

Senate Bill No. 1665

CHAPTER 864

An act to amend Section 2060 of, and to add Section 2290.5 to, the Business and Professions Code, to amend Sections 1367 and 1375.1 of, and to add Sections 1374.13 and 123149.5 to, the Health and Safety Code, to amend Section 10123.13 of, and to add Section 10123.85 to, the Insurance Code, and to add and repeal Section 14132.72 of the Welfare and Institutions Code, relating to telemedicine.

[Approved by Governor September 24, 1996. Filed with Secretary of State September 25, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1665, M. Thompson. Medicine: telemedicine.

Existing law provides that the Medical Practice Act does not apply to any practitioner when in actual consultation with a licensed practitioner of this state, and would prohibit the practitioner from opening an office, a place to meet patients, and from receiving calls from patients within the limits of this state.

This bill would instead provide that the act does not apply to any practitioner located outside the state when in actual consultation either within this state or across state lines with a licensed practitioner of this state, and would also prohibit the out-of-state practitioner from having ultimate authority over the care or primary diagnosis of a patient who is located within this state.

Existing law provides for the licensure and regulation of physicians and surgeons and other health care professionals and provides that various actions constitute unprofessional conduct. Existing law also regulates health care service plans, disability insurers, and nonprofit hospital service plans and requires each of them to provide certain prescribed benefits. Existing law provides that a violation of the provisions governing health care service plans is subject to criminal sanction. Existing law establishes the Medi-Cal program which provides for health care services for individuals who meet certain financial eligibility criteria.

This bill would enact the "Telemedicine Development Act of 1996" by imposing several requirements governing the delivery of health care services through telemedicine, as defined. It would require a health care practitioner, as defined, prior to providing health care services through telemedicine, as defined, to obtain the verbal and written consent of the patient, and would provide that the failure to do so would constitute unprofessional conduct. This requirement would not apply when the patient is not directly involved in the telemedicine interaction, with a specified

exception. The bill would impose various requirements in regard to the provision of, or payment for, telemedicine services by health care service plans, disability insurers, and, until January 1, 2001, the Medi-Cal program.

Existing law establishes procedures regarding the maintenance of a patient's medical records and for the patient's access to medical records.

This bill would state that it is the intent of the Legislature that all medical information transmitted through telemedicine be maintained as a part of the patient's medical record. The bill would also provide that it should not be construed to alter the scope of practice of any health care provider or to authorize the delivery of health care services in a setting or in a manner not otherwise authorized by law.

By changing the definition of a crime applicable to health care service plans, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would incorporate additional changes in Section 10123.13 of the Insurance Code, proposed by SB 1478, to be operative only if SB 1478 and this bill are both chaptered and become effective on January 1, 1997, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

Lack of primary care, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.

Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care. As of June, 1995, 49 counties received federal designation as having medically underserved areas or populations.

Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.

Telemedicine is broadly defined as the use of information technology to deliver

medical services and information from one location to another.

Telemedicine is part of a multifaceted approach to address the problem of provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations, and other forms of support.

The use of telecommunications to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice, and improve access to health care in rural and other medically underserved areas.

Telemedicine has been utilized in one form or another for 30 years, and telemedicine projects currently exist in at least 40 states.

Telemedicine will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of medical care in the local area, strengthening the health infrastructure, and preserving health care-related jobs.

Consumers of health care will benefit from telemedicine in many ways, including expanded access to providers, faster and more convenient treatment, better continuity of care, reduction of lost work time and travel costs, and the ability to remain with support networks.

Telemedicine does not change the existing scope of practice of any licensed health professional.

It is the intent of the Legislature that telemedicine not replace health care providers or relegate them to a less important role in the delivery of health care. The fundamental health care provider-patient relationship can not only be preserved, but also augmented and enhanced, through the use of telemedicine.

Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telemedicine will not be realized.

This act shall be known as the “Telemedicine Development Act of 1996.”

SEC. 2. This act shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

SEC. 3. Section 2060 of the Business and Professions Code is amended to read:

2060. Nothing in this chapter applies to any practitioner located outside this state,

when in actual consultation, whether within this state or across state lines, with a licensed practitioner of this state, or when an invited guest of the California Medical Association or the California Podiatric Medical Association, or one of their component county societies, or of an approved medical or podiatric medical school or college for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, if he or she is, at the time of the consultation, lecture, or demonstration a licensed physician and surgeon in the state or country in which he or she resides. This practitioner shall not open an office, appoint a place to meet patients, receive calls from patients within the limits of this state, give orders, or have ultimate authority over the care or primary diagnosis of a patient who is located within this state.

SEC. 4. Section 2290.5 is added to the Business and Professions Code, to read:

2290.5. (a) For the purposes of this section, “telemedicine” means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications.

For the purposes of this section, “health care practitioner” has the same meaning as “licentiate” as defined in paragraph (2) of subdivision (a) of Section 805.

Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient. The informed consent procedure shall ensure that at least all of the following information is given to the patient verbally and in writing:

The individual retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the individual would otherwise be entitled.

A description of the potential risks, consequences, and benefits of telemedicine.

All existing confidentiality protections apply.

Patient access to all medical information transmitted during a telemedicine consultation is guaranteed, and copies of this information are available for a reasonable fee.

Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

A patient shall sign a written statement prior to the delivery of health care via

telemedicine, indicating that the patient understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

The written consent statement signed by the patient shall become part of the patient's medical record.

The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

Where the patient is a minor, or is incapacitated or mentally incompetent such that he or she is unable to give informed consent, this section shall apply to the patient's representative.

Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available.

This section shall not apply to a patient under the jurisdiction of the Department of Corrections.

SEC. 5. Section 1367 of the Health and Safety Code is amended to read:

1367. Each health care service plan, and where applicable, each specialized health care service plan, shall meet the following requirements:

All facilities located in this state including, but not limited to, clinics, hospitals, and skilled nursing facilities to be utilized by the plan shall be licensed by the State Department of Health Services, where licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

All personnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.

All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

The plan shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with

good professional practice.

(1) All services shall be readily available at reasonable times to all enrollees. To the extent feasible, the plan shall make all services readily accessible to all enrollees.

(2) To the extent that telemedicine services are appropriately provided through telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, these services shall be considered in determining compliance with Section 1300.67.2 of Title 10 of the California Code of Regulations.

The plan shall employ and utilize allied health manpower for the furnishing of services to the extent permitted by law and consistent with good medical practice.

The plan shall have the organizational and administrative capacity to provide services to subscribers and enrollees. The plan shall be able to demonstrate to the department that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

All contracts with subscribers and enrollees, including group contracts, and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the plan, shall be fair, reasonable, and consistent with the objectives of this chapter. All contracts with providers shall contain provisions requiring a dispute resolution mechanism under which providers may submit disputes to the plan, and requiring the plan to inform its providers upon contracting with the plan, or upon change to these provisions, of the procedures for processing and resolving disputes, including the location and telephone number where information regarding disputes may be submitted.

Each health care service plan contract shall provide to subscribers and enrollees all of the basic health care services included in subdivision (b) of Section 1345, except that the commissioner may, for good cause, by rule or order exempt a plan contract or any class of plan contracts from that requirement. The commissioner shall by rule define the scope of each basic health care service which health care service plans shall be required to provide as a minimum for licensure under this chapter. Nothing in this chapter shall prohibit a health care service plan from charging subscribers or enrollees a copayment or a deductible for a basic health care service or from setting forth, by contract, limitations on maximum coverage of basic health care services, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

Nothing in this section shall be construed to permit the commissioner to establish the rates charged subscribers and enrollees for contractual health care services.

The commissioner's enforcement of Article 3.1 (commencing with Section 1357) shall not be deemed to establish the rates charged subscribers and enrollees for contractual health care services.

SEC. 6. Section 1374.13 is added to the Health and Safety Code, to read:

1374.13. (a) It is the intent of the Legislature to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

For the purposes of this section, the meaning of "telemedicine" is as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code.

On and after January 1, 1997, no health care service plan contract that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to all terms and conditions of the contract agreed upon between the enrollee or subscriber and the plan. The requirement of this subdivision shall be operative for health care service plan contracts with the Medi-Cal managed care program only to the extent that both of the following apply:

Telemedicine services are covered by, and reimbursed under, the Medi-Cal fee-for-service program, as provided in subdivision (c) of Section 14132.72.

Medi-Cal contracts with health care service plans are amended to add coverage of telemedicine services and make any appropriate capitation rate adjustments.

Health care service plans shall not be required to pay for consultation provided by the health care provider by telephone or facsimile machines.

SEC. 7. Section 1375.1 of the Health and Safety Code is amended to read:

1375.1. (a) Every plan shall have and shall demonstrate to the commissioner that it has all of the following:

A fiscally sound operation and adequate provision against the risk of insolvency.

Assumed full financial risk on a prospective basis for the provision of covered health care services, except that a plan may obtain insurance or make other arrangements for the cost of providing to any subscriber or enrollee covered health care services, the aggregate value of which exceeds five thousand dollars (\$5,000) in any year, for the cost of covered health care services provided to its members other than through the plan because medical necessity required their provision before they could be secured through the plan, and for not more than 90 percent of the amount

by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year.

A procedure for prompt payment or denial of provider and subscriber or enrollee claims, including those telemedicine services, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, covered by the plan. Except as provided in Section 1371, a procedure meeting the requirements of Subchapter G of the regulations (29 C.F.R. Part 2560) under Public Law 93-406 (88 Stats. 829-1035, 29 U.S.C. Secs. 1001 et seq.) shall satisfy this requirement.

In determining whether the conditions of this section have been met, the commissioner shall consider, but not be limited to, the following:

The financial soundness of the plan's arrangements for health care services and the schedule of rates and charges used by the plan.

The adequacy of working capital.

Agreements with providers for the provision of health care services.

For the purposes of this section, "covered health care services" means health care services provided under all plan contracts.

SEC. 8. Section 123149.5 is added to the Health and Safety Code, to read:

123149.5. (a) It is the intent of the Legislature that all medical information transmitted during the delivery of health care via telemedicine, as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, become part of the patient's medical record maintained by the licensed health care provider.

(b) This section shall not be construed to limit or waive any of the requirements of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

SEC. 9. Section 10123.13 of the Insurance Code is amended to read:

10123.13. Every insurer issuing group or individual policies of disability insurance that covers hospital, medical, or surgical expenses, including those telemedicine services covered by the insurer as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, shall reimburse claims or any portion of any claim, whether in state or out of state, for those expenses, as soon as practical, but no later than 30 working days after receipt of the claim by the insurer unless the claim or portion thereof is contested by the insurer in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the insurer. The notice that a claim is being contested

shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

For purposes of this section, a claim, or portion thereof, is reasonably contested where the insurer has not received a completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability for the claims includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the insurer to determine the medical necessity for the health care services provided to the claimant.

SEC. 9.5. Section 10123.13 of the Insurance Code is amended to read:

10123.13. Every insurer issuing group or individual policies of disability insurance that covers hospital, medical, or surgical expenses, including those telemedicine services covered by the insurer as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, shall reimburse claims or any portion of any claim, whether in state or out of state, for those expenses, as soon as practical, but no later than 30 working days after receipt of the claim by the insurer unless the claim or portion thereof is contested by the insurer in which case the claimant shall be notified, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the insurer. The notice that a claim is being contested shall identify the portion of the claim that is contested and the specific reasons for contesting the claim.

If an uncontested claim is not reimbursed by delivery to the claimants' address of record within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30-working-day period.

For purposes of this section, a claim, or portion thereof, is reasonably contested where the insurer has not received a completed claim and all information necessary to determine payer liability for the claim, or has not been granted reasonable access to information concerning provider services. Information necessary to determine liability for the claims includes, but is not limited to, reports of investigations concerning fraud and misrepresentation, and necessary consents, releases, and assignments, a claim on appeal, or other information necessary for the insurer to

determine the medical necessity for the health care services provided to the claimant.

The obligation of the insurer to comply with this section shall not be deemed to be waived when the insurer requires its contracting entities to pay claims for covered services.

SEC. 10. Section 10123.85 is added to the Insurance Code, to read: 10123.85.

(a) It is the intent of the Legislature to recognize the

practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

For the purposes of this section, the meaning of “telemedicine” is as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code.

On and after January 1, 1997, no disability insurance contract that is issued, amended, or renewed for hospital, medical, or surgical coverage shall require face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to all terms and conditions of the contract agreed upon between the policyholder or contractholder and the insurer.

Disability insurers shall not be required to pay for consultation provided by the health care provider by telephone or facsimile machines.

SEC. 11. Section 14132.72 is added to the Welfare and Institutions Code, to read:

14132.72. (a) It is the intent of the Legislature to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

For the purposes of this section, the meaning of “telemedicine” is as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code.

Commencing July 1, 1997, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

The Medi-Cal program shall not be required to pay for consultation provided by the health care provider by telephone or facsimile machines.

The Medi-Cal program shall pursue private or federal funding to conduct an evaluation of the cost-effectiveness and quality of health care provided through telemedicine by those providers who are reimbursed for telemedicine services by the program.

This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 13. Section 9.5 of this bill incorporates amendments to Section 10123.13 of the Insurance Code proposed by both this bill and SB 1478. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 10123.13 of the Insurance Code, and (3) this bill is enacted after SB 1478, in which case Section 9 of this bill shall not become operative.