Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2315 (Quirk-Silva) – As Amended April 2, 2018

[Note: This bill is doubled referred to the Assembly Health Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Pupil health: health care: telehealth services

SUMMARY: Establishes a telehealth pilot program in three school districts, allocates funding from the Mental Health Services Fund for the purchase of telehealth equipment and technology and specifies that providers would qualify for Medi-Cal reimbursement for mental and behavioral health services provided to a pupil via telehealth. Specifically, **this bill**:

1) Requires the Mental Health Services Oversight and Accountability Commission to establish a pilot program and provide funding for three school districts, serving pupils in any of kindergarten through 12th grade inclusive, to purchase telehealth technology and equipment to connect pupils with mental and behavioral health providers.

2) Specifies that the three school districts must be located in three different regions of the state and must include one school district in a rural area, one in an urban area, and one in a tribal community.

3) Requires that a participating school district be equipped with portable telehealth technology and equipment that enables the delivery of mental and behavioral health services, as well as provider consultation and training via live video.

4) Requires the commission to allocate funds from the Mental Health Services Fund to participating school districts to purchase the telehealth technology and equipment.

5) Requires the California Department of Education (CDE) and the Department of Health Care Services (DHCS) to work jointly with the Commission to develop the pilot program and to provide oversight to ensure that mental and behavioral health services are provided by licensed providers.

6) Defines "telehealth" as the mode of delivering health care services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a pupil's health care while the pupil is at a schoolsite and the health care provider is at a distant site.

7) Requires DHCS to allow a licensed mental health provider that provides mental or behavioral telehealth services to a pupil pursuant to the telehealth pilot program established to receive Medi-Cal reimbursement in accordance with the Medicaid state plan.

8) Requires DHCS to specify in the Medi-Cal Provider Manual that a school district participating in the telehealth pilot program qualifies as an "eligible originating site" for purposes of Medi-Cal coverage of mental and behavioral telehealth services provided by a licensed mental health care provider.

EXISTING LAW:

1) Expresses the intent of the Legislature that the that the governing board of each school district and each county superintendent of schools maintain fundamental school health services at a level that is adequate to accomplish all of the following: preserve pupils' ability to learn, fulfill existing state requirements and policies regarding pupils' health, and contain health care costs through preventive programs and education (EC 49427).

2) Requires the governing board of a school district to give diligent care to the health and physical development of pupils, and authorizes the district to employ properly certified persons for the work (EC 49400).

3) Specifies that the minimum requirements for the services credential with a specialization in pupil personnel services are a baccalaureate degree or higher degree from an approved institution, a fifth year of study, and any specialized and professional preparation that the commission shall require. The services credential with a specialization in pupil personnel services shall authorize the holder to perform, at all grade levels, the pupil personnel service approved by the commission as designated on the credential, which may include, but need not be limited to, school counseling, school psychology, child welfare and attendance services, and school social work (EC 44266).

4) Any psychologist employed to provide care to the health and physical development of pupils must hold a school psychologist credential, a general pupil personnel services credential authorizing service as a school psychologist, a standard designated services credential with a specialization in pupil personnel services authorizing service as a psychologist, or a services credential issued by the State Board of Education or Commission on Teacher Credentialing (EC 49422).

5) Prohibits any person who is an employee of a school district from administering psychological tests or engaging in other psychological activities involving the application of psychological principles, methods or procedures unless the person holds a valid and current credential as a school psychologist or is a psychological assistant or intern performing the testing or activities under the supervision of a credentialed psychologist (EC 49422).

6) The minimum requirements for a services credential with a specialization in health for a school nurse are all of the following: a baccalaureate or higher degree from an accredited institution, a valid California license as a registered nurse, and one year of coursework beyond the baccalaureate degree in a program approved by the commission. The services credential with a specialization in health for a school nurse authorizes the holder to perform, at grades 12 and below, the health services approved by the commission designated on the credential (EC 44267.5).

7) Expresses 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 provider (Welfare & Institutions Code (WIC) 14132.72)

    a) Specifies that in-person contact between a health care provider and a patient is not required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by the department to compensate a

licensed health care provider who provides health care services through telehealth that are otherwise reimbursed by the Medi-Cal program.

b) 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.

8) Defines "telehealth" as 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 (Business & Professions Code (BPC) 2290.5).

9) Defines "originating site" as 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 (BPC 2290.5)

10) Authorizes psychiatrists to receive fee-for-service Medi-Cal reimbursement for services provided through telehealth in accordance with the Medicaid state plan (WIC 14132.73).

11) Establishes the Investment in Mental Health Wellness Act of 2013, including Community-Based Services, to, among other objectives: provide a complete continuum of crisis services for children and youth 21 years of age and under regardless of where they live in the state. Authorizes the California Health Facilities Financing Authority (Authority) and the Mental Health Services Oversight and Accountability Commission (Commission) to administer competitive selection processes for capital capacity and program expansion to increase capacity for mobile crisis support, crisis intervention, crisis stabilization services, crisis residential treatment, and specified personnel resources. Funds appropriated by the Legislature for purposes of this section are to be made available to selected counties, or counties acting jointly. The authority may, at its discretion, also give consideration to private nonprofit corporations and public agencies in an area or region of the state if a county, or counties acting jointly, supports this designation and collaboration in lieu of a county government directly receiving grant funds (WIC 5848.5).

FISCAL EFFECT: Unknown

COMMENTS: ***Need for the bill.*** According to the author:

"For over a decade, schools across America have been looking to technology to solve patient access to care issues for their student body. A desktop PC or laptop with a video link can connect small and rural schools with a nurse at the district's head office, or even to a doctor at a nearby hospital. A telehealth platform can also be used for behavioral health counseling.

Schools are increasingly challenged by the rising number of children with behavioral health and mental health issues. According to a 2017 Kidsdata (Packard Foundation) survey, an estimated 21% of California youth ages 12-17 needed help for emotional or mental health problems (such as feeling sad, anxious, or nervous) in 2013-2014, up from 17% in 2005.

Among those who needed help, approximately one-third (35%) received counseling. According to 2011-2012 parent reports, an estimated 63% of California children ages 2-17 who needed mental health treatment or counseling received services in the previous year, with county-level estimates ranging from 53% to 67%. Additionally, the survey found that nearly 1 in 6 high school students reported seriously considering suicide in the previous year, and 1 in 13 reported attempting it.

Unfortunately, there are limited resources available to address a student in crisis during the school day. Due to this lack of resources, schools often turn to School Resource Officers to intervene when a student is experiencing a behavior problem. These officers are not trained mental health providers and their involvement with a student during this time can escalate an already stressful situation."

Incidence of mental health and behavioral health issues for children and youth. According to a report by the American Institutes for Research (AIR), *Mental Health Needs of Children and Youth,* up to 20 percent of children in the United States experience a mental, emotional, or behavioral health disorder every year. The most prevalent mental health disorder in children and youth is attention deficit hyperactivity disorder (ADHD), followed by depression, behavioral or conduct problems, anxiety, substance use disorders, Autism spectrum disorders, and Tourette syndrome. In many cases, these conditions occur together, which can complicate identification and treatment.

Importance of prevention and early intervention. Research suggests that nearly half of all children with emotional or behavioral health difficulties receive no mental health services. Among the few children and youth who do receive mental health services, most do so at school. One study found that 70.8 percent of California children identified with mental health needs through a statewide survey did not receive treatment. Mental health problems that are not addressed early in life can inflict severe consequences including serious difficulties at home, with peers, and in school; a higher risk for dropping out of school; and increased risk of engaging in substance use, criminal behavior, and other risk-taking behaviors.

Barriers to seeking treatment for mental and behavioral health disorders. Studies cite a lack of insurance coverage as one of the barriers to children and youth receiving mental health services. Additional barriers to accessing mental health services include parents with limited English proficiency – 88.6 percent of children whose parents had limited English proficiency did not receive any mental health treatment compared to 66.6 percent of children with English proficient parents. Other barriers include the complexity of the care system, the inadequate linguistic capacity of existing professional services and resources, as well as the stigmas and cultural barriers to recognizing and seeking treatment for mental health problems.

School-based and school-linked mental health services for pupils. Across the country, school systems are increasingly joining forces with community health, mental health, and social service agencies to promote student well-being and to prevent and treat mental health disorders. Because children spend more time in school than in community mental health centers, schools are well positioned to link students with mental health services.

Mental health services that are provided in schools may include academic counseling, brief interventions to address behavior problems, assessments and referrals to other systems. Providing mental health services in a school-based setting helps address barriers to learning and

provide supports so that all students can achieve in school and ultimately in life. Schools are also places where prevention and early intervention activities can occur in a non-stigmatizing environment.

Schools offering comprehensive mental health programs rely on partnerships with community systems, such as community mental health centers, hospitals, and universities. Schools, working with their community partners, can collect prevalence data to build a foundation to plan, develop, and implement comprehensive mental health programs and services through strong school-community partnerships.

California schools lag in providing social emotional support to pupils. According to CDE data for 2016-17, there were 5,932 school psychologists and 687 social workers employed in California schools. Further, 29 percent of California school districts have no counseling programs at all. The ratio of students per counselor in this state averages 945 to 1, compared to the national average of 477 to 1, ranking California last in the nation. As of 2016-17, there were only 2,630 credential school nurses in California. This clearly fails to meet the threshold of one teacher per school as there are more than 10,000 public K-12 schools in California. Clearly California lacks sufficient numbers of trained personnel in our schools to meet the social and emotional needs of over six million pupils.

Telehealth in public schools. The National Association of School Nurses (NASN) suggests that telehealth solutions may greatly benefit a school system by providing the ability to link a student with a distant healthcare official. This could address the special needs of individual students whether they are suffering from a chronic health condition or needing increased access to behavioral health services, particularly for those students living in rural areas. They note that telehealth services have the capacity to connect a student with a psychiatrist or behavioral specialist to deal with issues relating to a chronic behavioral condition or a recent loss or trauma. Students would receive treatment without taking time away from school. However, they note that these technologies cannot replace the care coming directly from a school nurse. The NASN position statement on *The Use of Telehealth in Schools* states that "telehealth technology may be used to augment school health services but not replace in-person health care provided by the school nurse".

Funding for school-based mental health services in California. There are a number of local, state, and federal funding streams available to link students with mental health services. These include funding established in 2004 as a result of the passage of Proposition 63, the Mental Health Services Act (MHSA), which levies a one percent tax on personal income above one million. Revenues are distributed directly to counties based on total population, measures of poverty, levels of uninsured individuals and the prevalence of mental illness. Target populations include children and adolescents with Serious Emotional Disturbance and transition-aged youth. MHSA includes two funding streams which could be relevant for this purpose:

- MHSA Prevention and Early Intervention (PEI) allocates 20 percent of the fund to counties for PEI programs which emphasize strategies to reduce negative outcomes that may result from untreated mental illness, including suicide, incarceration, school failure or dropout, unemployment, prolonged suffering, homelessness, and removal of children from their homes.

- MHSA Community Services and Support (CSS) allocates 55 percent of funds to CSS programs to provide funding for services identified in childrens' and adults' systems of care treatment plans that are not funded through any other source, including public or private insurance. The intent is to serve unserved and underserved populations with a serious mental illness, and include an emphasis on eliminating racial and other disparities.

This bill directs funding from the CSS portion of the MHSA for the purpose of purchasing equipment and technology to establish telehealth capabilities in participating public schools to serve the mental health and behavioral health needs of children and youth.

Provider reimbursement for telehealth services. This bill would require DHCS to allow a licensed mental health provider providing services to pupils via the telehealth pilot program to receive Medi-Cal reimbursement and would also require DHCS to specify that a participating school district would qualify as an "eligible originating site" for purposes of Medi-Cal coverage of mental health and behavioral telehealth services provided by a licensed mental health provider.

According to the American Telemedicine Association, telemedicine is becoming more common in schools and at least 18 states authorize Medicaid reimbursement for telemedicine services provided in schools and 28 states require private insurers to cover telemedicine appointments as they would face-to-face doctor visits. California is not currently one of the states that authorize Medicaid reimbursement for school telemedicine.

Privacy concerns relating to the provision of telehealth in public schools. The use of telehealth in public school settings requires attention to the protection of the health records and personal information of pupils related to the Health Insurance Portability and Accountability Act of 1996 (HIPPA) or the Family Educational Rights and Privacy Act of 1974 (FERPA).

Need to address significant issues in order to provide a successful telehealth program. This bill fails to address many of the key issues critical to the successful implementation of a telehealth program to provide mental and behavioral health services to pupils on school campuses. These include, but are not limited to:

- There is no requirement that a credentialed school nurse or other health professional be with the pupil who is receiving telehealth services. It is conceivable that non-medical personnel would be overseeing and serving as "health providers" and thus, could be considered to be practicing medicine or nursing without a license This could raise concerns regarding the level of care for the pupils and result in liability issues for the school or district involved.

- There is no requirement for the distant provider of mental or behavioral to hold a services credential with a specialization in pupil personnel services (PPS) or a services credential with a specialization in health for a school nurse provided through the Commission on Teaching Credentials (CTC) as is currently required for any school employee providing health services.

- The bill does require CDE and DHCS to ensure that services are provided by licensed providers, however current law requires that any licensed provider without the above

noted credentials must only provide health service to pupils under the supervision of a PPS credential or an administrative credential holder.

- It is not clear whether the redirection of monies by DHCS from a county directly to a school district to fund the purchase of telehealth equipment and technology, without the approval of the county, furthers the intent of Proposition 63.

- The bill makes no reference to billing private insurance companies for pupils receiving telehealth services who are covered by private insurance and thus raises the question of whether the provision of telehealth services to pupils not covered by Medi-Cal would be a financial burden to the school or to the distant mental health or behavioral health provider if there is no ability to seek reimbursement from private health insurance providers.

- There is no provision in the bill for policies and procedures regarding data security and protections for the privacy of pupil records and medical information or for seeking parental consent for treatment of minors.

Committee staff recommends that the bill be amended to strike the contents of the bill and replace it with language directing CDE, in consultation with DHCS, and appropriate stakeholders, including those with experience in the field of telehealth, to develop guidelines for the use of telehealth technology in public schools to provide mental health and behavioral health to students by a specified date.

These guidelines would include, but not be limited to, definitions of the providers of the telehealth services, both at the schoolsite with the student as well as the distant provider, scope of practice considerations, the funding mechanisms to allow for the purchase of the necessary technology and equipment and for reimbursement of providers, data security measures, the procedures necessary to protect the privacy of a pupil's medical records and personal information, and the methods to be used to gain parental consent for treatment of minors.

Similar and prior legislation. AB 2022 (Chu) of this Session requires schools to have at least one mental health professional for every 600 pupils generally accessible to pupils on campus during school hours by December 31, 2012. This bill is pending before this Committee.

AB 2471 (Thurmond) requires the transfer of funds from the *Youth, Education, Prevention, Early Intervention and Treatment Account* established through the passage of the *Control, Regulate and Tax Adult Use of Marijuana Act* to the California Department of Education (CDE) to establish a grant program which would allow schools to provide in-school support services to pupils. This bill is pending before this committee.

AB 2498 (Eggman) of this Session establishes the School Social Worker Pilot Program to provide multiyear grants to school districts in specified counties to fund a social worker at each eligible school. This bill is pending before this committee.

AB 580 (O'Donnell) of the 2015-16 Session requires the CDE to develop model referral protocols for voluntary use by schools to address the appropriate and timely referral by school staff of students with mental health concerns. This bill was vetoed by the Governor.

AB 809 (Logue) Chapter 404, Statutes of 2014 revises the informed consent requirement relating to the delivery of healthcare via telehealth by permitting consent to be made verbally or in writing, and by deleting the requirement that the health care provider who obtains the consent be at the originating site where the patient is physically located.

REGISTERED SUPPORT / OPPOSITION:

Support

California Academy of Family Physicians

Opposition

California Nurses Association
California Right to Life Committee, Inc.

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087