FQHC.

On March 26, 2020, DHCS wrote to CMS requesting approval for the multiple detailed additional flexibilities under Social Security Act Section 1135. When the President declares a disaster or emergency under the Stafford Act or National Emergencies Act and the federal Department of Health and Human Services (DHHS) Secretary declares a public health emergency, the Secretary of DHHS is authorized to take certain actions in addition to her regular authorities. For example, under Social Security Act Section 1135, they may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area and time periods and that providers who provide such services in good faith can be reimbursed and exempted from sanctions.

Related to this bill, DHCS requested a waiver of the face-to-face encounter requirement for reimbursement in specified federal regulations relative to covered services via telehealth provided by clinic providers, and to allow flexibility to provide these covered services via telehealth without regard to date of last visit and for new or established clinic patients.

DHCS followed up on April 3, 2020, with a letter to CMS requesting a SPA 20-0024, that when the treating health care practitioner of the FQHCs/RHCs satisfies all of the procedural and technical components of the Medi-Cal covered service or benefit being provided except for the face-to-face component, reimbursement to occur to an FQHC or RHC at the PPS rate for new or

established patients, irrespective of date of last visit. DHCS seeks to align this SPA with the duration of the emergency period, starting with the effective date of March 1, 2020.

According to the Author:
California's community health centers serve the state's most vulnerable populations. One in six Californians are seen in an FQHC in California today for their healthcare needs and one in three of these patients are covered by Medi-Cal. The COVID-19 pandemic has underscored the importance of utilizing telehealth to ensure the delivery of reliable care to the most vulnerable populations and underserved areas of the state. Telehealth has proven to be an invaluable tool to ensure that patients, especially those who are low-income and living in underserved areas, get the medical, dental, and mental healthcare they need. Health centers are recognized as central to primary care delivery in California and need to be supported to integrate virtual care innovation and technology into their clinical workflow and assist with staff and provider education and training. It is essential that we make it easier to provide care to people who wouldn't get it otherwise. The authors conclude that this bill would expand access for the most vulnerable populations by enabling FQHCs and RHCs, which are critical sources of care that serve as safety net for the most vulnerable populations, to establish patients via telehealth at community sites, such as schools, early learning sites and nursing homes.

Arguments in Support:
This bill is jointly sponsored by CaliforniaHealth+Advocates, the California Dental Association, the Children's Partnership and Children Now, writing that with an expansion of telehealth, California can further address access barriers for children by ensuring community health centers are able to bring care to where children are, through innovative solutions like telehealth. Supporters argue this bill supports health centers' ability to establish and serve patients by bringing health care to safe and trusted community sites within their designated service areas, such as schools and early learning sites, using effective telehealth models. The sponsors state, one evidence-based example is the virtual dental home, in which specially trained dental hygienists and assistants go to schools and other community sites to provide diagnostic, preventive, and early intervention dental care in partnership with a collaborating dentist. Additionally, parents do not need to take time off of work and a child does not need to miss school to get timely and needed care**.** When schools across California reopen after this time of emergency, students will need access to mental and behavioral health resources more than ever. In recent years, the Legislature has looked to telehealth as one key strategy in addressing the barriers faced by students in accessing mental and behavioral health care in their communities. This bill will ensure that as the need for care delivered via telehealth continues to grow, we will have policies in place to support these innovative solutions to provide safe, high-quality care to California's most vulnerable populations.

Support if Amended:
The California Association of Physician Assistants write, in a previous version of this bill, that by law, physician assistants (PAs) work in collaboration and under the supervision of the physicians mentioned in this bill. As this bill is laudably intended to expand access to services, especially during a pandemic, and as PAs work with the physicians mentioned in the bill, this bill would be strengthened by including PAs. Recent amendments struck out relevant provisions of this bill.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, unknown, likely significant Medi-Cal costs for an increase in visits, associated with the ability of a clinic to allow a patient to be established through telehealth without a face-to-face visit. DHCS also notes if this change is allowed on a longer-term basis, it could lead to additional change in scope-of-service requests. Additional requests result in administrative costs to recalculate PPS rates and result in higher PPS rates paid per visit for all future visits.

VOTES:

ASM HEALTH: 15-0-0
YES: Wood, Mayes, Aguiar-Curry, Bigelow, Bonta, Burke, Carrillo, Flora, Limón, McCarty, Nazarian, Ramos, Rodriguez, Santiago, Waldron

ASM APPROPRIATIONS: 18-0-0
YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

UPDATED:

VERSION: June 4, 2020

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