

**Introduced by Senator Caballero
(Coauthors: Senators Dahle and Wiener)**

February 10, 2021

An act to amend Section 14132.72 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 365, as introduced, Caballero. E-consult service.

Existing law provides for the Medi-Cal program, which is administered by the department, under which qualified low-income individuals receive health care services, including federally qualified health center (FQHC) services and rural health clinic (RHC) services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. FQHC and RHC services are reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis, and a "visit" is defined as a face-to-face encounter between a patient of an FQHC or RHC and specified health care professionals.

Existing law prohibits a requirement of in-person contact between a health care provider and a Medi-Cal patient when the service may be provided by telehealth, and, for purposes of telehealth, prohibits the department from limiting the type of setting where Medi-Cal services are provided.

This bill would make electronic consultation services reimbursable under the Medi-Cal program for enrolled providers, including FQHCs or RHCs, and would require the department to develop a reimbursement policy for those services that, at a minimum, and with respect to primary care providers, is consistent with the Medicare program coverage policy. The bill would require the department to seek federal waivers and

approvals to implement this provision. The bill would make related findings and declarations.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
- 3 (1) Telehealth is an effective means to ensure patients can access
4 safe and effective health care regardless of location.
- 5 (2) Electronic consultation services, which are also referred to
6 as “e-consults,” are a method of telehealth used to provide
7 patient-centered care and improve treating or requesting providers’
8 ability to better manage their patients’ care.
- 9 (3) The State Department of Health Care Services has an existing
10 telehealth policy that allows for reimbursement for e-consult
11 services delivered by consultant providers who are usually
12 specialists.
- 13 (4) However, under that policy, reimbursement is not authorized
14 for any requesting or treating providers, who are usually primary
15 care providers. Moreover, federally qualified health centers and
16 rural health clinics are prohibited from seeking reimbursement for
17 e-consult services that their requesting or treating and consultant
18 providers render.
- 19 (5) Current department policy limits the use of e-consult
20 services, and thereby hinders access to care. These services provide
21 a critical way to improve access to care in California’s safety net.
- 22 (6) E-consult services offer benefits to patients, including
23 improved specialty visit wait times and patient satisfaction rates,
24 and reduced costs associated with in-person office visits, including
25 patient travel time, time off work, and associated required
26 childcare.
- 27 (7) E-consult services offer benefits to primary care providers,
28 including reinforcing the medical home, improving provider
29 satisfaction, and addressing current and future patient issues
30 through specialist consultation obtained through e-consult services.
- 31 (8) E-consult services also benefit specialists by improving the
32 readiness and appropriateness of referrals, reducing no-show rates,

1 improving provider satisfaction, and bettering overall access to
2 specialty care.

3 (b) Therefore, it is the intent of the Legislature to enact
4 legislation that would do both of the following:

5 (1) Ensure coverage and utilization of e-consult services under
6 the Medi-Cal program.

7 (2) Recognize the benefits of e-consult services that have been
8 found to have particular impact on the safety net population,
9 including Medi-Cal beneficiaries and uninsured Californians.

10 SEC. 2. Section 14132.72 of the Welfare and Institutions Code
11 is amended to read:

12 14132.72. (a) For purposes of this section, ~~the both of the~~
13 *following apply:*

14 (1) *The definitions in subdivision (a) of Section 2290.5 of the*
15 *Business and Professions Code shall apply. Code.*

16 (2) *“Electronic consultation service,” or “e-consult service,”*
17 *means an interprofessional health record assessment and*
18 *management service initiated by a treating or requesting provider*
19 *and delivered by a consultative provider, including a written report*
20 *to the patient’s treating or requesting provider. An e-consult*
21 *service ordinarily involves a treating or requesting provider*
22 *sending information regarding the patient and a consultation*
23 *request to a consultative provider, usually a specialist provider,*
24 *who may then respond in any of a number of ways, including*
25 *providing requested feedback, asking for additional information,*
26 *recommending certain studies or examinations, or initiating the*
27 *scheduling of an appointment.*

28 (b) It is the intent of the Legislature to recognize the practice
29 of telehealth as a legitimate means by which an individual may
30 receive health care services from a health care provider without
31 in-person contact with the provider.

32 (c) In-person contact between a health care provider and a
33 patient shall not be required under the Medi-Cal program for
34 services appropriately provided through telehealth, subject to
35 reimbursement policies adopted by the department to compensate
36 a licensed health care provider who provides health care services
37 through telehealth that are otherwise reimbursed pursuant to the
38 Medi-Cal program. ~~Nothing in this~~ *This section or and the*
39 *Telehealth Advancement Act of 2011 shall be construed to do not*
40 *conflict with or supersede the provisions of former Section 14091.3*

1 of this code or any other existing state laws or regulations related
2 to reimbursement for services provided by a noncontracted
3 provider.

4 (d) The department shall not require a health care provider to
5 document a barrier to an in-person visit for Medi-Cal coverage of
6 services provided via telehealth.

7 (e) For the purposes of payment for covered treatment or
8 services provided through telehealth, the department shall not limit
9 the type of setting where services are provided for the patient or
10 by the health care provider.

11 (f) (1) *An e-consult service shall be reimbursable under the*
12 *Medi-Cal program for an enrolled provider, as described in*
13 *subdivision (h) of Section 14043.1, including a federally qualified*
14 *health center or rural health clinic, as defined in subsection (aa)*
15 *of Section 1395x of Title 42 of the United States Code, and*
16 *described in Section 14132.100, if a provider renders that service.*
17 *The department shall develop a reimbursement policy for e-consult*
18 *services that, at a minimum, and with respect to primary care*
19 *providers, shall be consistent with the Medicare program coverage*
20 *policy.*

21 (2) *The department shall seek any federal waivers and approvals*
22 *necessary to implement this subdivision.*

23 (f)

24 (g) ~~Nothing in this section shall be interpreted to~~ *This section*
25 *does not* authorize the department to require the use of telehealth
26 when the health care provider has determined that it is ~~not~~
27 ~~appropriate.~~ *inappropriate.*

28 (g)

29 (h) Notwithstanding Chapter 3.5 (commencing with Section
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
31 the department may implement, interpret, and make specific this
32 section by means of all-county letters, provider bulletins, and
33 similar instructions.