

SENATE THIRD READING

SB 365 (Caballero)

As Amended May 4, 2021

Majority vote

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 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.

- 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.

COMMENTS

BACKGROUND. DHCS' Medi-Cal policy on e-consults is contained in its telehealth provider manual for medical providers and FQHCs and RHCs. DHCS policy 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:

- 1) A record of the review and analysis of the transmitted medical information with written documentation of date of service and time spent; and,
- 2) 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:

- 1) The distant site provider (consultant) saw the patient within the last 14 days;
- 2) 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,
- 3) 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.

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.

Arguments in 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 argue 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.

Arguments in Opposition

DHCS writes in opposition DHCS recognizes the value of being flexible in the use of telehealth across the health care safety net. However, DHCS writes that the definition of e-consult is inconsistent with federal law that explicitly states that reimbursement for visits in FQHCs and RHCs is only permitted between an FQHC and RHC billable provider and a patient. In addition, DHCS states the Centers for Medicare and Medicaid Services have confirmed that e-consult services are not separately reimbursable to FQHCs and RHCs because a patient is not included during the encounter, and the cost of physician services, including e-consult services, may already be included in the Prospective Payment System rate; billing a separate visit would result in improper Medi-Cal payments for the service.

The Department of Finance (DOF) analysis indicates its opposition, stating it results in significant ongoing General Fund impacts not included in the 2021 Budget Act, and AB 133

(Committee on Budget), Chapter 143, Statutes of 2021, requires DHCS to convene a stakeholder group to inform ongoing telehealth policy to be proposed in the 2022-23 Governor's Budget. DOF states the provisions of this bill should be considered as part of a comprehensive telehealth policy through this stakeholder process.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, DHCS indicates this bill will result in indeterminate, but significant costs to the Medi-Cal program because Medi-Cal does not currently reimburse FQHCs or RHCs for e-consults and does not currently have a mechanism to do so. In addition, this bill is contingent on federal approval and federal financial participation, which DHCS sees as unlikely. Costs, in addition to the amount required for federal approval, would also include the costs of the individual e-consults. As an example, with even a small number of clinics participating (10%) with a small number of visits (one e-consult per month per clinic), costs might be in the hundreds of thousands dollars (50% General Fund, 50% federal funds).

VOTES

SENATE FLOOR: 38-0-2

YES: Allen, Archuleta, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Atkins, Limón

ASM HEALTH: 15-0-0

YES: Wood, Mayes, Aguiar-Curry, Arambula, Bigelow, Calderon, Carrillo, Flora, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Waldron

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

UPDATED

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