

## CONCURRENCE IN SENATE AMENDMENTS

AB 2164 (Robert Rivas and Salas)

As Amended August 20, 2020

Majority vote

**SUMMARY:**

Requires a "visit" for purposes of reimbursement by Medi-Cal to a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC) to include a visit by an FQHC/RHC patient and a health care provider using telehealth through synchronous interaction (face to face over video) or asynchronous store and forward (the sending of images such as x-rays to a health care provider). Authorizes FQHCs and RHCs to establish a patient, located within the federal designated service area of the FQHC and RHC, through synchronous interaction or asynchronous store and forward as of the date of service, but requires the use of a licensed health care provider who is employed by the FQHC or RHC and who is physically present with the patient to establish a patient through asynchronous store and forward. 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, and requires the adoption of regulations by July 1, 2022. Sunsets this bill 180 days after the state of emergency for the COVID-19 pandemic has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature.

**The Senate Amendments:**

- 1) Eliminate the restrictions in the Assembly-approved version of this bill that a licensed non-billable Medi-Cal provider who is employed by the billing FQHC or RHC be physically present with the patient at the originating site for synchronous telehealth interactions to establish the patient, that the billing provider be an employee of the FQHC or RHC for synchronous telehealth interactions to establish the patient, that the patient be at an originating site that is a licensed FQHC or RHC or an intermittent clinic site of the FQHC or RHC for synchronous telehealth interactions to establish the patient, and that a billable provider in the Medi-Cal program who is employed by the FQHC or RHC supervise a licensed provider or provide the health services for that patient via telehealth by synchronous real time or asynchronous store and forward.
- 2) Add a sunset provisions of this bill.

**COMMENTS:**

FQHCs and RHCs are federally designated clinics that are required to serve medically underserved populations that provide primary care services. Under existing law, FQHC and RHC services are reimbursed on a per-visit basis in accordance with the definition of a "visit" as a face-to-face encounter between an FQHC or RHC patient and specified health care providers (such as a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse).

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, which limit (with exceptions) telehealth visits to an "established patient" of the FQHC/RHC. DHCS policy defines 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 policy during the pandemic period, and instead permit an FQHC or RHC to establish a patient located within the FQHC/RHC service area during an initial telehealth visit by synchronous real time or asynchronous store and forward, thereby over-riding the February 2020 DHCS telehealth policy restriction.

However, the February 2020 policy has been superseded during the current pandemic. In April 2020, DHCS released updated guidance regarding FQHC/RHC for telehealth. For Medi-Cal covered benefits and services provided via traditional telehealth (which includes synchronous and asynchronous store and forward), DHCS proposed to waive through its Section 1135 Waiver request existing restrictions/requirements in Medi-Cal's current telehealth policy due to various federal laws/Medicaid State Plan language, relative to "new" and "established" patients, "face-to-face"/in-person, and "four walls" requirements. DHCS indicated waiving these limitations would allow FQHCs and RHCs greater flexibility under DHCS' existing telehealth policy. Under Section 1135 of the federal Social Security Act, 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, including temporarily waiving or modifying 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 in the emergency area and time periods and that providers who provide such services in good faith can be reimbursed and exempted from sanctions. The federal Centers for Medicare and Medicaid Services approved these DHCS-proposed changes in its May 2020 approval of California' State Plan Amendment 20-0024.

**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. Amendments struck out relevant provisions of this bill.

**Arguments in Opposition:**

The Department of Finance (DOF) wrote in opposition to the previous version of this bill because the identified costs and resources required to implement this bill create a General Fund cost pressure for the Medi-Cal program. Moreover, DOF states that DHCS currently allows FQHCs and RHCs to serve patients and receive reimbursement for telehealth services during the federal COVID-19 public health emergency. DOF recommends studying the costs and benefits of this policy more broadly within the Medi-Cal system before revising the definition specific to an FQHC and RHC visit in statute. The cost of this change is also more appropriately considered alongside other policy changes in the budget process next year. DOF's opposition is prior to the August 20, 2020 amendments, which require the expanded telehealth provisions of this bill to remain in effect until 180 days after the state of emergency for the COVID-19 pandemic has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature declaring it at an end.

**FISCAL COMMENTS:**

According to the Senate Appropriations Committee, unknown, significant, ongoing cost pressures (General Fund/federal fund) related to Medi-Cal reimbursement rates, as the bill would allow for an increase in visits with a clinic establishing a patient through telehealth absent a face-to-face visit. The vast majority of the services accessed during states of emergency are typically covered regardless of the emergency. Staff notes especially during a state of emergency, there is likely increased utilization, including FQHCs and RHCs billing the Prospective Payment System (PPS) rate for services provided by telephone. If this change is allowed on a longer-term basis, it could lead to additional change in scope-of-service requests. Additional requests could possibly 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

**ASSEMBLY FLOOR: 78-0-1**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

**ABS, ABST OR NV:** Quirk

**SENATE FLOOR: 39-0-1**

**YES:** Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Jones

**UPDATED:**

VERSION: August 20, 2020

CONSULTANT: Kristene Mapile / HEALTH / (916) 319-2097

FN: 0003381