
THIRD READING

Bill No: AB 32
Author: Aguiar-Curry (D) and Robert Rivas (D), et al.
Amended: 8/24/22 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 permits the Department of Health Care Services (DHCS) to allow under specified circumstances new patients to be established with health care providers in the Medi-Cal program using audio-only synchronous and other modalities, and permits exceptions from requirements to ensure beneficiary choice of modalities.

Senate Floor Amendments of 8/24/22 make non-substantive changes and address chaptering-out conflicts with SB 966 (Limon), which requires DHCS to seek any necessary federal approvals and issue appropriate guidance to allow a federally qualified health center (FQHC) or rural health clinic (RHC) to bill for specified behavioral health providers, as specified.

Senate Floor Amendments of 8/22/22 delete the expanded definition of synchronous interaction for purposes of telehealth, telehealth payment parity expansion in Medi-Cal managed care, evaluation requirements for DHCS; allow DHCS to authorize exceptions to the prohibition on establishing new patients via audio-only interactions and other modalities; and allow DHCS to authorize some exceptions to the beneficiary choice requirements.

ANALYSIS:

Existing law:

- 1) Establishes the DHCS to administer the Medi-Cal program. [WIC §14000, et seq.]
- 2) Requires an FQHC or an 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]
- 3) 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]
- 4) 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]

- 5) 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]
- 6) Defines “sensitive services” to mean all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes other specified services, as described, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section. [CIV 56.05]

This bill:

- 1) Permits DCHS to provide for an exception to the prohibition on FQHCs and RHCs establishing a new patient relationship using audio-only synchronous interaction, including, but not limited to, the situations as described below, and requires that they are established in consultation with affected stakeholders and published in departmental guidance:
 - a) When the visit is related to sensitive services, and when established in accordance DHCS requirements and consistent with federal and state law, regulations and guidance; and,
 - b) When the patient requests audio-only modality or attests they do not have access to video, and when established in accordance with department requirements and consistent with federal and state laws, regulations and guidance.
- 2) Allows in making exceptions to beneficiary choice requirements, DHCS to also take into consideration the availability of broadband access based on speed standards set by the Federal Communication Commission pursuant to federal law, as specified, or other applicable federal law or regulation.
- 3) Permits a health care provider to establish a new patient relationship with a Medi-Cal beneficiary via asynchronous store and forward, audio-only synchronous interaction, remote patient monitoring, or other virtual communication modalities, to the same extent as FQHCs and RHCs but also allows for the exemptions described in 1) above for remote patient monitoring or other virtual communication modalities (for providers who are not FQHCs and RHCs).

- 4) Requires applicable health care services provided through asynchronous store and forward, video synchronous store interaction, audio-only synchronous interaction, remote patient monitoring, or other permissible virtual communication to comply with privacy and security requirements contained in federal Health Insurance Portability and Accountability Act of 1996, and regulations, the Medicaid State Plan Amendment and any other applicable state and federal statutes and regulations.

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.

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 addresses policy beyond the PHE with respect to Medi-Cal and telehealth including:

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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.

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 8/22/22)

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 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 8/22/22)

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 telehealth has huge potential to expand access to high-quality virtual care for all Californians and this bill will bolster access to care. 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. 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
8/26/22 15:31:59

**** END ****