

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2661

Introduced by Assembly Member ~~Furutani~~ *Dymally*

February 22, 2008

~~An act to amend Section 33052.5 of the Education Code, relating to education.~~ *An act to amend Sections 2242 and 2290.5 of the Business and Professions Code, to amend Section 1374.13 of the Health and Safety Code, to amend Section 10123.85 of the Insurance Code, and to amend Section 14132.72 of the Welfare and Institutions Code, relating to telemedicine.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2661, as amended, ~~Furutani~~ *Dymally*. ~~Local educational agencies: waiver requests.~~ *Telemedicine.*

Existing law provides for the licensure and regulation of physicians and surgeons and other health care professionals. Existing law also regulates health care service plans and health insurers and requires plans and insurers to provide certain prescribed benefits.

Existing law, the Telemedicine Development Act of 1996, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications, by a health care practitioner, as defined. Existing law provides that a telephone conversation does not constitute telemedicine and imposes various requirements in regard to the provision of, or payment for, telemedicine services by health care service plans and health insurers.

This bill would specify that telemedicine includes, but is not limited to, the use of telephonic communication to provide and support health

care delivery, diagnosis, consultation, and treatment when distance separates a patient and his or her primary care physician and surgeon. The bill would require a health care practitioner delivering health care via telemedicine to create and maintain an electronic medical record on each patient that the practitioner treats via telemedicine, as specified. The bill would also authorize a patient’s physician and surgeon or podiatrist, or a designated physician and surgeon or podiatrist, as specified, providing health care via telemedicine to prescribe, dispense, or furnish dangerous drugs without a prior examination, except as specified.

Existing law provides that prescribing, furnishing, or dispensing dangerous drugs, as defined, without an appropriate prior examination and medical indication constitutes unprofessional conduct, but provides exceptions for designated licensees, among others, in certain circumstances.

This bill would provide an additional exception for licensees that prescribe, furnish, or dispense drugs via telemedicine pursuant to the bill’s provisions. The bill would also provide that a licensee is designated if the patient or the patient’s physician and surgeon or podiatrist designates the licensee to act in the absence of the patient’s physician and surgeon or podiatrist.

~~Existing law provides that the term “school district” includes county offices of education for purposes of provisions that authorize the governing board of a school district or a county board of education to request the State Board of Education to waive all or part of a section of the Education Code or a regulation adopted by the state board to implement a provision of the code.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 2242 of the Business and Professions
- 2 Code is amended to read:
- 3 2242. (a) Prescribing, dispensing, or furnishing dangerous
- 4 drugs as defined in Section 4022 without an appropriate prior
- 5 examination and a medical indication, constitutes unprofessional
- 6 conduct.

1 (b) No licensee shall be found to have committed unprofessional
2 conduct within the meaning of this section if, at the time the drugs
3 were prescribed, dispensed, or furnished, any of the following
4 applies:

5 (1) The licensee was a designated physician and surgeon or
6 podiatrist serving in the absence of the patient's physician and
7 surgeon or podiatrist, as the case may be, and if the drugs were
8 prescribed, dispensed, or furnished only as necessary to maintain
9 the patient until the return of his or her practitioner, but in any case
10 no longer than 72 hours.

11 (2) The licensee transmitted the order for the drugs to a
12 registered nurse or to a licensed vocational nurse in an inpatient
13 facility, and if both of the following conditions exist:

14 (A) The practitioner had consulted with the registered nurse or
15 licensed vocational nurse who had reviewed the patient's records.

16 (B) The practitioner was designated as the practitioner to serve
17 in the absence of the patient's physician and surgeon or podiatrist,
18 as the case may be.

19 (3) The licensee was a designated practitioner serving in the
20 absence of the patient's physician and surgeon or podiatrist, as the
21 case may be, and was in possession of or had utilized the patient's
22 records and ordered the renewal of a medically indicated
23 prescription for an amount not exceeding the original prescription
24 in strength or amount or for more than one refill.

25 (4) The licensee was acting in accordance with Section 120582
26 of the Health and Safety Code.

27 (5) *The licensee was acting in accordance with subdivision (g)*
28 *of Section 2290.5.*

29 (c) *For purposes of this section, a licensee is "designated" if*
30 *the patient or the patient's physician and surgeon or podiatrist*
31 *designates the licensee to act in the absence of the patient's*
32 *physician and surgeon or podiatrist.*

33 *SEC. 2. Section 2290.5 of the Business and Professions Code*
34 *is amended to read:*

35 2290.5. (a) (1) For the purposes of this section, "telemedicine"
36 means the practice of health care delivery, diagnosis, consultation,
37 treatment, transfer of medical data, and education using interactive
38 audio, video, or data communications. ~~Neither a telephone~~
39 ~~conversation nor an~~ *An electronic mail message between a health*

1 care practitioner and patient—~~constitutes~~ *does not constitute*
2 “telemedicine” for purposes of this section.

3 (2) *For purposes of this section, “telemedicine” includes, but*
4 *is not limited to, the use of telephonic communications to provide*
5 *and support health care delivery, diagnosis, consultation, and*
6 *treatment when distance separates a patient and his or her primary*
7 *care physician and surgeon.*

8 ~~(2)~~

9 (3) For purposes of this section, “interactive” means an audio,
10 video, or data communication involving a real time (synchronous)
11 or near real time (asynchronous) two-way transfer of medical data
12 and information.

13 (b) For the purposes of this section, “health care practitioner”
14 has the same meaning as “licentiate” as defined in paragraph (2)
15 of subdivision (a) of Section 805 and also includes a person
16 licensed as an optometrist pursuant to Chapter 7 (commencing
17 with Section 3000).

18 (c) Prior to the delivery of health care via telemedicine, the
19 health care practitioner who has ultimate authority over the care
20 or primary diagnosis of the patient shall obtain verbal and written
21 informed consent from the patient or the patient’s legal
22 representative. The informed consent procedure shall ensure that
23 at least all of the following information is given to the patient or
24 the patient’s legal representative verbally and in writing:

25 (1) The patient or the patient’s legal representative retains the
26 option to withhold or withdraw consent at any time without
27 affecting the right to future care or treatment nor risking the loss
28 or withdrawal of any program benefits to which the patient or the
29 patient’s legal representative would otherwise be entitled.

30 (2) A description of the potential risks, consequences, and
31 benefits of telemedicine.

32 (3) All existing confidentiality protections apply.

33 (4) All existing laws regarding patient access to medical
34 information and copies of medical records apply.

35 (5) Dissemination of any patient identifiable images or
36 information from the telemedicine interaction to researchers or
37 other entities shall not occur without the consent of the patient.

38 (d) A patient or the patient’s legal representative shall sign a
39 written statement prior to the delivery of health care via
40 telemedicine, indicating that the patient or the patient’s legal

1 representative understands the written information provided
2 pursuant to subdivision (a), and that this information has been
3 discussed with the health care practitioner, or his or her designee.

4 (e) The written consent statement signed by the patient or the
5 patient’s legal representative shall become part of the patient’s
6 medical record.

7 (f) *A health care practitioner who delivers health care via
8 telemedicine shall create and maintain an electronic medical
9 record on each patient that the practitioner treats via telemedicine.*

10 *That record shall adhere to national standards for data portability
11 and shall be portable and accessible from any location at all hours.*

12 *All data in the record shall be made available for audit in order
13 to create a simple, transparent system. A health care practitioner
14 shall update a patient’s electronic medical record created pursuant
15 to this subdivision prior to undertaking a consultation via
16 telemedicine. Patients receiving health care via telemedicine shall
17 annually receive an update on the record created and updated
18 pursuant to this subdivision.*

19 (g) (1) *A patient’s physician and surgeon or a podiatrist, or a
20 designated physician and surgeon or podiatrist, as provided in
21 subdivision (c) of Section 2242, who delivers health care via
22 telemedicine pursuant to this section may prescribe, dispense, or
23 furnish dangerous drugs, as defined in Section 4022, without a
24 prior examination of the patient, except that the physician and
25 surgeon shall not do either of the following via telemedicine:*

26 (A) *Prescribe, dispense, or furnish controlled substances, as
27 defined in Section 802 of Title 21 of the United States Code.*

28 (B) *At the time of prescribing a dangerous drug, as defined in
29 Section 4022, authorize any renewals or refills of the prescription.*

30 (2) *The physician and surgeon shall monitor the drugs
31 prescribed, dispensed, or furnished pursuant to this subdivision.*

32 ~~(f)~~

33 (h) *The failure of a health care practitioner to comply with this
34 section shall constitute unprofessional conduct. Section 2314 shall
35 not apply to this section.*

36 ~~(g)~~

37 (i) *All existing laws regarding surrogate decisionmaking shall
38 apply. For purposes of this section, “surrogate decisionmaking”
39 means any decision made in the practice of medicine by a parent*

1 or legal representative for a minor or an incapacitated or
2 incompetent individual.

3 ~~(h)~~

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

8 ~~(i)~~

9 (k) This section shall not apply in an emergency situation in
10 which a patient is unable to give informed consent and the
11 representative of that patient is not available in a timely manner.

12 ~~(j)~~

13 (l) This section shall not apply to a patient under the jurisdiction
14 of the Department of Corrections or any other correctional facility.

15 ~~(k)~~

16 (m) This section shall not be construed to alter the scope of
17 practice of any health care provider or authorize the delivery of
18 health care services in a setting, or in a manner, not otherwise
19 authorized by law.

20 *SEC. 3. Section 1374.13 of the Health and Safety Code is*
21 *amended to read:*

22 1374.13. (a) It is the intent of the Legislature to recognize the
23 practice of telemedicine as a legitimate means by which an
24 individual may receive medical services from a health care provider
25 without person-to-person contact with the provider.

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

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

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

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

4 (d) ~~Health~~ *Notwithstanding paragraph (2) of subdivision (a) of*
5 *Section 2290.5 of the Business and Professions Code, health care*
6 *service plans shall not be required to pay for telemedicine or*
7 *consultation provided by the health care provider by telephone or*
8 *facsimile machines.*

9 *SEC. 4. Section 10123.85 of the Insurance Code is amended*
10 *to read:*

11 10123.85. (a) It is the intent of the Legislature to recognize
12 the practice of telemedicine as a legitimate means by which an
13 individual may receive medical services from a health care provider
14 without person-to-person contact with the provider.

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

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

25 (d) ~~Disability~~ *Notwithstanding paragraph (2) of subdivision (a)*
26 *of Section 2290.5 of the Business and Professions Code, disability*
27 *insurers shall not be required to pay for telemedicine or*
28 *consultation provided by the health care provider by telephone or*
29 *facsimile machines.*

30 *SEC. 5. Section 14132.72 of the Welfare and Institutions Code*
31 *is amended to read:*

32 14132.72. (a) It is the intent of the Legislature to recognize
33 the practice of telemedicine as a legitimate means by which an
34 individual may receive medical services from a health care provider
35 without person-to-person contact with the provider.

36 (b) For the purposes of this section, “telemedicine” and
37 “interactive” are defined as those terms are defined in subdivision
38 (a) of Section 2290.5 of the Business and Professions Code.

39 (c) (1) Commencing July 1, 1997, face-to-face contact between
40 a health care provider and a patient shall not be required under the

1 Medi-Cal program for services appropriately provided through
 2 telemedicine, subject to reimbursement policies developed by the
 3 Medi-Cal program to compensate licensed health care providers
 4 who provide health care services, that are otherwise covered by
 5 the Medi-Cal program, through telemedicine. The audio and visual
 6 telemedicine system used shall, at a minimum, have the capability
 7 of meeting the procedural definition of the Current Procedural
 8 Terminology Fourth Edition (CPT-4) codes which represent the
 9 service provided through telemedicine. The telecommunications
 10 equipment shall be of a level of quality to adequately complete all
 11 necessary components to document the level of service for the
 12 CPT-4 code billed. If a peripheral diagnostic scope is required to
 13 assess the patient, it shall provide adequate resolution or audio
 14 quality for decisionmaking.

15 (2) The department shall report to the appropriate committees
 16 of the Legislature, by January 1, 2000, on the application of
 17 telemedicine to provide home health care; emergency care; critical
 18 and intensive care, including neonatal care; psychiatric evaluation;
 19 psychotherapy; and medical management as potential Medi-Cal
 20 benefits.

21 (d) ~~The Notwithstanding paragraph (2) of subdivision (a) of~~
 22 ~~Section 2290.5 of the Business and Professions Code, the Medi-Cal~~
 23 ~~program shall not be required to pay for telemedicine or~~
 24 ~~consultation provided by the health care provider by telephone or~~
 25 ~~facsimile machines.~~

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

31 ~~SECTION 1. Section 33052.5 of the Education Code is~~
 32 ~~amended to read:~~

33 ~~33052.5. For purposes of this article, "school district" includes~~
 34 ~~a county office of education.~~