



## California expands Telehealth opportunities

By Harsh P. Parikh and Jill H. Gordon

Last week, Governor Gavin Newsom ended the current legislative session by signing a slew of bills, including several that could drive digital health innovation forward in the Golden State. Among them was [Assembly Bill 744 \(AB 744\)](#), [Chapter 867](#) that continues to pave the way for telehealth technology adaptation in the state by:

- enacting new “parity” provisions that require private payors to reimburse services using telehealth modalities in the same way as a comparable in-person visit;
- expanding the definition of “telehealth” to include “store-and-forward” (asynchronous) modalities;
- removing various face-to-face requirements and other conditions for telehealth reimbursement; and
- imposing additional parameters for the use and proliferation of telehealth.

The passage of this bill presents opportunities for stakeholders in the industry to identify efficiencies, increase engagement, and allow patients to be active participants in managing their health. The legislation removes key reimbursement barriers and relaxes existing restrictions that may have hampered digital disruption in health care.

### Telehealth parity

Despite staunch opposition from the health plan and health insurance community, California joined a small minority of jurisdictions to require “telehealth parity.” The new law applies to health plans and insurers regulated by both the Department of Managed Health Care and the California Department of Insurance. Under the legislation, all payor-provider agreements must specify that the plan will reimburse diagnosis, consultation, or treatment through telehealth “on the same basis and to the same extent” as services that the plan covers through in-person visits. The parity provisions mandate that same services, as determined by the provider’s description of the service on a claim, be reimbursed at the same rate whether provided in-person or through telehealth. If no in-person equivalent exists, then a health plan’s reimbursement rate for telehealth must be fair and reasonable.

Health plans may require copayments or coinsurance for services delivered by telehealth, but such copayment or coinsurance cannot exceed amounts applicable if the same services were delivered through in-person diagnosis, consultation, or treatment. Services rendered by telecommunication tools can be subject to the same deductible and annual/lifetime maximums as applicable to similar in-person services.

Importantly, the new “parity” provisions do not apply to California’s Medi-Cal managed care plans or Medicare plans. The statutes do not require telehealth to be unbundled from other capitation or bundled risk-based arrangements. Health plans are also not required to cover out-of-network telehealth services. These new requirements are effective for payor-provider contracts issued, amended, or renewed after January 1, 2021. A willful violation of these requirements would be a crime under the existing legal framework.

## Telehealth modalities

AB 744 incorporates the broad framework of “telehealth” into the new parity requirements. The bill also makes changes to the definition of “telehealth,” to give additional flexibilities to stakeholders, and addresses both “synchronous” and “asynchronous” communications. The statutory definition of “telehealth” includes any modes that “deliver[] 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.” Notably, the statutory definition is agnostic as to the particular methodology of communication.

For synchronous communications, historically, the California Board of Medicine appeared to take a more narrow view, suggesting that telehealth should involve videoconferencing, and not include instant messaging and live chat. AB 744 does not make any such distinction.

Similarly, asynchronous or “store-and-forward” technologies are also being more widely adopted. Through mobile phone platforms, website monitoring applications, and wearable accessories, “store-and-forward” devices gather and transmit health data to distant providers for analysis, diagnosis, and treatment planning. The information transmitted through asynchronous interaction is not reviewed in “real time.” Several telehealth guidelines, including those by the California Department of Health Care Services that we covered [here](#), placed restrictions on consultations via asynchronous transmission. These restrictions limited patient-initiated asynchronous consultations. AB 744 confirms that telehealth under state law broadly includes both synchronous interaction and asynchronous “store and forward” transfers and effectively did away with a number of restrictions.

## Parameters for telehealth services

The changes clarify the parameters for delivering telehealth services, including the following:

- **Document written or verbal consent.** Amended provisions of the California Business and Professions code will require that health care providers obtain consent before delivering telehealth services. The statute gives flexibility to obtain either written or verbal consent. But the patient’s consent is required to be documented. This clarification provides welcome guidance to an existing ambiguity in California law.
- **No face-to-face contact or setting limitations.** Health plans in the state cannot not require in-person contact or limit the setting type before reimbursing telehealth services. The new law specifies that face-to-face contact between a health care provider and a patient is no longer

required under Medi-Cal or any other plan.

- **Interactive communication.** Building on the Department of Health Care Services' expanded telehealth policy that our team covered [here](#), the legislation also deletes certain existing requirements on interactive communication under the Medi-Cal program. For instance, AB 744 removes the requirement that Medi-Cal teleophthalmology, teledermatology, and teledentistry store-and-forward providers notify patients of their right to receive interactive communication with a distant physician, optometrist, or dentist.
- **Medical staff privileges.** In supporting hospitals' and health systems' adaption to new modalities of delivering care, AB 744 confirms that hospital medical staff may rely on distant site providers' information during the credentialing process. These modifications further align state and federal framework governing the credentialing of telehealth practitioners.
- **Tele-dentistry.** Another bill that Governor Newsom signed at the same time, [Assembly Bill 1519 \(AB 1519\), Chapter 865](#), includes requirements specific to teledentistry. AB 1519 mandates that dental services through telehealth must make the name, telephone number, practice address, and California state license number available of any dentist involved in providing services to a patient prior to providing services and upon request by the patient.

While statutory revisions embrace real-time (synchronous interactions) and store-and-forward (asynchronous) telemedicine technologies, it stops short of embracing all modalities of telemedicine. Most notably, the changes do not address remote patient monitoring (RPM) programs that focus on continuous monitoring and collection of patient-generated health data from the patient's home. The changes also do not establish specific policies for the use of mobile devices to access health services or content, other than within the context of existing rules (mHealth). Nonetheless, the new law provides additional clarity around telehealth modalities and removes key reimbursement-related barriers. It represents yet another step forward for California's burgeoning digital health economy.

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