SENATE COMMITTEE ON HEALTH
Senator Dr. Richard Pan, Chair

BILL NO: SB 365
AUTHOR: Caballero
VERSION: March 16, 2021
HEARING DATE: March 24, 2021
CONSULTANT: Kimberly Chen

SUBJECT: E-consult service

SUMMARY: Requires electronic consultation services provided by an enrolled Medi-Cal provider, including a federally qualified health center or rural health clinic provider, to be reimbursable under the Medi-Cal Program.

Existing federal law: Establishes the definition of services of a federally qualified health center (FQHC) and the services of a rural health clinic (RHC). [42 U.S. Code §1396d]

Existing state law:

1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low-income individuals are eligible for medical coverage. [WIC §14000, et seq.]

2) Requires FQHC and RHC services to be covered benefits under the Medi-Cal program and these services be reimbursed on a per-visit basis, as defined. Requires FQHC and RHC per-visit rates to be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in federal law. [WIC §14132.100]

3) Prohibits in-person contact between a health care provider and a patient from being required under Medi-Cal for services appropriately provided through telehealth, subject to reimbursement policies adopted by DHCS. Prohibits DHCS from limiting the type of setting where services are provided for the patient or by the health care provider for the purposes of payment for covered treatment or services provided through telehealth. [WIC §14132.72]

4) Provides that, to the extent that federal financial participation (FFP) is available, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for health care services provided by asynchronous store and forward, as defined, subject to the billing and reimbursement practices developed by DHCS. [WIC §14132.725]

5) Defines "asynchronous store and forward" to mean the transmission of a patient's medical information from an originating site to the health care provider at a distant site. [BPC §2290.5]

6) Defines "telehealth" to mean 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. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers. [BPC §2290.5]

This bill:

1) Requires electronic consultation (e-consult) services provided by an enrolled Medi-Cal provider, including a FQHC or RHC provider, to be reimbursable under Medi-Cal.

2) Defines "e-consult" to mean interprofessional health record assessment and management service initiated by a treating or requesting provider and delivered by a consultative provider, including a written report to the patient's treating or requesting provider. Defines an e-consult service to involve a treating or requesting provider sending information regarding the patient and a consultation request to a consultative provider, usually a specialist provider, who may then respond in any of a number of ways, including providing requested feedback, asking for additional information, recommending certain studies or examinations, or initiating the scheduling of an appointment

3) Requires DHCS to seek any federal waivers and approvals necessary to implement this bill.

4) Make legislative findings and declarations regarding the benefits of e-consult services to patients and to the Medi-Cal program.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

1) *Author's statement.* According to the author, e-consult services are truly a patient centered innovation. They offer timely resolutions for patients who may otherwise wait months to see a specialist for something that may not require an appointment in the first place. Currently, e-consult services are reimbursable for providers at the distant site, who are usually the specialist providers. However, the primary care provider at the originating site is not able to bill for this telehealth service. Both providers are bringing expertise to the table when discussing the patient's condition, but only the specialist is reimbursed for their time. It can be difficult to get an appointment with your general practitioner at the local clinic, let alone a specialist appointment, since specialty care is stressed everywhere in the health care industry. Use of an e-consult would determine if a physical visit is needed, saving patient's time and money. This also gets the patient's concerns addressed more quickly for non-urgent medical conditions. This bill would require Medi-Cal to reimburse all participating primary care providers, including those who operate out of an FQHC or RHC, for e-consult services. This bill will not only create equity for the primary care provider, but most importantly, will improve care for the patient.

2) *Telehealth and e-consult services.* Medi-Cal provides reimbursement for covered treatments and services provided through telehealth, subject to certain procedures and guidelines. Mechanisms for delivering telehealth can include video conferencing, patient monitoring through electronic devices, and store and forward technologies. One type of telehealth services is asynchronous store and forward, which refers to the practice of transmitting a patient's medical information from an originating site to the health care provider at a distant site.

   Under DHCS' current telehealth policy, e-consults are a covered service under the auspice of store and forward. DHCS' billing manual defines e-consults as asynchronous health record consultation services that provide an assessment and management service in which the patient's treating health care practitioner (attending or primary) requests the opinion or treatment advice of another health care practitioner (consultant) with specific specialty

expertise to assist in the diagnosis and management of the patient's health care needs without patient face-to-face contact with the consultant. E-consults between health care providers are designed to offer coordinated multidisciplinary case reviews, advisory opinions and recommendations of care. E-consults are permissible only between health care providers. Only the health care provider at the distant site (the consulting specialist) may bill for the e-consult visit. Current policy prohibits FQHCs and RHCs from billing for an e-consult, regardless of whether it is the patient's treating health care practitioner or the distant site specialist.

3) *FQHCs and RHCs*. FQHCs and RHCs are clinics that meet federally defined qualifications and furnish specified services. FQHCs provide outpatient preventive and primary health care services to medically underserved populations. RHCs also provide outpatient primary care services and must be located within a designated medically underserved area. Payment rules for FQHCs and RHCs differ from those for other providers. State and federal law requires that FQHCs and RHCs are paid for each patient visit, a cost-based per-visit rate known as a prospective payment system (PPS). Medi-Cal managed care plans (MCPs), which must make FQHCs and RHCs available to their members, make payments to the FQHC and RHC. DHCS also makes a "wrap around" payment that makes up the difference between the managed care plan payment and the FQHC or RHC's full per-visit PPS rate. Federal law offers states flexibility in defining which services are included in a visit, the number of visits an FQHC or RHC can bill per member per day, and the types of health care professionals that qualify for a face-to-face visit under PPS.

   SB 147 (Hernandez, Chapter 760, Statutes of 2015) authorized a three-year Alternative Payment Methodology (APM) pilot program for county and community-based FQHCs. The purpose was to move the clinics away from volume-based, PPS to a more flexible payment methodology that would enable "non-traditional" services like integrated primary and behavioral health visits on the same day, group visits, email visits, phone visits, community health worker contacts, case management, and case coordination across systems. In 2016, DHCS submitted a concept paper for the APM pilot program to the Center for Medicare and Medicaid Services (CMS), but CMS indicated the proposal did not comply with federal APM requirements. In February 2018, DHCS announced that the APM pilot would not go forward for the foreseeable future.

4) *DHCS post-COVID 19 telehealth policy recommendations*. As a result of the COVID-19 public health emergency (PHE), DHCS implemented broad telehealth flexibilities offered under a myriad of federal waivers and flexibilities. On February 2, 2021, DHCS released a set of telehealth policy recommendations to maintain some of the temporary PHE policy changes and implement new telehealth policies after the conclusion of the PHE. According to DHCS, reimbursement for e-consults will be subject to a separate fee schedule that will likely be available for both the attending or primary care provider and the consulting specialist. However, FQHCs and RHCs will not be eligible for reimbursement for these services under fee-for-service or PPS. DHCS also states its intent to engage with interested FQHC and RHC stakeholders regarding the use of e-consults and other telehealth services in the context of an APM discussion. DHCS's telehealth policy recommendations are currently included as proposed trailer bill language for the 2021-22 budget.

5) *Related legislation.* AB 32 (Aguiar-Curry) requires telehealth services provided by an enrolled clinic to be reimbursed by Medi-Cal on the same on the same basis, to the same extent, and at the same payment rate as those services are reimbursed if furnished in person. Prohibits DHCS from restricting the ability of an enrolled clinic to provide and be reimbursed for services furnished through telehealth. Requires DHCS to indefinitely continue the telehealth flexibilities in place during the COVID-19 PHE. Requires DHCS to convene an advisory group with specified membership to provide on the development of a revised Medi-Cal telehealth policy that promotes specified principles. *AB 32 is pending in the Assembly Health Committee.*

6) *Prior legislation.* AB 2164 (Rivas of 2020) would have allowed FQHCs and RHCs to establish a patient who is 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, under specified conditions. *AB 2164 was vetoed by Governor Newsom, who wrote in his veto message: "While I am supportive of utilizing telehealth to increase access to primary and specialty care services, DHCS is currently in the process of evaluating its global telehealth policy to determine what temporary flexibilities should be extended beyond the COVID-19 pandemic. Changes to FQHC and RHC telehealth is better considered within the context of a global assessment around telehealth in the state of California. Further, the cost of these changes is also more appropriately considered alongside other policy changes in the budget process next year.*"

   AB 744 (Aguiar-Curry, Chapter 867, Statutes of 2019) requires health care contracts after January 1, 2021, to specify that the health plan or insurer is required to cover and reimburse diagnosis, consultation, or treatment delivered through telehealth on the same basis and to the same extent that the plan or insurer is responsible for coverage and reimbursement for the same service provided through in-person diagnosis, consultation, or treatment. Deletes the definition of teleophthalmology, teledermatology, and teledentistry by store and forward" in Medi-Cal law, and replaces references to "teleophthalmology, teledermatology, and teledentistry" with health care services provided by asynchronous store and forward, as specified so that the law now, prohibits face-to-face contact between a health care provider and a Medi-Cal patient for health care services that are appropriately provided by store and forward, to the extent that federal financial participation is available, subject to billing and reimbursement policies developed by DHCS.

   AB 1494 (Aquiar-Curry, Chapter 829, Statutes of 2019) prohibits face-to-face contact or a patient's physical presence on the premises of an enrolled community clinic, as specified, to be required for services provided to a Medi-Cal beneficiary during or immediately following a state of emergency. Requires DHCS on or before July 1, 2020, to issue and publish on its Website guidance to facilitate reimbursement for services provided by enrolled community clinics to a Medi-Cal beneficiary during or immediately following a state of emergency.

7) *Support*. This bill is sponsored by BluePath Health. BluePath Health writes that Medi-Cal beneficiaries continue to lack access to specialty care and that e-consult offers a foundational strategy to alleviate specialty access issues, in addition to improved provider work quality and satisfaction, and cost savings for the health system. BluePath Health cites multiple studies in its statement that e-consults have demonstrated improved access and timeliness of care, high level of provider satisfaction, and improved efficiency. They conclude that primary care provider reimbursement for e-consult will make this service more accessible to our safety net providers across the state, and will result increased adoption across the state.

L.A. Care Health Plan also supports this bill. They write that in areas with limited access to care, such as rural areas, e-consults offer a much-needed opportunity for patients and primary care providers alike. L.A. Care Health Plans states that primary care provider reimbursement can improve the opportunity for the patient to receive appropriate care from their clinic without having to drive potentially hundreds of miles to see a specialist. They argue that for FQHCs and RHCs providers caring for the most underserved populations, keeping patients is critical to their funding structure. FQHCs are obligated to care for patients regardless of their insurance status or ability to pay, so they often see the most vulnerable patients who likely do not have the ability to travel to a specialist many miles away. L.A. Care Plans states that this bill will result in significant improvements in wait times for specialist visits.

8) *Policy comments.* If DHCS' telehealth policy recommendations are adopted as proposed, primary care and specialist providers will be able to receive reimbursement for e-consults services under a separate fee schedule. This may make provisions of this bill unnecessary.

   DHCS has excluded FQHCs and RHCs from receiving separate reimbursement for e-consults. DHCS shared that initial conversations with CMS suggests that DHCS may not receive FFP for e-consults at FQHCs and RHCs and, therefore, a mandate to require FHQCs and RHCs to receive reimbursement for e-consults may be a state-only program.

SUPPORT AND OPPOSITION:

Support: BluePath Health (sponsor)
Camarena Health
L.A. Care Health Plan
OCHIN, Inc.

Oppose: None received

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