Date of Hearing: July 6, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 365 (Caballero) – As Amended May 4, 2021

SENATE VOTE: 38-0

SUBJECT: E-consult service.

SUMMARY: Requires an e-consult service to be reimbursable under the Medi-Cal program for an enrolled provider, including a federally qualified health center (FQHC) or rural health clinic (RHC), if a provider renders that service. Defines an "e-consult service" to mean an interprofessionalw2 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. Specifically, **this bill**:

1) Requires an e-consult service to be reimbursable under the Medi-Cal program for an enrolled provider, including a FQHC or RHC, if a provider renders that service.

2) Defines "electronic consultation service," or "e-consult service," to mean:
   a) An 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; and,
   b) An e-consult service ordinarily involves 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 the Department of Health Care Services (DHCS) to seek any federal waivers and approvals necessary to implement this bill.

4) Implements this bill only to the extent that DHCS obtains necessary federal approval of federal matching funds.

5) Makes legislative findings and declarations that:
   a) Telehealth is an effective means to ensure patients can access safe and effective health care regardless of location;
   b) Electronic consultation services, which are also referred to as "e-consults," are a method of telehealth used to provide patient-centered care and improve treating or requesting providers' ability to better manage their patients' care;
   c) DHCS has an existing telehealth policy that allows for reimbursement for e-consult services delivered by consultant providers who are usually specialists, but under that policy, reimbursement is not authorized for any requesting or treating providers, who are usually primary care providers;
   d) FQHCs and RHCs are prohibited from seeking reimbursement for e-consult services that their requesting or treating and consultant providers render;

e) Current DHCS policy limits the use of e-consult services, and thereby hinders access to care;
f) These services provide a critical way to improve access to care in California's safety net;
g) E-consult services offer benefits to patients, including improved specialty visit wait times and patient satisfaction rates, and reduced costs associated with in-person office visits, including patient travel time, time off work, and associated required childcare;
h) E-consult services offer benefits to primary care providers, including reinforcing the medical home, improving provider satisfaction, and addressing current and future patient issues through specialist consultation obtained through e-consult services; and,
i) E-consult services also benefit specialists by improving the readiness and appropriateness of referrals, reducing no-show rates, improving provider satisfaction, and bettering overall access to specialty care.

6) States legislative intent to enact legislation that would do both of the following:
   a) Ensure coverage and utilization of e-consult services under the Medi-Cal program; and,
   b) Recognize the benefits of e-consult services that have been found to have particular impact on the safety net population, including Medi-Cal beneficiaries and uninsured Californians.

EXISTING LAW:

1) Prohibits in-person contact between a health care provider and a patient from being required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by DHCS, to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program.

2) Defines "telehealth" to:
   a) 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; and,
   b) Include synchronous interactions and asynchronous store and forward transfers.

3) Defines "synchronous interaction" to mean a real-time between a patient and a health care provider located at a distant site.

4) Defines "asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site.

5) Prohibits DHCS from requiring a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.

6) Requires FQHCs and RHCs to be reimbursed on a per-visit basis. Defines a "visit" as a face-to-face encounter between an FQHC or RHC patient and specified health care providers.

FISCAL EFFECT: According to the Senate Appropriations Committee, DHCS estimates that this bill will result in indeterminate, but significant costs to the Medi-Cal program and the State General Fund (GF) because Medi-Cal does not currently reimburse FQHC or RHC for e-consult and does not currently have a mechanism to do so. This bill is contingent upon DHCS obtaining

necessary federal approval and federal financial participation, which DHCS does not believe the Centers for Medicare & Medicaid Services (CMS) will approve. However, should CMS grant DHCS the necessary approvals, the services authorized under this bill would be reimbursed 50% from the GF, and 50% from federal funds.

COMMENTS:

1) **PURPOSE OF THIS BILL**. 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. The author concludes this bill will not only create equity for the primary care provider, but most importantly, will improve care for the patient.

2) **BACKGROUND**. DHCS' Medi-Cal policy on e-consults is contained in its telehealth provider manual for medical providers and FQHCs and RHCs, and differs by type of provider. For example, e-consults are not a reimbursable telehealth service for FQHCs and RHCs. For non-FQHC/RHC providers, DHCS' telehealth provider manual states that "e-consults" fall under the auspice of store and forward (known as "asynchronous" telehealth). DHCS' provider manual describes e-consults as follows:

   > E-consults are 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 and/or treatment advice of another health care practitioner (consultant) with specific specialty expertise to assist in the diagnosis and/or 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.

   Under current DHCS policy, e-consults are only billable (except for a transmission fee described below) by the consulting provider at the distant site under a particular Common Procedural Treatment Code (CPT Code 99451), which is defined as "interprofessional telephone/Internet/electronic health record assessment and management service provided by a consultative physician, including a written report to the patient's treating/requesting physician or other qualified health care professional, five minutes or more of medical consultative time." CPT is reimbursed at a rate of $31.45. In order to bill for e-consults, the health care provider at the distant site must create and maintain the following:
   a) A record of the review and analysis of the transmitted medical information with written documentation of date of service and time spent; and,

b) A written report of case findings and recommendations with conveyance to the originating site.

CPT code 99451 is not separately reportable or reimbursable if any of the following are true:
a) The distant site provider (consultant) saw the patient within the last 14 days;
b) The e-consult results in a transfer of care or other face-to-face service with the distant site provider (consultant) within the next 14 days or next available appointment date of the consultant; and,
c) The distant site provider did not spend at least five minutes of medical consultative time, and it did not result in a written report.

DHCS indicated Medi-Cal pays an originating site fee per transmission to the provider at the originating site for providing services via telehealth, via synchronous and/or asynchronous. The maximum is once per day per patient using Healthcare Common Procedure Coding System code Q3014, which is reimbursed at $22.94. Medi-Cal will otherwise only pay providers at the originating site if they perform a medically necessary professional service for the patient, as determined by the physician or practitioner at the distant site.

3) **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 its "Post-COVID-19 Public Health Emergency Telehealth Policy Recommendations: Public Document" which is its post-COVID telehealth policy recommendations and proposed trailer budget bill language was also posted on the Department of Finance website. DHCS released an updated telehealth policy in May 2021 and revised trailer bill language. The DHCS recommendations are only for Medi-Cal and not for commercial coverage. DHCS proposed to maintain some of the temporary PHE policy changes and implement new telehealth policies after the conclusion of the PHE. Asynchronous telehealth (which DHCS considers e-consult) will be reimbursed at a separate fee schedule. However, FQHCs and RHCs will not be eligible for reimbursement for these services under fee-for-service (FFS) or Prospective Payment System (PPS). In its telehealth policy, DHCS indicated that, given the underlying intent of and level of care provided, DHCS does not believe it is appropriate to pay FQHC/RHC and/or non-clinic providers for less involved and less costly modalities, such as a telephonic/audio-only visits, e-consults, or e-visits, at the same rate as a visit conducted in-person or through synchronous telehealth modalities. DHCS indicated it would like to engage in future discussions with interested FQHC/RHC stakeholders regarding the use of telephonic/audio-only modalities, e-consults, virtual communication modalities (e.g., e-visits), and/or remote patient monitoring services in the context of an Alternative Payment Methodology. DHCS states it recognizes the value of being flexible in the use of telehealth across the health care safety net, while protecting the integrity of the Medi-Cal program from a health care quality and fiscal perspective.

4) **FEDERAL GUIDANCE RELATED TO FQHCs AND RHCs**. In its October 14, 2020 publication entitled "State Medicaid & CHIP Telehealth Toolkit - *Policy Considerations for States Expanding Use of Telehealth* COVID-19 Version: Supplement #1," CMS provided guidance relevant to whether an FQHC or RHC could be reimbursed at a rate different than the PPS rate. In the toolkit, CMS stated that if a service is covered within the scope of the FQHC/RHC benefit, federal Medicaid law requires a state to pay a provider using the PPS rate or an alternative payment methodology (APM) that pays at least the PPS rate. For

services that are not covered as part of the FQHC/RHC benefit, a state may pay providers using the state plan FFS payment methodology established for that service. Rates for those services may be lower than the PPS or an APM paid for FQHC/RHC services, provided the rate is consistent with all other applicable federal requirements. This policy applies whether a service is delivered face-to-face or telephonically.

5) **SUPPORT**. This bill is sponsored by Bluepath Health and supported by health care providers and health plans to require Medi-Cal to reimburse all requesting/treating providers, including those who operate out of a FQHC or RHC for e-consult services. Current DHCS telehealth policy only allows for the reimbursement of e-consults delivered by consultant providers, usually specialists, and reimbursement does not exist for requesting or treating providers, who are usually the primary care providers, and existing policy also prohibits FQHCs or RHCs from being compensated for the e-consults that their requesting providers render. The proponents argues 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. 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. 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.

   The supporters cite several research studies on e-consults, including research out of the Los Angeles County Department of Health Services (DHS) that found that 25% of e-consults performed within the DHS clinic network were resolved without the need for a follow-up in-person visit over the period 2012 to 2015, a recent California Health Care Foundation-funded evaluation showing that e-consult in a California-based FQHC network resulted in 17% decrease in average wait time for an in-person specialist visit and that 25% of e-consults were resolved without requiring an inpatient visit, among other findings, and a University of California, San Francisco study found that patients have similar satisfaction levels for e-consult compared to those for in-person visits, and prefer that their providers use e-consult in the future. Research demonstrates that e-consult stands to improve access to care, provider and patient satisfaction, while decreasing costs. Proponents conclude this bill will create reimbursement equity between primary care providers and specialist providers when assisting patients through the use of e-consults, and 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 in significant improvements in wait times for specialist visits.

6) **RELATED LEGISLATION**. AB 32 (Aguiar-Curry) expands coverage of telehealth to require health plans and health insurers to cover audio only (telephone), and to reimburse for services delivered using telephone at the same payment rate as in-person visits; continues some telehealth payment and enrollment flexibilities put in place by DHCS for the Medi-Cal program during the COVID-19 PHE, including extending payment parity to MCMC plans for telehealth (as defined under existing law) and for audio-video, audio-only, and other virtual communication, and for Medi-Cal clinic visits. AB 32 also requires DHCS to reimburse each FQHC and RHC for health care services furnished through audio-only telehealth, including telephone, at the applicable PPS per-visit rate, until the earlier of January 1, 2025, or the date that the FQHC or RHC elects to participate in an APM; requires DHCS, in consultation with affected stakeholders, to develop one or more federally permissible APM, that FQHCs and RHCs may elect to participate in; requires, to the extent that an APM includes a separate per-visit payment rate for audio-only telehealth visits, that

payment rate to be less than the rate the FQHC or RHC receives for an in-person visit, except requires specified mental health services to continue to be reimbursed at the applicable PPS per-visit rate indefinitely, except if the FQHC or RHC elects an APM that covers those services; requires specified mental health services furnished through audio-only telehealth, to continue to be reimbursed at the applicable PPS per-visit rate indefinitely, except if the FQHC or RHC elects an APM that covers those services. AB 32 is currently in the Senate Health Committee.

AB 133 (Assembly Committee on Budget) and SB 133 (Senate Committee on Budget and Fiscal Review), two health budget trailer bills, include provisions requiring DHCS to seek any federal approvals it deems necessary to extend an approved waiver or flexibility implemented as of July 1, 2021, that are related to the delivery and reimbursement of services via telehealth modalities in the Medi-Cal program for which federal approval is obtained through December 31, 2022.

7) **PREVIOUS LEGISLATION**. AB 2164 (Rivas) of 2020 would have established the E-Consult Services and Telehealth Assistance Program within DHCS to award grants to eligible specified health clinics to conduct projects to implement and test the effectiveness of e-consult services and related telehealth services. That provision was subsequently amended out of the bill off of the Assembly Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Bluepath Health (sponsor)
Anthem Blue Cross
Aristamd
California Academy of Family Physicians
California Association for Nurse Practitioners
California Association of Public Hospitals & Health Systems
California Health & Wellness
California Medical Association
California Psychological Association
California Telehealth Policy Coalition
CaliforniaHealth+ Advocates
Calviva Health
Camarena Health
Central Valley E-consult Coalition
Central Valley Health Network
Confermed
E-consult Workgroup
Govern for California
Health Net
Hubmd
Inland Empire Health Plan
LA Care Health Plan
Local Health Plans of California
OCHIN, Inc.

Safety Net Connect
San Joaquin County Clinics
South Central Family Health Center
Thea Health

Opposition

None on file.

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