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AMENDED IN ASSEMBLY APRIL 8, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 457

Introduced by Assembly Member Santiago
(Coauthor: Senator Stern)

February 8, 2021

An act to amend Section 650 of the Business and Professions Code, to add Section 1374.141 to the Health and Safety Code, and to add Section 10123.856 to the Insurance Code, relating to telehealth.

LEGISLATIVE COUNSEL'S DIGEST

AB 457, as amended, Santiago. Protection of Patient Choice in Telehealth Provider Act.

(1) Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for healing arts licensees, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, subject to certain exceptions.

This bill would provide that the payment or receipt of consideration for internet-based advertising, appointment booking, or any service that provides information and resources to prospective patients of licensees

does not constitute a referral of a patient if the internet-based service provider does not recommend, endorse, arrange for, or otherwise select a licensee for the prospective patient.

(2) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires a contract issued, amended, or renewed on or after January 1, 2021, between a health care service plan or health insurer and a health care provider to require the plan or insurer to reimburse the provider for the diagnosis, consultation, or treatment of an enrollee, subscriber, insured, or policyholder appropriately delivered through telehealth services on the same basis and to the same extent as the same service through in-person diagnosis, consultation, or treatment.

This bill would enact the Protection of Patient Choice in Telehealth Provider Act, and would require a health care service plan and a health insurer to ~~arrange for the provision of a~~ *comply with specified notice and consent requirements if the plan or insurer offers a service via telehealth to an enrollee or an insured through a third-party corporate telehealth provider, as defined, only if specified notice conditions are met and the enrollee or insured, once notified, as specified, elects to receive the service via telehealth through a third-party corporate telehealth provider.* ~~defined.~~ For an enrollee or insured that receives specialty telehealth services for a mental or behavioral health condition, the bill would require that the enrollee or insured be given the option of continuing to receive that service with the contracting individual health professional, a contracting clinic, or a contracting health facility. Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

(3) 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.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Protection of Patient Choice in Telehealth Provider Act.

3
4 Protection of Patient Choice in Telehealth Provider Act
5

6 SEC. 2. The Legislature finds and declares both of the
7 following:

8 (a) The purpose of telehealth is to allow a patient to interact
9 with the patient's physician or other health care provider when
10 safety or convenience make in-person treatments difficult or
11 impossible.

12 (b) Third-party telehealth corporations should coordinate with
13 a patient's usual source of care and contribute to the longitudinal
14 patient record in order to be part of a comprehensive, integrated
15 health care system.

16 SEC. 3. Section 650 of the Business and Professions Code is
17 amended to read:

18 650. (a) Except as provided in Chapter 2.3 (commencing with
19 Section 1400) of Division 2 of the Health and Safety Code, the
20 offer, delivery, receipt, or acceptance by any person licensed under
21 this division or the Chiropractic Initiative Act of any rebate, refund,
22 commission, preference, patronage dividend, discount, or other
23 consideration, whether in the form of money or otherwise, as
24 compensation or inducement for referring patients, clients, or
25 customers to any person, irrespective of any membership,
26 proprietary interest, or coownership in or with any person to whom
27 these patients, clients, or customers are referred is unlawful.

28 (b) The payment or receipt of consideration for services other
29 than the referral of patients that is based on a percentage of gross
30 revenue or similar type of contractual arrangement shall not be
31 unlawful if the consideration is commensurate with the value of
32 the services furnished or with the fair rental value of any premises
33 or equipment leased or provided by the recipient to the payer.

34 (c) The offer, delivery, receipt, or acceptance of any
35 consideration between a federally qualified health center, as defined
36 in Section 1396d(l)(2)(B) of Title 42 of the United States Code,
37 and any individual or entity providing goods, items, services,
38 donations, loans, or a combination thereof to the health center

1 entity pursuant to a contract, lease, grant, loan, or other agreement,
2 if that agreement contributes to the ability of the health center
3 entity to maintain or increase the availability, or enhance the
4 quality, of services provided to a medically underserved population
5 served by the health center, shall be authorized only to the extent
6 sanctioned or permitted by federal law.

7 (d) Except as provided in Chapter 2.3 (commencing with Section
8 1400) of Division 2 of the Health and Safety Code and in Sections
9 654.1 and 654.2 of this code, it shall not be unlawful for any person
10 licensed under this division to refer a person to any laboratory,
11 pharmacy, clinic, including entities exempt from licensure pursuant
12 to Section 1206 of the Health and Safety Code, or health care
13 facility solely because the licensee has a proprietary interest or
14 coownership in the laboratory, pharmacy, clinic, or health care
15 facility, provided, however, that the licensee's return on investment
16 for that proprietary interest or coownership shall be based upon
17 the amount of the capital investment or proportional ownership of
18 the licensee which ownership interest is not based on the number
19 or value of any patients referred. Any referral excepted under this
20 section shall be unlawful if the prosecutor proves that there was
21 no valid medical need for the referral.

22 (e) Except as provided in Chapter 2.3 (commencing with Section
23 1400) of Division 2 of the Health and Safety Code and in Sections
24 654.1 and 654.2 of this code, it shall not be unlawful to provide
25 nonmonetary remuneration, in the form of hardware, software, or
26 information technology and training services, as described in
27 subsections (x) and (y) of Section 1001.952 of Title 42 of the Code
28 of Federal Regulations, as amended October 4, 2007, as published
29 in the Federal Register (72 Fed. Reg. 56632 and 56644), and as
30 subsequently amended.

31 (f) "Health care facility" means a general acute care hospital,
32 acute psychiatric hospital, skilled nursing facility, intermediate
33 care facility, and any other health facility licensed by the State
34 Department of Public Health under Chapter 2 (commencing with
35 Section 1250) of Division 2 of the Health and Safety Code.

36 (g) Notwithstanding this section or any other law, the payment
37 or receipt of consideration for advertising, wherein a licensee offers
38 or sells services through a third-party advertiser, shall not constitute
39 a referral of patients when the third-party advertiser does not itself
40 recommend, endorse, or otherwise select a licensee. The fee paid

1 to the third-party advertiser shall be commensurate with the service
2 provided by the third-party advertiser. If the licensee determines,
3 after consultation with the purchaser of the service, that the service
4 provided by the licensee is inappropriate for the purchaser or if
5 the purchaser elects not to receive the service for any reason and
6 requests a refund, the purchaser shall receive a refund of the full
7 purchase price as determined by the terms of the advertising service
8 agreement between the third-party advertiser and the licensee. The
9 licensee shall disclose in the advertisement that a consultation is
10 required and that the purchaser will receive a refund if ineligible
11 to receive the service. This subdivision shall not apply to basic
12 health care services, as defined in subdivision (b) of Section 1345
13 of the Health and Safety Code, or essential health benefits, as
14 defined in Section 1367.005 of the Health and Safety Code and
15 Section 10112.27 of the Insurance Code. The entity that provides
16 the advertising shall be able to demonstrate that the licensee
17 consented in writing to the requirements of this subdivision. A
18 third-party advertiser shall make available to prospective purchasers
19 advertisements for services of all licensees then advertising through
20 the third-party advertiser in the applicable geographic region. In
21 any advertisement offering a discount price for a service, the
22 licensee shall also disclose the regular, nondiscounted price for
23 that service.

24 (h) Notwithstanding this section or any other law, the payment
25 or receipt of consideration for internet-based advertising,
26 appointment booking, or any service that provides information
27 and resources to prospective patients of licensees shall not
28 constitute a referral of a patient if the internet-based service
29 provider does not recommend, endorse, arrange for, or otherwise
30 select a licensee for the prospective patient.

31 (i) A violation of this section is a public offense and is
32 punishable upon a first conviction by imprisonment in a county
33 jail for not more than one year, or by imprisonment pursuant to
34 subdivision (h) of Section 1170 of the Penal Code, or by a fine not
35 exceeding fifty thousand dollars (\$50,000), or by both that
36 imprisonment and fine. A second or subsequent conviction is
37 punishable by imprisonment pursuant to subdivision (h) of Section
38 1170 of the Penal Code, or by that imprisonment and a fine of fifty
39 thousand dollars (\$50,000).

SEC. 4. Section 1374.141 is added to the Health and Safety Code, immediately following Section 1374.14, to read:

1374.141. (a) ~~Upon request of an enrollee, If~~ a health care service plan ~~shall arrange for the provision of~~ offers a service via telehealth to an enrollee through a third-party corporate telehealth provider ~~only if provider~~, all of the following conditions ~~are~~ shall be met:

(1) *The health care service plan shall disclose to the enrollee in any promotion or coordination of the service both of the following:*

(1) (A) ~~The enrollee is first given notice of the~~ availability of receiving the service on an in-person basis, ~~basis or via telehealth,~~ if available, from the enrollee's primary care provider, treating specialist, or from another contracting individual health professional, contracting clinic, or contracting health facility consistent with the service and existing timeliness and geographic access standards in Sections 1367 and 1367.03 and regulations promulgated thereunder.

(2) (B) ~~If the enrollee has coverage for out-of-network benefits, the enrollee is given notice a reminder of the availability of receiving the service either via telehealth or on an in-person basis using the enrollee's out-of-network benefits. benefits, and the cost sharing obligation for out-of-network benefits compared to in-network benefits and balance billing protections for services received from contracted providers.~~

(3) (2) After being notified pursuant to ~~paragraphs (1) and (2), paragraph (1),~~ the enrollee elects to receive the service via telehealth through a third-party corporate telehealth provider.

(4) (3) The enrollee consents to the service consistent with Section 2290.5 of the Business and Professions Code.

(5) (4) If the enrollee is currently receiving specialty telehealth services for a mental or behavioral health condition, the enrollee is given the option of continuing to receive that service with the contracting individual health professional, a contracting clinic, or a contracting health facility.

~~(6) Notice shall include an estimate of cost sharing associated with paragraphs (1) and (2), including for use of out-of-network benefits and balance billing protections for services received from contracted providers.~~

(b) For purposes of this section, the following definitions apply:

(1) “Contracting individual health professional” means a physician and surgeon or other professional who is licensed by the state to deliver or furnish health care services, including mental and behavioral health services, and who is contracted with the enrollee’s health care service plan. A “contracting individual health professional” shall not include a dentist licensed pursuant to the Dental Practice Act (Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code). Application of this definition is not precluded by a contracting individual health professional’s affiliation with a group.

(2) “Contracting clinic” means a clinic, as defined in Section 1200, that is contracted with the enrollee’s health care service plan.

(3) “Contracting health facility” means a health facility, as defined in Section 1250, that is contracted with the enrollee’s health care service plan.

(4) “Third-party corporate telehealth provider” means a corporation directly contracted with a health care service plan that provides health care services exclusively through a telehealth technology platform and has no physical location at which a patient can receive services.

(c) If services are provided to an enrollee through a third-party corporate telehealth provider, a health care service plan shall comply with all of the following:

(1) Notify the enrollee of their right to access their medical records pursuant to, and consistent with, Chapter 1 (commencing with Section 123100) of Part 1 of Division 106.

(2) Notify the enrollee that the record of any services provided to the enrollee through a third-party corporate telehealth provider shall be shared with their primary care ~~provider~~ *provider, unless the enrollee objects*.

(3) Ensure that the records are entered into a patient record system shared with the enrollee’s primary care provider or are otherwise provided to the enrollee’s primary care ~~provider~~ *provider, unless the enrollee objects*, in a manner consistent with state and federal law.

1 (4) *Notify the enrollee that all services received through the*
2 *third-party corporate telehealth provider are considered to be in*
3 *network.*

4 (d) A health care service plan shall include in its reports
5 submitted to the department pursuant to Section 1367.035 and
6 regulations adopted pursuant to that section, in a manner specified
7 by the department, all of the following for each product type:

8 (1) By specialty, the total number of services delivered via
9 telehealth by third-party corporate telehealth providers.

10 (2) The names of each third-party corporate telehealth provider
11 contracted with the plan and, for each, the number of services
12 provided by specialty.

13 (3) For each third-party corporate telehealth provider with which
14 it contracts, the percentage of the third-party corporate telehealth
15 provider's contracted providers available to the plan's enrollees
16 that are also contracting individual health professionals.

17 (4) For each third-party corporate telehealth provider with which
18 it contracts, the types of telehealth services utilized by enrollees,
19 including frequency of use, gender, age, and any other information
20 as determined by the department.

21 (e) The director shall investigate and take enforcement action,
22 as appropriate, against a health care service plan that fails to
23 comply with these requirements and shall periodically evaluate
24 contracts between health care service plans and third-party
25 corporate telehealth providers to determine if any audit, evaluation,
26 or enforcement actions should be undertaken by the department.

27 (f) If a health care service plan delegates payment functions to
28 a contracted entity, including, but not limited to, a medical group
29 or independent practice association, the delegated entity shall
30 comply with this section.

31 (g) ~~This section shall not prevent~~ *apply when an enrollee from*
32 ~~seeking seeks~~ *services directly from the a third-party corporate*
33 ~~telehealth provider. provider that is not contracted with the~~
34 ~~enrollee's health care service plan.~~

35 SEC. 5. Section 10123.856 is added to the Insurance Code, to
36 read:

37 10123.856. (a) ~~Upon request of an insured, If a health insurer~~
38 ~~shall arrange for the provision of offers a service via telehealth to~~
39 ~~an insured through a third-party corporate telehealth provider only~~
40 ~~if provider, all of the following conditions are shall be met:~~

1 (1) The health insurer shall disclose to the insured in any
2 promotion or coordination of the service both of the following:

3 (1)

4 (A) ~~The insured is first given notice of the availability of~~
5 ~~receiving the service on an in-person basis, basis or via telehealth,~~
6 if available, from the insured's primary care provider, treating
7 specialist, or from another contracting individual health
8 professional, a contracting clinic, or a contracting health facility
9 consistent with the service and existing timeliness and geographic
10 access standards in Section 10133.5 and regulations promulgated
11 thereunder.

12 (2)

13 (B) If the insured has coverage for out-of-network benefits, ~~the~~
14 ~~insured is given notice a reminder of the availability of receiving~~
15 ~~the service either via telehealth or on an in-person basis using the~~
16 ~~insured's out-of-network benefits; benefits, and the cost sharing~~
17 ~~obligation for out-of-network benefits compared to in-network~~
18 ~~benefits and balance billing protections for services received from~~
19 ~~contracted providers.~~

20 (3)

21 (2) After being notified pursuant to ~~paragraphs (1) and (2),~~
22 ~~paragraph (1),~~ the insured elects to receive the service via
23 telehealth through a third-party corporate telehealth provider.

24 (4)

25 (3) The insured consents to the service consistent with Section
26 2290.5 of the Business and Professions Code.

27 (5)

28 (4) If the insured is currently receiving specialty telehealth
29 services for a mental or behavioral health condition, the insured
30 is given the option of continuing to receive that service with the
31 contracting individual health professional, a contracting clinic, or
32 a contracting health facility.

33 ~~(6) Notice shall include an estimate of cost sharing associated~~
34 ~~with paragraphs (1) and (2), including for use of out-of-network~~
35 ~~benefits and balance billing protections for services received from~~
36 ~~contracted providers.~~

37 (b) For purposes of this section, the following definitions shall
38 apply:

39 (1) "Contracting individual health professional" means a
40 physician and surgeon or other professional who is licensed by the

1 state to deliver or furnish health care services, including mental
2 or behavioral health services, and who is contracted with the
3 insured's health insurer. A "contracting individual health
4 professional" shall not include a dentist licensed pursuant to the
5 Dental Practice Act (Chapter 4 (commencing with Section 1600)
6 of Division 2 of the Business and Professions Code). Application
7 of this definition is not precluded by a contracting individual health
8 professional's affiliation with a group.

9 (2) "Contracting clinic" means a clinic, as defined in Section
10 1200 of the Health and Safety Code, that is contracted with the
11 insured's health insurer.

12 (3) "Contracting health facility" mean a health facility, as
13 defined in Section 1250 of the Health and Safety Code, that is
14 contracted with the insured's health insurer.

15 (4) "Third-party corporate telehealth provider" means a
16 corporation directly contracted with a health insurer that provides
17 health care services exclusively through a telehealth technology
18 platform and has no physical location at which a patient can receive
19 services.

20 (c) If services are provided to an insured through a third-party
21 corporate telehealth provider, a health insurer shall comply with
22 all of the following:

23 (1) Notify the insured of the insured's right to access the
24 insured's medical records pursuant to, and consistent with, Chapter
25 1 (commencing with Section 123100) of Part 1 of Division 106 of
26 the Health and Safety Code.

27 (2) Notify the insured that the record of any services provided
28 to the insured through a third-party corporate telehealth provider
29 shall be shared with the insured's primary care ~~provider~~, *provider*,
30 *unless the insured objects*.

31 (3) Ensure that the records are entered into a patient record
32 system shared with the insured's primary care provider or are
33 otherwise provided to the insured's primary care provider, *unless*
34 *the insured objects*, in a manner consistent with state and federal
35 law.

36 (4) *Notify the insured that all services received through the*
37 *third-party corporate telehealth provider are considered to be in*
38 *network*.

39 (d) A health insurer shall include in its reports submitted to the
40 department pursuant to Section 10133.5 and regulations adopted

1 pursuant to that section, in a manner specified by the commissioner,
2 all of the following for each product type:

3 (1) By specialty, the total number of services delivered via
4 telehealth provided by third-party corporate telehealth providers.

5 (2) The names of each third-party corporate telehealth provider
6 contracted with the insurer and, for each, the number of services
7 provided by specialty.

8 (3) For each third-party corporate telehealth provider with which
9 it contracts, the percentage of the third-party corporate telehealth
10 provider's contracted providers available to the insurer's insured
11 that are also contracting individual health professionals.

12 (4) For each third-party corporate telehealth provider with which
13 it contracts, the types of telehealth services utilized by insureds,
14 including frequency of use, gender, age, and any other information
15 as determined by the department.

16 (e) The commissioner shall investigate and take enforcement
17 action, as appropriate, against a health insurer that fails to comply
18 with these requirements and shall periodically evaluate contracts
19 between health insurers and third-party corporate telehealth
20 providers to determine if any audit, evaluation, or enforcement
21 actions should be undertaken by the commissioner.

22 ~~(f) If a health insurer delegates payment functions to a contracted~~
23 ~~entity, including, but not limited to, a medical group or independent~~
24 ~~practice association, the delegated entity shall comply with this~~
25 ~~section.~~

26 ~~(g)~~

27 ~~(f) This section shall not prevent apply when an insured from~~
28 ~~seeking seeks services directly from the a third-party corporate~~
29 ~~telehealth provider. provider that is not contracted with the~~
30 ~~insured's health insurer.~~

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

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O