Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 32
Author: Aguiar-Curry (D) and Robert Rivas (D), et al.
Amended: 8/1/22 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 10-0, 6/29/22
AYES: Pan, Melendez, Eggman, Grove, Hurtado, Leyva, Limón, Roth, Rubio, Wiener
NO VOTE RECORDED: Gonzalez

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 78-0, 6/1/21 - See last page for vote

SUBJECT: Telehealth

SOURCE: California Association of Public Hospitals and Health Systems
California Medical Association
CommunityHealth+ Advocates
Essential Access Health
Planned Parenthood Affiliates of California

DIGEST: This bill expands the definition of synchronous interaction for purposes of telehealth to include audio-video, audio only, such as telephone, and other virtual communication. Extends telehealth payment parity to certain Medi-Cal managed care plans. This bill requires the Department of Health Care Services (DHCS) to conduct an evaluation of the benefits of telehealth. This bill expands the telehealth modalities Medi-Cal providers can use to establish new patients to include asynchronous store and forward, and telephonic (audio-only) synchronous interaction, as specified. This bill relieves some Medi-Cal providers of requirements to provide beneficiary choice under specified circumstances.

ANALYSIS:

Existing law:

1) Requires before the delivery of health care via telehealth, the health care provider initiating the use of telehealth to inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health, requires the consent to be documented, and, defines "synchronous interaction" to mean a real-time interaction between a patient and health care provider located at a distant site. [BPC §2290.5]

2) Establishes the DHCS to administer the Medi-Cal program. [WIC §14000, et seq.]

3) Requires a federally qualified health center (FQHC) or a rural health clinic (RHC) "visit" to mean a face-to-face encounter between an FQHC or RHC patient and specified providers. Prohibits an FQHC or RHC from establishing a new patient relationship using audio-only synchronous interaction. Allows DHCS to develop exceptions. Does not preclude an FQHC or RHC from establishing a new patient through asynchronous store and forward modality if certain conditions are met such as the patient is physically present at an originating site that is a licensed or intermittent site of the FQHC or RHC, at the time the service is performed. [WIC §14132.100]

4) Does not require in-person, face-to-face contact between a health care provider and a patient under the Medi-Cal program for covered health care services and provider types designated by DHCS, when provided by video synchronous interactions, asynchronous store and forward, audio-only synchronous interaction, remote patient monitoring, or other permissible virtual communication modalities when services and setting meet the applicable standard of care and meet the requirements of the service code being billed, subject to specified requirements. [WIC §14132.725]

5) Requires at some point designated by DHCS, no sooner than January 1, 2024, a Medi-Cal provider furnishing applicable health care services via audio-only synchronous interaction to also offer those same services via video synchronous interaction to preserve beneficiary choice. Permits DHCS to provide specific exemptions. Additionally, on a date designated by DHCS, a provider furnishing services thorough video synchronous interaction or audio-only synchronous interaction to offer those services via in-person, face-to-face contraction, or arrange for a referral to in-person care.[WIC §14132.725]

6) Permits a health care provider to establish a new patient relationship with a Medi-Cal beneficiary via video synchronous interaction, but prohibits this using asynchronous store and forward, telephonic (audio-only) synchronous interaction, remote patient monitoring or other virtual communication, except as permitted for FQHCs and RHCs. [WIC §14132.725]

This bill:

1) Revises the definition of "synchronous interaction" to include, but not be limited to, audio-video, audio only, such as telephone, and other virtual communication.

2) Requires a county contracting with DHCS, or a county subcontractor, as specified, to comply telehealth payment parity requirements.

3) Permits, for the Family Planning, Access, Care, and Treatment, Presumptive Eligibility for Pregnant Women, and Every Woman Counts programs, a provider to enroll or recertify an individual remotely through telehealth and other virtual communication modalities, including telephone, based on the current Medi-Cal program eligibility form or forms applicable to the specific program.

4) Permits for the Medi-Cal Minor Consent program, a county eligibility worker to determine eligibility for, or recertify eligibility for, an individual remotely through virtual communication modalities, including telephone.

5) Permits DHCS to develop program policies and systems to support implementation of remote eligibility determination, enrollment, and recertification.

6) Permits DHCS to implement, interpret, or make specific this bill by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

FQHCs and RHCs

7) Prohibits an FQHC and RHC from being precluded from establishing a new patient relationship using an audio-only synchronous interaction.

8) Permits a new patient to be established using asynchronous store and forward if the patient is physically present at the FQHC or RHC, or intermittent site at the time the service is performed.

Other Clinics

9) Requires health care services furnished by a Medi-Cal enrolled clinic through telehealth to be reimbursed by Medi-Cal on the same basis, to the same extent, and at the same payment rate as those services are reimbursed if furnished in person, consistent with this bill.

10) Prohibits DHCS from restricting the ability of an enrolled clinic to provide and be reimbursed for services furnished through telehealth and having policies that require all of the clinical elements of a service to be met as a condition of reimbursement. Requires managed care plans to comply with this and payment parity. Includes as prohibited restrictions all of the following:

    a) Requirements for face-to-face contact between an enrolled clinic provider and a patient;

    b) Requirements for a patient's or provider's physical presence at the enrolled clinic or any other location;

    c) Requirements for prior in-person contacts between the enrolled clinic and a patient;

    d) Requirements for documentation of a barrier to an in-person visit or a special need for a telehealth visit;

    e) Policies, including reimbursement policies, that impose more stringent requirements on telehealth services than equivalent services furnished in person; and,

    f) Limitations on the means or technologies through which telehealth services are furnished. This does not prohibit policies that require compliance with applicable federal and state health information privacy and security laws.

11) States that this bill does not eliminate the obligation of a health care provider to obtain verbal or written consent, or the rights of the patient, as specified.

12) Defines "enrolled clinic" as a licensed clinic, intermittent clinic exempt from licensure, a hospital or nonhospital-based clinic operated by the state or any of its political subdivisions, including the University of California, or a city, county, city and county, or hospital authority, and a tribal clinic exempt from licensure, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined in federal law.

13) Requires DHCS to seek any necessary federal approvals and obtain FFP in implementing this bill, and to implement it only to the extent that any necessary federal approvals are obtained and FFP is available and not otherwise jeopardized.

Evaluation

14) Requires by July 2025, DHCS to complete an evaluation to assess the benefits of telehealth in Medi-Cal. Requires the evaluation to analyze improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth, and DHCS to utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this effort. Requires the evaluation to also analyze utilization and access across different Medi-Cal populations and the degree to which telehealth has improved equity and helped address disparities in care.

15) Requires DHCS to provide data and information to the evaluator, and report its findings and recommendations to appropriate committees of the Legislature no later than October 31, 2025.

Other Medi-Cal providers

16) Exempts Medi-Cal providers that provide audio-only synchronous interactions from being required to provide video synchronous for beneficiary choice if they are specified clinics, or are unable, due to lack of infrastructure or financial capital, to obtain a specified broadband speed, as specified.

17) Deletes the prohibition on the establishment of new patients via asynchronous store and forward, telephonic (audio-only) synchronous interaction,

Comments

According to the author, the COVID-19 pandemic has made abundantly clear what we have known for decades – our most vulnerable and marginalized communities continue to struggle for affordable and reliable access to healthcare. This bill will extend the telehealth flexibilities that were put in place during the COVID-19 pandemic, which have been vital to ensuring that health centers can continue providing services. More specifically this bill will ensure that telehealth, including telephonic and video care, are available to patients regardless of who they are, their insurance, what language they speak, or the barriers they may face, such as geographic, transportation, childcare, or the ability to take time off from work.

Budget Act of 2022-23. As part of the budget, DHCS requested trailer bill language to make statutory changes to align with its DHCS Telehealth Recommendations Post- the COVID Public Health Emergency (PHE).

SB 184 (Committee on Budget, Chapter 47, Statutes of 2022) is the omnibus health budget trailer bill which includes the following with respect to Medi-Cal and telehealth:

- Provides that face-to-face contact is not required when covered Medi-Cal services are provided by video synchronous interaction, audio-only synchronous interaction, remote patient monitoring, or other permissible virtual communication modalities, meeting certain criteria.

- Requires a provider furnishing services through video synchronous interaction or audio-only synchronous interaction to also offer those services through in-person, face-to-face contact or arrange for a referral to in-person care.

- Authorizes a provider to establish a new patient relationship with a Medi-Cal beneficiary through video synchronous interaction, and prohibits a provider from doing so through other telehealth modalities.

- Adopts various requirements on DHCS, or a Medi-Cal provider, relating to the use of telehealth modalities, including requirements concerning fee schedules and minimum reimbursement limits, services in border communities, as defined, consent standards, privacy and security compliance, informational notices, and a research and evaluation plan.

- Expands the definition of patient "visit," for FQHCs and RHCs, to include an encounter between an FQHC or RHC patient and any of specified health care professionals using video synchronous interaction, audio-only synchronous interaction, or asynchronous store and forward modality when the applicable standard of care and other conditions are met.

- Establishes other requirements on an FQHC or RHC relating to the use of those telehealth modalities, including requirements concerning reimbursement rates, consent standards, privacy and security compliance, the establishment of new patient relationships, and in-person services or referrals.

- Authorizes reimbursement for additional medically necessary Drug Medi-Cal services and to other authorized individuals when those services are delivered through video synchronous interaction or audio-only synchronous interaction.

- Establishes certain requirements relating to privacy and security compliance and the establishment of new patient relationships through telehealth modalities for Drug Medi-Cal.

- Requires DHCS to adopt regulations by July 1, 2024, to implement telehealth provisions specific to Drug Medi-Cal.

- Extends from January 1, 2023, to January 1, 2026, certain time, distance, and appointment time standards for specified services to ensure that Medi-Cal managed care covered services are available and accessible to enrollees of Medi-Cal managed care plans in a timely manner.

- Authorizes DHCS to allow a Medi-Cal managed care plan to use clinically appropriate video synchronous interaction as a means of demonstrating compliance with the time or distance standards, and as part of an alternative access standard request, and authorizes DHCS to develop policies for granting credit, as specified.

- Makes changes to the frequency of alternative access standards request submissions made by Medi-Cal managed care plans when they cannot meet the time and distance standards, and requires the plan to close out any corrective action plan deficiencies in a timely manner to ensure beneficiary access is adequate and to continually work to improve access in its provider network.

Concerns. The California Association of Health Plans, the Association of California Life and Health Insurance Companies, and America's Health Insurance Plans write with concerns to this bill because it is one of the fourteen health insurance mandate will increase costs, reduce choice and competition, and further incent some employers and individuals to avoid state regulation by seeking alternative coverage options. Large employers, unions, small businesses and hard-working families value their ability to shop for the right health plan, at the right price, that best fits their needs. Benefit mandates impose a one-size-fits-all approach to medical care and benefit design driven by the Legislature, rather than consumer choice. The Service Employees International Union (SEIU California) requests that the evaluation process be expanded to include the impact on the healthcare workforce.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, unknown ongoing costs, potentially millions of dollars (General Fund and federal funds). Establishing new patients that would not have taken place in the absence of telehealth modalities proposed under this bill would increase health utilization costs.

SUPPORT: (Verified 8/12/22)

California Association of Public Hospitals and Health Systems (co-source)
California Medical Association (co-source)
CommunityHealth+ Advocates (co-source)
Essential Access Health (co-source)
Planned Parenthood Affiliates of California (co-source)
AARP California
AIDS Healthcare Foundation
Alameda Health Consortium
Alameda Health System
All Inclusive Community Health Center
Alliance Medical Center
AltaMed Health Services
American College of Obstetricians and Gynecologists District IX
Ampla Health
APLA Health
Arnold & Associates
Arroyo Vista Family Health Center
Asian Health Services
Asian Pacific Health Care Venture, Inc.
Association for Clinical Oncology
Association of California Healthcare Districts
Bartz-Altadonna Community Health Centers
Behavioral Health Services, Inc.
Borrego Health
Business & Professional Women of Nevada County
California Academy of Family Physicians
California Association of Health Facilities
California Association of Public Hospitals and Health Systems,
California Association of Social Rehabilitation Agencies
California Behavioral Health Planning Council
California Board of Psychology
California Chapter of the American College of Emergency Physicians

California Chronic Care Coalition
California Commission on Aging
California Commission on the Status of Women and Girls
California Consortium for Urban Indian Health
California Dental Association
California Dialysis Council
California Hospital Association
California PACE Association
California Podiatric Medical Association
California Primary Care Association
California Psychological Association
California School-based Health Alliance
California Senior Legislature
California Solar & Storage Association
California State Association of Psychiatrists
California Telehealth Network
California Telehealth Policy Coalition
Center for Family Health & Education
Central California Partnership for Health
Central Valley Health Network
ChapCare Medical and Dental Health Center
CHE Behavioral Services
Children Now
Children's Specialty Care Coalition
Chinatown Service Center
Citizens for Choice
City of San Francisco
Coalition of Orange County Community Health Centers
CommuniCare Health Centers
Community Clinic Association of Los Angeles County
Community Health Councils
Community Health Partnership
Community Medical Wellness Centers
County Health Executives Association of California
County of Contra Costa
County of San Diego
County of San Francisco
County of Santa Barbara
County of Santa Clara
County Welfare Directors Association of California

Desert Aids Project
District Hospital Leadership Forum
Eisner Health
El Proyecto Del Barrio, Inc.
Family Health Care Centers of Greater Los Angeles, Inc.
Father Joe's Villages
First 5 Association of California
Golden Valley Health Centers
Governmental Advocates, Inc.
Health Access California
Health Alliance of Northern California
Health Care LA
Health Center Partners of Southern California
Health Improvement Partnership of Santa Cruz
Kheir Clinic
Kheir Health Services
LA Clinica De LA Raza, INC.
Lifelong Medical Care
Los Angeles Homeless Services Authority
Los Angeles LGBT Center
Mission City Community Network
Morongo Basin Healthcare District
MPact Global Action for Gay Men's Health and Human Rights
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
National Multiple Sclerosis Society
Natividad Medical Center - County of Monterey
Neighborhood Healthcare
North Coast Clinics Network
North East Medical Services
Northeast Valley Health Corporation
Occupational Therapy Association of California
OCHIN
Ole Health
ParkTree Community Health Centers
Petaluma Health Center
Queens Care Health Centers
Redwood Community Health Coalition
Rural County Representatives of California
Saban Community Clinic

Salud Para La Gente
San Fernando Community Health Center
San Francisco Department of Public Health
San Mateo County Board of Supervisors
San Ysidro Health
Santa Barbara Women's Political Committee
Santa Cruz Community Health Centers
Santa Rosa Community Health
Shasta Community Health Center
Solano County Board of Supervisors
South Bay Family Health Center
South Central Family Health Center
St. John's Well Child and Family Center
Steinberg Institute
Sutter Health
TCC Family Health
Tenet Healthcare Corporation
The Achievable Foundation
The California Association of Local Behavioral Health Boards and Commissions
The Los Angeles Trust for Children's Health
Triple P America Inc.
TrueCare
UMMA Community Clinic
Unicare Community Health Center
Universal Community Health Center
Urban Counties of California
Venice Family Clinic
WellSpace Health
Western Center on Law & Poverty
Westside Family Health Center
Women's Health Specialists

OPPOSITION: (Verified 8/12/22)

ATA Action
California Chamber of Commerce
Teladoc Health

ARGUMENTS IN SUPPORT: The California Association of Public Hospitals and Health Systems (CAPH), writes that CAPH and the co-sponsors of this bill have been working with the Administration since last year to provide input on its

permanent Medi-Cal telehealth proposal, which is being advanced via the state budget process this year. CAPH is pleased with the Administration's collaboration and partnership on this effort and the overall changes that have been made over the last year. The recent amendments to this bill reflect the Administration's trailer bill language with the additional changes cosponsors are seeking to it, including a few areas that we are still working to resolve with the Administration. Altamed writes we are actively working with the Legislature and DHCS on a permanent Medi-Cal Telehealth flexibility policy and would like to see the bill move forward. Telehealth has huge potential to expand access to high-quality virtual care for all Californians and this bill will bolster access to care by permanently maintaining essential COVID-19 telehealth and telephonic care flexibilities. It will ensure that patients facing physical barriers such as transportation and lacking alternative means to access care can do so in a safe and medically appropriate manner. Essential Access Health, a cosponsor of this bill writes, telehealth has become a crucial pathway for patients to access care during the pandemic and will remain so beyond the PHE period. Access to telehealth decreases barriers, increases access to care for patients, and reduces no-show rates significantly. Telephonic care in particular has become a reliable modality of care. Recent surveys conducted by the California HealthCare Foundation found that most patients would like the option of a telephone or video visit and would likely choose a phone or video visit over an in-person visit whenever possible. Essential Access Health conducted a survey of Title X provider network last fall and respondents reported that on average, nearly 60% of their remote sexual and reproductive health visits were conducted by telephone. Another cosponsor, Planned Parenthood Affiliates of California, writes centers now provide about 25% of their visits through telehealth – which includes both video and audio-only visits. The majority of Planned Parenthood's telehealth visits are for birth control, sexually transmitted infections screening and treatment, pregnancy counselling, gender affirming care, PrEP and PEP follow-ups, and UTI screenings. All visits, regardless of modality, meet the time, medical decision-making, and documentation requirements of billing codes to be reimbursed.

ARGUMENTS IN OPPOSITION: Teledoc Health believes provisions of this bill would create a dual standard that would make compliance impossible for providers furnishing services only through video synchronous or audio-only interactions. The consequences of this provision could mean that patients in California will have fewer options from which to choose when seeking virtual care. The California Chamber of Commerce (Chamber) believes this bill's current definition of telehealth will increase the cost of care delivery since it places no parameters on the telephone-only parity provision. The Chamber indicates a clear definition is needed for exactly which virtual/remote services will be placed at parity with in-person presentations and to what extent they will be at parity, and

states without this guardrail, this bill could potentially place even the simplest and shortest patient-provider telephone interactions at parity with in-person presentations. ATA Action writes that state policymakers should set rational guidelines that are fair to the provider of such services while reflecting the cost saving the effective use of telehealth technologies offers to the health care system. ATA Action suggest adopting language which grants provider the flexibility to accept reimbursement amounts less than the amount those providers would charge for the same service in person. ATA Action has several concerns particularly with language establishing a patient-provider relationship via telehealth, patient consent, patient choice in telehealth modality, and certain referral provisions.

ASSEMBLY FLOOR: 78-0, 6/1/21
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon
NO VOTE RECORDED: Frazier

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
8/13/22 9:37:46

****** END ******