Discussion and consideration of amending Title 16, to add CCR Section 4172, Standards of Practice for Telehealth.

The following are attached for review:

- Board-approved legislative proposal to amended BPC 2570.2(k) and establish Standards of Practice for Telehealth in Occupational Therapy.
- Suggested amendments to Standards of Practice for Telehealth by AOTA.
- Article: *The Telehealth Advancement Act of 2011 – Opportunities for Innovation in California.*
- AB 415 (Logue), bill amending BPC 2290, to replace 'telemedicine' with 'telehealth' and expanding 'telehealth' to all healthcare providers.
- BPC 2290.5, providing definitions and requirements for providing services via telehealth.
- Letter from Dr. Burns, Medical Director, Karuk Tribal Health Program, requesting the Board's assistance in moving forward with telehealth to improve service-delivery to his patients.
- Proposed text to establish CCR Section 4172, Standards of Practice for Telehealth.

Legislative Proposal

Amend Business & Professions Code Section 2570.2(k)

(k) "~~Practice of~~ ~~o~~Occupational therapy" means the therapeutic use of ~~purposeful and meaningful goal-directed~~ everyday life activities (occupations) with individuals, groups, or populations to address participation and function in roles and situations in home, school, workplace, community and other settings. Occupational therapy services are provided for habilitation, rehabilitation, promoting and maintaining health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect physical and mental health, ~~which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and promote or maintain health,~~ well-being, and quality of life. Occupational therapy ~~services~~ encompasses research, education of students, occupational therapy ~~assessment~~ evaluation, treatment, education of, and consultation with~~, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)).~~ individuals, groups, programs, organizations, or communities.

(1) Occupational therapy ~~assessment~~ evaluation identifies performance abilities ~~and limitations~~ that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability. Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices excluding gait training). Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, in groups, or via telehealth.~~, or through social groups.~~

(2) Occupational therapy includes, but is not limited to, performing as a clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/clients.

(l) "Hand therapy" is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

(m) "Physical agent modalities" means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

2572 BPC Standards of Practice for Telehealth in Occupational Therapy

(a) The provision of telehealth is intended to provide equitable access or increased access to occupational therapy services, to promote independence, and to increase the quality and standards of care when a patient or client has a disability, illness, injury or has a need for consultative, preventative, diagnostic, wellness, or therapeutic services.
(b) The purpose of this section is to establish standards for the practice of telehealth by means of an interactive telecommunication system by an occupational therapist or occupational therapy assistant licensed under this chapter. The standard of care provided to patients is the same whether the patient is seen in-person, via telehealth or telerehabilitation, or other methods of electronically enabled occupational therapy, health care or education. Occupational therapists or occupational therapy assistants need not reside in California, as long as they have a valid, current and unrestricted California license.
(c) Occupational therapists must obtain verbal and written informed consent from the patient prior to delivering health care via telehealth, and also requires that this signed written consent statement becomes part of the patient's medical record.
(d) An occupational therapist or occupational therapy assistant licensed under this chapter conducting telehealth by means of an interactive telecommunication system must do all of the following:
(1) Provide services and/or treatment consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code,
(2) Interact with the patient maintaining the same ethical standards of practice required pursuant to Section 4170, California Code of Regulations;
(3) Comply with the supervision requirements for any licensed occupational therapy assistant providing services under this section;
(4) Provide and ensure appropriate client confidentiality and HIPAA compliance, establish secure connections, activate firewalls, and encrypt confidential information.
(e) For purposes of this section:
(1) "Telehealth" means the provision of health care, health information, or health education, using telecommunications technology, other technologies using interactive audio, video, or data communications when providing or using telerehabilitation, or via other specially adapted equipment.
(2) "Telerehabilitation" means the provision, at a distance, of telehealth-based rehabilitation services using various technologies including real-time videoconferencing, personal computer-based camera usage, videophones, home-applied technology for recording and submission of images, and includes the use of other technologies, including virtual reality videogame-based rehabilitation systems or other virtual reality systems with haptic interfaces.

UNDERLINED TEXT = PROPOSED NEW LANGUAGE

~~STRIKEOUT TEXT~~ = LANGUAGE PROPOSED TO BE DELETED

Add BPC 2572 - Standards of Practice for Telehealth in Occupational Therapy

(a) The provision of telehealth is intended to provide equitable access or increased access to occupational therapy services, to promote independence, and to increase the quality and standards of care when a patient or client has a disability, illness, injury or has a need for consultative, preventative, ~~diagnostic~~, wellness, or therapeutic services.

(b) The purpose of this section is to establish standards for the practice of telehealth by means of an interactive telecommunication system by an occupational therapist or occupational therapy assistant licensed under this chapter. The standard of care provided to patients is the same whether the patient is seen in-person, via telehealth or telerehabilitation, or other methods of electronically enabled occupational therapy, health care or education. Occupational therapists or occupational therapy assistants need not reside in California, as long as they have a valid, current and unrestricted California license, and are treating a client in California.

(c) Prior to providing occupational therapy via telehealth, occupational therapists and occupational therapy assistants must obtain informed consent from the client to provide service via telehealth. The consent statement becomes a part of the client's record. ~~Occupational therapists must obtain verbal and written informed consent from the patient prior to delivering health care via telehealth, and also requires that this signed written consent statement becomes part of the patient's medical record.~~

(d) Clinical and ethical reasoning guides the selection and application of appropriate telehealth technology necessary to evaluate and meet client needs. As part of their clinical reasoning, occupational therapy practitioners should consider whether the use of technology and service provision through telehealth will ensure the safe, effective, appropriate delivery of services. In order to determine whether providing occupational therapy via telehealth is in the best interest of the client, the occupational therapist must consider the following:

(1) complexity of the client's condition;
(2) knowledge, skill, and competence of the occupational therapy practitioner;
(3) nature and complexity of the intervention;
(4) requirements of the practice setting; and
(5) client's context and environment.

(e) In the case of each client, the occupational therapist practicing telehealth is responsible for determining

(1) whether an in-person evaluation is necessary before beginning treatment via telehealth, or
(2) whether during the course of treatment in-person interventions are necessary.

(fd) An occupational therapist or occupational therapy assistant licensed under this chapter conducting telehealth by means of an interactive telecommunication system must do all of the following:

(1) Provide services and/or treatment consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code,

(2) Interact with the patient maintaining the same ethical standards of practice required pursuant to Section 4170, California Code of Regulations;

(3) Comply with the supervision requirements for any licensed occupational therapy assistant providing services under this section;

(4) Provide and ensure appropriate client confidentiality and HIPAA compliance, establish secure connections, activate firewalls, and encrypt confidential information.

(5) Comply with best practices established by the occupational therapy profession and to national standards according to the American Occupational Therapy Association

(ge) For purposes of this section:
(1) "Telehealth" means the provision of health care, health information, or health education, using telecommunications technology, other technologies using interactive audio, video, or data communications when providing or using telerehabilitation, or via other specially adapted equipment.

(2) "Telerehabilitation" means the provision, at a distance, of telehealth-based rehabilitation services using various technologies including real-time videoconferencing, personal computer-based camera usage, videophones, home-applied technology for recording and submission of images, and includes the use of other technologies, including virtual reality videogame-based rehabilitation systems or other virtual reality systems with haptic interfaces.

The Telehealth Advancement Act of 2011
Opportunities for Innovation in California

On Oct. 7, 2011, Gov. Edmund G. Brown, Jr., signed into law the Telehealth Advancement Act of 2011 (AB 415). The Act was authored by Assemblyman Dan Logue (R, Lake Wildwood) and sponsored by the California State Rural Health Association (CSRHA). AB 415 enjoyed impressive bi-partisan support, with four Democratic co-authors: Wesley Chesbro (D-North Coast), Cathleen Galgiani (D-Livingston), Richard Pan (D-Natomas), and V. Manuel Pérez (D-Coachella).

A joint issue brief from the Center for Connected Health Policy and the California Telemedicine and eHealth Center.

The Act, which went into effect Jan. 1, 2012, makes significant changes to California telehealth laws. It creates better parity between health care services delivered via telehealth and delivered in person, and further distinguishes telehealth as a mode of delivering services.

AB 415 removes barriers, real or perceived, that have hampered implementation of telehealth. AB 415 creates opportunities to further the use of telehealth, with the goal of providing better care, access and efficiencies.

AB 415 ***does not mandate*** the use or reimbursement of any telehealth services by public or private payers. Covered services, and the locations of their delivery, are still negotiated in contracts between health plans and providers, and in public insurance programs such as Medi-Cal, the state's Medicaid program. Nor does AB 415 change the scope of practice of any licensed health professional, or change interstate licensure laws.

The following is an assessment by the California Telemedicine and eHealth Center (CTEC) and the Center for Connected Health Policy (CCHP) on the impacts of AB 415.

What AB 415 Does

AB 415 replaces the terminology of "telemedicine" with "telehealth" in California law.

Under the old law's terminology, telemedicine was defined as the practice of medicine via live video connections between patients and providers in separate locations, or via "data communications." Telephone and email were explicitly excluded. As technological advances resulted in new telehealth treatment options, this legal definition over time created unintentional obstacles to the expansion of telehealth, and became a barrier to implementation.

In addition, while the old law referenced data communications, it did not explicitly reference in its definitions the use of store & forward technologies, a prominent type of delivery means, as a part of telehealth. Store & forward connects primary care providers (PCPs) and medical specialists via sophisticated high speed, high definition communications systems without the patient being present. While store & forward was allowed in a separate section of the old law, the lack of a clear and explicit presence in the definitions section created difficulties for providers seeking reimbursement for them.

Telehealth, the new legal terminology, refers to the technology-enabled delivery of services, rather than a specific medical practice. This allows for a far broader range of telehealth than the old law, and does not limit future telehealth technologies, because of its encompassing, forward-looking definitions.

AB 415 removes limits on the physical locations where telehealth delivered services may be provided.

Under the old state law, there was no explicit restriction to the location where telemedicine could be delivered, other than that the facility had to be licensed. However, Medi-Cal restricted delivery and receipt of telemedicine services to four specific licensed facilities: hospitals, clinics, doctors' offices, and skilled nursing facilities. This small list of facilities was perceived as the only locations in which telemedicine could be provided.

AB 415 clears up the confusion on location by explicitly removing limits on the settings for telehealth. This will ***allow*** for services delivered via telehealth to be covered, regardless of where it takes place. For example, this can include services such as patient care management programs that employ home monitoring devices, in-home patient medical appointments, and provider reviews, in any location, of store & forward patient cases. However, locations for telehealth are still subject to policies and contracts enacted by Medi-Cal and private payers.

AB 415 eliminates the ban on services provided via email or telephone being included as "telehealth."

AB 415 removes the restriction on telephone and email as a part of the definition of telehealth, but AB 415 did not mandate that services be provided in either manner, or reimbursement made for it. Only the restriction in current law is removed.

AB 415 expands the definition of health care provider, to include all health care professionals licensed by the State of California.

Under the old law, only these health professionals could provide services via telehealth:

- Physicians
- Surgeons
- Podiatrists
- Clinical psychologists
- Marriage, family and child counselors
- Dentists
- Optometrists (in limited scope)

AB 415 expands this list to include all professionals licensed under the state's healing arts statute, which also include:

- Pharmacists
- Nurse practitioners
- Physician assistants
- Registered nurses
- Dental hygienists
- Physical therapists
- Occupational therapists
- Speech and language pathologists
- Audiologists
- Licensed vocational nurses
- Psychologists
- Osteopaths
- Naturopaths

The expanded definition of provider allows for a substantial expansion of licensed providers and the corresponding service types they are able to provide via telehealth. However, reimbursement for telehealth is still subject to policies and contracts enacted by Medi-Cal and private payers.

AB 415 allows California hospitals to use new federal rules to more easily establish medical credentials of telehealth providers.

An amendment added to AB 415 during its legislative approval process helped clear up confusion among California regulators over a new federal rule to streamline the process for establishing medical credentials of telehealth providers.

The federal Centers for Medicare and Medicaid Services (CMS) issued new regulations in July 2011 that speed the approval process of medical credentials for telehealth practitioners.

The new federal regulations allow hospitals engaged in telehealth to accept the credentialing paperwork from the telehealth provider's original facility to use in determining whether the hospital would extend privileges to that specific provider. These new regulations make for quicker approvals of practitioners, and eliminate duplicative, expensive, and often cumbersome credentialing processes.

The new CMS rules also allow sites other than hospitals, such as physician offices and ambulatory centers, to use the same privileging by proxy approvals for telehealth services at a hospital, as long as those services meet the hospital's conditions of practice.

AB 415 aligns California law with the new CMS regulations. The confusion among California regulators centered on whether existing state regulations were in conflict with the new federal rules, and hospitals still would have to go through full state credentialing processes for all telehealth practitioners. Hospitals may use the credentialing process outlined in CMS regulations, but it is not mandatory. Should a hospital wish to undertake the full credentialing vetting process of a telehealth provider, it may still do so.

AB 415 removes two Medi-Cal regulations viewed as restrictive to services provided via telehealth.

AB 415 eliminated a Medi-Cal rule requiring providers to document a barrier to an in-person visit before a beneficiary could receive services via telehealth, which was widely viewed as a disincentive by providers to utilize telehealth.

Additionally, AB 415 eliminated the sunset date on the Medi-Cal reimbursed store & forward specialties of teledermatology, teleopothalmology and a small set of services for teleoptometry. Reimbursement for these services would have ended in 2013.

AB 415 changes the requirement of an additional written patient consent specifically for telehealth delivered services to a verbal consent.

The old law required that patients sign a separate, telehealth-specific consent form prior to receiving any type of services via telehealth. This stigmatized the field, and created an unnecessary barrier to care. In the medical field, written consents are often viewed as the equivalent of flagging a procedure as risky or experimental.

AB 415's removal of a written consent establishes parity between services provided in person and services provided via telehealth.

This provision is not a blanket removal of all written consent. It simply puts telehealth more in alignment with services delivered in person, by eliminating the ***additional*** written informed consent that existed in law. The new law requires that a verbal consent will still need to be obtained at the originating site, prior to services provided via telehealth and the consent be documented in the patient's medical record.

About This Issue Brief

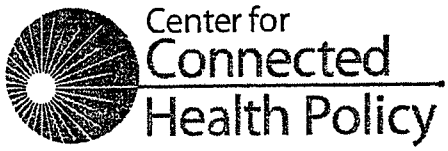
This issue brief on the impacts of the Telehealth Advancement Act of 2011 was a joint project of the California Telemedicine and eHealth Center (CTEC), and the Center for Connected Health Policy (CCHP).

About CCHP

Established in 2008 by the California HealthCare Foundation, the Center for Connected Health Policy (CCHP) is a non-profit planning and strategy organization working to remove policy barriers that prevent the integration of telehealth technologies into California's health care system. CCHP conducts objective policy analysis and research, develops non-partisan policy recommendations, and manages innovative telehealth demonstration projects.
www.connectedhealthca.org

About CTEC

With more than 15 years' telehealth experience, CTEC is one of the country's leading resources for telehealth education, expertise, and implementation guidance. A federally designated Telehealth Resource Center, CTEC is the go-to source for unbiased information, serving healthcare providers, health systems, clinics and government agencies. Working to make telehealth services widely available, CTEC creates systems that make people healthier, increase access to care, improve patient outcomes, drive down healthcare costs, and sustain a reduced-carbon economy. For more information on CTEC, please visit www.cteconline.org.



AB 415, Logue, Chapter 547 of 2011

As Amends The Law

SECTION 1. This act shall be known, and may be cited, as the Telehealth Advancement Act of 2011.

SEC. 2. The Legislature finds and declares all of the following:

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

(b) Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care.

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

(d) It is the intent of the Legislature to create a parity of telehealth with other health care delivery modes, to actively promote telehealth as a tool to advance stakeholders' goals regarding health status and health system improvement, and to create opportunities and flexibility for telehealth to be used in new models of care and system improvements.

(e) Telehealth is a mode of delivering health care services and public health utilizing information and communication technologies to enable the diagnosis, consultation, treatment, education, care management, and self-management of patients at a distance from health care providers.

(f) Telehealth is part of a multifaceted approach to address the problem of inadequate 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.

(g) The use of information and telecommunication technologies to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice, and improve access to health care, particularly in rural and other medically underserved areas.

(h) Telehealth 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.

(i) Consumers of health care will benefit from telehealth 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.

(j) It is the intent of the Legislature that the fundamental health care provider-patient relationship cannot only be preserved, but can also be augmented and enhanced, through the use of telehealth as a tool to be integrated into practices.

(k) Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telehealth will not be realized.

SEC. 3. Section 2290.5 of the Business and Professions Code is repealed.

~~**2290.5.** (a) (1) 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. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes "telemedicine" for purposes of this section.~~

~~(2) For purposes of this section, "interactive" means an audio, video, or data communication involving a real time (synchronous) or near real time (asynchronous) two-way transfer of medical data and information.~~

~~(b) 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 and also includes a person licensed as an optometrist pursuant to Chapter 7 (commencing with Section 3000).~~

~~(c) 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 or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:~~

~~(1) The patient or the patient's legal representative 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 patient or the patient's legal representative would otherwise be entitled.~~

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

~~(3) All existing confidentiality protections apply.~~

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

~~(5) 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.~~

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

~~representative 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.~~

~~(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.~~

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

~~(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.~~

~~(h) 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.~~

~~(i) 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 in a timely manner.~~

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

~~(k) This section 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. 4. *Section 2290.5 is added to the Business and Professions Code, to read:*

2290.5. *(a) For purposes of this division, the following definitions shall apply:*

(1) "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 without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means 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 while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient's medical record.

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

(d) This section 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.

(e) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(f) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(g) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

SEC. 5. Section 1374.13 of the Health and Safety Code is repealed.

~~**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.~~

~~(b) 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.~~

~~(c) 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:~~

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

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

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

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

1374.13. *(a) For the purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.*

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

(c) No health care service plan shall require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.

(d) No health care service plan shall limit the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.

(e) The requirements of this subdivision shall also be operative for health care service plan contracts with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.

(f) Notwithstanding any other provision, this section shall not be interpreted to authorize a health care service plan to require the use of telehealth when the health care provider has determined that it is not appropriate.

SEC. 7. Section 10123.85 of the Insurance Code is repealed.

~~**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.~~

~~(b) 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.~~

~~(c) 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.~~

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

SEC. 8. *Section 10123.85 is added to the Insurance Code, to read:*

10123.85. *(a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.*

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

(c) No health insurer shall require that in-person contact occur between a health care provider and a patient before payment is made for the services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the policyholder or contractholder and the insurer, and between the insurer and its participating providers or provider groups.

(d) No health insurer shall limit the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided by telehealth, subject to the terms and conditions of the contract between the policyholder or contract holder and the insurer, and between the insurer and its participating providers or provider groups.

(e) Notwithstanding any other provision, this section shall not be interpreted to authorize a health insurer to require the use of telehealth when the health care provider has determined that it is not appropriate.

SEC. 9. Section 14132.72 of the Welfare and Institutions Code is amended to read:

14132.72. *(a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.*

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

~~(b) For the purposes of this section, "telemedicine" and "interactive" are defined as those terms are defined in subdivision (a) of Section 2290.5 of the Business and Professions Code.~~

(c) ~~(1)~~ *In-person* ~~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,~~ *telehealth,* subject to reimbursement policies ~~developed~~ *adopted* by the ~~Medi-Cal program~~ *department* to compensate *a* licensed health care ~~providers~~ *provider* who ~~provide~~ *provides* health care ~~services,~~ *services through telehealth* that are otherwise ~~covered by the Medi-Cal program, through telemedicine. The audio and visual telemedicine system used shall, at a minimum, have the capability of meeting the procedural definition of the Current Procedural Terminology Fourth Edition (CPT-4) codes which represent the service provided through telemedicine. The telecommunications equipment shall be of a level of quality to adequately complete all necessary components to document the level of service for the CPT-4 code billed. If a peripheral diagnostic scope is required to assess the patient, it shall provide adequate resolution or audio quality for decisionmaking.~~ *reimbursed pursuant to the Medi-Cal program. Nothing in this section or the Telehealth Advancement Act of 2011 shall be construed to conflict with or supersede the provisions of Section 14091.3 of this code or any other existing state laws or regulations related to reimbursement for services provided by a noncontracted provider.*

~~(2)~~ *(d)* The department shall ~~report to the appropriate committees of the Legislature, by January 1, 2000, on the application of telemedicine to provide home health care; emergency care; critical and intensive care, including neonatal care; psychiatric evaluation; psychotherapy; and medical management as potential Medi-Cal benefits.~~ *not require a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.*

~~(d)~~ *(e)* ~~The Medi-Cal program shall not be required to pay for consultation provided~~ *For the purposes of payment for covered treatment or services provided through telehealth, the department shall not limit the type of setting where services are provided for the patient or* by the health care ~~provider by telephone or facsimile machines.~~ *provider.*

(f) Nothing in this section shall be interpreted to authorize the department to require the use of telehealth when the health care provider has determined that it is not appropriate.

~~(e)~~ *(g)* ~~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.~~ *Notwithstanding*

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

SEC. 10. Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, "teleophthalmology and teledermatology by store and forward" means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

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

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

~~(e) The health care provider shall comply with the informed consent provisions of subdivisions (e) to (g), inclusive, of, and subdivisions (i) and (j) of, Section 2290.5 of the Business and Professions Code when a patient receives teleophthalmology or teledermatology by store and forward.~~

~~(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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 XIIIB of the California Constitution.

BPC 2290.5.

(a) For purposes of this division, the following definitions shall apply:

(1) "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 without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means 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 while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient's medical record.

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

(d) This section 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.

(e) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

(f) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(g) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth
services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the **Code** of Federal Regulations.

Steve Burns MD
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May 10, 2012

Heather Martin, Executive Officer
CA Board of Occupational Therapy
2005 Evergreen Street, Ste. 2050
Sacramento, CA 95815

Dear Ms. Martin,

I am Steve Burns MD, Medical Director of the Karuk Tribe. I am writing to you because my patients need your assistance.

We operate two rural health clinics, serving all the people, Native and non-Native American alike, who live along a remote and isolated stretch of the mid-Klamath River, as it winds across the top of the State of California. (Approximately 3000 people, 50% Native American).

Our main mid-River clinic is located in Happy Camp, California which is the ancestral home of the Karuk Tribe. In the ten years I have been Medical Director here, only a handful of my patients in Happy Camp have ever received rehabilitation services.

To reach our nearest Hospital, Fairchild Medical Center, requires a 150 mile round trip along a twisting, river road. Fifty percent of my patients are below poverty level, and have no money for such a trip, let alone three times a week. For them, Fairchild Medical Center may as well be located on the Moon. Even if transportation were feasible, the good of Rehabilitation Therapy would often be completely negated by three hours of bouncing and twisting along the River Road.

Yet my patients suffer strokes, back injuries, extremity injuries, have cerebral palsy, quadriplegia, multiple sclerosis, just like any other population. For the ten years I have been here I have seen Rehabilitation Services as the biggest unmet need for our patients. For the last several years we have made extensive use of Tele-Medicine to provide specialist consultation for our patients. The ability to see a specialist that would otherwise have been a six of eight hour drive away has been a wonderful boon for our patients.

I have hoped that someday Rehabilitation services might be provided via Tele-Medicine as well. And now that the CMS and the State of California have changed their regulations to allow Tele-Rehabilitation, I feel that goal is, at last, achievable.

The administration at Fairchild Medical Center (FMC) and the Karuk Tribal Health Program wish to provide a Mobile Tele-Rehabilitation vehicle that would operate along this mid-Klamath

River corridor; bringing for the first time ever, rehabilitation services to the people living in the little hamlets and towns along this corridor.

FMC offers excellent Rehabilitation Services; and the Karuk Tribe has extensive experience in Tele-Medicine. We are ready to put such an effort together, but we need your help.

We need the OT Board to promulgate regulations or amend the OT Practice Act to allow for operation and supervision of Rehabilitation Services via Tele-Rehabilitation. The practitioners that are licensed by your Boards look to you to provide the regulatory framework under which they can bring such services to a population that desperately needs them.

I would ask that your respective Boards amend its regulations or statues as necessary. We can then build upon them a pilot program that will not only help our patients, but can serve as a model program to bring much needed services to small rural communities everywhere.

Very Respectfully Yours,

S Burns MD

Steve Burns MD

California Board of Occupational Therapy
Department of Consumer Affairs
Title 16. Division 39, California Code of Regulations

PROPOSED LANGUAGE

All new language. Text that is underlined is for formatting purposes only.

ARTICLE 8. Ethical Standards of Practice

Add section 4172 = Standards of Practice for Occupational Therapy via Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant in this State or providing services to a patient or client in this State must have a valid and current license issued by the Board.

(b) An occupational therapist or occupational therapy assistant must exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services.

(c) An occupational therapist must obtain verbal ~~and written~~ informed consent from the patient or client prior to delivering occupational therapy services via telehealth. This signed written consent statement shall be made part of the patient's or client's medical record.

(d) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Provide services consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code; and

(2) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.