

NOTICE OF TELECONFERENCE BOARD MEETING

The Board of Psychology will hold a Board Meeting via WebEx

NOTE: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-29-20, dated March 17, 2020, neither Board member locations nor a public meeting location are provided. Public participation may be through the WebEx link as provided below. If you have trouble getting on the call to listen or participate, please call 916-574-7720.

Agenda discussion and report items are subject to action being taken on them during the meeting by the Board at its discretion. Action may be taken on any item on the agenda.

Important Notice to the Public: The Board of Psychology will hold a public meeting via WebEx Events. To participate in the WebEx meeting, please log on to this website the day of the meeting:

Friday, May 21, 2021:

<https://dca-meetings.webex.com/dca-meetings/onstage/q.php?MTID=e387f29f204461ed49fec441a7a659494>

Instructions to connect to the meeting can be found at the end of this agenda. Members of the public may, but are not obligated, to provide their names or personal information as a condition of observing or participating in the meeting. When signing into the WebEx platform, participants may be asked for their name and email address. Participants who choose not to provide their names will need to provide a unique identifier such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make public comment; participants who choose not to provide their email address may utilize a fictitious email address like in the following sample format: XXXXX@mailinator.com.

Due to potential technical difficulties, please consider submitting written comments by May 20, 2021, to bopmail@dca.ca.gov for consideration.

Friday, May 21, 2021

Board Members

Seyron Foo, President
Lea Tate, PsyD, Vice President
Sheryll Casuga, PsyD
Marisela Cervantes
Mary Harb Sheets, PhD
Julie Nystrom
Stephen Phillips, JD, PsyD
Ana Rescate
Shacunda Rodgers, PhD

Legal Counsel

Will Maguire
Heather Hoganson

Board Staff

Antonette Sorrick, Executive Officer
Jon Burke, Assistant Executive Officer
Stephanie Cheung, Licensing Manager
Jason Glasspiegel, Central Services Manager
Sandra Monterrubio, Enforcement Program
Manager
Liezal McCockran, CE/Renewals
Coordinator
Cristina Rivera, Legislative and Regulatory
Analyst
Sarah Proteau, Central Services Office
Technician

Friday, May 21, 2021

AGENDA

9:00 a.m. – 5:00 p.m. or until Completion of Business

Unless noticed for a specific time, items may be heard at any time during the period of the Board meeting.

The Board welcomes and encourages public participation at its meetings. The public may take appropriate opportunities to comment on any issue before the Board at the time the item is heard. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment.

1. Call to Order/Roll Call/Establishment of a Quorum
2. President's Welcome
3. Public Comment for Items Not on the Agenda. Note: The Board May Not Discuss or Take Action on Any Matter Raised During this Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code sections 11125 and 11125.7(a)].

4. Discussion and Possible Approval of the Board Meeting Minutes: February 18-19, 2021
5. Discussion and Possible Approval of the Board Meeting Minutes: April 2, 2021
6. Executive Officer's Report (A. Sorrick)
 - a) Personnel Update
 - b) Statistical Reports – Future Reporting Plan for Enforcement, Licensing, and Central Services
 - c) 2020 Department of Consumer Affairs (DCA) Annual Report
 - d) COVID-19 Update
7. DCA Update
8. Budget Report (J. Glasspiegel)
9. Discussion and Possible Approval of Regulatory Fee Changes 16 California Code of Regulations (CCR) Sections 1392: Psychologist Fees, 1392.1: Psychological Assistant Fees
10. Licensing Report (S. Cheung)
11. Continuing Education and Renewals Report (L. McCockran)
12. Enforcement Report (S. Monterrubio)
13. Enforcement Committee Report and Consideration of and Possible Action on Committee Recommendations (Phillips – Chairperson, Foo)
 - a) Child Custody Stakeholder Meeting-Implementation Plan Update
 1. Statutory Discussion Regarding Proposed Exception to Psychotherapist-Patient Privilege for Board Investigations
 - b) Regulatory Update, Review, and Consideration of Additional Changes
 1. 16 CCR 1380.6 – Display of License Number
 2. 16 CCR 1393 – Requirements for Psychologists on Probation
 3. 16 CCR 1396 – Competence
 4. 16 CCR 1396.1 – Interpersonal Relations
 5. 16 CCR 1396.2 – Misrepresentation
 6. 16 CCR 1396.3 – Test Security
 7. 16 CCR 1396.4 – Professional Identification
 8. 16 CCR 1396.5 – Consumer Information
 9. 16 CCR 1397 – Advertising
 10. 16 CCR 1397.1 – Child Abuse Reporting requirements
 11. 16 CCR 1397.2 – Other Actions Constituting Unprofessional Conduct
 12. 16 CCR 1397.30 – Citation
 13. 16 CCR 1397.36 – Requirements for Professional Corporations
 14. 16 CCR 1397.37 – Shares: Ownership and Transfer
 15. 16 CCR 1397.39 – Corporate Activities

- 16.16 CCR 1397.40 – Trusts
- 17.16 CCR 1397.50 – Citations and Fines
- 18.16 CCR 1397.51 – Amount of Fines
- 19.16 CCR 1397.52 – Compliance with Orders of Abatement
- 20.16 CCR 1397.53 – Citations for Unlicensed Practice
- 21.16 CCR 1397.54 – Contest of Citations
- 22.16 CCR 1397.55 – Disconnection of Telephone Service

- c) Statutory Update, Review, and Consideration of Additional Changes
 - 1. Business and Professions Code (BPC) section 2902 – Definitions
 - 2. BPC section 2903 – Licensure requirement; Practice of psychology; Psychotherapy
 - 3. BPC section 2903.1 – Biofeedback instruments
 - 4. BPC section 2908 – Exemption of other professions
 - 5. BPC section 2912 – Temporary practice by licensees of other state or foreign country
 - 6. BPC section 2934.1 – Posting of license status on Web site
 - 7. BPC section 2936 – Consumer and professional education in matters relevant to ethical practice; Standards of ethical conduct; Notice
 - 8. BPC section 2960 – Grounds for action subdivisions (a)-(r) & (o)
 - 9. BPC section 2960.05 – Limitations period for filing accusation against licensee
 - 10. BPC section 2960.1 – Sexual contact with patient; Revocation
 - 11. BPC section 2960.2 – Licensee’s physical, emotional and mental condition evaluated
 - 12. BPC section 2960.5 – Mental illness or chemical dependency
 - 13. BPC section 2960.6 – Actions by other states
 - 14. BPC section 2961 – Scope of action
 - 15. BPC section 2962 – Petition for reinstatement or modification of penalty
 - 16. BPC section 2963 – Matters deemed conviction
 - 17. BPC section 2964 – Report of license revocation or restoration
 - 18. BPC section 2964.3 – Persons required to register as sex offender
 - 19. BPC section 2964.5 – Conditions of probation or suspension
 - 20. BPC section 2964.6 – Payment of probationary costs
 - 21. BPC section 2965 – Conduct of proceedings
 - 22. BPC section 2966 – Suspension during incarceration for felony conviction; Determination of substantial relationship of felony to functions of psychologist; Discipline or denial of license
 - 23. BPC section 2969 – Penalties for failure to provide medical records; Failure to comply with court order; Multiple acts
 - 24. BPC section 2970 – Violation of chapter as misdemeanor
 - 25. BPC section 2971 – Injunctions
 - 26. BPC section 2985 – Renewal of suspended licenses; Reinstatement of revoked licenses
 - 27. BPC section 2986 – Effect of failure to renew within prescribed time
 - 28. BPC section 2995 – Psychological corporation
 - 29. BPC section 2996 – Violation of unprofessional conduct
 - 30. BPC section 2996.1 – Conduct of practice

31. BPC section 2996.2 – Accrual of income to shareholder while disqualified prohibited
 32. BPC section 2997 – Shareholders, directors and officers to be licensees
 33. BPC section 2998 – Name, 2999 – Regulation by committee
14. Association of State and Provincial Psychology Boards (ASPPB) Update (S. Foo)
 15. Legislative and Regulatory Affairs Updates (Cervantes – Chairperson, Casuga, Phillips)
 - a) Board-Sponsored Legislation for the 2021 Legislative Session: Review and Possible Action
 1. SB 401 (Pan) Psychology: unprofessional conduct: disciplinary action: sexual acts
 2. Pathways to Licensure Statutory Revisions – Amendments to sections 27, 2909, 2909.5, 2910, 2911, 2913, 2914, 2915, 2915.5, 2915.7, 2942, 2944, 2946, and 2960 of the Business and Professions Code, and section 1010 of the Evidence Code.
 3. Sunset Provisions – Amendments to section 2912, and Addition of Sections Related to Reinstatement to Active after Voluntary Surrender, Licensure Committee Delegated Authority, and Authority to Issue Waivers.
 - b) Review and Consideration of Bills for an Active Position
 1. AB 885 (Quirk) Bagley-Keene Open Meeting Act: teleconferencing
 - c) Review of Bills with Active Positions Taken by the Board
 1. AB 32 (Aguiar-Curry) Telehealth
 2. AB 107 (Salas) Department of Consumer Affairs: boards: temporary licenses: military spouses
 3. SB 731 (Durazo) Criminal records: relief
 4. SB 772 (Ochoa Bogh) Professions and vocations: citations: minor violations
 - d) Review of Watch Bills
 1. AB 29 (Cooper) State bodies: meetings
 2. AB 54 (Kiley) COVID-19 emergency order violation: license revocation
 3. AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses
 4. AB 339 (Lee) State and local government: open meetings
 5. AB 562 (Low) Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: health care providers: mental health services
 6. AB 646 (Low) Department of Consumer Affairs: boards: expunged convictions
 7. AB 657 (Bonta) State civil service system: personal services contracts: professionals
 8. AB 810 (Flora) Healing arts: reports: claims against licensees
 9. AB 830 (Flora) Department of Consumer Affairs: director: powers and duties

- 10. AB 1026 (Smith) Business licenses: veterans.
 - 11. AB 1236 (Ting) Healing arts: licensees: data collection
 - 12. AB 1386 (Cunningham) License fees: military partners and spouses
 - 13. SB 102 (Melendez) COVID-19 emergency order violation: license revocation
 - 14. SB 221 (Wiener) Health care coverage: timely access to care
 - 15. SB 224 (Portantino) Pupil instruction: mental health education
- e) Legislative Items for Future Meeting. The Board May Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such Items Should be on a Future Board Meeting Agenda and/or Whether to Hold a Special Meeting of the Board to Discuss Such Items Pursuant to Government Code section 11125.4
16. Regulatory Update, Review, and Consideration of Additional Changes (M. Cervantes)
- a) 16 California Code of Regulations (CCR) 1396.8 – Standards of Practice for Telehealth
 - b) 16 CCR sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Assistants
 - c) 16 CCR sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees
 - d) 16 CCR sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development
 - e) 16 CCR sections 1391.13, and 1391.14 – Inactive Psychological Assistant Registration and Reactivating a Psychological Assistant Registration
 - f) 16 CCR sections 1392 and 1392.1 – Psychologist Fees and Psychological Assistant Fees
 - g) 16 CCR 1395.2 – Disciplinary Guidelines and Uniform Standards Related to Substance-Abusing Licensees
17. Recommendations for Agenda Items for Future Board Meetings. Note: The Board May Not Discuss or Take Action on Any Matter Raised During This Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code Sections 11125 and 11125.7(a)].

CLOSED SESSION

18. The Board Will Meet in Closed Session Pursuant to Government Code Section 11126, subdivision (c)(3) to Discuss Disciplinary Matters Including Proposed Decisions, Stipulations, Petitions for Reinstatement or Modification of Penalty, Petitions for Reconsideration, and Remands.

ADJOURNMENT

Due to technological limitations, adjournment will not be broadcast. Adjournment will immediately follow closed session, and there will be no other items of business discussed or transacted.

The meeting may be canceled without notice. For verification, please check the Board's Web site at www.psychology.ca.gov, or call (916) 574-7720. To accommodate speakers, or to maintain a quorum, items may be taken out of order, tabled or held over to a subsequent meeting, and items scheduled to be heard on Thursday may be held over to Friday, or if scheduled to be heard on Friday may be moved up to Thursday.

In the event a quorum of the Board is unable to attend the meeting, or the Board is unable to maintain a quorum once the meeting is called to order, the president may, at his discretion, continue to discuss items from the agenda and to vote to make recommendations to the full board at a future meeting [Government Code section 11125(c)].

Meetings of the Board of Psychology are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. The public may take appropriate opportunities to comment on any issue before the Board at the time the item is heard, but the President may, at his discretion, apportion available time among those who wish to speak.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Antonette Sorrick, Executive Officer, at (916) 574-7720 or email bopmail@dca.ca.gov or send a written request addressed to 1625 N. Market Boulevard, Suite N-215, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

MEMORANDUM

DATE	May 4, 2021
TO	Psychology Board Members
FROM	Antonette Sorrick, Executive Officer
SUBJECT	Executive Officer's Report: Agenda Item 6

Background:

The report below is provided to the Board as an update on personnel and at the beginning of the year, the Board's Annual Report to the State Legislature. Additionally, there is an update on statistical reports to the Board and a waiver update.

Personnel Update

Authorized Positions: 26.30

Temp Help: 1.7

Vacancies: 1.0

New Hires	
Classification	Program

Promotions
None

Vacancies
1. Enforcement Technician (OT) Vacancy. Vacancy effective 11/19/19 2. Central Services Technician (OT) Vacancy. Vacancy effective 6/1/21 3. Enforcement Analyst (AGPA) Vacancy. Vacancy effective 4/6/21

Statistical Reports

As a follow up to the annual EO performance evaluation, the EO, in partnership with the Board President have reevaluated statistical reports provided to the Board at board and committee meetings. As such, each committee will review the current reports made and amend the report criteria as appropriate.

2020 Department of Consumer Affairs' (DCA) Annual Report to the Legislature

Background: In compliance with Business and Professions Code Section 129 (a report to the legislature to ascertain patterns of complaints and report such data on an annual basis), every year, the Department of Consumer Affairs compiles enforcement, examination, and licensing data for all its 37 boards and bureaus and submits said report to the State Legislature.

Waivers and Guidance

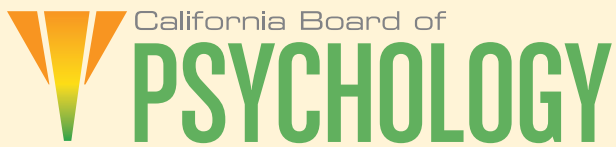
- The full list of current waivers and guidance can be found on the [DCA website](#). DCA boards and bureaus who wish to have a waiver reviewed and considered by the director are requested to submit a Waiver Request form to the following email: WaiverRequest@dca.ca.gov. It is important to note that the only requests that can be considered for Division 3 boards and bureaus at this time are those related to continuing education. The Department has been working with the boards to submit and review waiver requests. The information received by the boards will assist in determining whether to approve or deny the request.
- DCA Boards and Bureaus who wish to have a waiver reviewed and considered by the director are requested to submit a Waiver Request Form (attached) to the following email: WaiverRequest@dca.ca.gov. [The Department has been working with the boards to submit and review waiver requests. The information received by the boards will assist in determining whether to approve or deny the request.](#)
- Other important information:
 - Individuals with a current/active out-of-state license who want to assist with COVID-19 in California should email Emergency Medical Services Authority (EMSA) at: Covid19@emsa.ca.gov
 - The Department of Health Care Services issued a bulletin, [Guidance Relating to Non-Discrimination in Medical Treatment for Novel Coronavirus 2019 \(COVID-19\)](#), for the attention of all licensed health care workers. DCA healing arts boards are requested to provide this information to all health care licensees.
- Call to ACTION: On Monday, March 31, 2020, the Governor put out a call to action asking those licensed in California to join the fight in battling the COVID-19 pandemic. In addition, he launched the [California Health Corps](#) where individuals can go to sign up to be deployed to assist providing care to those in need. Please encourage those around you to sign up to help!
All Californians 16+ Eligible for COVID-19 Vaccines
- As of April 15, all Californians aged 16 and older are eligible for COVID-19 vaccinations. Individuals seeking an opportunity to get vaccinated may still need to wait for an appointment. Every Californian can schedule with My Turn by signing up at [MyTurn.ca.gov](https://myturn.ca.gov) ([available](#) in 12 languages) or call the COVID-19 hotline at (833) 422-4255 (assistance available in 250+ languages). Some local health authorities have additional vaccination appointments. The CDC's [VaccineFinder](#) may help Californians to locate nearby opportunities.

Attachments

Department of Consumer Affairs' Annual Report to the State Legislature
Waiver Update

Action Requested:

This item is for informational purposes only.



Licenses and regulates psychologists, registered psychologists, and psychological assistants.

www.psychology.ca.gov

STAFF:

28 civil servant positions
1 exempt

LICENSES, REGISTRATIONS, PERMITS, AND CERTIFICATES:

23,441

BOARD MEMBERSHIP:

4 public representatives
5 licensees

BOARD STAFF:

Executive Officer: Antonette Sorrick
antonette.sorrick@dca.ca.gov

LAWS AND REGULATIONS:

Business and Professions Code §§ 2900–2999;
California Code of Regulations, Division 13.6,
title 16, §§ 1380–1397.71.

SUNSET REVIEW:

Last review: 2016 Next review: 2021

Board Highlights

RECIPROCITY

Pursuant to Business and Professions Code section 2946, a psychologist certified or licensed in another state or province and who has made application to the Board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in California, whichever occurs first. Business and Professions Code section 2912 states that nothing in this chapter shall be construed to restrict or prevent a person who is licensed as a psychologist at the doctoral level in another state or territory of the United States or in Canada from offering psychological services in this state for a period not to exceed 30 days in a calendar year.

ACCOMPLISHMENTS

The Board of Psychology (Board) was scheduled to go through a sunset review March of 2020. Due to the Coronavirus Disease 2019 (COVID-19) pandemic, the Board's sunset review was extended to the next calendar year. The Board held five Board meetings and five committee meetings during this fiscal year. Of these, two Board meetings and two committee meetings were after Governor Newsom's declaration of emergency.

Responding to a Pandemic

On March 4, 2020, the Governor proclaimed a State of Emergency in California as a result of the impacts of COVID-19 to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare to respond to an increasing number of individuals requiring medical care and hospitalization as a result of a broader spread of COVID-19. In response to the pandemic, the Board implemented the following processes:

- All Board staff were provided the opportunity to telework. In partnership with the Department of Consumer Affairs (DCA), the Board utilized cloud-based systems, to enable continuity of services for all enforcement, licensing, and central service processes.

- The Board was able to embrace new technology to continue the Board’s operation; ensuring the Board’s responsibility for consumer protection and public service. The Board was able to ensure continuity of services by advocating for policy, conducting closed session to discuss enforcement cases, and considering licensing requests from applicants and trainees.
- The Board worked with its control agencies to reduce paper processes to support the new telework environment.
- The Board formed the Emergency Preparedness Ad Hoc Committee, to identify deficiencies facing the Board in its policy-making abilities during an emergency. This Committee’s charge is to look at lessons learned from the COVID-19 emergency, catalogue existing waivers, evaluate the need for additional waivers, assist with messaging to stakeholders, and evaluate needs of committee/board meetings.
- Based on staff input and applicant and licensee inquiries, the Board requested several waivers through the Department of Consumer Affairs, and issued waivers, when authorized, to reduce barriers for the provision of psychological services in California. Once issued, the Board in partnership with its stakeholders, shared applicable waiver information to its licensees and applicants.

Processing Time Reduction

The Board was able to significantly reduce its processing time for completion of disciplinary cases by 237 days from the prior fiscal year.

NEW LEGISLATION

There was no enacted legislation solely related to the Board in 2020.

License Requirements

License Requirements	Y/N
DEGREE/PROFESSIONAL SCHOOLING	Y
QUALIFYING EXPERIENCE (MAY INCLUDE EDUCATION)	Y*
EXAMINATION	Y**
CONTINUING EDUCATION/COMPETENCY	Y**
FINGERPRINT REQUIREMENT	Y

Business and Professions Code §§ 2909, 2913, and 2914; California Code of Regulations §§ 1387 and 1387.4.

*No minimum experience requirement for psychological assistant.

**Examinations and continuing education are only required for psychologists.

Fees

License Type	Actual Fee	Statutory Limit
PSYCHOLOGIST/ APPLICATION FEE	\$40	\$50
PSYCHOLOGIST/ INITIAL LICENSE FEE	\$400	EQUAL TO RENEWAL FEE
PSYCHOLOGIST (ACTIVE)/ BIENNIAL RENEWAL FEE	\$400	\$500
PSYCHOLOGIST (ACTIVE)/ ADDITIONAL BIENNIAL FEES PAID AT RENEWAL*	\$30	\$30
PSYCHOLOGIST (INACTIVE)/ BIENNIAL RENEWAL FEE	\$40	\$40
PSYCHOLOGIST (INACTIVE)/ ADDITIONAL BIENNIAL FEES PAID AT RENEWAL**	\$20	\$20
PSYCHOLOGIST (ACTIVE)/ DELINQUENCY FEE	\$150	50% OF RENEWAL NOT TO EXCEED \$150
PSYCHOLOGIST (INACTIVE)/ DELINQUENCY FEE	\$20	50% OF RENEWAL NOT TO EXCEED \$150
CALIFORNIA PSYCHOLOGY LAWS AND ETHICS EXAMINATION (CPLEE)	\$129	COST TO BOARD
PSYCHOLOGICAL ASSISTANT/ APPLICATION FEE	\$40	\$75
PSYCHOLOGICAL ASSISTANT/ ANNUAL RENEWAL FEE	\$40	\$75
PSYCHOLOGICAL ASSISTANT/ DELINQUENCY FEE	\$20	50% OF RENEWAL NOT TO EXCEED \$150
REGISTERED PSYCHOLOGIST APPLICATION FEE	\$0	\$0
LICENSE VERIFICATION FEE	\$5	\$5

*Included in the biennial renewal fee for an active psychologist is an additional \$30 in fees which includes \$20 pursuant to BPC section 2987.2 and \$10 pursuant to CCR Title 16, Division 13.1, section 1397.69.

**Included in the biennial renewal fee for an inactive psychologist is an additional \$20 fee pursuant to BPC section 2987.2.

Summary of Licensing Activity

Initial Licenses/Certificates/Permits			
TYPE	APPS RECEIVED	ISSUED	RENEWED
PSYCHOLOGICAL ASSISTANT	695	572	958
PSYCHOLOGIST	2,037	834	10,398
REGISTERED PSYCHOLOGIST	96	49	N/A
TOTAL	2,828	1,455	11,356

Licensing Population by Type			
TYPE	CERTIFICATES/ PERMITS	LICENSES/ REGISTRATIONS	APPROVALS
PSYCHOLOGICAL ASSISTANT		1,326	
PSYCHOLOGIST		21,998	
REGISTERED PSYCHOLOGIST		117	
TOTAL		23,441	

Renewal and Continuing Education (CE)		
TYPE	FREQUENCY OF RENEWAL	NUMBER OF CE HOURS REQUIRED EACH CYCLE
PSYCHOLOGIST	EVERY 2 YEARS	36
PSYCHOLOGICAL ASSISTANT	EVERY YEAR	0
REGISTERED PSYCHOLOGIST	NON-RENEWABLE	0

Exams Results			
EXAM TITLE	PASS	FAIL	TOTAL
"EXAMINATION FOR PROFESSIONAL PRACTICE IN PSYCHOLOGY (EPPP)"	670	794	1,464
"CALIFORNIA PSYCHOLOGY LAWS AND ETHICS EXAMINATION (CPLÉE)"	860	247	1,107

Summary of Enforcement Activity

Consumer Complaints—Intake	
1,142	RECEIVED
246	CLOSED WITHOUT REFERRAL FOR INVESTIGATION
864	REFERRED FOR INVESTIGATION
144	PENDING

Conviction/Arrest Notification Complaints	
44	RECEIVED
1	CLOSED WITHOUT REFERRAL FOR INVESTIGATION
43	REFERRED FOR INVESTIGATION
3	PENDING

Inspections	
N/A	CONDUCTED
N/A	CITATIONS ISSUED

Investigations	
907	OPENED
790	CLOSED
144	PENDING

Number of Days to Complete Intake and Investigations	
497	UP TO 90 DAYS
115	91 TO 180 DAYS
89	181 DAYS TO 1 YEAR
66	1 TO 2 YEARS
22	2 TO 3 YEARS
1	OVER 3 YEARS
137	AVERAGE NUMBER OF DAYS TO COMPLETE INTAKE AND INVESTIGATIONS

Citations and Fines	
103	ISSUED
103	ISSUED WITH A FINE
6	WITHDRAWN
0	DISMISSED
110	AVERAGE NUMBER OF DAYS TO ISSUE A CITATION AND FINE

\$13,000	REDUCED
\$116,961	COLLECTED

0	CRIMINAL ACTIONS FILED
0	CIVIL ACTIONS FILED

51	CASES CLOSED
44	CASES PENDING

10	1 TO 2 YEARS
16	2 TO 3 YEARS
13	OVER 3 YEARS
983	AVERAGE NUMBER OF DAYS TO IMPOSE DISCIPLINE

49	ACCUSATIONS FILED
2	RESTRAINING/RESTRICTION/SUSPENSION ORDERS GRANTED
3	STATEMENTS OF ISSUES WITHDRAWN/DISMISSED
1	ACCUSATIONS WITHDRAWN/DISMISSED

Administrative Outcomes/Final Orders	
9	LICENSE APPLICATIONS DENIED
10	REVOCAION
12	SURRENDER OF LICENSE
0	PROBATION WITH SUSPENSION
2	SUSPENSION ONLY
17	PROBATION ONLY
2	PUBLIC REPRIMAND
8	OTHER DECISIONS
60	TOTAL

2	DENIED

1	DENIED

Cost Recovery to DCA	
\$330,818.58	ORDERED
\$14,421.50	COLLECTED

\$0	AMOUNT REFUNDED
\$0	REWORK AT NO CHARGE
\$0	ADJUSTMENTS/RETURNS/EXCHANGES
\$0	TOTAL SAVINGS ACHIEVED FOR CONSUMERS

Receipt of Complaint to Investigation Assignment	
5	AVERAGE NUMBER OF DAYS

Start of Investigation to Investigation Closure	
132	AVERAGE NUMBER OF DAYS

Closure of Investigation to Imposing Formal Discipline	
312	AVERAGE NUMBER OF DAYS

Submission Date	Approval Status	Submitted By	Waiver Status
Submitted to Director Kirchmeyer on 4/9/2020	Approved by DCA on 5/6/20. Waiver extended on 7/1/20 to 9/3/20. Waiver extended again on 8/27/20 to 11/3/30. Waiver extended on 10/22/20. Waiver extended again on November 25, 2020. This waiver now expires January 30, 2021. Waiver extended on December 15 and now expires on Friday 28. Waiver extended on 2/26/21 and now expires April 30. Waiver extended on 4/30/21 and now expires June 30.	Board of Psychology	Active
N/A	<p>Published by DCA on 3/4/20. Waiver extended on 7/1/20 allowing for an additional 6 months from the 7/1/20 waiver. Waiver extended again on 8/27/20. All licensees with an expiration of 3/31/20-10/31/20 have until 2/28/21 to get their 36 hours of CE. Waiver extended again on 10/22/20. All licensees with an expiration of 3/31/20-5/31/20 have until 4/22/21 to get their 36 hours of CE. Licensees with an expiration between 1/1/21 and 2/28/21 have until June 15, 2021 to complete 36 hours of CE. Licensees with an expiration between 3/1/21-3/31/21 have until September 26, 2021 to complete the 36 hours of CE.</p> <p>Newest waiver published by DCA on March 30, 2021 gives all licensees expiring between 3/31/20 and 5/31/21, until September 30, 2021, to comply with the waived continuing education and exam requirements for renewal.</p>	DCA	Active
Submitted to Director Kirchmeyer on 4/9/2020	Referred to the Board for Delegation. Approved by Board on 4/17/20	Board of Psychology	Active

Submitted to Director Kirchmeyer on 4/9/2020	Referred to the Board for Delegation. Approved by Board on 4/17/20	Board of Psychology	Active
Submitted to Director Kirchmeyer on 4/9/2020	Referred to the Board for Delegation. Approved by Board on 4/17/20	Board of Psychology	Active
Submitted to Director Kirchmeyer on 4/10/2020	Approved by DCA on 9/30/2020. Extended on November 25, 2020. For psychologist applicants whose applications are deemed withdrawn between December 1, 2020, and January 31, 2021, due to the applicant failing to appear for an examination prescribed by California Code of Regulations, title 16, section 1388, subdivision (b), the Director waives California Code of Regulations, title 16, section 1381.4, to the extent it requires applicants to take or retake an examination within 12 months, subject to the condition that an applicant must take or retake the examination with 18 months of approval to take or retake the examination. Extended on 1/26/21 for psychologist applications that are deemed withdrawn between January 31, 2021 and April 2, 2021. Extended on 3/30/21 for psychologist applications that are deemed withdrawn between April 3, 2021 and June 1, 2021.	Board of Psychology	Active
Submitted to Director Kirchmeyer on 4/9/2020	Denied on 4/16/20	Board of Psychology	N/A

Unknown	Denied on 5/20/20	California Council of Community Behavioral Health Agencies	N/A
5/12/2020	Denied on 6/11/20	DCA	N/A
Submitted to Director Kirchmeyer on 4/22/20	Denied on 7/17/20	Board of Psychology	N/A
Submitted to Director Kirchmeyer on 4/22/20	Denied on 7/17/20	Board of Psychology	N/A
Submitted to Director Kirchmeyer on 6/16/20	Denied on 7/9/20	University of California	N/A
Submitted to Director Kirchmeyer on 4/10/2020	Withdrawn due to duplicative nature with existing global waiver. On COVID-19 Info Page on Board Website.	Board of Psychology	N/A

Submitted to Director Kirchmeyer on 4/22/20		Board of Psychology	N/A
N/A	Published by DCA on 12/15/20	DCA	Waiver effective through July 1, 2021 or until the completion of the Declaration of emergency which ever is sooner, for all who are granted the waiver.

MEMORANDUM

DATE	May 4, 2021
TO	Board of Psychology
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item #9 – Discussion and Possible Approval of Regulatory Fee Changes 16 California Code of Regulations (CCR) Sections 1392: Psychologist Fees, 1392.1: Psychological Assistant Fees

Background:

The Board of Psychology (Board) is statutorily authorized to maintain the Psychology Fund (Fund). All revenue is deposited into this fund and our yearly appropriation, or yearly budget, is withdrawn from it. Within the Board's fund condition, the Board's level of solvency is reflected by its Months in Reserve. This number indicates how many months the Board will be able to operate should the Board cease to receive revenue.

Since at least 2016, the Board has been operating with a structural imbalance. This means that each year, the Board has been allocated to expend more money from its Fund, than the Board has received in the form of Revenue. In the last fiscal year, the Board received \$5,715,000 of which, \$1,066,000 (was interest from a repaid general fund loan). That same year, the Board spent \$5,798,000. In total, not including the one-time payment of interest, the Board spent \$1,149,000 over the amount received in revenue from licensees and applicants. The result of a continued structural imbalance is a reduction in the Months in Reserve within the Board's Fund.

This structural imbalance is to be expected, as the Board has not had a license renewal or initial license fee increase (other than the change to its delinquent fee) since 1992. Since then, costs related to the operation of the Board, such as salaries, costs to outside agencies like the Office of the Attorney General and the Office of Administrative Hearings, and hiring additional staff, has increased the Board's budget appropriation and requires the Board to right-size its fund to ensure the program collects enough revenue to operate.

The State of California prefers agencies to have between 3-6 months in reserve. This is not a mandate, but more of a best practice. Any agency with over 24 months in reserve are required to explore a fee reduction. As can be seen from the Board's months in reserve this fiscal year, we are below the threshold requiring a fee reduction, and above the threshold of necessary months in reserve.

Due to the declining months in reserve, and the Board's ongoing structural imbalance, the Board will need to increase its revenue by fiscal year 2023/2024 to avoid insolvency.

To meet this goal, staff recommends a two-part approach:

Part One: Promulgate regulations to modify all available fees to the Board's statutory maximum. This change is anticipated to bring the Board an additional one million dollars of revenue, which would increase the Board's Months in Reserve by roughly one and a half months.

Part Two: Hire an independent company to conduct a fee analysis which will provide the Board with the appropriate fees the Board should charge in order to continue to operate without a structural imbalance.

Included for your review is proposed text modification to Title 16 CCR Sections 1392, and 1392.1, which contain the Board's fees identified under Part One.

Action Requested:

Staff requests the Board approve the proposed regulatory changes to 16 CCR Sections 1392 and 1392.1, direct the Executive Officer to take all steps necessary to initiate the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package as necessary, notice the proposed text for a 45-day comment period with the Office of Administrative Law, hold a hearing on the proposal, and, if no adverse comments are received during the 45-day comment period or hearing, adopt the proposed regulatory changes.

Attachment A: Proposed changes to 16 CCR Sections 1392, and 1392.1

16 CCR § 1392

§ 1392. Psychologist Fees.

- (a) The application fee for a psychologist is ~~\$40.00~~ \$50.00.
- (b) The fee for the California Psychology Laws and Ethics Examination (CPLEE) is ~~\$129~~235.20.
- (c) An applicant taking or repeating the licensing examination shall pay the full fee for that examination.
- (d) The initial license fee and the biennial renewal fee for a psychologist are ~~\$400.00~~ \$500.00, ~~except that if an initial license will expire less than one year after its issuance, then the initial license fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the license is issued.~~
- (e) The biennial renewal fee for an inactive license is \$40.00.

Note: Authority cited: Sections 2930, 2987 and 2989, Business and Professions Code.
Reference: Sections 2987, 2988 and 2989, Business and Professions Code.

§ 1392.1. Psychological Assistant Fees.

- (a) The application fee for registration of a psychological assistant which is payable by the supervisor is ~~\$40.00~~\$75.00.
- (b) The annual renewal fee for registration of a psychological assistant is ~~\$40.00~~ \$75.00.
- (c) The delinquency fee for a psychological assistant is ~~\$20.00~~ \$37.50.

Note: Authority cited: Section 2930, 2987, and 2989 Business and Professions Code.
Reference: Sections ~~2688~~2987 and ~~2689~~, Business and Professions Code.

MEMORANDUM

DATE	April 29, 2021
TO	Board Members
FROM	Mai Xiong Licensing and BreEZe Coordinator
SUBJECT	Agenda Item 10 Licensing Report

Statistical Content

Staff received feedback by the Board regarding the statistical content of the report. The data provided on this report was previously requested by the Board to provide information regarding the application workload of the Licensing unit.

The Licensure Committee will evaluate this report at the next Licensure Committee meeting on July 16, 2021 and provide staff with appropriate feedback on necessary changes.

License/Registration Data by Fiscal Year:

License & Registration	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21**
Psychologist*	22,020	22,688	***	20,575	20,227	20,024	20,580	21,116	22,005	22,134
Psychological Assistant	1,635	1,727	***	1,701	1,580	1,446	1,446	1,361	1,344	1,371
Registered Psychologist	320	349	***	280	272	278	250	129	113	111

*Current and Current Inactive

**As of April 22, 2021

***Statistics unavailable

Please refer to the Licensing Population Report (Attachment A) for statistics on the different license statuses across the three types of license and registration.

Application Workload Reports:

The attached reports provide statistics from October 2020 thru March 2021 on the application status by month for each of the license and registration types (see Attachment B). On each report, the type of transaction is indicated on the x-axis of the graphs. The different types of transactions and the meaning of the transaction status are explained below for the Board's reference.

Psychologist Application Workload Report

“Exam Eligible for EPPP” (Examination for Professional Practice in Psychology) is the first step towards licensure. In this step, an applicant has applied to take the EPPP. An application with an “open” status means it is deficient or pending initial review.

“Exam Eligible for CPLEE” (California Psychology Law and Ethics Exam) is the second step towards licensure. In this step, the applicant has successfully passed the EPPP and has applied to take the CPLEE. An application with an “open” status means it is deficient or pending review.

“CPLEE Retake Transaction” is a process for applicants who need to retake the CPLEE due to an unsuccessful attempt. This process is also created for licensees who are required to take the CPLEE due to probation. An application with an “open” status means it is deficient, pending review, or an applicant is waiting for approval to re-take the examination when the new form becomes available in the next quarter.

“Initial App for Psychology Licensure” is the last step of licensure. This transaction captures the number of licenses that are issued if the status is “approved” or pending additional information when it has an “open” status.

Psychological Assistant Application Workload Report

Psychological Assistant registration application is a single-step process. The “Initial Application” transaction provides information regarding the number of registrations issued as indicated by an “approved” status, and any pending application that is deficient or pending initial review is indicated by an “open” status.

Since all psychological assistants hold a single registration number, an additional mechanism, the “Change of Supervisor” transaction, is created to facilitate the process for psychological assistants who wishes to practice with more than one primary supervisor or to change primary supervisors. A change is processed when all information is received, thus there is no open status for this transaction type.

Registered Psychologist Application Workload Report

Registered Psychologist registration application is also a single-step process. The “Initial Application” transaction provides information regarding the number of registrations issued as indicated by an “approved” status, and any pending application that is deficient or pending initial review is indicated by an “open” status.

Examination Statistics

The examination statistics (see Attachment D) provide a 12-month period data of the total candidates and first timers who have taken the EPPP or CPLEE and the passing rate. These examination statistics are posted on the Board’s website and available to the public.

Attachments:

- A. Licensing Population Report as of April 22, 2021
- B. Application Workload Reports October 2020 – March 2021 as of April 29, 2021
- C. Applications and Notifications Received April 2020 – March 2021 as of April 22, 2021
- D. Examination Statistics April 2020 – March 2021 as of April 22, 2021

Action:

This item is for informational purposes only. No action is required.



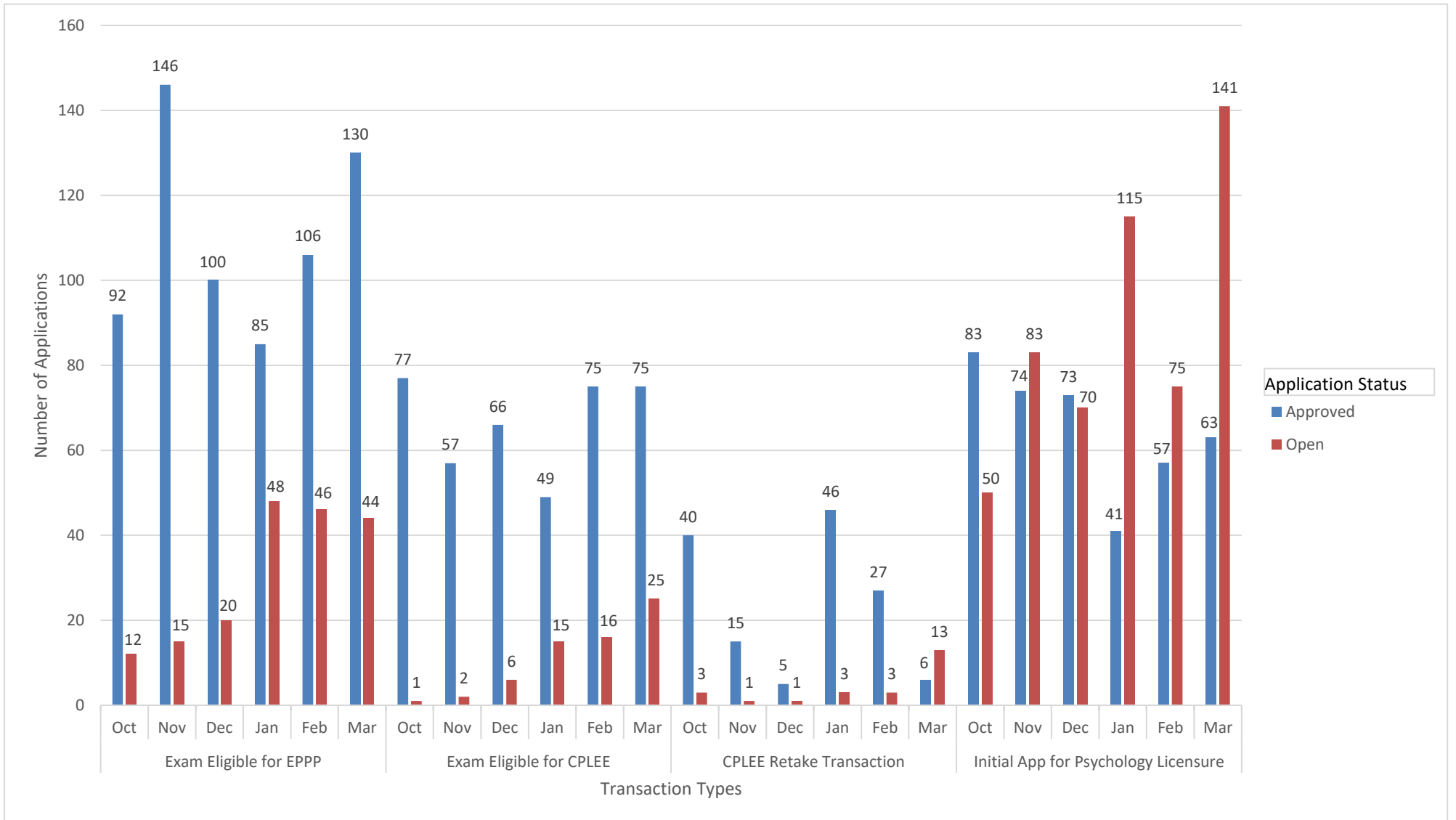
STATE DEPARTMENT OF CONSUMER AFFAIRS
BREEZE SYSTEM



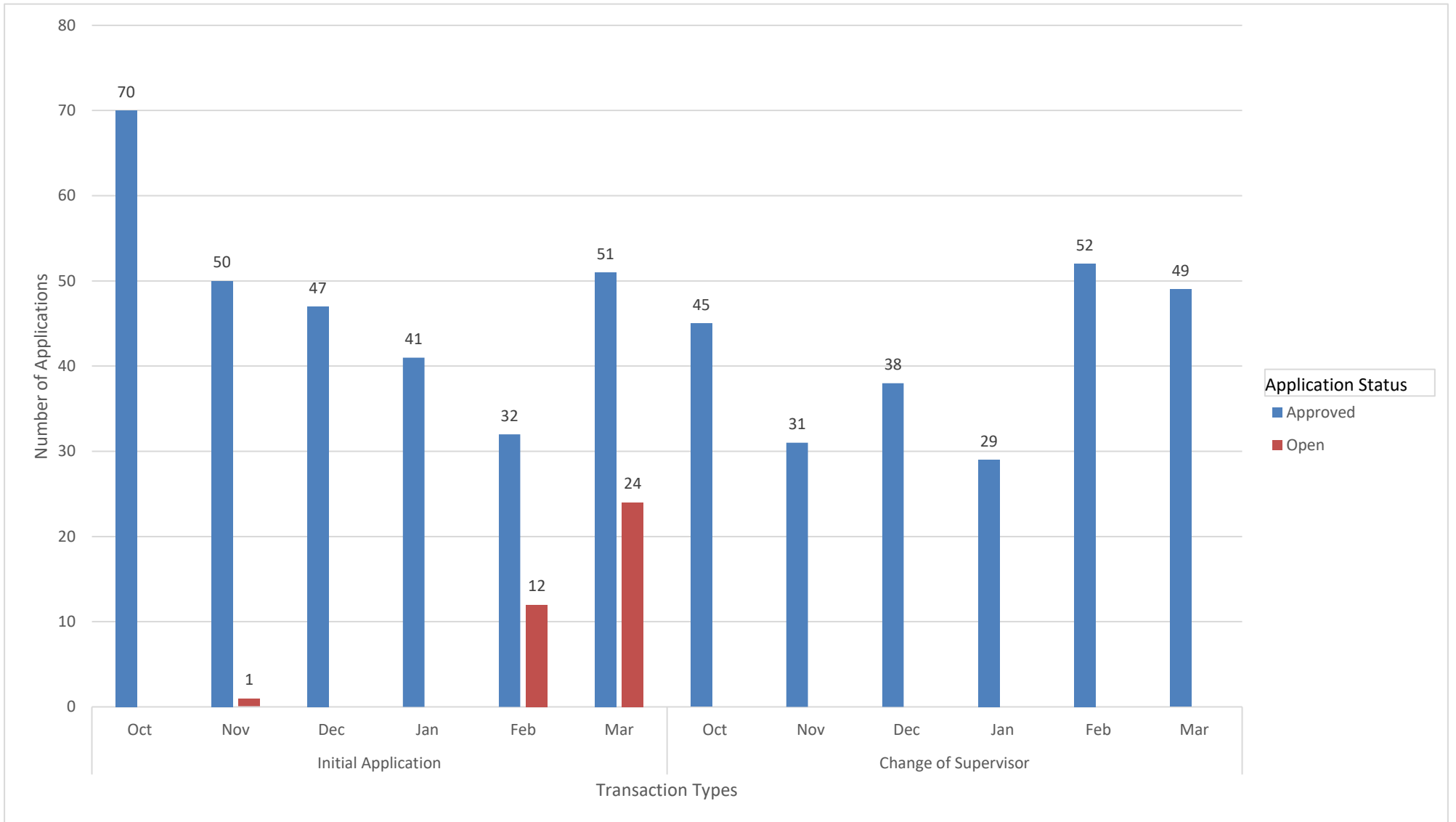
LICENSING POPULATION REPORT
BOARD OF PSYCHOLOGY
AS OF 4/22/2021

License Type	License Status							Total
	Licensing					Enforcement		
	Current	Inactive	Delinquent	Cancelled	Deceased	Surrendered	Revoked	
Psychologist	19,416	2,718	1,467	6,710	1,027	242	157	31,737
Psychological Assistant	1,371	0	61	22,341	8	11	8	23,800
Registered Psychologist	111	0	0	4,602	1	0	0	4,714
Total	20,898	2,718	1,528	33,653	1,036	253	165	60,251

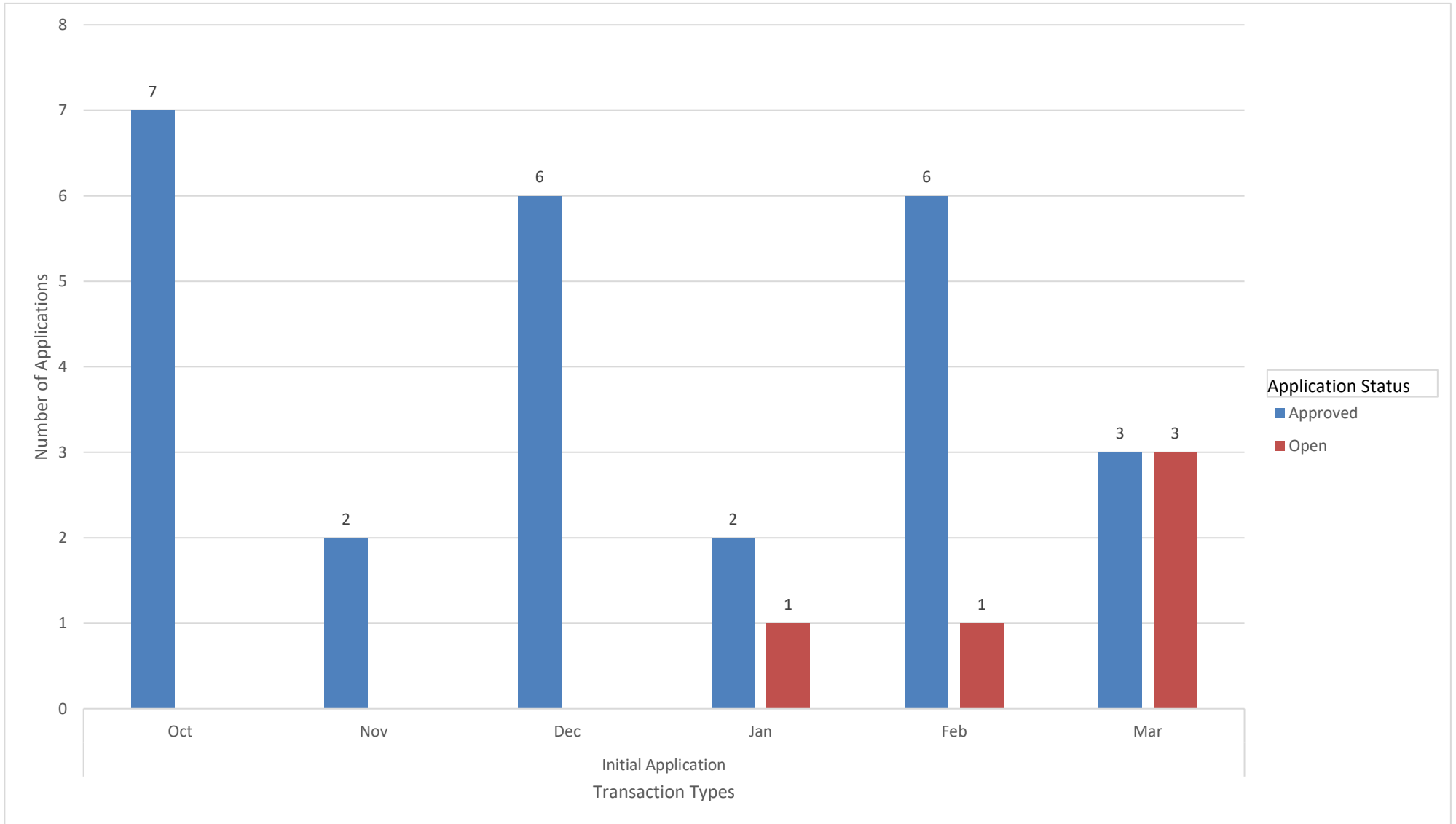
Psychologist Application Workload Report October 2020 to March 2021 As of April 29, 2021



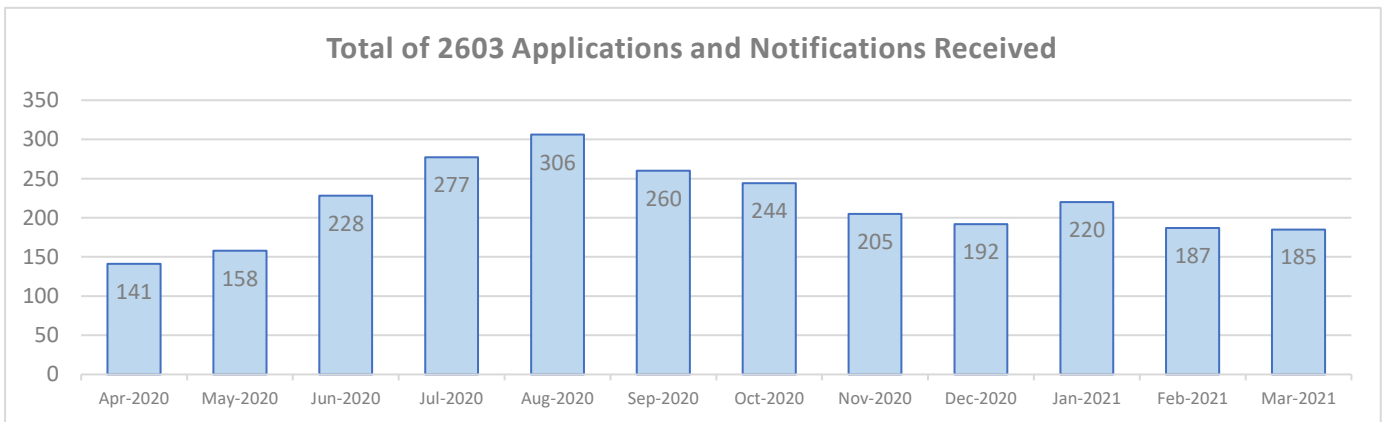
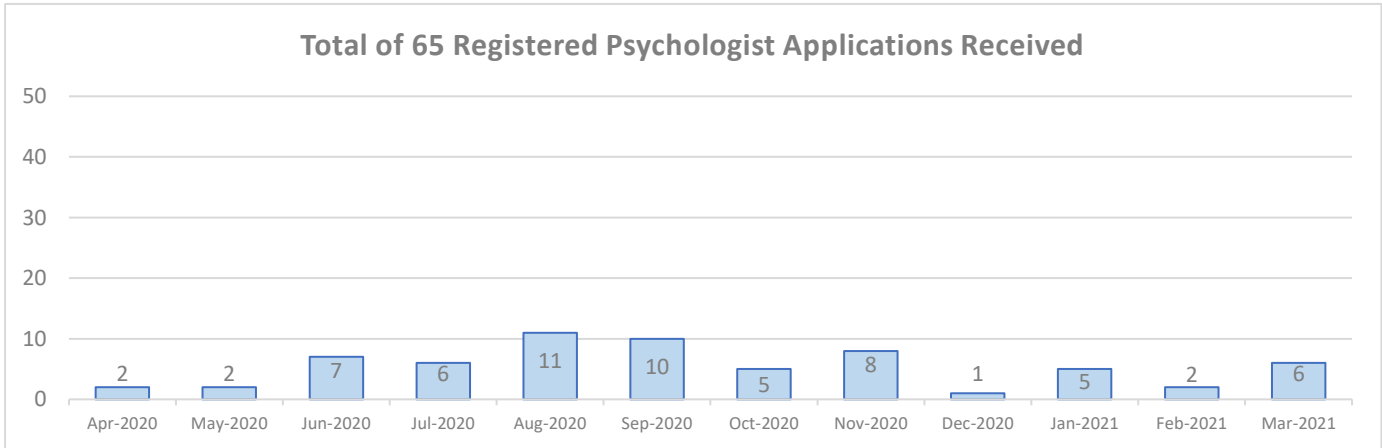
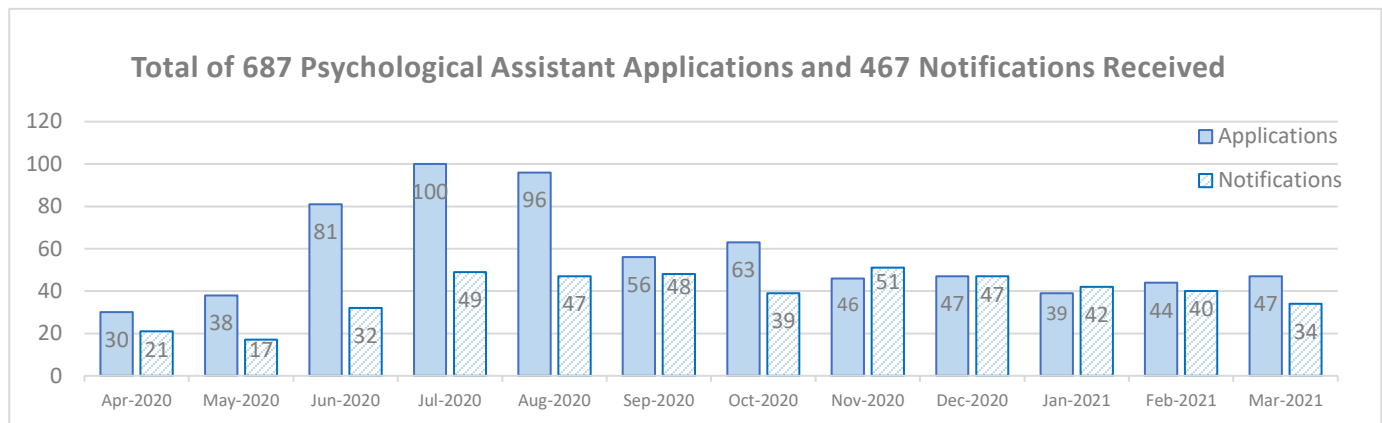
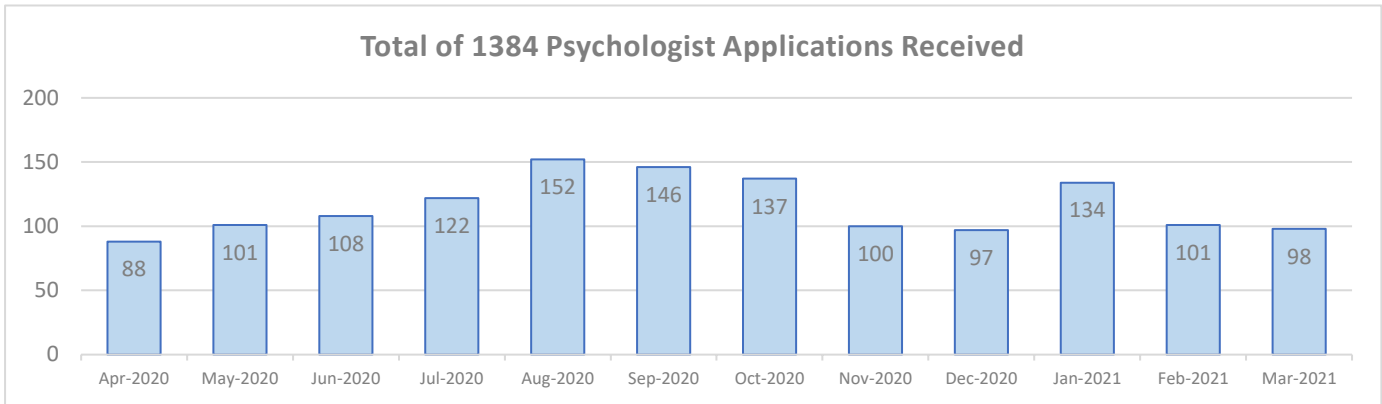
Psychological Assistant Application Workload Report October 2020 to March 2021 As of April 29, 2021



Registered Psychologist Application Workload Report October 2020 to March 2021 As of April 29, 2021



Applications and Notifications Received from April 2020 to March 2021
As of April 22, 2021



**Examination Statistics April 2020 – March 2021
As of April 22, 2021**

2020/2021 Monthly EPPP Examination Statistics

Month	# of Candidates	# Passed	% Passed	Total First Timers	First Time Passed	% First Time Passed
April	23	11	47.83	17	10	58.82
May	127	68	53.54	76	56	73.68
June	117	56	47.86	66	44	66.67
July	175	82	46.86	94	59	62.77
August	124	60	48.39	72	47	65.28
September	134	54	40.30	55	31	56.36
October	119	55	46.22	55	33	60.00
November	144	66	45.83	58	43	74.14
December	122	55	45.08	59	43	72.88
January	99	51	51.52	46	32	69.57
February	89	45	50.56	51	34	66.67
March	78	36	46.15	37	26	70.27
Total	1351	639	47.30	686	458	66.76

2020/2021 Monthly CPLEE Examination Statistics

Month	# of Candidates	# Passed	% Passed	Total First Timers	First Time Passed	% First Time Passed
April	26	18	69.23	18	13	72.22
May	93	74	79.57	76	56	73.68
June	106	82	77.36	80	64	80.00
July	106	84	79.25	76	60	78.95
August	110	92	83.64	91	78	85.71
September	126	98	77.78	107	84	78.50
October	75	54	72.00	55	41	74.55
November	84	59	70.24	71	50	70.42
December	87	59	67.82	65	43	66.15
January	58	41	70.69	39	27	69.23
February	83	53	63.86	63	38	60.32
March	109	83	76.15	85	66	77.65
Total	1063	797	74.98	826	620	75.06

MEMORANDUM

DATE	May 3, 2021
TO	Board of Psychology
FROM	Liezel McCockran Continuing Education and Renewals Coordinator
SUBJECT	Agenda Item #11 – Continuing Education and Renewals Report

The Continuing Education (CE) audits for January, February, March, and April 2020, concluded April 24, 2021. CE audits for May, June, July, and August 2020, have a due date of June 27, 2021. The pass rate for January 2020 through August 2020 CE audits is 22 percent and 75 percent of audits are pending.

The Continuing Professional Development (CPD) goal from the Strategic Plan 2019-2023 to implement licensed Board member CPD audits each license renewal cycle for transparency purposes began with the January 1, 2019 audit cycle. The following Board members have had their continuing education courses audited for their 2019 renewal and passed:

Stephen Phillips, JD, PsyD
Sheryll Casuga, PsyD
Lea Tate, PsyD
Shacunda Rodgers, PhD
Mary Harb Sheets, PhD

For renewals, between January 2021 through April 2021, 82 percent of Psychologists renewed as Active. Approximately 89 percent of Psychologists and Psychological Assistants renewed their license online using BreZE per month. The pass rate from 2015-2019 has been consistently over 80 percent. The pass rate for 2nd audits has risen from 68 percent in 2016 to 94 percent in 2019.

Action Requested:

These items are for information purposes only. No action requested

Attachments:

Attachment A: CE Audits for 2020
Attachment B: Pass and Fail Rate for 2020 CE Audits
Attachment C: Reasons for Not Passing CE Audit
Attachment D: Pass and Fail Rate for 1st Audits 2015-2019
Attachment E: Pass and Fail Rates for 2nd Audits
Attachment F: Online vs. Mailed in Renewals Processed
Attachment G: Psychologist and Psychological Assistant Renewal Applications Processed:
January 2021 – April 2021

Continuing Education Audits January 2020 - August 2020

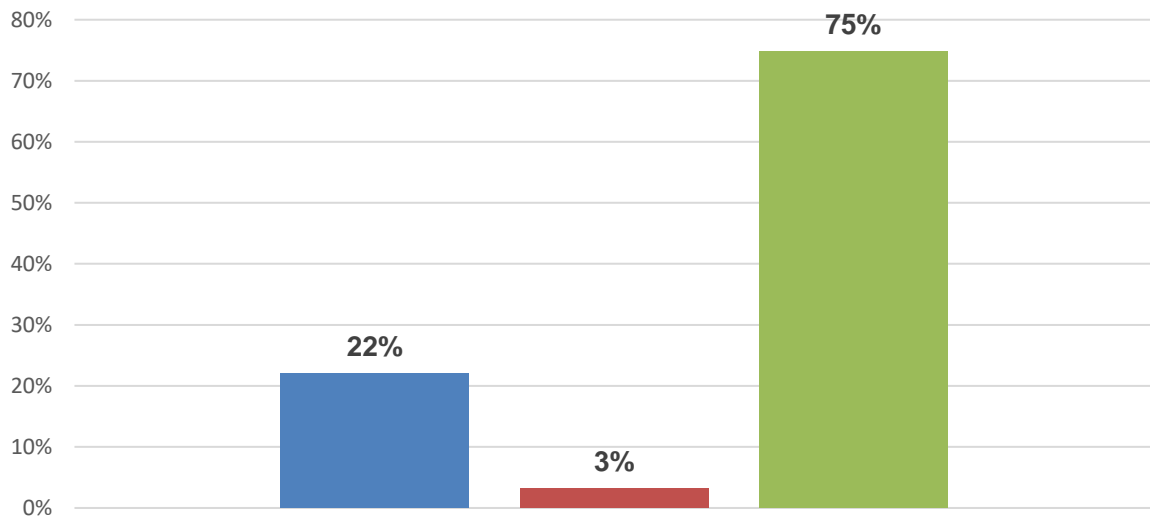
Month	Total # of Licensees Selected for Audit:	# Passed:	% Passed:	# Pending/ Deficient:	% Pending:	# Failed: (Referred to Citation & Fine Program)	% Failed:
January	25	13	52%	11	44%	1	4%
February	26	14	54%	10	38%	2	8%
March	27	13	48%	13	48%	1	4%
April	23	8	35%	12	52%	3	13%
May	26	0	0%	26	100%	0	0%
June	32	0	0%	32	100%	0	0%
July	30	0	0%	30	100%	0	0%
August	29	0	0%	29	100%	0	0%
Totals:	218	48	22%	163	75%	7	3%

Total Audited	Total Passed	Total Failed	Total Pending
218	48	7	163
	22%	3%	75%

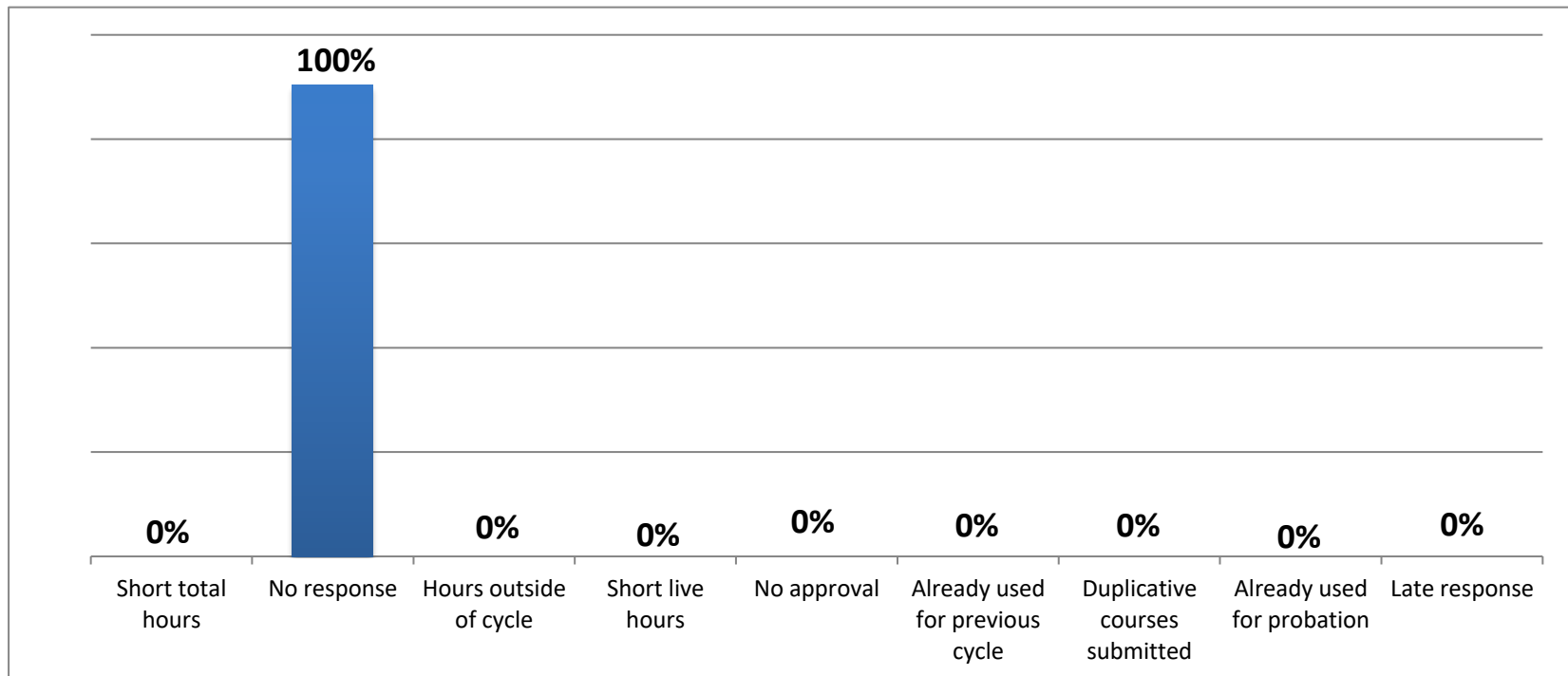
The CE fail rate of 3% only consists of licensees who did not respond to the audit. The current waiver states that licensees who expire between March 31, 2020 to May 31, 2021 are given until September 30, 2021 to fulfill the CE requirement. Those who were found to be deficient were given until October 1, 2021 to submit required documentation.

Pass and Fail Rate for CE Audits January - August 2020

■ Pass ■ Fail ■ Pending

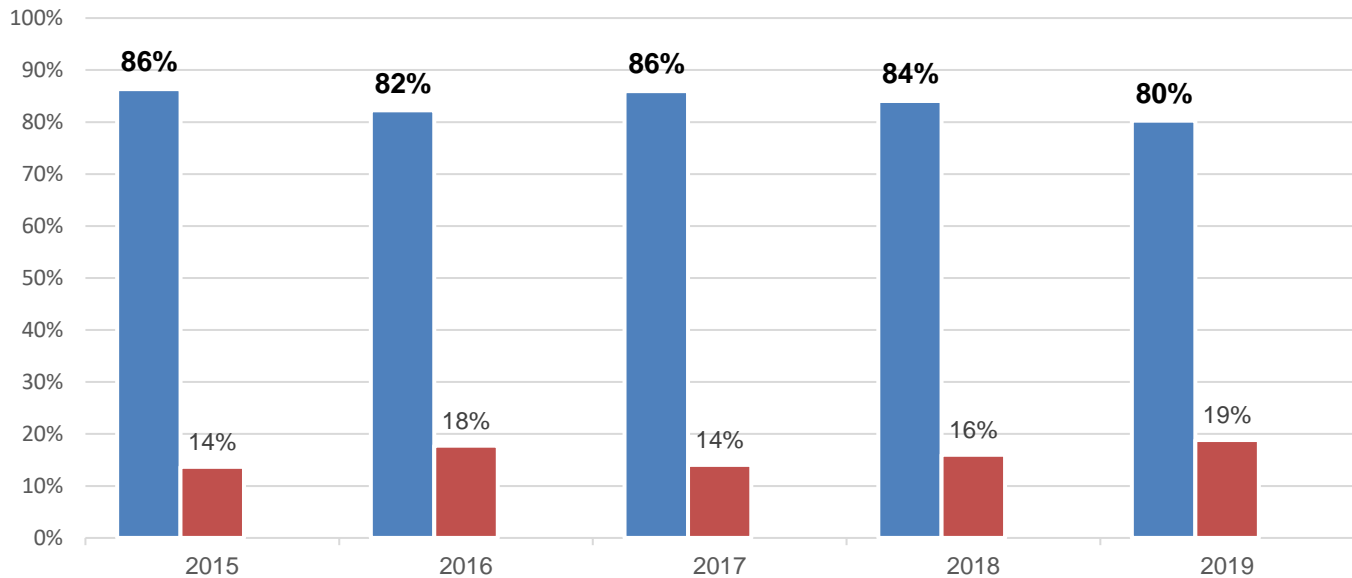


Reasons for Not Passing CE Audit January 2020 - August 2020



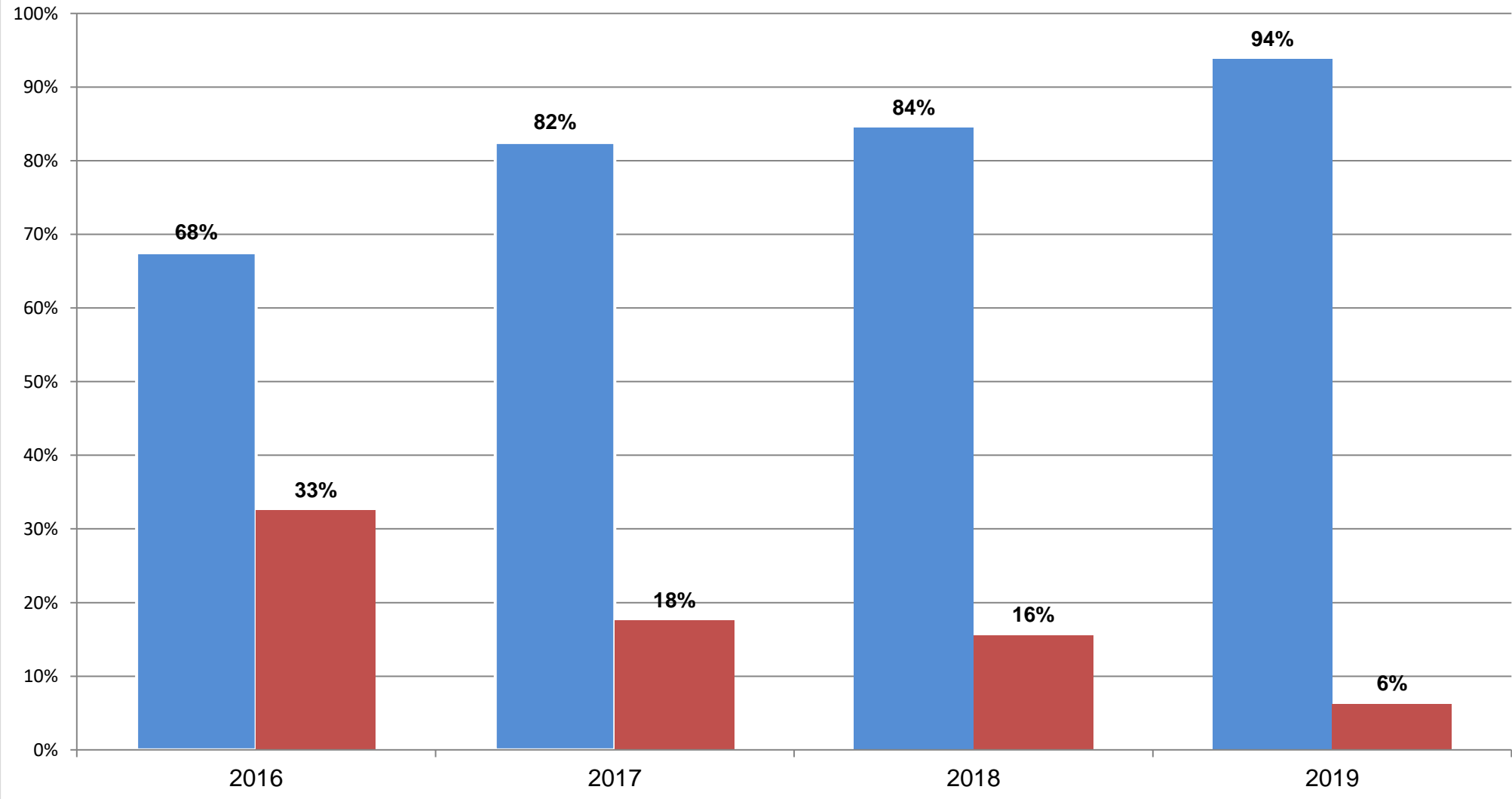
Pass and Fail Rate 1st Audits 2015 - 2019

■ Pass ■ Fail



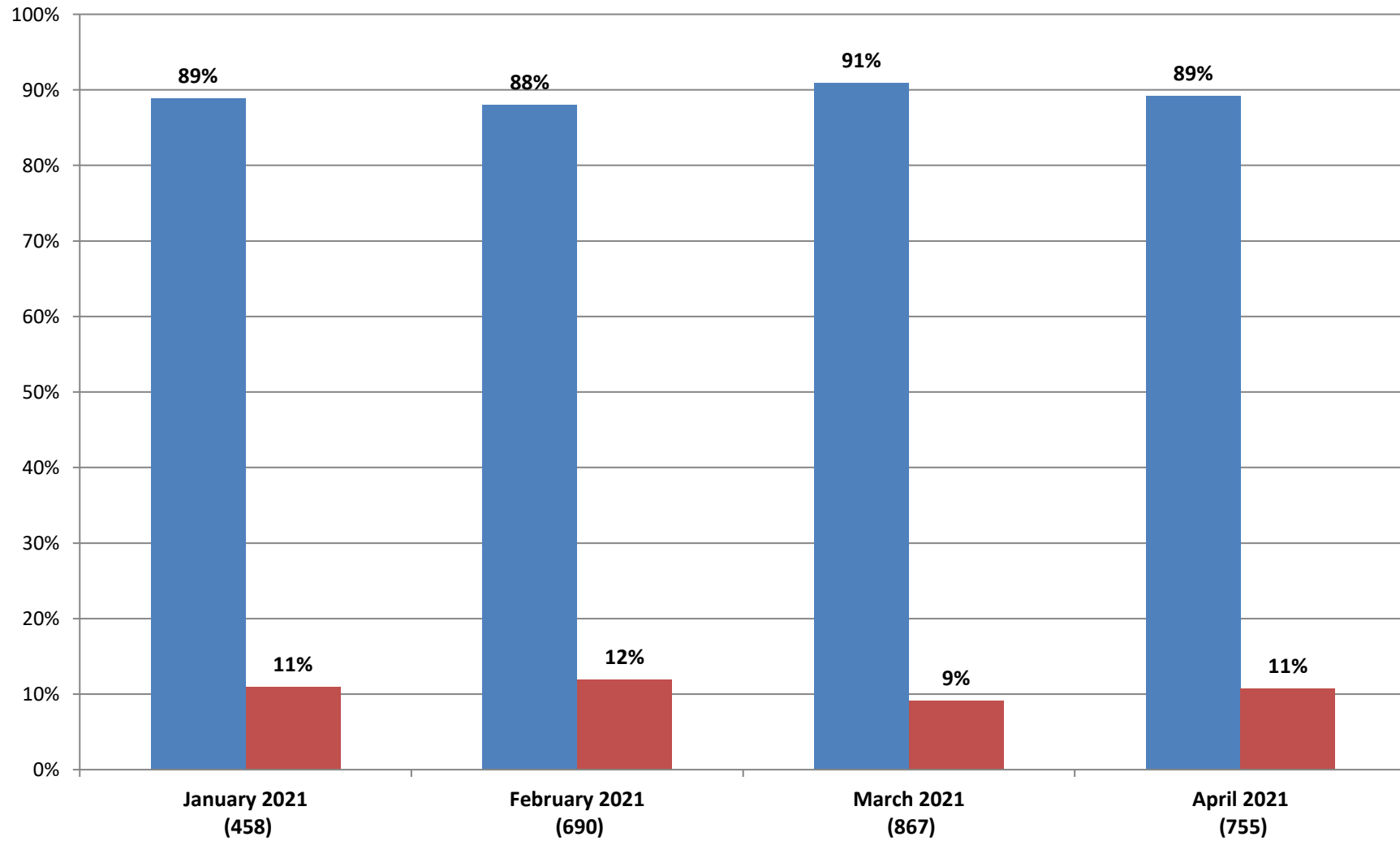
Pass and Fail Rate for 2nd Audits 2016 - 2019

■ Pass ■ Fail

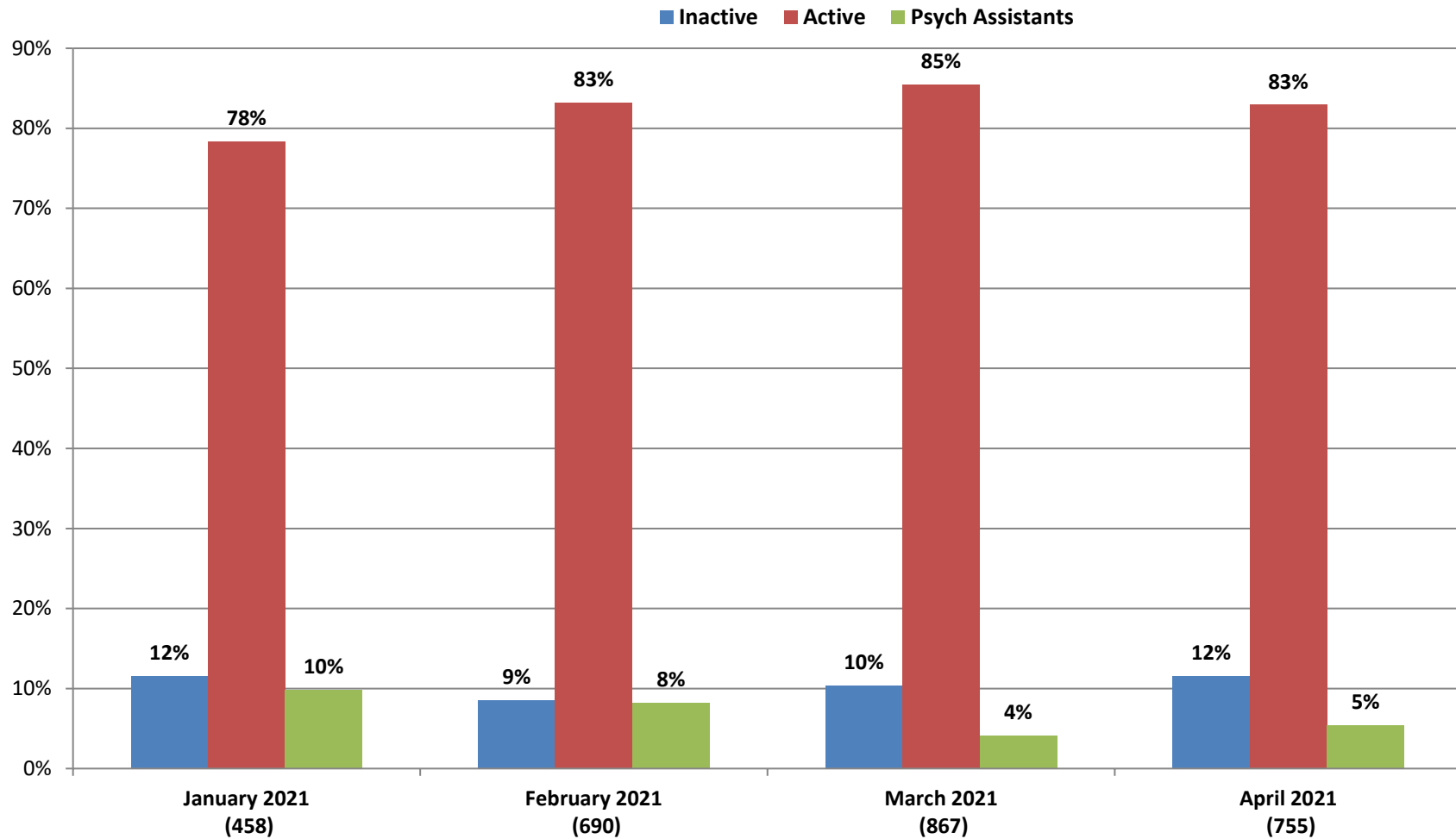


Online vs. Mailed In Renewals Processed January 2021 - April 2021

■ Online ■ Mailed In



Psychologist and Psychological Assistant Renewal January 2021 - April 2021



Every month about 82% of Psychologists renew as Active, and 11% of Psychologists renew as Inactive. Additionally, an average of 45 Psychological Assistant renewal applications were processed each month.

MEMORANDUM

DATE	May 3, 2021
TO	Psychology Board Members
FROM	Sandra Monterrubio, Enforcement Program Manager Board of Psychology
SUBJECT	Agenda Item 12, Enforcement Report

Please find attached the Overview of Enforcement Activity conveying complaint, investigation, and discipline statistics to date for the current fiscal year and the most recent Performance Measures.

The Enforcement Unit currently has two vacant positions, an Office Technician (OT) and an Associate Governmental Program Analyst (AGPA). The OT is responsible for opening complaints, corresponding with stakeholders regarding the complaint process, and provides administrative support to the enforcement staff. It has been a challenge to fill the OT position, but we are continuing to advertise for the position in hopes of finding the right person. The AGPA is responsible for performing desk investigations, referring cases to the Division of Investigation and the Office of the Attorney General. Interviews for the AGPA position were held the week of April 26-30 and we are waiting to hear back from the Office of Human Resources as to whether the candidate we have selected meets the hiring requirements.

Complaint Program

Since July 1, 2020, the Board has received 973 complaints. All complaints received are opened and assigned to an enforcement analyst.

Citation Program

Since July 1, 2020, the Board has issued 32 enforcement citations. Citation and fines are issued for minor violations.

Discipline Program

Since July 1, 2020, the Board has referred 42 cases to the Office of the Attorney General for formal discipline.

Probation Program

Enforcement staff is currently monitoring 43 active probationers. Of the 43 probationers, one is out of compliance. Being out of compliance can result in a citation and fine or further disciplinary action through the Office of the Attorney General.

Attachments:

Overview of Enforcement Activity and Performance Measures

Action Requested

This item is for informational purposes only.

MEMORANDUM

DATE	May 3, 2021
TO	Psychology Board Members
FROM	Sandra Monterrubio, Enforcement Program Manager
SUBJECT	Agenda Item 13 (b) and (c) Regulatory and Statutory Update, Review, and Consideration of Additional Changes

Background

The Enforcement Committee and board staff began a comprehensive review of all enforcement-related sections of the California Code of Regulations (CCR) and the Business and Professions Code (BPC). The Committee and staff have completed their review of the regulatory sections and will continue working on their review of the statutory sections at the next Enforcement Committee Meeting.

Action Requested

This item is for informational purposes only.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15 (a)(1) – SB 401 (Pan) Psychology: unprofessional conduct: disciplinary action: sexual acts

Background:

In early 2019, Senator Pan carried SB 275 to amend Sections 2960 and 2960.1. Given the COVID-19 pandemic and the request from leadership to minimize the bill load, SB 275 was amended and became a bill about Personal Protective Equipment.

Consequently, in December 2020, Board staff contacted Senator Pan's office to ask whether he would consider carrying legislation pertaining to this issue. In February of this year, Senator Pan agreed to carry the bill, and introduced SB 401 - Psychology: unprofessional conduct: disciplinary action: sexual acts.

Under current law, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision (discipline) that the Administrative Law Judge (ALJ) recommends to the Board of Psychology (Board) for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances sexual contact_(including sexual intercourse), revocation must be the discipline recommended by an ALJ.

Note: Current law defines sexual contact as meaning "the touching of an intimate part of another person." (Business and Professions Code section 728.) Additionally, current law defines an intimate part as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female."

The Board proposes adding "sexual behavior" to Section 2960 of the Business and Professions Code (BPC) due to the Board's experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of "sexual contact," which left the Board hamstrung in achieving appropriate discipline for sexual behavior antithetical to the psychotherapist-client relationship. It made it exceedingly difficult to achieve disciplinary terms that matched the egregiousness of the acts.

The Board believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline. Therefore, this proposal would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the ALJ the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct. Note: this would not change or diminish the Board's adjudicatory discretion as to the final discipline.

Under this proposal, sexual behavior would be defined as "inappropriate contact or communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse. 'Sexual behavior' does not include the provision of appropriate therapeutic interventions relating to sexual issues."

Examples of sexual behaviors include, but are not limited to:

- kissing a client,
- touching or exposing oneself inappropriately,
- sending sexually suggestive or sexually explicit texts (sexting), messages or emails to a client, and
- sending clients photos that include nudity, genitals, or sexually suggestive poses

On 3/19/2021 the Legislative and Regulatory Affairs Committee voted to recommend the Board **Support** SB 401. The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation to support SB 401 on 4/2/2021.

On 3/22/2021, SB 401 passed out of the Senate Business, Professions, and Economic Development Committee with a vote of 14-0.

On 4/22/2021, SB 401 passed on the Senate Floor on the Consent Calendar (Ayes: 38; Noes: 0) and was ordered to the Assembly.

Location: Assembly

Status: 4/22/2021 In Assembly. Read first time. Held at Desk.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Board Letter of Support

Attachment B: Senate Floor Analysis

Attachment C: SB 401 (Pan) Bill text

April 12, 2021

The Honorable Anthony Portantino
Chair, Senate Committee on Appropriations
State Capitol, Room 2206
Sacramento, CA 95814

RE: **SB 401 (Pan) – Psychologist: unprofessional conduct: disciplinary action: sexual acts – SPONSOR**

Dear Senator Portantino:

The Board of Psychology (Board) is pleased to **SPONSOR** SB 401 (Pan). This bill would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the Administrative Law Judge (ALJ) the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct. This amendment would not change or diminish the Board's adjudicatory discretion as to the final discipline.

The Board estimates that minor and absorbable costs might be incurred due to SB 401. The bill would change the terms of the proposed decision by an ALJ but would not change the Board's investigation of the allegations nor the adjudicatory process once an accusation is filed against a licensee. Additionally, the Board has no basis upon which to estimate whether a licensee would be more or less likely to appeal the decision or surrender their license in lieu of revocation.

Pursuant to Business and Professions Code (BPC) Section 2960.1, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision (discipline) that the ALJ recommends to the Board of Psychology (Board) for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances sexual contact (including sexual intercourse), revocation must be the discipline recommended by an ALJ. Current law defines sexual contact as meaning "the touching of an intimate part of another person." (Business and Professions Code section 728.) Additionally, current law defines an intimate part as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female."

The Board believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline. Therefore, this proposal would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the ALJ the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct.

The Board sponsored SB 401 due to the Board's experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of sexual contact and therefore did not require the ALJ to recommend revoking the license. Under this proposal, sexual behavior would be defined as "inappropriate contact or communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues."

Examples of sexual behaviors include, but are not limited to:

- kissing a client,
- touching or exposing oneself inappropriately,
- sending sexually suggestive or sexually explicit texts (sexting), messages or emails to a client, and
- sending clients photos that include nudity, genitals, or sexually suggestive poses

The Board is cognizant that during psychotherapy, and especially during therapeutic interventions related to sexual issues, there will be in-depth discussions and communications of a sexual nature with the client. When these discussions are a part of appropriate and documented therapeutic interventions, these communications would not be considered sexual behavior under SB 401.

The Board believes that inappropriate sexual behavior with a client is sexual misconduct and should be prosecuted and adjudicated as such. SB 401 (Pan) would close a loophole in current law and treat sexual behavior between a psychologist and client as the sexual misconduct it is.

For these reasons, the Board asks for your support of SB 401 (Pan) when it is heard in the Senate Committee on Appropriations. If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (925) 325-0157. Thank you.

Sincerely,



Seyron Foo
President, Board of Psychology

cc: Senator Patricia Bates (Vice Chair)
Members of the Senate Committee on Appropriations
Senator Richard Pan, MD
Samantha Lui, Consultant, Senate Committee on Appropriations
Amanda Richie, Consultant, Senate Republican Caucus

CONSENT

Bill No: SB 401
Author: Pan (D)
Amended: 3/4/21
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 14-0, 3/22/21
AYES: Roth, Melendez, Archuleta, Bates, Becker, Dodd, Eggman, Hurtado,
Jones, Leyva, Min, Newman, Ochoa Bogh, Pan

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Psychology: unprofessional conduct: disciplinary action: sexual
acts

SOURCE: Board of Psychology

DIGEST: This bill revises and recasts the circumstances under which specified
sexual acts constitute unprofessional conduct

ANALYSIS:

Existing law:

- 1) Requires that protection of the public to be the Board of Psychology's (Board) highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2920.1)
- 2) Requires any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse, sexual behavior, or sexual contact with a previous psychotherapist during the course of a prior treatment to provide a brochure to the client that delineates the rights of, and remedies for, clients who have been involved sexually with their

psychotherapists. Requires the psychotherapist or employer to discuss the brochure with the client. (BPC § 728 (a))

- 3) Defines, for purposes of the brochure, “sexual contact” as the touching of an intimate part of another person, and “sexual behavior” as inappropriate contact or communication of a sexual nature. “Sexual behavior” does not include the provision of appropriate therapeutic interventions relating to sexual issues. (BPC § 728 (c)(2))
- 4) Authorizes the Board to suspend or revoke the registration or license of any registrant or licensee found guilty of unprofessional conduct, which includes any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychologist, psychological assistant, or registered psychologist. (BPC § 2960 (o))
- 5) Requires any proposed decision or decision issued under the Psychology Licensing Law that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact with a patient, or with a former patient within two years following termination of therapy, contain an order of revocation. The revocation shall not be stayed by the administrative law judge (ALJ). (BPC § 2960.1)

This bill:

- 1) Defines for purposes of this bill:
 - a) “Sexual abuse” to mean “the touching of an intimate part of a person by force or coercion;
 - b) “Sexual behavior” to mean inappropriate physical contact or communication of a sexual nature with a client or a former client for the purposes of sexual arousal, gratification, exploitation, or abuse,” but does not include the provision of appropriate therapeutic intervention relating to sexual issues;
 - c) “Sexual contact” to mean the touching of an intimate part of a client or a former client; and,
 - d) “Sexual misconduct” to mean inappropriate conduct or communication of a sexual nature that is substantially related to the qualifications, functions, or

duties of a psychologist, psychological assistant, or registered psychologist.

- 2) Clarifies that any act of sexual contact, as defined, including with a patient or with a former patient within two years following termination of therapy, is unprofessional conduct, as specified.
- 3) States that a proposed or issued decision that contains a finding that the licensee or registrant engaged in an act of sexual abuse, sexual behavior, or sexual misconduct, as define, may contain an order of revocation.
- 4) Makes other technical and clarifying changes.

Background

Board of Psychology. The Board regulates licensed psychologists, registered psychological assistants, and registered psychologists. Under current law, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision to impose discipline that the Administrative Law Judge (ALJ) recommends to the Board must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances of sexual intercourse and sexual contact, revocation must be the discipline recommended by an ALJ.

Current law defines sexual contact as “sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse”. Additionally, current law defines an intimate part as “the sexual organ, anus, groin, or buttocks of any person, and the breast of a female”.

Under current law, when an investigation finds that there were egregious sexual behaviors between a psychologist and a client during or within two years of termination of therapy, these cases do not count as sexual misconduct and the requirement for the ALJ’s proposed to decision to include a recommendation of revocation does not apply. Since the law is not clear on how sexual behaviors should be prosecuted and adjudicated, the Board has historically had to prosecute and adjudicate these cases as boundary violations with a resulting discipline of placing the licensee on probation with different terms and conditions including such terms as continuing education or coursework related to the ethical breach involved in the acts.

In 2019, the Board pursued similar legislation that would have also defined “sexual behavior” as inappropriate contact or communication of a sexual nature – and would have also required an ALJ’s proposed decision to include an order of licensure revocation when there is a finding that a licensee of the Board of Psychology has engaged in sexual behavior short of sexual contact with a client during therapy, or within two years of termination of therapy.

Brochure. The DCA produces a consumer brochure entitled *Professional Therapy Never Includes Sex*, which the law requires a psychotherapist to provide to, and discuss with a client if the psychotherapist learns of inappropriate contact between the client and a previous psychotherapist. This brochure was updated in 2018 (AB 2968, Levine, Chapter 778, Statutes of 2018), to define and include “sexual behavior” between a client and a previous psychotherapist. This bill adds to the definition of “sexual behavior,” to include that “sexual behavior” be made by the psychotherapist “for the purpose of sexual arousal, gratification, exploitation, or abuse.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 4/20/21)

Board of Psychology (source)

OPPOSITION: (Verified 4/20/21)

None received

ARGUMENTS IN SUPPORT: The Board of Psychology writes that it “believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects...The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline...The Board is cognizant that during psychotherapy, and especially during therapeutic interventions related to sexual issues, there will be in-depth discussions and communications of a sexual nature with the client. When these discussions are a part of appropriate and documented therapeutic interventions,

these communications would not be considered sexual behavior under SB 401...The Board believes that inappropriate sexual behavior with a client is sexual misconduct and should be prosecuted and adjudicated as such.”

Prepared by: Sarah Mason / B., P. & E.D. /
4/21/21 15:12:15

****** END ******

SB 401 (Pan) Psychology: unprofessional conduct: disciplinary action: sexual acts.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 2960 of the Business and Professions Code is amended to read:

2960.

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to ~~himself or herself,~~ *oneself*, any other person, or the public, or to an extent that this use impairs ~~his or her~~ *their* ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use ~~his or her~~ *their* license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of ~~his or her~~ *their* profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(l) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological

assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) (1) *Any act of sexual abuse or sexual misconduct.*

(2) *Any act of sexual behavior or sexual contact with a client or former client within two years following termination of therapy.*

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

(A) *“Sexual abuse” means the touching of an intimate part of a person by force or coercion.*

(B) *“Sexual behavior” means inappropriate physical contact or communication of a sexual nature with a client or a former client for the purpose of sexual arousal, gratification, exploitation, or abuse. “Sexual behavior” does not include the provision of appropriate therapeutic interventions relating to sexual issues.*

(C) *“Sexual contact” means the touching of an intimate part of a client or a former client.*

~~(D) Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct “Sexual misconduct” means inappropriate conduct or communication of a sexual nature that is substantially related to the qualifications, functions, or duties of a psychologist or psychologist, psychological assistant, or registered psychologist.~~

(p) Functioning outside of ~~his or her~~ *their* particular field or fields of competence as established by ~~his or her~~ *their* education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

SEC. 2.

Section 2960.1 of the Business and Professions Code is amended to read:

2960.1.

Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 2960, ~~when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.~~ *2960, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. A proposed or issued decision that contains a finding that the licensee or registrant engaged in an act of sexual abuse, sexual behavior, or sexual misconduct, as those terms are defined in Section 2960, may contain an order of revocation.*

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology Members
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(a)(2) - Pathways to Licensure Statutory Revisions – Amendments to sections 27, 2909, 2909.5, 2910, 2911, 2913, 2914, 2915, 2915.5, 2915.7, 2942, 2944, 2946, and 2960 of the Business and Professions Code, and section 1010 of the Evidence Code

Background:

Requested legislative amendments to sections 27, 2909, 2909.5, 2910, 2911, 2913, 2914, 2915, 2915.5, 2915.7, 2942, 2944, 2946, and 2960 of the Business and Professions Code, and section 1010 of the Evidence Code were provided to the Senate and Assembly Business and Professions committees along with the Board's Sunset Report and COVID supplemental as a follow up to the Committee's request for section changes last year.

Action Requested:

This is for informational purposes only. No action is required at this time.

ISSUE MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology Members
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(a)(3) - Sunset Provisions – Amendments to section 2912, and Addition of Sections Related to Reinstatement to Active after Voluntary Surrender, Licensure Committee Delegated Authority, and Authority to Issue Waivers

Background:

Requested legislative changes regarding Business and Professions Code Section 2912, and Addition of Sections Related to Reinstatement to Active after Voluntary Surrender, Licensure Committee Delegated Authority, and Authority to Issue Waivers were provided to the Senate and Assembly Business and Professions committees along with the Board's Sunset Report and COVID supplemental.

Action Requested:

This is for informational purposes only. No action is required at this time.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(b)(1) – AB 885 (Quirk) – Bagley-Keene Open Meeting Act: teleconferencing

Background:

The Bagley-Keene Open Meeting Act of 1967 provides the public the ability to actively engage with its government and be a part of the decision-making process. Bagley-Keene mandates open meetings for California State agencies, boards, committees, and commissions and facilitates transparency of government activities to protect the rights of citizens to participate in state government proceedings.

Under existing law, any meeting of a state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference if the meeting complies with the requirements of the Bagley-Keene Act. Existing law requires that when a member of a multimember state advisory body participates remotely the body provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting.

AB 885 seeks to modernize the teleconferencing statute of Bagley-Keene to encourage more participation and engagement in public service. This bill ensures accessibility for both the public, as well as members of a state body. AB 885 maintains that public meetings remain transparent, by requiring public meetings that are conducted via teleconference to be observable to the public both audibly and visually. Additionally, AB 885 clarifies that members of a state body participating remotely shall count towards a quorum and would only require public disclosure of the designated primary physical meeting location from which the public may participate. Lastly, the reform in this bill is not replacing physical meetings, but authorizing state bodies to have the ability to have a meeting via teleconference in addition to a physical meeting location.

On 4/29/2021, staff learned that this bill will be a 2-year bill.

Location: 3/25/2021 Assembly Governmental Organization

Status: Re-referred to Committee on G.O.

Action Requested:

Staff recommends the Board watch AB 885 (Quirk). However, staff also seeks to work with Dr. Rodgers to draft a letter of concern regarding the requirement that the meeting should be both audibly and visually observable to the public. Staff's concerns are as follows: 1) technology may not allow for blurred backgrounds and health and safety of board members and their family and 2) there is considerable research regarding zoom fatigue and the impact of virtual meetings on mental health from cameras in meetings.

Attachment A: AB 885 (Quirk) Bill Text

AB 885 (Quirk) Bagley-Keene Open Meeting Act: teleconferencing.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 11123 of the Government Code is amended to read:

11123.

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be ~~audible~~ *both audibly and visually observable* to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post ~~agendas at all teleconference locations and~~ *an agenda at the designated primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate, and* conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. ~~Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public.~~ The agenda shall provide an opportunity for members of the public to address the state body *via teleconference* directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through ~~either audio or~~ both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public

may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

SEC. 2.

Section 11123.5 of the Government Code is amended to read:

11123.5.

(a) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123, any state body that is an ~~an~~ ~~advisory~~ a board, ~~advisory~~ commission, ~~advisory~~ committee, ~~advisory~~ subcommittee, or similar multimember ~~advisory~~ body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.

(b) A member of a state body as described in subdivision (a) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.

(c) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its ~~Internet Web site~~ *internet website* and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (e).

(d) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical meeting location designated pursuant to subdivision (e), but is not required to disclose information regarding any remote location.

(e) A state body described in subdivision (a) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate. A quorum of the members of the state body shall be in attendance *via teleconference or in person physically* at the primary physical meeting location, and members of the state body participating remotely shall ~~not~~ count towards establishing a quorum. All decisions taken during a meeting by teleconference shall be by rollcall vote. The state body shall post the agenda at the primary physical meeting location, but need not post the agenda at a remote location.

(f) When a member of a state body described in subdivision (a) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely ~~hear audio of the meeting or remotely observe the~~

~~meeting, including, if available, equal access equivalent to observe the meeting's proceedings, both audibly and visually, including the~~ members of the state body participating remotely. The applicable teleconference phone number or ~~Internet Web site, internet website,~~ or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (a) that is available to the public.

(g) Upon discovering that a means of remote access required by subdivision (f) has failed during a meeting, the state body described in subdivision (a) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its ~~Internet Web site~~ *internet website* and by email to any person who has requested notice of meetings of the state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may ~~hear audio of the meeting or observe the meeting.~~ *observe the meeting, both audibly and visually.*

(h) For purposes of this section:

(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.

(3) "Teleconference" has the same meaning as in Section 11123.

(i) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.

SEC. 3.

The Legislature finds and declares that Section 1 of this act, which amends Section 11123 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(c)(1) – AB 32 (Aguiar-Curry) Telehealth

Background:

This bill would require the State Department of Health Care Services to indefinitely continue the telehealth flexibilities in place during the COVID-19 pandemic state of emergency. The bill would require the department, by January 2022, to convene an advisory group with specified membership to provide input to the department on the development of a revised Medi-Cal telehealth policy that promotes specified principles. The bill would require the department, by December 2024, to complete an evaluation to assess the benefits of telehealth in Medi-Cal, including an analysis of improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth. The bill would require the department to report its findings and recommendations from the evaluation to the appropriate policy and fiscal committees of the Legislature no later than July 1, 2025.

On 3/19/2021, the Legislative and Regulatory Affairs Committee voted to recommend the Board take a **Support** position on AB 32 (Aguiar-Curry).

On 4/2/2021, the Board adopted the Legislative and Regulatory Affairs Committee's recommendation to support AB 32 (Aguiar-Curry).

Location: Assembly Committee on Appropriations

Status: 4/28/2021 From committee: Do pass and re-refer to Com. on APPR. (Ayes 13. Noes 0.) (April 27). Re-referred to Committee. on Appropriations.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Board Letter of Support to Assembly Committee on Health

Attachment B: Assembly Health Committee Analysis

Attachment C: AB 32 (Aguiar-Curry) Bill Text

April 12, 2021

The Honorable Jim Wood
Chair, Assembly Committee on Health
State Capitol, Room 6005
Sacramento, CA 95814

RE: **AB 32 (Aguiar-Curry) – Telehealth - SUPPORT**

Dear Assemblymember Wood:

The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

At its April 2, 2021 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on AB 32 (Aguiar-Curry). This bill would require the State Department of Health Care Services to indefinitely continue the telehealth flexibilities in place during the COVID-19 pandemic state of emergency. The telehealth flexibilities implemented during the COVID-19 pandemic have increased access to care and we applaud these efforts.

The Board asks for your support of AB 32 (Aguiar-Curry) when it is heard in the Assembly Committee on Health. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Jason Glasspiegel, at (916) 574-7137 or Jason.glasspiegel@dca.ca.gov. Thank you.

Sincerely,



Seyron Foo
President, Board of Psychology

cc: Assemblymember Chad Mayes (Vice Chair)
Members of the Assembly Committee on Health
Scott Bain, Consultant, Assembly Committee on Health
Assembly Republican Caucus

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 32 (Aguiar-Curry) – As Amended April 22, 2021

SUBJECT: Telehealth.

SUMMARY: Expands the definition of synchronous interaction for purposes of telehealth to include audio-video, audio-only and other virtual communication. Requires health plans and insurers to reimburse for audio-video, audio-only and other virtual communication on the same basis and to the same extent that the plan/insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment (referred to as “payment parity”). Extends payment parity to Medi-Cal managed care (MCMC) plans for telehealth (as defined under existing law) and for audio-video, audio-only, and other virtual communication, and for Medi-Cal clinic visits. Requires the Department of Health Care Services (DHCS) to reimburse each federally qualified health center (FQHC) and rural health clinic (RHC) for health care services furnished through audio-only telehealth, including telephone, at the applicable prospective payment system (PPS) per-visit rate, consistent with this bill, until the earlier of January 1, 2025, or the date that the FQHC or RHC elects to participate in an alternative payment methodology (APM). Requires specified mental health services furnished through audio-only telehealth, to continue to be reimbursed at the applicable PPS per-visit rate indefinitely, except if the FQHC or RHC elects an APM that covers those services. Prohibits the DHCS from restricting the ability of an enrolled clinic to provide and be reimbursed for Medi-Cal services furnished through telehealth, as specified. Permits a health care provider to enroll or recertify an individual remotely through telehealth and other virtual communication modalities, including telephone, based on the current Medi-Cal program eligibility form or forms applicable to the specific program for the Family Planning, Access, Care, and Treatment (Family PACT), Presumptive Eligibility for Pregnant Women, and Every Woman Counts programs. Permits a county eligibility worker to determine eligibility for, or recertify eligibility for, an individual remotely through virtual communication modalities, including telephone for the Medi-Cal Minor Consent program. Specifically, **this bill:**

- 1) Expands the definition of “synchronous interaction” in the telehealth provisions of the Business and Professions Code to include a real-time interaction that includes but is limited to audio-video, audio-only, and other virtual communication.
- 2) Extends the expanded definition of telehealth made by this bill in 1) above (to include audio-video, audio-only and other virtual communication) to provisions in existing law that are applicable to health plans and health insurers serving commercial populations that require health plans and health insurers to reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an enrollee or subscriber appropriately delivered through telehealth services on the same basis and to the same extent that the health plan/insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.
- 3) Extends the existing telehealth payment requirements in existing law applicable to plans and insurers, and the extended audio-video, audio-only and other virtual communication provisions in this bill, to MCMC plans by eliminating the exemption for MCMC plans

contained in existing law and by extending this bill to MCMC plans that are exempt from Knox-Keene Health Care Service Plan Act licensure.

- 4) Requires, if a health plan or health insurer delegates responsibility for the performance of the telehealth provisions in existing law and as modified by this bill to a contracted entity, including a medical group or independent practice association, the delegated entity to comply with these provisions.
- 5) Prohibits the obligation of a health plan and health insurer to comply with the telehealth provisions in existing law as modified by this bill from being waived if the plan/insurer delegates services or activities that the plan/insurer is required to perform to its provider or another contracting entity.
- 6) Requires a plan/insurer's implementation of the telehealth provisions as modified by this bill to be consistent with the requirements of the Health Care Providers' Bill of Rights, a material change in the obligations of a plan/insurer's contracting network providers and be considered a material change to the provider contract, within the meaning of a specified provisions of existing law.
- 7) Requires, notwithstanding any other law, health care services furnished by an enrolled clinic through telehealth to be reimbursed by Medi-Cal on the same basis, to the same extent, and at the same payment rate as those services are reimbursed if furnished in person, except to the extent otherwise required by this bill.
- 8) Prohibits DHCS, consistent with the protections for health care providers set forth in the Telehealth Advancement Act of 2011, from restricting the ability of an enrolled clinic to provide and be reimbursed for services furnished through telehealth, and prohibits the provisions below from requiring all of the clinical elements of a service to be met as a condition of reimbursement. Defines the prohibited restrictions to include all of the following:
 - a) Requirements for face-to-face contact between an enrolled clinic provider and a patient;
 - b) Requirements for a patient's or provider's physical presence at the enrolled clinic or any other location;
 - c) Requirements for prior in-person contacts between the enrolled clinic and a patient;
 - d) Requirements for documentation of a barrier to an in-person visit or a special need for a telehealth visit;
 - e) Policies, including reimbursement policies, that impose more stringent requirements on telehealth services than equivalent services furnished in person; or,
 - f) Limitations on the means or technologies through which telehealth services are furnished, provided this does not prohibit policies that require compliance with applicable federal and state health information and privacy laws.
- 9) Requires, if an enrolled clinic is an FQHC and RHC and notwithstanding the in-person requirement in existing law, the definition of "visit" set forth in existing law includes a telehealth encounter to the same extent it includes an in-person encounter.
- 10) Requires health care services furnished through audio-only telehealth, including by telephone, by an FQHC or RHC, other than mental health services that are excluded from the benefits provided by county mental health plans (MHPs) under the specialty mental health

services (SMHS) waiver, to be reimbursed pursuant to the provisions of this bill.

- 11) Prohibits the above-described provisions from eliminating the obligation of a health care provider to obtain verbal or written consent from the patient before delivery of health care via telehealth or the rights of the patient, pursuant to the existing law provisions.
- 12) Requires DHCS to require MCMC plans, through contract or otherwise, to adhere to the above-described clinic requirements.
- 13) Requires MCMC plans to comply with the requirements for payment parity for services delivered through telehealth services in health plan and health insurance, except that MCMC plans are not required to pay FQHCs and RHCs the same amount for audio-only telehealth visits as equivalent in-person visits on or after January 1, 2025.
- 14) Requires the provision in 13) above to be applied to the extent consistent with federal Medicaid requirements that a plan provide payment for services furnished by a FQHC or RHC clinic that is not less than the level and amount of payment the managed care plan would make for the services if the services were furnished by a provider that is not a FQHC or RHC.
- 15) Prohibits the above-described requirements from limiting reimbursement for or coverage of, or reduce access to, services provided through telehealth before the enactment of these provisions.
- 16) Permits DHCS to implement, interpret, and make specific the above-described requirements by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action pursuant to the Administrative Procedure Act (APA).
- 17) Requires DHCS to seek any necessary federal approvals and obtain federal financial participation (FFP) in implementing the above-described requirements, and to implement the above-described requirements only to the extent that any necessary federal approvals are obtained and FFP is available and not otherwise jeopardized.
- 18) Defines, for purposes of this bill, an “enrolled clinic” to mean any of the following:
 - a) A licensed primary care clinic (a community clinic and a free clinic);
 - b) An intermittent clinic exempt from licensure;
 - c) A hospital or nonhospital-based clinic operated by the state or any of its political subdivisions, including the University of California, or a city, county, city and county, or hospital authority; and,
 - d) A tribal clinic exempt from licensure, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined.
- 19) Requires DHCS to indefinitely continue the telehealth flexibilities in place during the COVID-19 pandemic, including those implemented under this bill, except as required by 20) below.
- 20) Requires DHCS to reimburse each FQHC and RHC for health care services furnished through audio-only telehealth, including telephone, at the applicable PPS per-visit rate,

consistent with this bill, until the earlier of January 1, 2025, or the date that the FQHC or RHC elects to participate in an APM described in this bill.

- 21) Requires mental health services that are excluded from the benefits provided by county MHPs under the SMHS waiver, furnished through audio-only telehealth, to continue to be reimbursed at the applicable PPS per-visit rate indefinitely, except if the FQHC or RHC elects an APM that covers those services.
- 22) Requires DHCS, by January 2022, to convene an advisory group that includes representatives from community health centers, designated public hospitals, health care districts, MCMC plans, consumer groups, labor organizations, behavioral health providers, counties, and other Medi-Cal providers.
- 23) Requires the advisory group to provide input to DHCS on the development of a revised Medi-Cal telehealth policy that promotes all of the following principles:
 - a) Telehealth is required to be used as a means to promote timely and patient-centered access to health care;
 - b) Patients, in conjunction with their providers, must be offered their choice of service delivery mode, and patients retain the right to receive health care in person;
 - c) Confidentiality and security of patient information must be protected; and,
 - d) Usual standard of care requirements must apply to services provided via telehealth, including quality, safety, and clinical effectiveness.
- 24) Requires DHCS to consider disparities in the utilization of, and access to, telehealth, and to support patients and providers in increasing access to the technologies needed to use telehealth.
- 25) Requires, when the care provided during a telehealth visit is commensurate with what would have been provided in person, payment to also be commensurate.
- 26) Requires DHCS, by July 2024, to complete an evaluation to assess the benefits of telehealth in Medi-Cal. Requires the evaluation to analyze improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth.
- 27) Requires DHCS to report its findings and recommendations on the evaluation to the appropriate policy and fiscal committees of the Legislature no later than October 31, 2024.
- 28) Requires DHCS, in consultation with affected stakeholders, including, but not limited to, the California Association of Public Hospitals and Health Systems and the California Primary Care Association, to develop one or more federally permissible APMs, consistent with the APM requirements in federal Medicaid law, that FQHCs and RHCs may elect to participate in.
- 29) Requires the APM models to be designed to enable the continued provision of high-quality health care, while furthering the goals of the Medi-Cal program to improve access and equity, and incentivize and support clinic infrastructure improvements.

- 30) Requires, to the extent that an APM includes a separate per-visit payment rate for audio-only telehealth visits, that payment rate to be less than the rate the FQHC or RHC receives for an in-person visit. Prohibits this provision from applying with respect to mental health services furnished through audio-only telehealth that are excluded from the benefits provided by county MHPs under the SMHS waiver.
- 31) Requires DHCS to submit and seek federal approval of the state plan amendment necessary for the implementation of the APM provisions, to be effective no later than January 1, 2025, and requires this provision to be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available and not otherwise jeopardized.
- 32) Requires, to enroll individuals in Medi-Cal programs that permit onsite enrollment and recertification of individuals by a provider or county eligibility worker as applicable, all of the following to apply:
 - a) Permits a provider to enroll or recertify an individual remotely through telehealth and other virtual communication modalities, including telephone, based on the current Medi-Cal program eligibility form or forms applicable to the specific program for the Family PACT, Presumptive Eligibility for Pregnant Women, and Every Woman Counts programs;
 - b) Permits a county eligibility worker to determine eligibility for, or recertify eligibility for, an individual remotely through virtual communication modalities, including telephone for the Medi-Cal Minor Consent program;
 - c) Permits DHCS to develop program policies and systems to support implementation of remote eligibility determination, enrollment, and recertification, consistent with the above-described provisions; and,
 - d) Permits DHCS to implement, interpret, or make specific the above-described requirements by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action under the APA.

EXISTING LAW:

- 1) Defines “telehealth” to:
 - a) Mean 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; and,
 - b) Include synchronous interactions and asynchronous store and forward transfers.
- 2) Defines “synchronous interaction” to mean a real-time between a patient and a health care provider located at a distant site.
- 3) Defines “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.
- 4) Requires, before the delivery of health care via telehealth, the health care provider initiating the use of telehealth to inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health, and requires the consent to be documented.

- 5) Requires health plan and insurer contracts with health care providers for the provision of health care services to an enrollee or subscriber to specify that the plan/insurer is required to reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an enrollee or subscriber appropriately delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.
- 6) Exempts MCMC plans from 5) above.
- 7) Prohibits in-person contact between a health care provider and a patient from being required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by DHCS to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program.
- 8) Prohibits DHCS, for purposes of Medi-Cal, from requiring a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.
- 9) Prohibits DHCS, for the purposes of payment for covered treatment or services provided through telehealth, from limiting the type of setting where services are provided for the patient or by the health care provider.

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, the COVID-19 Pandemic has made abundantly clear what we have known for decades – our most vulnerable and marginalized communities continue to struggle for affordable and reliable access to healthcare. This bill will extend the telehealth flexibilities that were put in place during the COVID-19 Pandemic, which have been vital to ensuring that health centers can continue providing services. More specifically this bill will ensure that telehealth, including telephonic and video care, are available to patients regardless of who they are, their insurance, what language they speak, or the barriers they may face, such as geographic, transportation, childcare, or the ability to take time off from work.
- 2) **BACKGROUND.**
 - a) **California Health Benefits Review Program (CHBRP) analysis.** AB 1996 (Thomson), Chapter 795, Statutes of 2002, requests the University of California to assess legislation proposing a mandated benefit or service and prepare a written analysis with relevant data on the medical, economic, and public health impacts of proposed health plan and health insurance benefit mandate legislation. CHBRP was created in response to AB 1996. SB 125 (Hernandez), Chapter 9, Statutes of 2015, added an impact assessment on essential health benefits (EHBs), and legislation that impacts health insurance benefit designs, cost sharing, premiums, and other health insurance topics. CHBRP states the following in its analysis of this bill:

- i) **Enrollees covered.** If enacted, this bill would apply to the health insurance of approximately 24.7 million enrollees (62.6% of all Californians). This represents 100% of the 21.9 million Californians who will have health insurance regulated by the state that may be subject to any state health benefit mandate law, which includes health insurance regulated by the DMHC or CDI, plus the 2.7 million beneficiaries receiving Medi-Cal benefits through county organized health system (COHS) and the FFS program.
- ii) **Impact on expenditures.** This bill would increase total net annual expenditures by \$240,827,000, or 0.18%, for enrollees with DMHC-regulated plans, CDI-regulated policies, and DMHC-regulated MCMC Plans. This is due to an increase in total health insurance premiums paid by DMHC-regulated large-group plans (\$0.29 per member per month [PMPM]), small-group plans (\$0.77 PMPM), individual market plans (\$0.20 PMPM), the California Public Employees' Retirement System (CalPERS) HMOs (\$0.13 PMPM), MCMC Plans for age under 65 years (\$1.42 PMPM), MCMC for ages 65 and over (\$1.41 PMPM), CDI-regulated large-group (\$1.32 PMPM), and CDI-regulated individual market (\$0.95 PMPM) policies. The largest increases in expenditures were in MCMC for age under 65 (0.63%), MCMC for age 65+ (0.30%), and CDI-regulated large group (0.26%). CHBRP does not project any cost offsets or savings in expenditures that would result because of the enactment of this bill. Since this bill requires payment for telehealth to be at parity with in-person care and because 50% of the increased telehealth use supplements in-person visits, no cost offsets or savings are anticipated. In addition, it is unlikely the actual cost of staff, technology, and resources used to deliver services via telehealth are less expensive than in-person care. Overall, the increase in commercial and CalPERS expenditures are driven entirely by new benefit coverage because payment parity is already required for telehealth services. However, of the 0.57% increase in MCMC expenditures, almost all of the expenditure changes are due to parity requirements (0.56%) rather than benefit coverage changes (0.01%).
- (1) **Medi-Cal.** In addition to the estimated \$136,534,000 increase in premiums for the 8.05 million Medi-Cal beneficiaries enrolled in DMHC-regulated MCMC plans, a proportional increase of \$42.62 million is estimated to occur for the beneficiaries enrolled in COHS managed care and the FFS program. CHBRP assumes the two populations to be relatively similar and to have relatively similar benefit coverage. Of the \$136,534,000 increase in MCMC plan expenditures, \$134,005,000 would be due to parity requirements and \$2,529,000 would be due to new coverage of telehealth services. Additionally, of the \$136,534,000 increase in expenditures, \$24,450,000 (0.10%) would be due to the increase in coverage and parity requirements for telehealth services provided by FQHCs/RHCs.
- (2) **Number of Uninsured in California.** Since the change in average premiums does not exceed 1% for any market segment, CHBRP expects no measurable change in the number of uninsured persons due to the enactment of this bill.
- iii) **EHBs.** This bill requires coverage of modes of delivery for health care services, but does not require coverage of specific tests, treatments, or services. Since this bill would not require coverage for a new state benefit mandate, this bill does not appear to exceed the definition of EHBs in California.
- iv) **Medical effectiveness.** Most studies pertinent to this analysis examine the use of telehealth modalities as a substitute for in-person care. In these cases, the relevant studies evaluated whether care provided via these technologies resulted in equal or better outcomes and processes of care than care delivered in person, and whether use

of these technologies improved access to care. Some studies assessed the effects of telehealth as a supplement to in-person care; these studies evaluated whether adding these technologies improves processes of care and health outcomes relative to receiving in-person care alone. To examine whether services delivered via telehealth are of the same quality as in-person services, CHBRP examined three sets of outcomes: (1) health outcomes, including both physiological measures and patient-reported outcomes; (2) process of care outcomes, including treatment adherence and accuracy of diagnoses and treatment plans; and (3) access to care and utilization outcomes, such as wait time for specialty care, or number of outpatient visits, emergency department visits, and hospitalizations. CHBRP found that evidence regarding whether telehealth modalities and services result in equal or better outcomes than care delivered in person is mixed, depending on the disease and condition, telehealth modality, and type of outcome studied: health outcomes, process of care, or use of other services. Because telehealth studies have only focused on a limited number of diseases and conditions, the findings may not be generalizable outside of the specific diseases and conditions studied.

- (1) **For Live Video:** There is *preponderance of evidence* that care delivered by live video is at least as effective as in-person care for **health outcomes** for several conditions and health care settings, including infectious disease, obesity, diabetes, and abortion. *Preponderance of evidence* indicates that the majority of the studies reviewed are consistent in their findings that treatment is either effective or not effective. There is *clear and convincing* evidence that mental health services for attention deficit/hyperactivity disorder, depression, and posttraumatic stress disorder delivered by live video are at least as effective as in-person care for **processes of care** and **health outcomes**. *Clear and convincing* evidence indicates that there are multiple studies of a treatment and that the large majority of studies are of high quality and consistently find that the treatment is either effective or not effective. *Inconclusive evidence* indicates that although some studies included in the medical effectiveness review find that a treatment is effective, a similar number of studies of equal quality suggest the treatment is not effective. There is *clear and convincing* evidence that dermatology diagnoses made via live video are as accurate as diagnoses made during in-person visits. There is a *preponderance of evidence* that scores on neurocognitive tests administered via live video are similar to scores obtained when tests are administered in person. Studies have also found diagnostic concordance between live video and in-person examination for shoulder disorders, otolaryngology, and fetal alcohol syndrome. There is a *limited evidence* that care delivered by live video is at least as effective as in-person care for **access to care and utilization**.
- (2) **For Telephone:** For the diseases and conditions studied, the *preponderance of evidence* from studies of the effect of telephone consultations suggests that telephone consultations were at least as effective as in-person consultations on **health outcomes**. For the diseases and conditions studied, findings from studies of the effect of telephone consultations on **processes of care** and **access to care and utilization** are inconsistent; therefore, the evidence that medical care provided by telephone compared to medical care provided in person is *inconclusive*.
- (3) **Comparing Live Video to Telephone:** There is *preponderance of evidence* that behavioral health services delivered by live video are comparable to services delivered by telephone consultation on **health outcomes**. CHBRP found no

studies that compared live video to telephone consultation on outcomes for processes of care and access to care and utilization of health

- iv) Utilization.** According to CHBRP, telehealth capacity among providers has improved during 2020 due to COVID-19. This improvement in capacity to deliver and bill for telephone and live video will enable providers to respond to new benefit coverage in 2022, regardless of the state of the pandemic or public health emergency. This increased capacity will allow FQHCs and RHCs in particular to respond differently to telehealth benefit coverage than they would have in the absence of the COVID-19 public health emergency. The implementation of AB 744 (Aguiar-Curry), Chapter 867, Statutes of 2019 on January 1, 2021, which required benefit coverage for synchronous telehealth services by commercial and CalPERS plans and policies, and the COVID-19 public health emergency will bolster the capacity of health care providers to deliver telehealth in 2022 whether this bill is enacted or not. Telehealth will likely represent a larger proportion of health care services than in the past due to new capacity, patient convenience, patient reticence about obtaining in-person care due to the ongoing effects of the pandemic, and practice adoption. The baseline presented in this analysis is a middle-ground estimate of 2022 in a hypothetical scenario in which AB 744 has been fully implemented and the COVID-19 public health emergency regulations terminated, both of which laid the groundwork for telehealth adoption and use more broadly than in 2019 prior to the pandemic.
- iv) Public health.** According to CHBRP, telehealth can supplant or substitute in-person visits for many diseases and health conditions. The broad nature of telehealth modalities and the multiple metrics (e.g., access, process, outcomes, etc.) across modalities and countless conditions precludes quantitative estimates of changes in public health outcomes attributable to this bill. However, based on evidence presented in this report:
- (1) CHBRP anticipates that this bill would increase access to and use of telehealth modalities for ~4.85 million commercial/CalPERS and Medi-Cal enrollees (plus an additional 2.7 million enrollees in Medi-Cal COHS and fee-for-service (FFS)), thus bringing their coverage into parity with other state-regulated commercial carriers already providing coverage at baseline. In turn, these enrollees would experience reduced delays in care (e.g., appointments, diagnoses, treatments) for conditions treated by primary care, behavioral health, orthopedic, rehabilitation, dermatology, and other specialty providers.
 - (2) CHBRP anticipates this bill would bring live video and telephone-based care from FQHCs and RHCs into parity with Medi-Cal and commercial plans and policies, thus mitigating income disparities in care.
 - (3) CHBRP also anticipates that, as compared with in-person visits, this bill would produce equivalent (or in some cases, better) health outcomes for newly covered enrollees across some, but not all, diseases and conditions.
 - (4) People of color comprise the majority of Medi-Cal beneficiaries, who, by definition, are low-income. As a group, their telehealth coverage is unequal with much of the commercial market at baseline. CHBRP projects that, postmandate, this bill would bring telephone and live video telehealth coverage and reimbursement for Medi-Cal beneficiaries into parity with that of commercial plans and policies. This would decrease income disparities in access to health care and health outcomes by reducing delays in in-person care for some conditions (appointments, diagnoses, treatment), as well as providing equal access to all modalities of care.

- (5) CHBRP also projects that this bill would decrease overall racial and ethnic disparities that are present due to the different baseline coverage between commercial plans and policies and Medi-Cal, which is predominantly comprised of people of color. This would decrease disparities in access to health care and health outcomes by reducing delays in in-person care for some conditions (appointments, diagnoses, treatment), as well as providing equal access to all modalities of care. CHBRP is unable to quantify the reduction in racial and ethnic disparities. It is unknown whether racial or ethnic disparities in access to or use of telehealth exist among the commercially-insured population; therefore CHBRP is unable to estimate an impact for this population. These changes would be attributable to two mechanisms in this bill: (a) new coverage for telephone (audio only) that brings Medi-Cal beneficiaries' coverage into parity with commercial plans and policies; and, (b) permanent eligibility for FQHCs and RHCs to bill Medi-Cal for telephone and live video visits with Medi-Cal patients.
- (6) This bill would increase access to health care by reducing transportation barriers to in-person care by covering telephone (audio only) visits. This bill would also increase health care options and reduce travel costs and travel time for those enrollees who use the newly covered telephonic visits or reimbursable live video visits with FQHC/RHC providers. These enrollees and Medi-Cal beneficiaries may have equivalent or better outcomes (compared with in-person care) because they would no longer delay or avoid in-person visits because of travel difficulties. For those rural (and some urban) enrollees and Medi-Cal beneficiaries who have no broadband connectivity (due to lack of infrastructure in remote areas or cost of service or devices), a landline telephone would remain a viable telehealth modality, resulting in equivalent or better outcomes (compared with in-person care).
- (7) CHBRP anticipates this bill would decrease disparities in care associated with technology barriers for many Californians who are low-income (Medi-Cal), live in broadband deserts, or lack digital literacy by permitting access to reimbursable telephone and live video visits.
- iv) **Long-term impacts.** Although CHBRP estimates that telephonic telehealth services will increase in 2022 and 2023 due to new benefit coverage under this bill and the ongoing effects of the COVID-19 pandemic (as a barrier to in-person services), in the long term, CHBRP anticipates that technology capacity improvements could support additional use of live video. However, use of telephone for telehealth is likely to continue, especially for patients with technology limitations (e.g., Internet bandwidth, lack of smartphone or computer). Under this bill, Medi-Cal beneficiaries, especially those who access care through FQHCs/RHCs, would experience comparable coverage for telehealth care with their commercially-insured counterparts, which would allow them access to the same telehealth choices. In the long term, CHBRP projects that this new parity could narrow racial/ethnic, income, and geographic disparities in access to care and health outcomes. CHBRP projects this bill would increase enrollee access to health care in the long-term, especially for those who would use audio only services. It would also provide more data to inform future research about the appropriateness of telehealth care as compared with in-person visits and other telehealth modalities.

3) **DHCS TELEHEALTH PROPOSAL.** On February 2, 2021, DHCS released its "Post-COVID-19 Public Health Emergency Telehealth Policy Recommendations: Public

Document” which is its post-COVID telehealth policy recommendations and proposed trailer budget bill language was also posted on the Department of Finance website. The DHCS recommendations are only for Medi-Cal and not for commercial coverage. DHCS indicates it is looking to modify or expand the use of synchronous telehealth, asynchronous telehealth, telephonic/audio-only, other virtual communication systems and to add remote patient monitoring (such as continuous glucose monitors) as a Medi-Cal benefit. The main difference between this bill and the DHCS proposal is DHCS does not propose to pay for telephone visits at parity (the Trailer bill Language permits a different fee schedule) and does not propose to permit FQHCs and RHC to bill for telephone services.

- 4) **SUPPORT.** This bill is jointly sponsored by the California Health+ Advocates, the California Medical Association, Essential Access Health, the California Association of Public Hospitals and Health Systems and Planned Parenthood Affiliates of California and supported by health care provider and patient advocacy groups. Generally, supporters argue telehealth has been an important way for patients to access care during the pandemic and it will be critical to post-pandemic care. Telehealth decreases barriers, increases access to care for patients, and reduces no-show rates significantly. More importantly, telephonic (audio only) care has become a reliable modality of care. Due to inadequate broadband infrastructure and high costs of internet access and computing devices, one in eight California households lacks internet access. Many California households still rely on basic cell phones, do not have video capability, or do not have unlimited data for streaming videos. In sharing their preference for phone visits, some Medi-Cal patients and older patients have noted discomfort when required to utilize video modalities for care. Supporters argue that it is timely and necessary to update our state laws, to reflect our state values, and ensure that patients do not lose the access to care they have had during the pandemic.
- 5) **SUPPORT IF AMENDED.** The Los Angeles Unified School District seeks an amendment that would clarify that school districts can also take advantage of the policy this bill seeks to accomplish. The Centers for Autism and Related Disorders (CARD) writes that, during the public health emergency, flexibilities have been granted to allow services by qualified autism service paraprofessionals who often provide direct one-on-one treatment. CARD requests this bill be amended to continue the flexibility that permit qualified autism service paraprofessionals to deliver services via telehealth.

Health Access California (HAC) writes that, while it supports ongoing expansion of telehealth modalities, it has emphasized the need to proceed in a manner that centers consumer interests and a data-driven approach as we move forward. HAC suggests additional amendments to ensure consumer choice is not sacrificed as a result of telehealth expansions, and to ensure strong data evaluation requirements. Specifically, HAC requests language to specify that consumers may always opt for in-person care, even if previously they elected to receive services via telehealth, to apply evaluation requirements for telehealth services delivered to consumers in the commercial market as well as those in MCMC plans, and to strengthen requirements to include full evaluation of the impact telehealth has had on delivery, access, and quality of healthcare, including health outcomes, and how telehealth has impact diverse communities.

- 6) **CONCERNS.** The California Association of Health Plans (CAHP) and the Association of California Life and Health Insurance Companies (ACLHIC) write expressing concern that this bill includes a mandate on health plans and insurers to reimburse all types of

synchronous telehealth interactions at parity. Specifically, CAHP and ACLHIC express concern with the CHBRP estimate that this bill could significantly increase premiums on consumers, stating that CHBRP analysis points to an increase in net total annual expenditures of \$241 million, including a \$136 million increase in premiums for an estimated 8 million individuals enrolled in a MCMC plan.

- 7) **OPPOSE UNLESS AMENDED.** The California Chamber of Commerce (Chamber) writes that it is opposed to the bill unless it is amended. The Chamber writes that telehealth is rapidly expanding due to its convenience, safety, accessibility, and affordability, and that employers, health plans and insurers collaborate to design innovative solutions that increase access to care, improve the quality of care, and reduce the cost of care delivery. Unfortunately, this bill's current definition of telehealth will increase the cost of care delivery since it places no parameters on the telephone-only parity provision. The Chamber argues a clear definition is needed for exactly which virtual/remote services will be placed at parity with in-person presentations and to what extent they will be at parity. Without this guardrail, the Chamber argues this bill will come with an unmanageable price tag for struggling businesses and consumers.

8) RELATED LEGISLATION.

- a) AB 457 (Santiago) establishes the Protection of Patient Choice in Telehealth Provider Act, which requires a health plan and a health insurer to arrange for the provision of a service via telehealth to an enrollee or an insured through a third-party corporate telehealth provider only if the service is not available to the enrollee or insured via telehealth through a contracting individual health professional, a contracting clinic, or a contracting health facility, consistent with existing timeliness standards, when specified conditions are met. AB 457 passed out of the Assembly Health Committee on April 20, 2021 and is currently in the Assembly Appropriations Committee.
- b) AB 935 (Maienschein) requires health plans and health insurers, by July 1, 2022, to provide access to a telehealth consultation program that meets specified criteria and provides providers who treat children and pregnant and certain postpartum persons with access to a mental health consultation program, as specified. Requires the consultation by a mental health clinician with expertise appropriate for pregnant, postpartum, and pediatric patients to be conducted by telephone or telehealth video, and to include guidance on the range of evidence-based treatment options, screening tools, and referrals. Requires health care service plans and insurers to communicate information relating to the telehealth program at least twice a year in writing. AB 935 is scheduled for hearing in the Assembly Health Committee on April 27, 2021.
- c) AB 1102 (Low) specifies that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing their respective licenses. Specifies that a telephone medical advice service is required to comply with all directions and requests for information made by the respective healing arts licensing boards. AB 1102 is pending in Senate Rules Committee.

9) PREVIOUS LEGISLATION.

- a) AB 744 (Aguilar-Curry), Chapter, Statutes of 2018, require a contract issued, amended, or renewed on or after January 1, 2021, between a health plan and a health care provider for the provision of health care services to an enrollee or subscriber, or a contract issued, amended, or renewed on or after January 1, 2021, between a health insurer and a health care provider for an alternative rate of payment to specify that the health plan or health insurer reimburse a health care 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 that the health plan or health insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment. Authorizes a health plan or health insurer to offer a contract or policy containing a copayment or coinsurance requirement for a health care service delivered through telehealth services, subject to specified limitations. Requires telehealth services covered under a health plan contract or policy or health insurance issued, amended, or renewed on or after January 1, 2021, to be subject to the same deductible and annual or lifetime dollar maximum as for equivalent services that are not provided through telehealth.
- b) SB 1023 (Hernandez) of 2018 would have required the Family PACT program to cover services provided by a Family PACT provider through direct video and telephonic communications with a provider and direct or asynchronous care provided through a smart phone application that is appropriate to be delivered remotely based on current clinical guidelines. SB 1023 died in the Assembly inactive file.
- c) AB 2861 (Salas), Chapter 500, Statutes of 2018, requires a drug Medi-Cal certified provider to receive reimbursement for individual counseling services provided through telehealth, as defined, by a licensed practitioner of the healing arts or registered or certified alcohol or other drug counselor, when medically necessary and in accordance with the Medicaid state plan, to the extent federal financial participation is available and any necessary federal approvals have been obtained.
- d) AB 205 (Wood), Chapter 738, Statutes of 2017, authorizes the use of clinically appropriate telecommunications technology, including telehealth, as a means of determining annual compliance with the time and distance standards established in the bill or the DHCS's approval of a request for alternative access standards.
- e) SB 171 (Hernandez), Chapter 768, Statutes of 2017, requires DHCS to ensure that all covered mental health benefits and substance use disorder benefits are provided in compliance with federal mental health parity regulations for Medicaid, and any subsequent amendment to those regulations, and any associated federal policy guidance issued by the federal Centers for Medicare and Medicaid Services.
- f) AB 2507 (Gordon) of 2016 would have added video communications and telephone communications to the definition of telehealth. AB 2507 would have provided that the required prior consent for telehealth services may be digital as well as oral or written. AB 2507 was held in the Assembly Appropriations Committee.
- g) SB 289 (Mitchell) of 2015 would have required health plans or health insurers to cover telephonic and electronic patient management services provided by a physician or non-physician health care provider and reimburse those services based on their complexity and time expenditure. SB 289 was held in the Senate Appropriations Committee.

- h) AB 1771 (V. Manuel Pérez) of 2014 would have required health plans and health insurers, with respect to plan contracts and insurance policies issued, amended, or renewed on or after January 1, 2016, to cover telephone visits provided by a physician. AB 1771 was held in the Senate Appropriations Committee.
- i) AB 809 (Logue), Chapter 404, Statutes of 2014, revises the informed consent requirements relating to the delivery of health care 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.
- j) AB 1733 (Logue), Chapter 782, Statutes of 2012, specifies that the prohibition on requiring in-person contact also applies to other health care service plan contracts with the DHCS for services under the Medi-Cal program, and publicly supported programs other than Medi-Cal, as well as to the organizations implementing Programs of All-Inclusive Care for the Elderly.
- k) AB 415 (Logue), Chapter 547, Statutes of 2011, among other provisions, prohibits DHCS from requiring that a health care provider document a barrier to an in-person visit prior to paying for services provided via telehealth to a Medi-Cal beneficiary. Repeals the prohibition of paying for a service provided by telephone or facsimile and would instead prohibit DHCS from limiting the type of setting where services are provided for the patient. Prohibits health plans and insurers from requiring 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 of the relevant contract. Repeals the prohibition for paying for a service provided by telephone or facsimile and would instead prohibit health plans and insurers from limiting the type of setting where services are provided for the patient or by the health care provider.
- l) SB 1665 (Thompson), Chapter 864, Statutes of 1996, established the Telemedicine Development Act (TDA) to set standards for the use of telemedicine by health care practitioners and insurers. TDA specifies, in part, that 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, when those services are otherwise covered by the Medi-Cal program, and requires a health care practitioner to obtain verbal and written consent prior to providing services through telemedicine.

REGISTERED SUPPORT / OPPOSITION:

Support

CaliforniaHealth+ Advocates (co-sponsor)
California Medical Association (co-sponsor)
Planned Parenthood Affiliates of California (co-sponsor)
Essential Access Health (co-sponsor)
AARP
Alameda Health Consortium
Alameda Health System
All Inclusive Community Health Center
Alliance Medical Center
Altamed Health Services Corporation

American College of Obstetricians and Gynecologists District IX
Ampla Health
APLA Health
Arroyo Vista Family Health Center
Asian Health Services
Asian Pacific Health Care Venture, Inc.
Association for Clinical Oncology
Association of California Healthcare Districts; the
Bartz-Altadonna Community Health Centers
Behavioral Health Services, Inc.
Borrego Health
CA Behavioral Health Planning Council
California Academy of Family Physicians
California Association of Health Facilities
California Association of Social Rehabilitation Agencies
California Board of Psychology
California Chapter of the American College of Emergency Physicians
California Chronic Care Coalition
California Commission on The Status of Women and Girls
California Consortium for Urban Indian Health
California Dialysis Council
California Hospital Association/California Association of Hospitals and Health Systems
California Podiatric Medical Association
California Psychological Association
California School-Based Health Alliance
California Solar & Storage Association
California State Association of Psychiatrists
California Telehealth Policy Coalition
Center for Family Health & Education
Central California Partnership for Health
Central Valley Health Network
Chapcare Medical and Dental Health Center
Che Behavioral Health Services
Children Now
Children's Specialty Care Coalition
Chinatown Service Center
Citizens for Choice
City and County of San Francisco
Community Clinic Association of Los Angeles County
Community Health Partnership
Community Medical Wellness Centers, USA
Contra Costa County
County Health Executives Association of California
County of Santa Barbara
County of Santa Clara
Eisner Health
El Proyecto Del Barrio, Inc.
Father Joe's Villages
Golden Valley Health Centers

Governmental Advocates, Inc.
Health Alliance of Northern California
Health Care LA IPA
Health Center Partners of Southern California
Health Improvement Partnership of Santa Cruz
Kheir Clinic
LA Clinica De LA Raza, Inc.
Los Angeles Homeless Services Authority
Los Angeles LGBT Center
Mission City Community Network
Morongo Basin Healthcare District
Mpact Fijate Bien Program
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
National Multiple Sclerosis Society
Natividad Medical Center - County of Monterey
Neighborhood Healthcare
North Coast Clinics Network
North East Medical Services
Northeast Valley Health Corporation
Occupational Therapy Association of California
Ochin, Inc.
Ole Health
Parktree Community Health Centers
Petaluma Health Center
Queenscare Health Centers
Rural County Representatives of California
Saban Community Clinic
Salud Para LA Gente
San Fernando Community Health Center
San Francisco Department of Public Health
San Mateo County Board of Supervisors
San Ysidro Health
Santa Barbara; County of
Santa Cruz Community Health Centers
Santa Rosa Community Health
Solano County Board of Supervisors
South Bay Family Health Center
St. John's Well Child and Family Center
St. Johns Well Child & Family Health Center
Steinberg Institute
Sutter Health
TCC Family Health
Tenet Healthcare Corporation
The Achievable Foundation
The California Association of Local Behavioral Health Boards and Commissions
The Los Angeles Trust for Children's Health
Triple P America Inc.
Truecare

UMMA Community Clinic
Unicare Community Health Center
Universal Community Health Center
Urban Counties of California
Venice Family Clinic
Wellspace Health
Westside Family Health Center

Opposition

None on file.

Analysis Prepared by: Scott Bain / HEALTH / (916) 319-2097, Kristene Mapile / HEALTH / (916) 319-2097

AB 32 (Aguiar-Curry) Telehealth

As Amends the Law Today (04/30/2021)

SECTION 1.

(a) The Legislature finds and declares all of the following:

(1) The Legislature has recognized 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, and enacted protections in Section 14132.72 of the Welfare and Institutions Code to prevent the State Department of Health Care Services from restricting or limiting telehealth services.

(2) The use of telehealth was expanded during the COVID-19 pandemic public health emergency and has proven to be an important modality for patients to stay connected to their health care providers. Telehealth has been especially critical for California's Medi-Cal patients.

(3) Patients have reported high satisfaction with telehealth, noting how easy it is to connect with their care teams without having to take time off work, find childcare, or find transportation to an in-person appointment.

(4) In addition to video access, audio-only care is essential because many patients have reported challenges accessing video technology due to limitations with data plans and internet access.

(5) Primary care and specialty care providers have found telehealth to be a critical access point to address a variety of health care needs, including helping patients manage chronic disease, adjust pain medications, and for followup visits after a procedure, among others.

(6) Behavioral health providers have found that offering telehealth has engaged patients in necessary care they would never have received if required to walk into a clinic.

(7) Health care providers have reported significant decreases in the number of missed appointments since telehealth became available, helping to ensure that patients receive high-quality care in a timely manner.

(8) Telehealth is widely available to individuals with health insurance in the commercial market, and existing law in Section 1374.14 of the Health and Safety Code and Section 10123.855 of the Insurance Code requires commercial health care service plans and health insurers to pay for services delivered through telehealth services on the same basis as equivalent services furnished in person. Medi-Cal must evolve with the rest of the health care industry to achieve health equity for low-income Californians.

(9) The expanded telehealth options that patients and providers have relied on during the COVID-19 pandemic should continue to be available to Medi-Cal recipients after the public health emergency is over.

(b) It is the intent of the Legislature to continue the provision of telehealth in Medi-Cal, including video and audio-only technology, for the purposes of expanding access and enhancing delivery of health care services for beneficiaries.

SEC. 2.

Section 2290.5 of the Business and Professions Code is amended 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.

(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 any of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(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~~ *interaction, including, but not limited to, audiovideo, audio only, such as telephone, and other virtual communication*, 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. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

- (d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.
- (e) This section shall not be construed to alter the scope of practice of a health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.
- (f) All laws regarding the confidentiality of health care information and a patient's rights to the patient's medical information shall apply to telehealth interactions.
- (g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider's license shall apply to that health care provider while providing telehealth services.
- (h) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.
- (i) (1) Notwithstanding any other 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. 3.

Section 1374.14 of the Health and Safety Code is amended to read:

1374.14.

- (a) (1) A contract ~~issued, amended, or renewed on or after January 1, 2021,~~ between a health care service plan and a health care provider for the provision of health care services to an enrollee or subscriber shall specify that the health care service plan shall reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an enrollee or subscriber appropriately delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.
- (2) This section does not limit the ability of a health care service plan and a health care provider to negotiate the rate of reimbursement for a health care service provided pursuant to a contract subject to this section. Services that are the same, as determined by the provider's description of the service on the claim, shall be reimbursed at the

same rate whether provided in person or through telehealth. When negotiating a rate of reimbursement for telehealth services for which no in-person equivalent exists, a health care service plan and the provider shall ensure the rate is consistent with subdivision (h) of Section 1367.

(3) This section does not require telehealth reimbursement to be unbundled from other capitated or bundled, risk-based payments.

(4) If a health care service plan delegates responsibility for the performance of the duties described in this section to a contracted entity, including a medical group or independent practice association, then the delegated entity shall comply with this section.

(5) The obligation of a health care service plan to comply with this section shall not be waived if the plan delegates services or activities that the plan is required to perform to its provider or another contracting entity. A plan's implementation of this section shall be consistent with the requirements of the Health Care Providers' Bill of Rights, and a material change in the obligations of a plan's contracting network providers shall be considered a material change to the provider contract, within the meaning of subdivision (b) Section 1375.7.

(b) (1) A health care service plan contract issued, amended, or renewed on or after ~~January 1, 2021,~~ shall specify that the health care service plan shall provide coverage for health care services appropriately delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.

(2) This section does not alter the obligation of a health care service plan to ensure that enrollees have access to all covered services through an adequate network of contracted providers, as required under Sections 1367, 1367.03, and 1367.035, and the regulations promulgated thereunder.

(3) This section does not require a health care service plan to cover telehealth services provided by an out-of-network provider, unless coverage is required under ~~other provisions of law.~~

(c) A health care service plan may offer a contract containing a copayment or coinsurance requirement for a health care service delivered through telehealth services, provided that the copayment or coinsurance does not exceed the copayment or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment. This subdivision does not require cost sharing for services provided through telehealth.

(d) Services provided through telehealth and covered pursuant to this chapter shall be subject to the same deductible and annual or lifetime dollar maximum as equivalent services that are not provided through telehealth.

(e) The definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code apply to this section.

~~(f) This section shall not apply to Medi-Cal managed care plans that contract with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) of, Chapter 8 (commencing with Section 14200) of, or Chapter 8.75 (commencing with Section 14591) of, Part 3 of Division 9 of the Welfare and Institutions Code.~~

SEC. 4.

Section 10123.855 of the Insurance Code is amended to read:

10123.855.

(a) ~~(1) A contract issued, amended, or renewed on or after January 1, 2021,~~ between a health insurer and a health care provider for an alternative rate of payment pursuant to Section 10133 shall specify that the health insurer shall reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an insured or policyholder appropriately delivered through telehealth services on the same basis and to the same extent that the health insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.

(2) This section does not limit the ability of a health insurer and a health care provider to negotiate the rate of reimbursement for a health care service provided pursuant to a contract subject to this section. Services that are the same, as determined by the provider's description of the service on the claim, shall be reimbursed at the same rate whether provided in person or through telehealth. When negotiating a rate of reimbursement for telehealth services for which no in-person equivalent exists, a health insurer and the provider shall ensure the rate is consistent with subdivision (a) of Section 10123.137.

(3) If a health insurer delegates responsibility for the performance of the duties described in this section to a contracted entity, including a medical group or independent practice association, then the delegated entity shall comply with this section.

(4) The obligation of a health insurer to comply with this section shall not be waived if the insurer delegates services or activities that the insurer is required to perform to its provider or another contracting entity. An insurer's implementation of this section shall be consistent with the requirements of the Health Care Providers' Bill of Rights, and a material change in the obligations of an insurer's contracting network providers shall be considered a material change to the provider contract, within the meaning of subdivision (b) Section 10133.65.

~~(b) (1) A policy of health insurance issued, amended, or renewed on or after January 1, 2021,~~ that provides benefits through contracts with providers at alternative rates of payment shall specify that the health insurer shall provide coverage for health care services appropriately delivered through telehealth services on the same basis and to the same extent that the health insurer is responsible for coverage for the same service

through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.

(2) This section does not alter the existing statutory or regulatory obligations of a health insurer to ensure that insureds have access to all covered services through an adequate network of contracted providers, as required by Sections 10133 and 10133.5 and the regulations promulgated thereunder.

(3) This section does not require a health insurer to deliver health care services through telehealth services.

(4) This section does not require a health insurer to cover telehealth services provided by an out-of-network provider, unless coverage is required under other provisions of law.

(c) A health insurer may offer a policy containing a copayment or coinsurance requirement for a health care service delivered through telehealth services, provided that the copayment or coinsurance does not exceed the copayment or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment. This subdivision does not require cost sharing for services provided through telehealth.

(d) Services provided through telehealth and covered pursuant to this chapter shall be subject to the same deductible and annual or lifetime dollar maximum as equivalent services that are not provided through telehealth.

(e) The definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code apply to this section.

SEC. 5.

Section 14087.95 of the Welfare and Institutions Code is amended to read:

14087.95.

Counties (a) A county contracting with the department pursuant to this article shall be exempt from the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out the contracts.

(b) (1) Notwithstanding subdivision (a), a county contracting with the department pursuant to this article shall comply with Section 1374.14 of the Health and Safety Code.

(2) If a county subcontracts for the provision of services pursuant to this article, as authorized under Section 14087.6, the subcontractor shall comply with Section 1374.14 of the Health and Safety Code.

SEC. 6.

Section 14092.4 is added to the Welfare and Institutions Code, immediately following Section 14092.35, to read:

14092.4.

(a) To enroll individuals in Medi-Cal programs that permit onsite enrollment and recertification of individuals by a provider or county eligibility worker as applicable, the following shall apply:

(1) For the Family Planning, Access, Care, and Treatment (Family PACT), Presumptive Eligibility for Pregnant Women, and Every Woman Counts programs, a provider may enroll or recertify an individual remotely through telehealth and other virtual communication modalities, including telephone, based on the current Medi-Cal program eligibility form or forms applicable to the specific program.

(2) For the Medi-Cal Minor Consent program, a county eligibility worker may determine eligibility for, or recertify eligibility for, an individual remotely through virtual communication modalities, including telephone.

(b) The department may develop program policies and systems to support implementation of remote eligibility determination, enrollment, and recertification, consistent with this section.

(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, or make specific this section by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

SEC. 7.

Section 14132.721 is added to the Welfare and Institutions Code, immediately following Section 14132.72, to read:

14132.721.

(a) Notwithstanding any other law, and subject to paragraph (2) of subdivision (c), health care services furnished by an enrolled clinic through telehealth shall be reimbursed by Medi-Cal on the same basis, to the same extent, and at the same payment rate as those services are reimbursed if furnished in person, consistent with this section.

(b) Consistent with the protections for health care providers set forth in the Telehealth Advancement Act of 2011, including Section 14132.72, the department shall not restrict the ability of an enrolled clinic to provide and be reimbursed for services furnished through telehealth and this subdivision shall not prohibit policies that require all of the clinical elements of a service to be met as a condition of reimbursement. Prohibited restrictions include all of the following:

(1) Requirements for face-to-face contact between an enrolled clinic provider and a patient.

(2) Requirements for a patient's or provider's physical presence at the enrolled clinic or any other location.

(3) Requirements for prior in-person contacts between the enrolled clinic and a patient.

(4) Requirements for documentation of a barrier to an in-person visit or a special need for a telehealth visit.

(5) Policies, including reimbursement policies, that impose more stringent requirements on telehealth services than equivalent services furnished in person.

(6) Limitations on the means or technologies through which telehealth services are furnished. This paragraph does not prohibit policies that require compliance with applicable federal and state health information privacy and security laws.

(c) (1) Notwithstanding the in-person requirements of Section 14132.100, if an enrolled clinic is also a federally qualified health center or a rural health center, the definition of "visit" set forth in subdivision (g) of Section 14132.100 includes a telehealth encounter to the same extent it includes an in-person encounter.

(2) Health care services furnished through audio-only telehealth, including by telephone, by a federally qualified health center or a rural health clinic, other than mental health services that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver, shall be reimbursed pursuant to Section 14132.722.

(d) This section does not eliminate the obligation of a health care provider to obtain verbal or written consent from the patient before delivery of health care via telehealth or the rights of the patient, pursuant to subdivisions (b) and (c) of Section 2290.5 of the Business and Professions Code.

(e) (1) The department shall require Medi-Cal managed care plans, through contract or otherwise, to adhere to the requirements of subdivision (b) of this section.

(2) Medi-Cal managed care plans shall comply with the requirements for health care service plan contracts set forth in Section 1374.14 of the Health and Safety Code and the requirements for health insurance policies set forth in Section 10123.855 of the Insurance Code. Medi-Cal managed care plans shall not be required to pay federally qualified health centers and rural health clinics the same amount for audio-only telehealth visits as equivalent in-person visits on or after January 1, 2025. This paragraph shall be applied to the extent consistent with federal Medicaid requirements that a managed care plan provide payment for services furnished by a federally qualified health center or rural health clinic that is not less than the level and amount of payment the managed care plan would make for the services if the services were furnished by a provider that is not a federally qualified health center or rural health clinic.

(f) This section does not limit reimbursement for or coverage of, or reduce access to, services provided through telehealth before the enactment of this section.

(g) 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, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

(h) The department shall seek any necessary federal approvals and obtain federal financial participation in implementing this section. This section shall be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available and not otherwise jeopardized.

(i) For purposes of this section:

(1) "Enrolled clinic" means any of the following:

(A) A clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

(B) An intermittent clinic exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code.

(C) A hospital or nonhospital-based clinic operated by the state or any of its political subdivisions, including the University of California, or a city, county, city and county, or hospital authority.

(D) A tribal clinic exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined in Section 1603 of Title 25 of the United States Code.

(2) "Telehealth" has the same meaning as in subdivision (a) of Section 2290.5 of the Business and Professions Code, which includes audio-only telephone communication technologies.

SEC. 8.

Section 14132.722 is added to the Welfare and Institutions Code, immediately following Section 14132.721, to read:

14132.722.

(a) (1) Except as described in paragraph (2), the department shall indefinitely continue the telehealth flexibilities in place during the COVID-19 pandemic, including those implemented pursuant to Section 14132.723.

(2) (A) The department shall reimburse each federally qualified health center and rural health clinic for health care services furnished through audio-only telehealth, including telephone, at the applicable prospective payment system per-visit rate, consistent with Section 14132.721, until the earlier of January 1, 2025, or the date that the federally qualified health center or rural health clinic elects to participate in an alternative payment methodology described in subdivision (c).

(B) Notwithstanding subparagraph (A), mental health services that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver, furnished through audio-only telehealth, shall continue to be reimbursed at the applicable prospective payment system per-visit rate indefinitely, except if the federally qualified health center or rural health clinic elects an alternative payment methodology that covers those services.

(b) (1) By January 2022, the department shall convene an advisory group that includes representatives from community health centers, designated public hospitals, Medi-Cal managed care plans, consumer groups, labor organizations, behavioral health providers, counties, health care districts formed pursuant to Chapter 1 (commencing

with Section 32000) of Division 23 of the Health and Safety Code, and other Medi-Cal providers.

(2) The advisory group shall provide input to the department on the development of a revised Medi-Cal telehealth policy that promotes all of the following principles:

(A) Telehealth shall be used as a means to promote timely and patient-centered access to health care.

(B) Patients, in conjunction with their providers, shall be offered their choice of service delivery mode. Patients shall retain the right to receive health care in person.

(C) Confidentiality and security of patient information shall be protected.

(D) Usual standard of care requirements shall apply to services provided via telehealth, including quality, safety, and clinical effectiveness.

(E) The department shall consider disparities in the utilization of, and access to, telehealth, and shall support patients and providers in increasing access to the technologies needed to use telehealth.

(F) When the care provided during a telehealth visit is commensurate with what would have been provided in person, payment shall also be commensurate.

(c) (1) By July 2024, the department shall complete an evaluation to assess the benefits of telehealth in Medi-Cal. The evaluation shall analyze improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth.

(2) The department shall report its findings and recommendations on the evaluation to the appropriate policy and fiscal committees of the Legislature no later than October 31, 2024.

(d) (1) The department, in consultation with affected stakeholders, including, but not limited to, the California Association of Public Hospitals and Health Systems and the California Primary Care Association, shall develop one or more federally permissible alternative payment models, consistent with Section 1396a(bb)(6) of Title 42 of the United States Code, that federally qualified health centers and rural health clinics may elect to participate in.

(2) (A) The alternative payment models shall be designed to enable the continued provision of high-quality health care, while furthering the goals of the Medi-Cal program to improve access and equity, and incentivize and support clinic infrastructure improvements.

(B) To the extent that an alternative payment model includes a separate per-visit payment rate for audio-only telehealth visits, that payment rate shall be less than the rate the federally qualified health center or rural health clinic receives for an in-person visit. This subparagraph shall not apply with respect to mental health services furnished through audio-only telehealth that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver.

(3) The department shall submit and seek federal approval of the state plan amendment necessary for the implementation of this subdivision, to be effective no later than January 1, 2025. This section shall be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available and not otherwise jeopardized.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(c)(2) – AB 107 (Salas) Licensure: veterans and military spouses

Background:

This bill would expand the requirement in Business and Professions Code (BPC) section 115.6, which relates to issuing temporary licenses for individuals married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders, to include among others, the Board of Psychology. The bill would require a board to issue a temporary license within 30 days of receiving the required documentation. The bill would require a board to submit to the department for approval draft regulations necessary to administer these provisions by June 15, 2022.

The bill would exempt from these provisions a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year.

Under BPC 2946, the Board of Psychology allows a psychologist certified or licensed in another state or province and who has submitted an application to the board for a license in this state to perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever occurs first.

Staff spoke with the author's office and sponsor, who advised they are willing to assist the Board in making the necessary modifications to BPC 2946 to include the Board under the exemption above. The authors office advised they would be pursuing our amendment when the bill is in the Senate Business, Professions, and Economic Development Committee. Amendments to BPC 2946 can be found at the end of the analysis.

On 3/19/2021, the Legislative and Regulatory Affairs Committee voted to recommend the Board take a **Support** if Amended position on AB 107 (Salas). The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation to support if amended AB 107 (Salas) on 4/2/2021.

On 3/23/2021, the Assembly Committee on Business and Professions voted 17 - 0 to refer the bill to the Committee on Military and Veterans Affairs.

Location: Assembly Committee on Military and Veterans Affairs

Status: 4/28/2021 Do pass and be re-referred to the Committee on Appropriations. Ayes: 11; Noes: 0; Abstain: 0.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Support if Amended Letter to Military and Veterans Affairs Committee

Attachment B: Military and Veterans Affairs Committee Analysis

Attachment C: AB 107 (Salas) Bill Text

April 15, 2021

The Honorable Jacqui Irwin
Chair, Assembly Committee Military and Veterans Affairs
1020 N. Street, Suite 389
Sacramento, CA 95814

RE: **AB 107 (Salas) – Licensure: veterans and military spouses – SUPPORT IF AMENDED**

Dear Assemblymember Irwin:

The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

At its April 2, 2021 meeting, the Board of Psychology (Board) adopted a **SUPPORT IF AMENDED** position on AB 107 (Salas). This bill would expand the requirement in Business and Professions Code (BPC) section 115.6, relating to the issuance of temporary licenses for individuals married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders, to include among others, the Board of Psychology.

The bill would exempt from these provisions a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year.

Under BPC 2946, the Board of Psychology allows a psychologist certified or licensed in another state or province and who has submitted an application to the board for a license in this state to perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever occurs first. Staff has spoken with the author's office and the bill's sponsor, who advised they are willing to assist the Board in making the necessary modifications to BPC 2946 to include the Board under the exemption above.

Page 2

AB 107 (Salas): SUPPORT IF AMENDED

April 15, 2021

We look forward to working with the author's office and the sponsor to incorporate the suggested amendments. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Jason Glasspiegel, at (916) 574-7137 or jason.glasspiegel@dca.ca.gov. Thank you.

Sincerely,



Seyron Foo
President, Board of Psychology

cc: Assemblymember Randy Voepel (Vice Chair)
Assemblymember Salas
Members of the Assembly Committee on Military and Veterans Affairs
Christian Burkin, Consultant, Assembly Committee on Military and Veterans Affairs
Assembly Republican Caucus

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON MILITARY AND VETERANS AFFAIRS

Jacqui Irwin, Chair

AB 107 (Salas) – As Amended April 20, 2021

SUBJECT: Licensure: veterans and military spouses

SUMMARY: Adds ten Department of Consumer Affairs (DCA) licensing boards to the existing list of boards that are required to issue temporary licenses to the spouses of active-duty members of the U.S. Armed Forces, as specified; requires all other DCA boards to issue permanent licenses to applicants who meet similar requirements; and requires the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the Department of Public Health to annually report specified licensing information to the Legislature. Specifically, **this bill:**

- 1) Makes the following changes to the current temporary license requirements:
 - a) Adds the following boards and all license types to the existing requirement to issue temporary licenses:
 - i) The Dental Board of California.
 - ii) The Dental Hygiene Board of California.
 - iii) The California State Board of Pharmacy.
 - iv) The State Board of Barbering and Cosmetology.
 - v) The Board of Psychology.
 - vi) The California Board of Occupational Therapy.
 - vii) The Physical Therapy Board of California.
 - viii) The California Board of Accountancy.
 - b) Adds previously excluded licenses under the Veterinary Medical Board.
 - c) Specifies that the revenues from fees for temporary licenses issued by the California Board of Accountancy shall be credited to the Accountancy Fund.
 - d) Modifies the attestation requirement to specify that the applicant attests to meeting the temporary license requirements in the same area and scope of practice issued in the other state, district, or territory of the United States, rather than just the temporary license requirements.
 - e) Requires that the boards issue temporary licenses within 30 days of receiving the required documentation.

- f) Adds that temporary licenses expire upon issuance of a license by endorsement, in addition to the current expiration requirements of 12 months, upon issuance of an expedited license, but **not** upon denial of the application.
 - g) Requires the boards required to issue temporary licenses to submit to the DCA for approval draft regulations necessary to administer the temporary license programs by January 1, 2022.
 - h) Exempts boards from the temporary license requirements if the board already has a similar process in place.
- 2) Establishes a license requirement for the boards not included under the temporary license provisions with the same requirements:
- a) Requires DCA boards not specified under the temporary license provisions to, after appropriate investigation, issue a license to an applicant if the applicant meets all of the following requirements:
 - i) The applicant supplies evidence satisfactory to the board that the applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.
 - ii) The applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a license from the board.
 - iii) The applicant submits an application to the board that includes a signed affidavit attesting to the fact that the applicant meets all of the requirements for the license, in the same area and scope of practice as issued in the other state, district, or territory of the United States, and that the information submitted in the application is accurate, to the best of the applicant's knowledge. The application must also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.
 - iv) The applicant must not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under the BPC at the time the act was committed, and a violation may be grounds for the denial or revocation of a license issued by the board.
 - v) The applicant must not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.
 - vi) The applicant must, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

- b) Authorizes a board to adopt regulations necessary to administer the new provisions.
- 3) Makes a conforming change to the Accountancy Fund provisions.
 - 4) Requires the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the State Department of Public Health to compile information on military, veteran, and spouse licensure into an annual report for the Legislature that includes all of the following:
 - a) The number of applications for a license submitted by active duty service members, separating service members, veterans, or military spouses per calendar year.
 - b) The number of licenses issued and denied, including reason for denial, to active duty service members, separating service members, veterans, and military spouses per calendar year.
 - c) The number of licenses of active duty service members, separating service members, veterans, or military spouses that were suspended or revoked per calendar year.
 - d) The number of applications for waived renewal fees received from active duty service members and military spouses per calendar year.
 - e) The number of fee waivers issued to active duty service members and military spouses per calendar year.
 - f) The average length of time between application and issuance of licenses for active duty service members, separating service members, veterans, or military spouses per board and occupation.

EXISTING LAW:

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Provides for the regulation and licensure of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 100-144.5)
- 3) Defines “board,” as used in the BPC, as the board in which the administration of the provision is vested, and unless otherwise expressly provided, includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” (BPC § 22)
- 4) Requires that any licensee or registrant of any board, commission, or bureau within the DCA whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate their license or registration without examination or penalty. (BPC § 114)
- 5) Requires every board within the DCA to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard. (BPC § 114.3)

- 6) Requires a DCA board to inquire in every license application if the individual applying for licensure is serving in, or has previously served in, the military and, if the board's governing law authorizes veterans to apply military experience and training towards licensure requirements, to post information on the board's website about the ability of veteran applicants to apply military experience and training towards licensure requirements. (BPC § 114.5)
- 7) Requires a DCA board to expedite the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged. (BPC § 115.4)
- 8) Requires a DCA board to expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and who holds a current license in another state, district, or territory of the United States in the profession or vocation for which they are seeking a license from the board. (BPC § 115.5)
- 9) Requires seven DCA boards to, after appropriate investigation, issue temporary licenses to an applicant, if the applicant meets specified requirements, including, among other things, that 1) the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders; 2) the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license; and the applicant submits a signed affidavit attesting to meeting the requirements of the temporary license. (BPC § 115.6)
- 10) Includes the following licenses under the temporary license requirement:
 - a) Registered nurse licenses under the Board of Registered Nursing.
 - b) Vocational nurse and psychiatric technician licenses under the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
 - c) Speech-language pathologist and audiologist licenses under the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board but not hearing aid dispenser licenses.
 - d) Veterinarian licenses under the Veterinary Medical Board but not registered veterinary technicians.
 - e) All licenses under the Board for Professional Engineers, Land Surveyors, and Geologists.
 - f) All licenses under the Medical Board of California.
 - g) All licenses under the Podiatric Medical Board of California.

11) Establishes separate temporary licensing authorization for all applicants applying for a permanent license with the Board of Registered Nursing. Temporary licenses issued under that authorization expire after six months and may be renewed twice. (BPC § 2733)

FISCAL EFFECT: This bill has not been analyzed in a fiscal committee.

COMMENTS:

According to the author, “We must do more for military spouses, who are six times more likely to be unemployed, find a job so that they can put food on the table. Transferring professional licenses that spouses have already earned should be a seamless process that allows spouses to quickly find well-paying jobs in their field. This program has already worked for 6 years, and by expanding it to include more common occupations of military spouses we can ensure our military families will thrive in California.”

Background: As of 2020, the DCA administers more than 3.4 million licenses in more than 280 license types, providing oversight and regulation over a variety of professions in California. These licenses are necessary to legally practice within that profession, however, licenses from other states are not portable to California. Therefore, when active duty members of the military receive orders to relocate to California, military spouses who travel with their partner may be required to apply for a new license, despite being licensed in a different state. This process can be long, expensive, and onerous, and military spouses may have to undergo this process multiple times, despite have no choice in how often they move.

In 2018 the National Conference of State Legislatures published a series of white papers on the status of licensure across the US. In the paper focused on military and veterans, NCSL notes that 35% of military spouses are employed in fields that require licensure and 22% of military spouses report the lack of licensure portability to be the greatest barrier to employment. Additionally, writing in support of the bill, the US Department of Defense says California is host to over 62,000 active duty military spouses which is over 11% of military spouses DoD-wide.

Existing California law provides some accommodations for military family members and veteran license applicants. DCA boards are required to inquire about the military status of applicants to apply military experience towards licensure, should it be relevant, as well as to expedite licensure for military veterans and spouse of active duty military.

Existing law also requires 7 DCA boards to issue temporary licenses to military spouses, although each board administers these licenses differently. Temporary licenses permit applicants to practice for a limited time, designed to allow the applicant to practice while obtaining the remaining qualifications for permanent licensure. Current temporary licenses issued to military spouses expire 12 months after issuance.

This bill expands temporary licensure for military spouses to all boards under DCA and their corresponding licenses, requiring 22 new boards to issue temporary licenses unless they already have a process in place. As noted in the Assembly Business and Professions Committee Analysis, there may be some implementation issues. Some board licenses relate to a profession or vocation that would not move across state lines or require state-specific primary examinations. Additionally, existing temporary license provisions are generally vague as to the requirements for licensure, providing significant discretion to the boards. Should the bill pass this Committee,

the author may wish to work with the DCA on exclusions as well as amend the bill to include greater specificity to ensure boards are implementing the section as intended.

Arguments in support:

The Department of Defense, echoing many of the arguments in support, states:

“Military spouses are disproportionately affected by state-specific licensure requirements that can cause delays and gaps in employment, with over 34 percent of the working population requiring state licensure to practice in their professions and an annual cross-state relocation rate ten times higher than their civilian counterparts. Accordingly, military spouses experience unemployment and underemployment at significantly higher rates than their civilian peers, which has been compounded by the Covid-19 pandemic.

State policies that enhance existing licensure provisions for military spouses relieve one of the many stressors of frequent military moves by enabling spouses to more quickly transfer their licenses in order to obtain employment in a new state. These policies facilitate greater career sustainability for military spouses, improving their families’ financial security and overall resilience. The need for such policies in California is underscored by the fact that California hosts over 62,000 active duty military spouses, the highest in the U.S. This number represents over eleven percent of military spouses, DoD-wide.”

Arguments in opposition:

The Dental Hygiene Board has submitted a letter opposing the bill unless amended. The board argues that the requirement to issue a license within 30 days is too short, to take into account the board’s other workload, including cyclical increases, and other statutory precedent for a 90-day timelines. The board also says that applicants may not be able to complete necessary training and coursework required of out-of-state applicants to safely practice in California.

The Board of Professional Engineers, Land Surveyors and Geologists also opposes the bill unless amended; they are asking for an amendment that clarifies an applicant must also show they have met that board’s specific requirement under Business and Professions Code Section 115.6 (f) that an applicant for a temporary license pass examinations required by the board.

Current Related Legislation: AB 225 (Gray), which is pending in this Committee, would make changes to temporary licensing provisions proposed under this bill, except it would include veterans within 6 months of separation from active duty and extend the duration of temporary licenses to 18 months.

AB 410 (Fong), would establish the statutory language needed to enter California into the Nurse Licensure Compact, an interstate compact that allows reciprocity for registered nurses that carry a multi-state license issued under the compact. Pending in Assembly Business and Professions Committee.

Prior Legislation: AB 2185 (Patterson) of 2020 would have required each DCA licensing board that does not have an out-of-state license endorsement process to issue a license to an applicant if the applicant is the spouse of an active duty member of the Armed Forces of the United States,

holds a license in good standing and practiced for three of the last five years, passes a California jurisprudence examination, passes a background check, and pays applicable fees. AB 2185 died pending hearing in this Assembly Business and Professions.

AB 2459 (Salas) of 2020 would have made the changes to the temporary licensing provisions proposed under this bill. AB 2459 died pending hearing in the Senate Committee on Business, Professions and Economic Development.

AB 3045 (Gray) of 2020 would have added similar permanent licensing provisions proposed under this bill. AB 3045 died pending hearing in the Senate Committee on Business, Professions and Economic Development.

AB 186 (Maienschein), Chapter 640, Statutes of 2014 first established the temporary license provisions that this bill is amending.

SB 1226 (Correa), Chapter 657, Statutes of 2014 established the requirement that DCA boards expedite applications from honorable discharged veterans and established equivalency in-lieu course requirements for private security officers.

AB 1904 (Block, 2013), Chapter 399, Statutes of 2012 established the requirement that DCA boards expedite the licensing process for spouses of active duty Armed Forces members.

REGISTERED SUPPORT / OPPOSITION:

Support

Beale Military Liaison Council, INC.
California Association for Health Services At Home
California Board of Accountancy
California Defense Community Alliance
City of Yuba City
Military Services in California
San Diego Military Advisory Council (SDMAC)
Travis Community Consortium
U.s. Department of Defense
Yuba Co. Supervisor, Gary Bradford, 4th District

Opposition

Board for Professional Engineers, Land Surveyors, and Geologists (Oppose unless amended.)
Dental Hygiene Board of California (Oppose unless amended.)

Analysis Prepared by: Margaret Lie / M. & V.A. / (916) 319-3550

AB 107 (Salas) Licensure: veterans and military spouses.

As Amends the Law Today (04/30/2021)

SEC. 2. SECTION 1.

Section 115.6 of the Business and Professions Code is amended to read:

115.6.

(a) A (1) *Except as provided in subdivision (i), a board within the department shall, after appropriate investigation, issue the following eligible temporary licenses to an applicant if the applicant a temporary license to practice a profession or vocation to an applicant who* meets the requirements set forth in subdivision ~~(e)~~: (c).

~~(1) Registered nurse license by the Board of Registered Nursing.~~

~~(2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~(3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~(4) Speech-language pathologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.~~

~~(5) Audiologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.~~

~~(6) Veterinarian license issued by the Veterinary Medical Board.~~

~~(7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.~~

~~(8) (2) All Revenues from fees for temporary licenses issued by the Medical Board of California. California Board of Accountancy shall be credited to the Accountancy Fund in accordance with Section 5132.~~

~~(9) All licenses issued by the Podiatric Medical Board of California.~~

(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.

(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

(1) The applicant shall supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) The applicant shall hold a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board.

(3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary license *license*, and that the information submitted in the application is accurate, to the best of the applicant's knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.

(4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.

(5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

(d) A board ~~may adopt regulations necessary to administer this section.~~ *shall issue a temporary license pursuant to this section within 30 days following receipt of the documentation specified in subdivision (c) if the results of the criminal background check do not show grounds for denial.*

(e) A temporary license issued pursuant to this section may be immediately terminated upon a finding that the temporary licenseholder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect the person's eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary licenseholder to immediately cease the practice of the licensed profession upon receipt.

(f) An applicant seeking a temporary license as a civil engineer, geotechnical engineer, structural engineer, land surveyor, professional geologist, professional geophysicist, certified engineering geologist, or certified hydrogeologist pursuant to this section shall successfully pass the appropriate California-specific examination or examinations required for licensure in those respective professions by the Board for Professional Engineers, Land Surveyors, and Geologists.

(g) A temporary license issued pursuant to this section shall expire 12 months after issuance, upon issuance of an expedited license pursuant to Section 115.5, or upon denial of the application for expedited licensure by the board, ~~a standard license, upon issuance of a license by endorsement, or upon issuance of an expedited license pursuant to Section 115.5,~~ whichever occurs first.

(h) A board shall submit to the department for approval, if necessary to implement this section, draft regulations necessary to administer this section by June 15, 2022. These regulations shall be adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(i) (A) This section shall not apply to a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year or is able to receive an expedited license by endorsement with no additional requirements superseding those described in subdivision (c).

(B) This section shall apply only to the extent that it does not amend an initiative or violate constitutional requirements.

SEC. 2.

Section 115.8 is added to the Business and Professions Code, to read:

115.8.

The Department of Consumer Affairs, the Commission on Teacher Credentialing, the Department of Real Estate, and the State Department of Public Health shall compile information on military, veteran, and spouse licensure into an annual report for the Legislature, which shall be submitted in conformance with Section 9795 of the Government Code. The report shall include all of the following:

(a) The number of applications for a temporary license submitted by active duty service members, veterans, or military spouses per calendar year, pursuant to Section 115.6.

(b) The number of applications for expedited licenses submitted by veterans and active duty spouses pursuant to Sections 115.4 and 115.5.

(c) The number of licenses issued and denied per calendar year pursuant to Sections 115.4, 115.5, and 115.6.

(d) The number of licenses issued pursuant to Section 115.6 that were suspended or revoked per calendar year.

(e) The number of applications for waived renewal fees received and granted pursuant to Section 114.3 per calendar year.

(f) The average length of time between application and issuance of licenses pursuant to Sections 115.4, 115.5, and 115.6 per board and occupation.

SEC. 3.

Section 5132 of the Business and Professions Code is amended to read:

5132.

(a) All moneys received by the board under this chapter from any source and for any purpose and from a temporary license issued under Section 115.6 shall be accounted

for and reported monthly by the board to the Controller and at the same time the moneys shall be remitted to the State Treasury to the credit of the Accountancy Fund.

(b) The secretary-treasurer of the board shall, from time to time, but not less than once each fiscal year, prepare or have prepared on ~~his or her~~ *their* behalf, a financial report of the Accountancy Fund that contains information that the board determines is necessary for the purposes for which the board was established.

(c) The report of the Accountancy Fund, which shall be published pursuant to Section 5008, shall include the revenues and the related costs from examination, initial licensing, license renewal, citation and fine authority, and cost recovery from enforcement actions and case settlements.

SEC. 4.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.

MEMORANDUM

DATE	April 29, 2020
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(c)(3) – SB 731 (Durazo) Criminal records: relief

Background:

Among other things, this bill amends section 11105 of the Penal Code which would prohibit the Board from receiving conviction information for applicants to the Board if their conviction was granted relief pursuant to sections 1203.4, 1203.4(a), 1203.41, 1203.42, or 1203.49 of the Penal Code, so long as a period of two years has elapsed since the date the relief was granted and the applicant was not convicted of a new criminal offense.

This bill would have a large impact on the Board of Psychology's licensing and enforcement programs, and it would hinder the Board's ability to carry out its legislative mandate of consumer protection. Currently, the Board completes an enforcement review for every applicant with a criminal history, determines whether the crimes committed are substantially related to the duties of licensure. This bill would significantly diminish the Board's ability to make these determinations without access to the necessary conviction information.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to **Oppose** SB 731 (Durazo).

On 4/2/2021, the Board approved the Legislative and Regulatory Affairs Committee recommendation to **Oppose** SB 731 (Durazo).

Location: Senate Committee on Appropriations

Status: 4/20/2021 Read second time and amended. Re-referred to Committee on Appropriations. Set for hearing on May 3, 2021.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Board Letter of Opposition to Public Safety Committee

Attachment B: Senate Public Safety Committee Analysis

Attachment C: SB 731 (Durazo) Bill Text

April 13, 2021

The Honorable Steven Bradford
Chair, Senate Committee on Public Safety
State Capitol, Room 2031
Sacramento, CA 95814

RE: SB 731 (Durazo) – Criminal Records: Relief

Dear Senator Bradford:

The Board of Psychology (Board) regrets to share our OPPOSE position on SB 731 (Durazo). This bill would significantly impair the Board's ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly undermine the Board's ability to carry out its mission of consumer protection.

Specifically, SB 731 (Durazo) would implement a system to prospectively and retroactively seal criminal and arrest records and would require the Department of Justice, beginning on January 1, 2022, to archive all criminal records. These archived criminal records would not be included in any state or federal summary criminal history provided by the department, except if compliance with applicable federal law requires the inclusion.

The bill would diminish the Board's ability to adequately protect the health and safety of California consumers of psychological services by removing the Board's ability to review and evaluate a current licensee's arrest and conviction information for the purposes of approving an application for licensure. Such arrest records have provided a comprehensive proof of an applicant's ability to practice without harm to the public. For example, an initial arrest record has revealed instances of domestic violence that might not have been shared with the Board previously. While these types of arrest warrants are usually dropped, some arrest reports include information regarding substance abuse or cognitive issues. We have seen arrests for possession of child pornography, indecent exposure, stalking, possession of drugs and violating a restraining order. These types of reports provide a holistic view of an applicant in the context of consumer protection and are vital to our vetting process.

Due to the bill's weakening of the consumer protections integral to the Board's enforcement processes and the bill's undermining of the Board's legislative mandate of consumer protection, the Board asks for a "**No**" vote on SB 731 (Durazo).

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113.

Sincerely,



SEYRON FOO
President, Board of Psychology

cc: Senator Steven Bradford (Chair)
Senator Ochoa Bogh (Vice Chair)
Assemblymember Durazo
Members of the Public Safety Committee
Kapri Walker, Consultant, Senate Committee on Public Safety

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 731 **Hearing Date:** April 13, 2021
Author: Durazo
Version: April 5, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal records: relief*

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 118 (Budget) Chapter 29, Stats. 2020
AB 1076 Ting Chapter 578, Stats. 2019
AB 2438 (Ting), 2018, held in Assembly Appropriations
AB 2599 (Holden), Ch. 653, Stats. 2018
AB 1793 (Bonta), Ch. 993, Stats. 2018
AB 1008 (McCarty), Ch. 789, Stats. 2017
SB 393 (Lara), Ch. 680, Stats. 2017
SB 513 (Hancock), Ch. 798, Stats. 2013
SB 599 (Perata), Ch. 792, Stats. 2003

Support: A New Way of Life Re-entry Project; Alliance of Californians for Community Empowerment (ACCE) Action; American Civil Liberties Union/northern California/Southern California/san Diego and Imperial Counties; Arts for Healing and Justice Network; Asian Americans Advancing Justice – California; Asian Solidarity Collective; Bend the Arc: Jewish Action; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; California Immigrant Policy Center; California Labor Federation, Afl-cio; California Public Defenders Association (CPDA); California Religious Action Center of Reform Judaism; Californians United for a Responsible Budget; Cat Clark Consulting Services LLC; Code for America; Communities United for Restorative Youth Justice (CURYJ); Community Works; Courage California; Dream Corps; Drug Policy Alliance; Ella Baker Center for Human Right; Family Reunification, Equity and Empowerment Project; Family Reunification, Equity & Empowerment; Forward Impact Db a Represent Justice; Fresno Barrios Unidos; Friends Committee on Legislation of California; Homeboy Industries; Initiate Justice; Inland Empire Fair Chance Coalition; Inland Equity Partnership; Last Prisoner Project; Law Enforcement Action Partnership; Legal Aid At Work; Legal Services for Prisoners With Children; Los Angeles Regional Reentry Partnership; National Association of Social Workers, California Chapter; Phenomenal Angels of The Community; Pillars of The Community; Re:store Justice; Rubicon Programs; San Francisco Public Defender; Shields for Families; Showing Up for Racial Justice (SURJ) Bay Area; Showing Up for Racial Justice (SURJ) San Diego; Showing Up for Racial Justice North County; Social & Environmental Justice Committee of The Universalist Unitarian Church of

Riverside; Starting Over INC.; Team Justice; Think Dignity; The Reverence Project; Tides Advocacy; Time for Change Foundation; Transition Clinic Network; Uncommon Law; Underground Scholars Initiative Berkeley; We the People - San Diego

Opposition: California Association of Licensed Investigators; Peace Officers Research Association of California (PORAC)

PURPOSE

The purpose of this bill is to permit additional relief by way of withdrawing a plea and deleting arrest records for the purpose of most criminal background checks.

Existing law provides that on a monthly basis the Department of Justice (DOJ) shall review the records in the statewide criminal databases and shall identify persons with records of arrest that are eligible for arrest record relief, with no requirement that the person file a motion seeking relief. A person is eligible for relief if the arrest occurred on or after January 1, 2021 and meets any of the following conditions:

- The arrest was for a misdemeanor and the charge dismissed.
- The arrest was for a misdemeanor and no criminal proceedings have been initiated one year from the date of the arrest.
- If the arrest was for a jail felony, punishable by 8 or more years and no proceedings have been initiated 3 years after the date of the arrest, and no conviction occurred, or the arrestee was acquitted of the charges.
- If the person successfully completed a specified diversion program.

The relief granted is subject to the following conditions:

- It does not relieve a person of an obligation to disclose an arrest in an application for employment as a peace officer.
- It does not limit the ability of a criminal justice agency to access the arrest information.
- It does not limit the ability of a district attorney to prosecute for the offense if it is within the statute of limitations.
- It does not impact a person's authorization to own or possess a firearm
- It does not impact any prohibition on holding public office.
- It does not impact licensing for foster homes and similar facilities.
- It does not limit other motions for relief. (Penal Code Section 851.93)

This bill also makes an arrest for a felony and there is no indication that the criminal proceeding has been initiated at least 3 years after the arrest eligible for relief and also amends existing law to provide that if the arrest was for a jail or prison felony with a sentence of 8 or more years shall be eligible for relief when no criminal proceedings have happened 6 years after the arrest.

Existing law provides that if a person is sentenced to a jail felony, the court, in its discretion, in the interest of judgement may allow a person to withdraw their guilty plea and enter a plea of not guilty and the court shall set aside the verdict and dismiss the accusations or information against the defendant when specified conditions are met. The relief shall be not be granted unless the

prosecuting attorney has been given 15 days' notice of the petition for relief. (Penal Code Section 1203.41)

This bill makes Penal Code Section 1203.41 apply to all felonies not just jail felonies and provides that if the defendant was on mandatory supervision, the parole officer shall notify the prosecuting attorney when a petition is filed.

Existing law provides that commencing July 1, 2022, and subject to a Budget appropriation, on a monthly basis, the DOJ shall review records in the statewide criminal justice databases and shall identify person with convictions that meet specified criteria and are eligible for automatic conviction relief. A person is eligible for relief if they meet all of the following conditions:

- The person is not required to register as a Sex Offender.
- The person does not have an active record for local, state, or federal supervision in the Supervised Release file.
- Based on the information available, it does not appear the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.
- There is no indication that the conviction resulted in a sentence of incarceration in state prison.
- The conviction occurred on or after January 1, 2021 and the defendant either was sentenced to probation and appears to have completed their term of probation without revocation or, the defendant was convicted of an infraction or misdemeanor, was not granted probation, and at least one calendar year has passed since the date of judgement. (Penal Code Section 1203.425(a)(1))

This bill deletes the prohibition on granting relief if the person was incarcerated in the state prison.

This bill adds an additional criteria for relief providing for relief if the conviction occurred on or after January 1, 1973, the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based on the disposition date and the sentence specified in DOJ's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole.

Existing law provides that automatic conviction record relief is subject to the following conditions:

- It does not relieve a person of the obligation to disclose a conviction when applying to be a peace officer.
- It does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire for public office or for contracting with the California State Lottery Commission
- It does not affect a person's authorization to own, possess, etc. a firearm.
- It does not affect a prohibition from holding public office that would otherwise apply as a result of the conviction.
- It does not affect the authority to receive, or take action based on, criminal history information including the authority to receive certified court records.
- It does not make eligible a person otherwise ineligible to provide in-home supportive services.

- It may still act as a prior for future arrests and convictions. (Penal Code Section 1203.425(a)(3))

This bill in addition provides that relief granted does not release the defendant from the terms and conditions of any unexpired criminal protective orders.

Existing law provides that the DOJ shall maintain the state summary criminal history information which is the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person. (Penal Code Section 11105(a))

Existing law specifies how, what and to whom criminal history information shall be distributed by the DOJ to an entity to check the background of a potential or current employee or volunteer. What criminal history is released differs based on the employer or volunteer organization and is specified in law. (Penal Code Section 11105(b)-(u))

This bill states that commencing July 1, 2022, notwithstanding any other law, state or federal summary criminal history furnished by DOJ shall not include any of the following information;

- Records of arrest that were granted relief under Section 851.93, if 2 years has passed since that relief was granted and there was no new conviction for a felony offense.
- Records granted relieve under numerous sections to expunge, change a plea, seal a record etc. and if 2 years have passed and there is no new conviction for a felony offense.

This bill provides that the above does not apply to any of the following:

- Any record for which the subject is required to register as a Sec Offender, has an active record for state, local, or federal supervision in the Supervised Release File, or it appears as if the person Is currently serving a sentence for an offense or there is an indication of a pending criminal charge.
- Records that are given to the courts, district attorneys, peace officers, probation or parole officers , public defenders for peace officer certification or employment at a criminal justice agency.
- If the dissemination is required by federal law.
- The furnishing of records relating to the regulation of firearms.
- The furnishing of records to the subject of the records.
- Records of specified assault offenses when they are being distributed to an agency licensing a community care facility or foster home or similar.

COMMENTS

1. Need for This Bill

According to the author:

Nationally, an estimated 70 million people (nearly one in three adults, and 8 million people in California alone) have a past arrest or conviction on their record.¹ The vast majority of people with convictions have long finished their sentence in prison, jail, parole or probation and exited the ‘deepest end’ of the justice system.

Despite the data on recidivism, California still maintains these records until the person reaches 100 years of age. Due to the widespread usage of background checks in today's society, the availability of these records activate thousands of barriers for one quarter of the state's population resulting in chronic housing insecurities, long-term unemployment, and widespread lack of civic participation. These collateral consequences disproportionately affect Black and Latino communities and have become one of the leading drivers of multi-generational poverty.

2. Automatic Arrest Record Relief

AB 1076 Ting Chapter 578, Statutes 2019, created a process for the automatic arrest record relief for people arrested for a misdemeanor or for a jail felony when the charges were dismissed or enough time has passed that it is clear there is not intent for criminal proceedings to go forward.. Dependent on an appropriation in the budget, the relief will be automatic based on a monthly review by the Department of Justice (DOJ) starting January 1, 2021. Even if relief granted relief, a person will still be required to disclose the arrest or the arrest information can still be used for specified circumstances such as applying to become a peace officer or having a foster car license evaluated.

This bill would expand those eligible for relief to those arrested for any felony not just those for which the sentence is county jail. If the felony sentence can be more than eight years relief shall not be granted until six years have passed, otherwise relief may be granted after three years have passed.

3. Automatic conviction relief

SB 1076 (Ting) also created a process for automatic conviction relief. Specifically, the law requires DOJ, starting on January 1, 2021, to review its records and identify persons with convictions eligible for conviction record relief. If granted this relief, the state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted" listing the date that the department granted the relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

A person is eligible is not eligible for relief if the person was sentenced to state prison. A conviction is eligible if the defendant was sentenced to probation and based on information the DOJ has probation was completed without a revocation or the defendant was convicted of an infraction or misdemeanor and not granted probation but based on the information the DOJ has the defendant appears to have completed their judgement a year has elapsed.

This bill deletes the prohibition on relief for a person sentenced to prison and specifically allows relief for a person convicted of a felony after January 1, 1973 and based on the information the DOJ has completed all terms of incarceration, probation, mandatory supervision postrelease supervision and parole.

The relief granted does not remove a number of obligations and prohibitions, including: disclosing the conviction when applying to be a peace officer; disclosing the conviction when contracting with the State Lotter or applying for public office; a criminal justice agency can still use the records; it does not impact motions or appeals related to the conviction; does not change

prohibitions related to firearms; does not change actions relating to a foster care agency or home supportive services; and, it can still act as a prior.

This bill further adds that the bill does not impact a protective order.

Should a person convicted of a felony, for which they were not granted probation, be eligible for automatic relief by the DOJ?

4. Court conviction relief

Existing law also creates a process for conviction record relief. A court may, in the interests of justice, order relief for a person convicted of a jail felony. This bill expands that provision to include any felony. If relief is granted the court may permit a person to withdraw his or her plea of guilty and the defendant shall be released from any penalties and disabilities related to the offense. The relief can only come after one or two years after the completion of the sentence, depending on the underlying sentences and a person cannot be on parole or under supervision. Notice must be served on the prosecutor 15 days prior to the petition and this bill provides that if the person was on mandatory supervision, the probation officer shall notify the prosecuting attorney and if the person was on parole the parole officer shall notify the prosecuting attorney.

Why have probation and parole notice the prosecutor and not the person requesting the relief?

The relief granted is subject to some limitations: it can still be used as a prior for a future conviction; they must still disclose the conviction in response to a direct question for public office, for licensure by any state or local agency, or for contracting with the State Lottery; it does not change any prohibition on gun ownership; and, it does not change any limitation on holding public office.

Are there any other purposes for which a former conviction should be disclosed?

5. Background checks

Under existing law, DOJ is the keeper of criminal history and the law sets forth to whom criminal history and for what purposes criminal history, based on a fingerprint check along with other identifying information, can be released. Fingerprint based DOJ background checks are authorized to be used for numerous employment, licensing and volunteer purposes. What part of a criminal history is released is outlined in the law and varies depending on the type of employment etc.

This bill provides that notwithstanding any other law, the criminal history furnished by DOJ shall not include records where relief was granted if at least two years has passed and there has been no new offense. Exceptions to this prohibition include: records for which a person has to register as a sex offender; records to a criminal justice agency for peace officer employment or employment at a criminal justice agency; firearm background checks; if dissemination is required by federal law; information for licensing of a foster home etc.

It is not clear if this section would allow a defense attorney to get the information on their client, should access by those in the criminal justice system be clarified that it is allowed for more than just employment? Are there more circumstances in which records granted relief should be released? The state has a number of licensing boards. There is also the Medical Board and the State Bar.

Could some of these records be specifically related to a license a person is seeking and may be relevant? Does the federal exception cover background checks required by Federally Insured Banks?

6. Argument in Support

Californians for Safety and Justice the sponsor of this bill states:

Nationally, an estimated 70 million people—nearly one in three adults, and 8 million people in California alone— have a past arrest or conviction on their record. California maintains an individual’s criminal records until that person reaches 100 years of age. As a result of the widespread usage of background checks in today’s society, the permanence of these records present thousands of barriers resulting in widespread constraints on civic participation.

Examples of these barriers are felt by families seeking to live outside of impoverished areas, individuals that want careers in education or healthcare, others who want to coach, homeowners that want to join their HOA board, couples that want to adopt, or grandchildren that want to care for their elderly grandparent. Old criminal records go beyond economics and into denial of human decency, family responsibility, and basic citizenship.

Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a cost of \$20 billion annually to California’s economy. Nationally, it has been estimated that the U.S. loses roughly \$372.3 billion per year in terms of gross domestic product due to employment losses among people living with convictions.

SB 731 proposes a structured, automated approach to sunseting criminal records. Automated sealing of all arrest records that do not result in conviction, and phased relief for convictions records, expand record sealing to all sentences following completion of terms of incarceration, post-release supervision, and an additional period of time - provided the person has completed their sentence without any new felony convictions and has no new charges pending. For the reasons listed above, Californians for Safety and Justice is proud to co-sponsor SB 731.

7. Argument in Opposition

Peace Officers Research Association of California Opposes this bill stating:

Current law authorizes a defendant who was sentenced to a county jail for the commission of a felony and who has met specified criteria to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty after the completion of their sentence. Current law requires the court to dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense, except as specified. This bill would make this relief available to a defendant who has been convicted of any felony.

PORAC believes that by expanding the relief of penalties for all felonies, we are placing our communities at risk. Oftentimes, felony crimes are violent and leave behind innocent victims whose lives will never be the same. By allowing violent criminals back on the street, with their record dismissed, they will have less deterrent to commit another crime. Thus, leaving more victims in their wake. If the author is willing to amend the bill to exclude violent criminals, we would be inclined to remove our opposition.

-- END --

SB 731 Durazo Criminal records: relief.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 851.93 of the Penal Code is amended to read:

851.93.

(a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 2021, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) (i) The arrest was for a felony offense not described in clause (ii), there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

~~(C) (ii) The~~ *If the* arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of ~~in the state prison for eight years or more or by imprisonment pursuant to~~ subdivision (h) of Section 1170, ~~1170 for eight years or more,~~ there is no indication that criminal proceedings have been initiated, at least ~~three calendar~~ six years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in *subdivision (d) of* Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) A diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to *all of* the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) This section does not limit the ability of a district attorney to prosecute, within the applicable statute of limitations, an offense for which arrest relief has been granted pursuant to this section.

(4) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of

Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(5) Relief granted pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(6) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section does not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish *on the OpenJustice Web portal, as described under Section 13010*, statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a ~~disposition, on the OpenJustice Web portal, as defined in Section 13010.~~ *disposition.*

(g) This section shall be operative commencing July 1, 2022, subject to an appropriation in the annual Budget Act.

SEC. 2.

Section 1203.41 of the Penal Code is amended to read:

1203.41.

(a) If a defendant is ~~sentenced pursuant to paragraph (5) of subdivision (h) of Section 1170,~~ *convicted of a felony*, the court, in its discretion and in the interests of justice, may order the following relief, subject to the conditions of subdivision (b):

(1) The court may permit the defendant to withdraw ~~his or her~~ *their* plea of guilty or plea of nolo contendere and enter a plea of not guilty, or, if ~~he or she~~ *the defendant* has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and, in either case, the court shall ~~thereupon~~ dismiss the accusations or information against the defendant and ~~he or she~~ *the defendant* shall thereafter be released from all penalties and disabilities resulting from the offense of which ~~he or she~~ *has* ~~has~~ *they have* been convicted, except as provided in Section 13555 of the Vehicle Code.

(2) The relief available under this section may be granted only after the lapse of one year following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, or after the lapse of two years following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section ~~4470.~~ *1170 or if the defendant was sentenced to the state prison.*

(3) The relief available under this section may be granted only if the defendant is not *on parole or* under supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, and is not serving a sentence for, on probation for, or charged with the commission of any offense.

(4) The defendant shall be informed, either orally or in writing, of the provisions of this section and of ~~his or her~~ *their* right, if any, to petition for a certificate of rehabilitation and pardon at the time ~~he or she is~~ *they are* sentenced.

(5) The defendant may make the application and change of plea in person or by attorney, or by a probation officer authorized in writing.

(b) Relief granted pursuant to subdivision (a) is subject to *all of* the following conditions:

(1) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the accusation or information had not been dismissed.

(2) The order shall state, and the defendant shall be informed, that the order does not relieve ~~him or her~~ *them* of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(3) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in ~~his or her~~ *their* custody or control any firearm or prevent ~~his or her~~ *their* conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(4) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(c) This section applies to any conviction specified in subdivision (a) that occurred before, on, or after January 1, ~~2014~~ *2021*.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in

which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this ~~section~~ *section, if the defendant was on mandatory supervision. The parole officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section, if the defendant was on parole.*

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney ~~may~~ *shall* not move to set aside or otherwise appeal the grant of that petition.

SEC. 3.

Section 1203.425 of the Penal Code is amended to read:

1203.425.

(a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) ~~Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison. The conviction meets either of the following criteria:~~

~~(v) (I) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:~~

~~(I) (ia) The defendant was sentenced to ~~probation~~ *probation*, and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.~~

~~(H)~~ (ib) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(II) The conviction occurred on or after January 1, 1973, the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based upon the disposition date and the sentence specified in the department's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(H) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(I) In a subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.

(J) Relief granted pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective orders that have been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections ~~1203.4 and 1204.4a~~, 1203.4, 1203.4a, 1016.5, and 1473.7.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of

convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting ~~attorney or probation department~~ *attorney, probation department, or the Department of Corrections and Rehabilitation* may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the *Department of Corrections and Rehabilitation*, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, reliable, and relevant.

(4) The ~~prosecutor or probation department~~ *prosecutor, probation department, or Department of Corrections and Rehabilitation* has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the ~~prosecutor or probation department~~ *prosecutor, probation department, or the Department of Corrections and Rehabilitation*, has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

SEC. 4.

Section 11105 of the Penal Code is amended to read:

11105.

(a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints ~~to~~ *to*, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as ~~defined~~ *described* in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may perform state and federal criminal history information checks as provided for in subdivision (u). The Department of Justice shall provide a state or federal response to the agency, officer, or official pursuant to subdivision (p).

(11) A city, county, city and county, or district, or an officer or official thereof, if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city, county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state ~~entity~~ entity," and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) A peace officer of the state other than those included in subdivision (b).

(3) An illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) A peace officer of another country.

(5) Public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) A person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) An individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on their own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on their own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section ~~shall not be construed as imposing~~ *does not impose* a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the

Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) A campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) A foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in ~~(1)~~ a transcript or record of a judicial or administrative proceeding or ~~(2)~~ any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision (v) and notwithstanding* any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision (v) and notwithstanding* any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision (v) and notwithstanding* any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and *except as otherwise provided in subdivision (v), and* notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision (v) and notwithstanding* any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision (v) and notwithstanding* any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49. The Commission on Teacher Credentialing shall receive every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions ~~(k), (l), (m), (n), (o), and (p)~~ (k) to (p), inclusive, may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

~~(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to~~ shall be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(u) (1) If a fingerprint-based criminal history information check is required pursuant to any statute, that check shall be requested from the Department of Justice and shall be applicable to the person identified in the referencing statute. The agency or entity identified in the statute shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of the types of applicants identified in the referencing statute, for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of the state or federal arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

(2) If requested, the Department of Justice shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history information check. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and compile and disseminate a response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute.

(3) The Department of Justice shall provide a state- or federal-level response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute, pursuant to the identified subdivision.

(4) The agency or entity identified in the referencing statute shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2, for persons described in the referencing statute.

(5) The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the request described in this subdivision.

(v) (1) Commencing July 1, 2022, notwithstanding any other law, state or federal summary criminal history furnished by the department pursuant to this section shall not include the following information:

(A) Records of arrest that were granted relief under Section 851.93, if a period of at least two calendar years have passed since the date on which relief was granted under Section 851.93, during which the subject of the record was not convicted of a new felony offense.

(B) Records granted relief under Section 1203.425, or Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, if a period of two years has elapsed since the date on which relief was granted under Section 1203.425, or Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, during which the subject of the record was not convicted of a new felony offense.

(2) Paragraph (1) does not apply to any of the following:

(A) Any record in which the subject of the record is required to register pursuant to the Sex Offender Registration Act, has an active record for local, state, or federal supervision in the Supervised Release File, or, based on the information available in the department's record, it appears the person is currently serving a sentence for an offense or there is an indication of pending criminal charges.

(B) The furnishing of state summary criminal history information pursuant to paragraphs (1) to (9), inclusive, of subdivision (b), for any purpose permitted under this section.

(C) If dissemination of records identified by paragraph (1) is required by federal law.

(D) The furnishing of state summary criminal history information for the purposes related to the regulation of firearms.

(E) The furnishing of state summary criminal history information pursuant to paragraph (12) of subdivision (b).

(F) Records of arrests or conviction for Section 220, 243.4, or 264.1, subdivision (a) of Section 273a, or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273ab, 273d, 273.5, 288, or 289, subdivision (c) of Section 290, or Section 368, if furnished when responding to an application by an authorized agency or organization pursuant to Section 1522 of the Health and Safety Code or a statute that incorporates the criteria of any of that section by reference.

SEC. 5.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(c)(4) – SB 772 (Ochoa Bogh): Professions and vocations: citations: minor violations.

Background:

This bill would prohibit the assessment of an administrative fine for a minor violation and would specify that a violation shall be considered minor if it meets specified conditions, including that the violation did not pose a serious health or safety threat and there is no evidence that the violation was willful.

On 3/19/2021, the Legislative and Regulatory Affairs Committee voted to recommend the Board take an **Oppose Unless Amended** position on SB 772 (Ochoa Bogh).

On 4/2/2021, the Board voted to adopt the **Oppose Unless Amended** recommendation made by the Legislative and Regulatory Affairs Committee.

Staff has learned that SB 772 will be a two-year bill.

Location: Business, Professions and Economic Development Committee.

Status: Set for hearing on April 19, 2021. Cancelled at the Author's request.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Board Letter of Oppose unless Amended to Business, Professions & Economic Development Committee

Attachment B: Senate Business, Professions & Economic Development Committee Analysis

Attachment C: SB 772 (Ochoa Bogh) Bill Text

April 12, 2021

The Honorable Richard Roth
Chair, Assembly Committee on Business, Professions and Economic Development
State Capitol, Room 2053
Sacramento, CA 95814

**RE: SB 772 (Ochoa Bogh) – Professions and vocations: citations: minor violations
– OPPOSE UNLESS AMENDED**

Dear Senator Roth:

At its April 2, 2021 meeting, the Board of Psychology (Board) adopted an **OPPOSE UNLESS AMENDED** position on SB 772 (Ochoa Bogh).

The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

The Board is requesting the removal of the Board of Psychology, as this bill would prohibit the assessment of an administrative fine for a minor violation. While violations may be deemed minor, violations speak to the character of the licensee and thus all violations should be addressed as part of a larger context.

If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Jason Glasspiegel, at (916) 574-7137 or Jason.glasspiegel@dca.ca.gov. Thank you.

Sincerely,



Seyron Foo
President, Board of Psychology

cc: Senator Melendez (Vice Chair)
Members of the Senate Committee on Business, Professions & Economic Development
Sarah Mason, Consultant, Senate Committee on Business, Professions & Economic Development
Senate Republican Caucus

This bill prohibits a licensee from being assessed an administrative fine for a violation of their applicable licensing act, or any regulation adopted pursuant to the act, if the violation is a minor violation. Defines minor violation as:

- a) One that did not pose a serious health or safety threat.
- b) There is no evidence that the violation was willful.
- c) The licensee was not on probation at the time of the violation.
- d) The licensee does not have a history of committing the violation.
- e) The licensee corrects the violation within 30 days from the date notice of the violation is sent to the licensee.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this bill. According to the Author, “Existing Business and Professions law is extremely nuanced and difficult for a small business owner, who does not have a full legal team at their disposal, to interpret and implement. Additionally, because the boards and bureaus that fall under the Department of Consumer Affairs disseminate the information as well as enforce the law through fines, business owners are not incentivized to engage with the DCA to ensure their implementation of the law is accurate, out of fear they will be penalized. This bill allows the boards and bureaus to engage with the business owner or licensee in order to fix the small violation in a productive manner. Additionally, this bill directs the boards and bureaus to determine the violations that qualify as minor so that no egregious violation is without monetary consequence.”
2. **DCA Programs and Enforcement.** Within the DCA are 38 entities, including 26 boards, eight bureaus, two committees, one program, and one commission (hereafter “boards” unless otherwise noted). Collectively, these boards regulate more than 100 types of businesses and 200 different industries and professions. As regulators, these boards perform two primary functions:
 - Licensing—which entails ensuring only those who meet minimum standards are issued a license to practice, and
 - Enforcement—which entails investigation of alleged violations of laws and/or regulations and taking disciplinary action, when appropriate.

The various practice acts governing boards and bureaus outline the functions for these regulatory bodies to investigate complaints and take disciplinary action against licensees when those licensees have engaged in activities that harm the public.

Investigations by board or bureau staff that determine a licensee has committed a minor violation that does not warrant formal disciplinary action against a license can result in discipline like a citation and fine. Most programs have an informal and internal process for these types of actions.

3. **Related Legislation.** SB 102 (Melendez) is an urgency measure that prohibits the Department of Consumer Affairs (DCA), certain boards within the DCA, and the Department of Alcoholic Beverage Control (ABC) from revoking a license or imposing a fine or penalty for failure to comply with any COVID-19 state of emergency orders or COVID-19 stay-at-home orders unless the board or department can prove that lack of compliance resulted in transmission of COVID-19. (Status: *The measure failed passage in this committee and is pending reconsideration.*)

SB 430 (Borgeas) establishes the California Small Business Regulatory Fairness Act, which requires a state agency to establish a policy to provide to reduce or waive civil penalties for small businesses that violate certain regulatory or statutory requirements, under certain circumstances. Requires a state agency that establishes a policy to report to the Office of Small Business Advocate and list certain data about the numbers of small businesses that qualified for reductions or waivers on the agency's website. (Status: *The measure is pending in the Senate Committee on Appropriations*)

4. **Arguments in Support.** The National Federation of Independent Business writes that "California businesses are confronting the worst economic challenges since the Depression, with 2.5 million Californian's filing for unemployment during the pandemic. California small businesses and the communities they serve are especially impacted by employer mandates, particularly in the most distressed parts of the state...Businesses are just opening. People are still out of work. Small business employ over one-half of the private workforce. California is battling a health crisis, but also needs to recover a crippled economy. Small business is the backbone of the California economy."

According to the Professional Beauty Federation of California, "...this measure will help elevate the professionalism of our industry by having our State Board regulators encourage/educate our licensed professionals rather than punish them for minor violations that do not involve the health/safety of their public patrons."

The Southwest Legislative Counsel believes this bill "will provide financial relief to businesses and licensed professionals by allowing them to correct minor violations without being subject to a monetary penalty."

5. **Arguments in Opposition.** The Board of Psychology asks to be removed from the bill "as this bill would prohibit the assessment of an administrative fine for a minor violation. While violations may be deemed minor, violations speak to the character of the licensee and thus all violations should be addressed as part of a larger context."

The Board for Professional Engineers, Land Surveyors, and Geologists says that this bill "would usurp the Board's authority to determine the appropriate penalty to

be ordered based on the specific facts obtained during the investigation of violations of the laws and regulations under the Board's jurisdiction...The licensure laws were created to protect the "health, safety, and welfare of the public," and violations of the laws are threats to the health, safety, and welfare of the public. One way to address violations, especially the less serious ones, and still protect the health, safety, and welfare of the public, is to issue citations containing orders to pay administrative fines to licensees who violate the laws. Issuing a citation puts the licensee on notice of the violation so that they will understand the requirements of the law and ensure they comply in the future; including as a penalty the requirement to pay a fine also helps to reinforce this."

According to the California Acupuncture Board, "The majority of the causes for citations and fines meet the proposed criteria for a minor violation set by the bill. The purpose of a fine is to make the licensee more accountable in complying with any possible orders of abatement through the citation. The Board has concern that without the authority to fine for minor violations, there won't be as much incentive for the licensee to comply."

- 6. Precedent and Parity.** Licensees are subject to laws set forth in practice acts and enforced by regulatory bodies, but also agree to comply with all laws. The bill is broadly drafted and as such, applies to all of the millions of DCA licensees, including physicians and surgeons, private postsecondary education institutions, boxing referees, contractors, nurses, and cosmetologists, to name a few. While the Author's intention is to help small businesses, not all DCA licensees are small businesses and there are not categorizations to always differentiate which of the many millions of licensees is a small business or independent operator. The bill instead creates a pathway for all licensees to opt to just not comply with terms of their license. Holding a license implies that the licensee knows the laws outlined in a practice act and it is not clear why the Legislature would absolve licensees of accountability for not complying with the rules.

SUPPORT AND OPPOSITION:

Support:

National Federation of Independent Business
Professional Beauty Federation of California
Southwest California Legislative Council

Opposition:

Board for Professional Engineers, Land Surveyors, and Geologists
California Acupuncture Board
California Board of Psychology

SB 772 (Ochoa Bogh) Professions and vocations: citations: minor violations.

As Amends the Law Today

SECTION 1.

Section 125.9 of the Business and Professions Code is amended to read:

125.9.

(a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if the licensee desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine or comply with an order of abatement, or both, within 30 days of the date of assessment or order, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed

fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine and compliance with the order of abatement, if applicable, shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

(f) A licensee shall not be assessed an administrative fine for a violation of the applicable licensing act or any regulation adopted pursuant to the act if the violation is a minor violation. A violation shall be considered minor if all of the following conditions are satisfied:

(1) The violation did not pose a serious health or safety threat.

(2) There is no evidence that the violation was willful.

(3) The licensee was not on probation at the time of the violation.

(4) The licensee does not have a history of committing the violation.

(5) The licensee corrects the violation within 30 days from the date notice of the violation is sent to the licensee.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(1) – AB 29 (Cooper): State bodies – meetings.

Background:

This bill would expand the Bagley-Keene Open Meeting Act requirements to include all writings or materials provided for the noticed meeting be made available on the state body's internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier.

Location: 4/21/2021 Assembly Committee on Appropriations.

Status: 4/21/2021 In committee: Set, first hearing. Referred to suspense file.

Action Requested:

Staff recommends the Board watch AB 29 (Cooper).

Attachment A: AB 29 (Cooper) Bill Text

ASSEMBLY BILL

No. 29

**Introduced by Assembly Member Cooper
(Coauthor: Assembly Member Blanca Rubio)**

December 7, 2020

An act to amend Section 11125 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 29, as introduced, Cooper. State bodies: meetings.

Existing law, the Bagley-Keene Open Meeting Act, requires that all meetings of a state body, as defined, be open and public, and that all persons be permitted to attend any meeting of a state body, except as otherwise provided in that act. Existing law requires the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, as provided, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting.

This bill would require that notice to include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. The bill would require those writings or materials to be made available on the state body's internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier. The bill would prohibit a state body from discussing those writings or materials, or from taking action on an item to which

those writings or materials pertain, at a meeting of the state body unless the state body has complied with these provisions.

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

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

1 SECTION 1. Section 11125 of the Government Code is
2 amended to read:

3 11125. (a) The state body shall provide notice of its meeting
4 to any person who requests that notice in writing. Notice shall be
5 given and also made available on the ~~Internet~~ *state body's internet*
6 *website* at least 10 days in advance of the ~~meeting~~, *meeting* and
7 shall include the name, address, and telephone number of any
8 person who can provide further information ~~prior to~~ *before* the
9 ~~meeting~~, *meeting* but need not include a list of witnesses expected
10 to appear at the meeting. The written notice shall additionally
11 include the address of the ~~Internet site~~ *internet website* where
12 notices required by this article are made available.

13 (b) The notice of a meeting of a body that is a state body shall
14 include a specific agenda for the meeting, containing a brief
15 description of the items of business to be transacted or discussed
16 in either open or closed session. A brief general description of an
17 item generally need not exceed 20 words. A description of an item
18 to be transacted or discussed in closed session shall include a
19 citation of the specific statutory authority under which a closed
20 session is being held. No item shall be added to the agenda
21 subsequent to the provision of this notice, unless otherwise
22 permitted by this article.

23 (c) (1) *A notice provided pursuant to subdivision (a) shall*
24 *include all writings or materials provided for the noticed meeting*
25 *to a member of the state body by the staff of a state agency, board,*
26 *or commission, or another member of the state body that are in*
27 *connection with a matter subject to discussion or consideration*
28 *at the meeting.*

29 (2) *The writings or materials described in paragraph (1) shall*
30 *be made available on the state body's internet website, and to any*
31 *person who requests the writings or materials in writing, on the*
32 *same day as the dissemination of the writings and materials to*

1 *members of the state body or at least 72 hours in advance of the*
2 *meeting, whichever is earlier.*

3 *(3) A state body may not distribute or discuss writings or*
4 *materials described in paragraph (1), or take action on an item*
5 *to which those writings or materials pertain, at a meeting of the*
6 *state body unless the state body has complied with this subdivision.*

7 ~~(e)~~

8 *(d) Notice of a meeting of a state body that complies with this*
9 *section shall also constitute notice of a meeting of an advisory*
10 *body of that state body, provided that the business to be discussed*
11 *by the advisory body is covered by the notice of the meeting of*
12 *the state body, provided that the specific time and place of the*
13 *advisory body's meeting is announced during the open and public*
14 *state body's meeting, and provided that the advisory body's*
15 *meeting is conducted within a reasonable time of, and nearby, the*
16 *meeting of the state body.*

17 ~~(d)~~

18 *(e) A person may request, and shall be provided, notice pursuant*
19 *to subdivision (a) for all meetings of a state body or for a specific*
20 *meeting or meetings. In addition, at the state body's discretion, a*
21 *person may request, and may be provided, notice of only those*
22 *meetings of a state body at which a particular subject or subjects*
23 *specified in the request will be discussed.*

24 ~~(e)~~

25 *(f) A request for notice of more than one meeting of a state body*
26 *shall be subject to the provisions of Section 14911.*

27 ~~(f)~~

28 *(g) The notice shall be made available in appropriate alternative*
29 *formats, as required by Section 202 of the Americans with*
30 *Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal*
31 *rules and regulations adopted in implementation thereof, upon*
32 *request by any person with a disability. The notice shall include*
33 *information regarding how, to whom, and by when a request for*
34 *any disability-related modification or accommodation, including*
35 *auxiliary aids or services may be made by a person with a disability*
36 *who requires these aids or services in order to participate in the*
37 *public meeting.*

O

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(2) – AB 54 (Kiley): COVID-19 emergency order violation: license revocation.

Background:

This bill would prohibit boards under the Department of Consumer Affairs (DCA), and the Department of Alcoholic Beverage Control, from revoking a license for failure to comply with any COVID-19 emergency orders unless the board or department can prove that a lack of compliance resulted in transmission of COVID-19.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 54 (Kiley).

On 4/2/2021, the Board approved the Legislative and Regulatory Affairs Committee recommendation to watch AB 54 (Kiley).

Location: 4/6/2021 Committee on Business and Professions

Status: 4/13/2021 In committee: Set, first hearing. Failed passage.
Ayes: 6; Noes: 7; Abstain: 6.

Action Requested:

Staff will no longer watch AB 54 (Kiley) as it failed passage from committee.

Attachment A: AB 54 (Kiley) Bill Text

AB 54 COVID-19 emergency order violation: license revocation.

As Amends the Law Today (5/7/2021)

SECTION 1.

Section 464.5 is added to the Business and Professions Code, to read:

464.5.

(a) The department and any board shall not revoke a license for failure to comply with any COVID-19 emergency orders, unless the department or board can prove that lack of compliance resulted in the transmission of COVID-19.

(b) This section shall not apply to any board or licensee within Division 2 (commencing with Section 500).

SEC. 2.

Section 24200.8 is added to the Business and Professions Code, to read:

24200.8.

The Department of Alcoholic Beverage Control shall not revoke the license of any licensee for failure to comply with any COVID-19 emergency orders unless the department can prove that lack of compliance resulted in transmission of COVID-19.

SEC. 3.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect businesses, including small businesses, which continue to make significant contributions to economic security, which helps ensure public safety, during these unprecedented times caused by the COVID-19 pandemic, as soon as possible, it is necessary for this act to take effect immediately

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(3) – AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses

Background:

Existing law requires specified boards within the department to issue, after appropriate investigation, certain types of temporary licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board. Existing law requires these temporary licenses to expire 12 months after issuance. Under existing law, some of the funds within the jurisdiction of a board consist of revenue from fees that are continuously appropriated.

This bill would require the temporary licenses described above to expire 30 months after issuance. The bill would require boards not responsible for the licensure and regulation of healing arts licensees and not subject to the temporary licensing provisions described above to issue licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States, as provided. The bill would require an application for a license to include a signed affidavit attesting to the fact that the applicant meets all requirements for a license.

The bill would authorize the immediate termination of a license issued pursuant to these provisions upon a finding that the license holder failed to meet specified requirements or provided substantively inaccurate information that would affect the person's eligibility for licensure, as provided.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 225 (Gray).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 225 (Gray).

Location: Assembly Committee on Appropriations

Status: 4/28/2021 Do pass and be re-referred to the Committee on Appropriations with recommendation: To Consent Calendar.
Ayes: 11; Noes: 0; Abstain: 0.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 225 (Gray) Bill Text

AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 115.6 of the Business and Professions Code is amended to read:

115.6.

(a) A board within the department shall, after appropriate investigation, issue the following eligible temporary licenses to an applicant if the applicant meets the requirements set forth in subdivision (c):

- (1) Registered nurse license by the Board of Registered Nursing.
- (2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- (3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- (4) Speech-language pathologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (5) Audiologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (6) Veterinarian license issued by the Veterinary Medical Board.
- (7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.
- (8) All licenses issued by the Medical Board of California.
- (9) All licenses issued by the Podiatric Medical Board of California.

(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.

(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

(1) The applicant shall supply evidence satisfactory to the board that the applicant is one of the following:

~~(1) (A) The applicant shall supply evidence satisfactory to the board that the applicant is married-~~ *Married* to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(B) A veteran of the Armed Forces of the United States within six months of separation from active duty under other-than-dishonorable conditions.

(C) An active duty member of the Armed Forces of the United States with official orders for separation within 90 days under other-than-dishonorable conditions.

(2) The applicant shall hold a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board.

(3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of the applicant's knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.

(4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.

(5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

(d) A board may adopt regulations necessary to administer this section.

(e) A temporary license issued pursuant to this section may be immediately terminated upon a finding that the temporary licenseholder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect the person's eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary licenseholder to immediately cease the practice of the licensed profession upon receipt.

(f) An applicant seeking a temporary license as a civil engineer, geotechnical engineer, structural engineer, land surveyor, professional geologist, professional geophysicist, certified engineering geologist, or certified hydrogeologist pursuant to this section shall successfully pass the appropriate California-specific examination or examinations required for licensure in those respective professions by the Board for Professional Engineers, Land Surveyors, and Geologists.

(g) A temporary license issued pursuant to this section shall expire ~~42~~ 18 months after issuance, upon issuance of an expedited license pursuant to Section 115.5, or upon denial of the application for expedited licensure by the board, a standard license, a license by endorsement, or an expedited license pursuant to Section 115.5, whichever occurs first.

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(4) – AB 339 (Lee) State and local government: open meetings

Background:

This bill would require all meetings, including gatherings using teleconference technology, to include an opportunity for all persons to attend via a call-in option or an internet-based service option that provides closed captioning services and requires both a call-in and an internet-based service option to be provided to the public. The bill would require all meetings to provide the public with an opportunity to comment on proposed legislation, as provided, and requires translation services to be provided for the 10 most-spoken languages, other than English, in California, and would require those persons commenting in a language other than English to have double the amount of time as those giving a comment in English, if time restrictions on public comment are utilized, except as specified. The bill would require instructions on how to attend the meeting to be posted at the time notice of the meeting is publicized, as specified.

This bill would require all meetings to include an opportunity for all persons to attend via a call-in option or an internet-based service option that provides closed captioning services and requires both a call-in and an internet-based service option to be provided to the public. The bill would require, even in the case of a declared state or local emergency, teleconferenced meetings to include an in-person public comment opportunity. The bill would require all meetings to provide the public with an opportunity to address the legislative body remotely via call-in or internet-based service, as provided, and would require instructions on how to attend the meeting to be posted at the time notice of the meeting is publicized, as specified. The bill would also require the legislative bodies of the local agency to employ a sufficient amount of qualified bilingual persons to provide translation during the meeting in the language of a non-English-speaking person, in jurisdictions which govern a substantial number of non-English-speaking people, as defined.

This bill would require all meetings, as defined, to include an opportunity for all persons to attend via a call-in option or an internet-based service option that provides closed captioning services and requires both a call-in and an internet-based service option to be provided to the public. The bill would require instructions on how to attend the meeting via call-in or internet-based service to be posted online along with the meeting agenda in an easily accessible location at least 72 hours before all regular meetings and at least 24 hours before all special meetings. The bill would require all meetings to provide the public with an opportunity to address the legislative body remotely via call-in

or internet-based service, as provided, and would require those persons commenting in a language other than English to have double the amount of time as those giving a comment in English, if time restrictions on public comment are utilized, except as specified.

This bill would require legislative bodies of local agencies, and state bodies, as defined, to translate agendas and instructions for accessing the meeting to be translated into all languages for which 5% of the population in the area governed by the local agency, or state body's jurisdiction, are speakers.

By imposing new duties on local governments with respect to meetings, this bill would impose a state-mandated local program.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

The author's office has submitted amendments to remove the Bagley-Keene portion of this bill, so it will no longer affect state boards and commissions.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 339 (Lee).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 339 (Lee).

Location: Assembly Committee on Appropriations

Status: 4/28/2021 Do pass as amended and be re-referred to the Committee on Appropriations. (Ayes: 7; Noes: 0; Abstain: 1.)

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 339 (Lee) Bill Text

AB 339 (Lee) Local government: open and public meetings.

As Amends the Law Today (04/30/2021)

SEC. 4. SECTION 1.

Section 54953 of the Government Code is amended to read:

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local ~~agency,~~ *agency in person*, except as otherwise provided in this chapter.

(b) All meetings shall include an opportunity for members of the public to attend via a telephonic option and an internet-based service option. For the purposes of this chapter, "internet-based service option" means a service or platform that allows two-way video and audio participation through the internet.

~~(b)~~ (c) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used *by members of the legislative body* for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision ~~(d)~~ (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(5) (A) Unless there are any laws that prohibit in-person government meetings in the case of a declared state of emergency, including a public health emergency, all

meetings shall include an in-person public comment opportunity, wherein members of the public can report to a designated site to give public comment in person. The location of the designated site and any relevant instructions on in-person commenting shall be included with the public posting of the agenda.

(B) All meetings shall provide the public with an opportunity to comment on proposed legislation, both in person and remotely via a telephonic and an internet-based service option, and ensure the opportunity for the members of the public participating via a telephonic or an internet-based option to comment on agenda items with the same time allotment as a person attending a meeting in person.

(C) Registration for public comment period is permitted, so long as instructions to register are posted, members of the public are able to register over the telephone and in person, and registration remains open until the comment period has finished for that agenda item. Information collected for registration purposes shall be limited to name, telephone number, and county of residence.

~~(e)~~ (d) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

~~(d)~~ (e) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision ~~(b)~~, (c), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created

pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a ~~county-sponsored~~ *county-sponsored* health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

~~SEC. 5.~~ SEC. 2.

Section 54954.2 of the Government Code is amended to read:

54954.2.

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's ~~Internet Web site,~~ *internet website*, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) Instructions on joining the meeting via telephonic or internet-based service option, including registration for public comment, if required, shall be made available to all non-English-speaking persons upon request and should at minimum be published in the two most spoken languages other than English within the boundaries of the territory over which the local agency exercises jurisdiction. The meeting agenda should be made available upon request to all non-English-speaking persons within those boundaries in their language, regardless of national origin or language ability.

~~(2)~~ (3) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an ~~Internet Web site,~~ *internet website*, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary ~~Internet Web site~~ *internet website* homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used ~~Internet~~ *internet* search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an ~~Internet Web site~~ *internet website* and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary ~~Internet Web site~~ *internet website* homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an ~~Internet Web site~~ *internet website* with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an ~~Internet Web site~~ *internet website* of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

~~(3)~~ (4) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public

testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on ~~his or her~~ *the member's* own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's ~~Internet Web site,~~ *internet website*, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

~~SEC. 6.~~ SEC. 3.

Section 54954.3 of the Government Code is amended to read:

54954.3.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, ~~before~~ ~~or~~ during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any

item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. ~~However, the~~ *The* agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) (1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) All members of the public shall be entitled to participate in public meetings, regardless of national origin or language ability. If interpretation services are requested for the public meeting and public comment period, those services should be provided.

(e) Local agencies shall have in place a system for requesting and receiving interpretation services for public meetings, including the public comment period. Local agencies shall publicize this system and the instructions on how to request certified interpretation services for public meetings online.

SEC. 4.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result either from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, or 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 XIII B of the California Constitution.

SEC. 5.

The Legislature finds and declares that Sections 1, 2, and 3 of this act, which amend Sections 54953, 54954.2, and 54954.3 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The provisions of the act allow for greater public access through requiring specified entities to provide a telephonic and internet-based service option and instructions on how to access these options to the public for specified meetings and allow for greater accommodations for non-English speakers attending the meetings.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(5) – AB 562 (Low) Mental health services for health care providers

Background:

This bill would require the director of the Department of Consumer Affairs to establish a mental health resiliency program, to provide mental health services to licensed health care providers who provide or have provided healthcare services to COVID-19 patients. The bill would require the relevant healing arts boards to notify licensees and solicit applications for access to the mental health resiliency program immediately upon the availability of services. The bill would require an applicant to make an attestation that states, among other things, that the applicant is an eligible licensee, as defined. The bill would make an applicant who willfully makes a false statement in their attestation guilty of a misdemeanor.

The bill would exempt the records associated with the mental health resiliency program from disclosure pursuant to the California Public Records Act.

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 562 (Low).

Location: Committee on Assembly Appropriations

Status: 4/15/2021 Re-referred to Committee on Appropriations pursuant to Assembly Rule 96.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Assembly Business and Professions Analysis

Attachment B: AB 562 (Low) Bill Text

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 562 (Low) – As Amended March 18, 2021

NOTE: This bill is double referred and, if passed by this Committee, will be referred to the Assembly Committee on Health.

SUBJECT: Mental health services for health care providers: Frontline COVID-19 Provider Mental Health Resiliency Act of 2021.

SUMMARY: Requires the Department of Consumer Affairs (DCA) to establish a mental health resiliency program, until Jan 1, 2025, in consultation with relevant health arts boards, and contract with vendors of mental health services, as defined, to provide mental health services to eligible licensees, as specified.

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Provides for the regulation and licensure of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 100-144.5)
- 3) Defines “board,” as used in the BPC, as the board in which the administration of the provision is vested, and unless otherwise expressly provided, includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” (BPC § 22)
- 4) Authorizes, whenever it appears that any person holding a healing arts license, certificate, or permit may be unable to practice his or her profession safely because the licentiate’s ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. (BPC § 820)
- 5) Regulates the practice of medicine under the Medical Practice Act and establishes the Medical Board of California to administer and enforce the act. (BPC §§ 2000-2528.5)
- 6) Authorizes the Medical Board to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in their rehabilitation from, their substance use to ensure that the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession. If established, the board must contract for the program’s administration with a private third-party independent administering entity pursuant to a request for proposals. (BPC § 2340-2340.8)
- 7) Establishes license requirements for osteopathic physicians and surgeons under the Osteopathic Act and establishes the Osteopathic Medical Board of California to administer

and enforce the act and other requirements. (BPC § 3600; Osteopathic Initiative Act, an initiative act entitled “An act to establish a board of osteopathic examiners, to provide for their appointment, and to prescribe their powers and duties; to regulate the examination of applicants, who are graduates of osteopathic schools, for any form of certificate to treat disease, injuries, deformities, or other physical or mental conditions; to regulate the practice of those so licensed, who are graduates of osteopathic schools; to impose upon said board of osteopathic examiners all duties and functions, relating to graduates of osteopathic schools, holding or applying for any form of certificate or license, heretofore exercised and performed by the board of medical examiners of the State of California under the provisions of the state medical practice act, approved June 2, 1913, and acts amendatory thereof” approved by electors November 7, 1922).

- 8) Establishes diversion evaluation committees within the Osteopathic Medical Board of California, as a voluntary alternative approach to traditional disciplinary actions, to identify and rehabilitate osteopathic physicians and surgeons whose competency may be impaired due to the use of drugs and alcohol, so that the licensees may be treated and safely returned to the practice of medicine. (BPC §§ 2360-2370).
- 9) Regulates the practice of nursing under the Nursing Practice Act and establishes the Board of Registered Nursing to administer and enforce the act. (BPC §§ 2700-2838.4)
- 10) Establishes intervention committees within the Board of Registered Nursing, as a voluntary alternative approach to traditional disciplinary actions, to identify and rehabilitate registered nurses whose competency may be impaired due to alcohol or drug use, or due to mental illness, so that they may be rehabilitated and returned to the practice of nursing. (BPC § 2770).
- 11) Regulates physician assistants under the Physician Assistant Practice Act and establishes the Physician Assistant Board to administer and enforce the act. (BPC §§ 3500-3546)
- 12) Requires the Physician Assistant Board to establish and administer a voluntary diversion program for the rehabilitation of physician assistants whose competency is impaired due to substance use. (BPC §§ 3534-3534.10)

THIS BILL:

- 1) Establishes the Frontline COVID-19 Provider Mental Health Resiliency Act of 2021.
- 2) Makes various findings and declarations.
- 3) Defines “eligible licensee” as a person licensed as a healing arts provider under the BPC who is or was also a frontline health care COVID-19 provider.
- 4) Defines “frontline COVID-19 health care provider” as a person who provides or has provided consistent in-person health care services to patients with COVID-19.
- 5) Defines “mental health services” means targeted in-person, online, and telehealth psychological distress and behavioral health assessments and interventions (professional or

self-administered) to support mental and behavioral health needs resulting from the COVID-19 pandemic. Interventions include counseling, wellness coaching, and any other mental health treatment to improve the psychological and behavioral health of the eligible licensee.

- 6) Defines “vendor of mental health services” means a third-party vendor that provides mental health services, assessments, or interventions.
- 7) Specifies the following relating to the duties of the DCA:
 - a) Requires the DCA director to:
 - i) Within three months of the effective date of this bill, in consultation with the relevant healing arts boards, establish a mental health resiliency program to provide mental health services to frontline COVID-19 providers.
 - ii) Contract with one or more vendors of mental health services for the duration of the program.
 - iii) To supervise all vendors and monitor vendor utilization rates, and authorizes termination of any contract. If the vendor’s contract is terminated, the director must contract with a replacement vendor as soon as practicable.
 - b) Requires the contract to specify that all personal or identifiable program participant data be kept confidential and that the confidentiality obligations shall survive the termination of the contract.
 - c) Provides that the development of the mental health resiliency program is exempt from the requirements for regulations under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- 8) Specifies the following relating to the duties of the healing arts boards relevant to the program:
 - a) Requires the relevant healing arts boards to notify licensees and solicit applications for access to the mental health resiliency program immediately upon the availability of any services contracted for.
 - b) Requires an applicant to the program to make an attestation that states all of the following:
 - i) The applicant is an eligible licensee, as defined under subdivision (a) of Section 952.
 - ii) The name, location, and type of the facility or facilities the applicant worked as a frontline COVID-19 provider.
 - iii) The applicant’s assigned unit or units at the facility or facilities.

- c) Deems an applicant an eligible licensee if the attestation is complete and any facility and unit listed would provide care to COVID-19 patients.
 - d) Makes an applicant who willfully makes a false statement in their attestation guilty of a misdemeanor.
 - e) Requires the relevant healing arts boards to grant all eligible licensees access to the program.
 - f) Prohibits an application to or participation in the mental health resiliency program from being used for purposes of disciplinary action and, except as specified under the reporting requirements under this bill, must be kept confidential.
- 9) Sunsets the provisions relating to the administration of the mental health resiliency program on January 1, 2025.
- 10) Requires the DCA and relevant healing arts boards, no later than June 30, 2025, to report to the relevant policy committees of the Legislature the following information regarding the mental health resiliency program:
- a) A description of the contracted vendors, services provided, and contract dates.
 - b) The depersonalized aggregate number of applicants and eligible licensees and a monthly breakdown.
 - c) Any available utilization rates from the vendors.
 - d) The costs associated with the program.
- 11) Exempts the records associated with the program from the California Public Records Act, except as required for the reporting requirement, makes the conforming change to the Government Code, and makes the necessary declarations.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is co-sponsored by the *United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP)*, the *California Society of Anesthesiologists*, and the *California Medical Association*. According to the author, “[i]f the true measure of a society is how it treats its most vulnerable people, we should be equally concerned with how well we support heroes who have been working nonstop during a generational crisis. The pandemic has placed our nurses, physicians, and frontline health care workers under enormous stress, and they have been carrying this unbelievable burden for nearly a year. The trauma they have experienced will not just go away when vaccines become ubiquitous and the pandemic comes to an end. We need urgent action to support these heroes by expanding access to mental and behavioral health services.”

Background. Since the start of the pandemic, California’s frontline health care workers have been caring for COVID-19 patients through multiple surges, which included a record-breaking death toll in December 2020. Nurses, physicians and surgeons, and other frontline health care providers are suffering from burnout and have been experiencing, or are at high risk of, a variety of mental health conditions, including depression, anxiety, post-traumatic stress disorder, and suicidal thoughts.¹

The California Health Care Foundation conducted a survey of 1,202 nurses, nurse practitioners, physician assistants, and behavioral health specialists in California, and findings showed that 59% of respondents said they were “burned out” from their work; 83% of those surveyed said not enough was being done to address the problems facing health care workers.²

UNAC/UHCP, which represents more than 32,000 California nurses and health care professionals, surveyed its members late last year and found that more than 10% reported a lack of mental health resources needed to cope during the pandemic. The poll was conducted before the deadliest surge in COVID-19 cases began in December 2020.

As the result of prolonged stress and repeated trauma, frontline health care providers may continue to endure the negative effects of the pandemic long after it ends. In the meantime, they may not have access to adequate mental health services due to difficulty accessing providers through employer-sponsored plans or as the result of leaving employment.

Some specific anecdotes include:

- Consistently coming into an ICU with several patients and ending the shift with none because they all passed away.
- Caring for more intensive care patients than ordinarily allowed due to waivers of staff ratios, often forcing them to make impossible decisions about which patients to prioritize.
- Having to wear uncomfortable and heavy personal protective equipment (PPE) for hours. A typical nursing shift is 12 hours. Wearing tight masks over long periods can lead to skin damage and pressure ulcers.
- Working in outdoor makeshift units, sometimes in harsh weather. In one case, a nurse’s PPE caught on fire while working in a confined space with an outdoor heater.
- Virtually assisting grieving families, providing worrisome prognoses and news of death to family members who may not have been able to visit at all. Some families without smartphones capable of video may not get to see them at all, and some bilingual nurses have to translate and deliver bad news directly.

¹ N Greenberg, et al., *Mental health of staff working in intensive care during COVID-19*, Occupational Medicine, (2021), <https://doi.org/10.1093/occmed/kqaa220>.

² Goodwin Simon Strategic Research, *COVID-19 Tracking Poll, February 2021: Views from California Health Care Providers on the Front Lines*, California Healthcare Foundation, (February 2021).

The current strain on the health care workforce may reduce California's ability to recover from the overall impact of the pandemic. The goal of this bill is to help health care workers to want to remain on the frontlines by providing resources that may not be available that can help improve resiliency.

Mental Health Resiliency Program. This would establish the Frontline COVID-19 Provider Mental Health Resiliency Act of 2021, which would require the Department of Consumer Affairs (DCA) to establish a mental health resiliency program, until Jan 1, 2025, in consultation with relevant health arts boards (which are defined under the amendments listed below). Under the program, the DCA would contract with one or more vendors of mental health services, as defined, for the duration of the program. The individual boards would then administer the program and determine eligibility.

The goal of the act is to make targeted services more immediately and directly available to those licensees who attest to being a "frontline COVID-19 health care provider," meaning a person who provides or has provided consistent in-person health care services to patients with COVID-19. By going through the licensing boards, this bill seeks to help providers who do not have adequate employer-sponsored plans or employee assistance programs, have prohibitively high deductibles, are not ready to establish with a mental health provider, experience delays in finding a provider, or are no longer employed due to early retirement or other change in employment.

This program would be relatively unique, but the reason for the structure is that licensing boards have a direct list of all licensees and their contact information, and can therefore more easily perform outreach. Further, licensing boards have regulatory authority over licensees and are better suited to review applications and enforce attestations.

The model for the proposed structure is based on the intervention, diversion, wellness programs certain boards provide to licensees. For example, the Board of Registered Nursing and the Osteopathic Medical Board of California have provisions of law that require the creation of a voluntary intervention or diversion program. Although not the primary concern of the bill, intervention and wellness programs aim to allow providers to seek assistance and stay in the workforce before they harm consumers.

The nursing program allows a licensee to seek entry into the program for substance use or mental illness that may affect their practice. They would then begin supervised rehabilitation and avoid discipline while participating in the program. The osteopathic program allows osteopathic physician and surgeons to seek supervised assistance for substance use but does not protect them from discipline.

Both programs are provided through a government contract vendor, Maximus. Maximus also provide intervention services for the Board of Pharmacy, the Physical Therapy Board of California, the Veterinary Medical Board, the Physician Assistant Board, the Dental Board of California, and the Dental Hygiene Board of California.

Because the goal of this bill is to make services as soon as possible, it is not structured in a way that would require supervision or monitoring nor require the development of a comprehensive program. Rather, the goal would be to contract with prepackaged vendors. Further, the bill would waive the requirement to promulgate regulations.

Mental Health Services. While dependent on the cost and availability of prepackaged services, this bill currently includes: in-person, online, and telehealth psychological distress and behavioral health service assessments and interventions (professional or self-administered) to support mental and behavioral health needs specifically resulting from the COVID-19 pandemic. Interventions may include counseling, wellness coaching, and any other mental health treatment to improve the psychological and behavioral health of the eligible licensee. One specific program being discussed the California Medical Association’s Care 4 Caregivers Project.

Mental Health Stigma and Confidentiality. Mental health issues in the nursing and medical profession are not new, but the pandemic has created an acute need. Longer-term solutions are still needed—this bill is a stopgap measure that would sunset January 1, 2025. One of the goals of this bill is to reduce the negative stigma associated with mental health conditions³ at the board level and incentivize licensees to seek assistance early, potentially staving off self-medicating and the development of chronic conditions. This is similar to the non-punitive/non-adversarial approach being proposed as part of the Sunset Review of the Medical Board’s enforcement program.

On that note, licensees are historically fearful of joining intervention programs, given the existing stigma and risk to their livelihoods. Therefore, this bill builds in several confidentiality requirements to give licensees some assurances that their participation in the program will not be used against them for purposes of disciplinary action.

Reporting Requirement. As a short-term stopgap measure, this bill contains data collection and reporting requirements relating to the program contracts, application and utilization rates, and costs. The purpose of the requirement is to utilize the information for future programs or legislation.

Current Related Legislation. AB 650 (Muratsuchi), which is pending in the Assembly Committee on Labor and Employment, would establish the Health Care Workers Recognition and Retention Act, which establishes hazard pay for health care employees.

SB 213 (Cortese), which is pending in the Senate Committee on Appropriations, would create workers’ compensation rebuttable presumptions that specified injuries that develop or manifest in a hospital employee who provides direct patient care in an acute care hospital arose out of and in the course of the employment.

ARGUMENTS IN SUPPORT:

The *United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP)*, a co-sponsor of this bill, writes:

During the COVID-19 pandemic, nurses and other hospital workers were on the frontline of battling a dangerous, deadly, and highly infectious disease. They experienced record-setting deaths, dangerously overcrowded health facilities, and

³ American Psychological Association, “Stigma, Prejudice and Discrimination Against People with Mental Illness,” <https://www.psychiatry.org/patients-families/stigma-and-discrimination>, last accessed April 4, 2021.

months of overtime and extra shifts to help care for those infected with the virus. Many nurses had to convey last goodbyes to critically ill patients whose families could not be present for fear of exposure to the disease. The incredible death toll under unprecedented conditions has led many nurses and other health care professionals to the brink of burnout. They endured a continuous barrage of high-stress, trauma-inducing events in the workplace, and many are experiencing various forms of PTSD.

[This bill] would ensure that these heroes have access to the mental health they need. Not only will this directly benefit the impacted health care workers, but it will also benefit the public at large by ensuring that our health care workforce can remain strong, resilient, and ready to adapt to the next public health crisis.... Nurses and other frontline COVID-19 workers need effective mental health treatment. [This bill] provides a pathway for them to get the services they need and deserve.

The *California Society of Anesthesiologists (CSA)*, a co-sponsor of this bill, writes:

Physician anesthesiologists are guardians of patient safety in the operating room, in the delivery room, in the intensive care unit, in pain management clinics, and on the frontlines of the COVID-19 pandemic. Physician anesthesiologists undergo over 12 years of education and training to navigate critical life-and-death moments in the operating room and multiple procedural areas. They also provided emergency services and served as airway management experts for the sickest of patients diagnosed with and suffering from COVID-19.

Bottom line, physician anesthesiologists were made for this moment, whether caring for COVID-19 patients, managing a crisis during surgery or labor and delivery, or providing pain management services.

However, physicians like us, nurses, and other frontline health care workers have been under extraordinary stress during the past year working longer hours, day after day, in tougher conditions than ever before. CSA wants to make sure they all have access to effective and confidential mental and behavioral health resources if needed.... We need physician anesthesiologists and our other frontline health care providers to stay physically healthy and mentally strong so they can continue to provide the best care possible for their patients.

Therefore, CSA strongly believes [this bill] will create new tools to manage burnout, and treat prolonged stress and trauma associated with seeing firsthand the devastating effects of COVID-19. All frontline workers deserve to recover and move forward with renewed resiliency as we recover from the devastating impact of the pandemic in California.

The California Medical Association, a co-sponsor of this bill, writes:

The current pandemic has been an utterly harrowing experience for all over this past year. Throughout this entire time, our health care providers have been caring

for COVID-19 patients, solely focused on providing the highest quality care to not just keep patients alive, but to also help mitigate the long-term effects of COVID-19. They have had to adapt to an ever-changing landscape: increased use of and shortages of PPE, having to stay away from their families for prolonged periods of time to decrease potential spread, adapting to telehealth systems and finding ways to provide treatment to those who do not have access to broadband internet, among many other difficult changes. These conditions have created significant burnout and have put providers at high risk for experiencing debilitating mental health conditions such as depression, anxiety, post-traumatic stress disorder, and suicidal thoughts.

The daily stress and trauma of battling this pandemic combined with the mental exhaustion of fretting over the burdens of patient care, separation from family, and the constant worry of infection undermines the resiliency of California's health care workforce. Resiliency is key to California overcoming this pandemic. Without a resilient workforce, California will have no means for recovering from the anticipated impact of the pandemic, since up to 40% of health care providers may need to be isolated on a preventative basis to avoid risking infecting their families and loved ones; California needs those workers to return to the frontlines swiftly, with their physical and emotional wellbeing intact. Therefore, building resiliency within the health care workforce is an absolute necessity. [This bill] takes the necessary steps to build that resiliency.... Even after the pandemic is over, the physical and mental strain of these traumatic times may well have long-reaching implications for our health care providers. It is imperative that we take action now to support the well-being and resiliency of our brave health care providers.

The California Association of Health Facilities (CAHF) writes in support:

Skilled nursing facilities (SNFs) in California have faced unprecedented challenges due to the worldwide COVID-19 Pandemic. Before the deployment of the vaccine, CAHF members struggled on a daily basis to try to keep the COVID-19 virus out of their buildings and contain it if it was present. Our frontline workers continue to go above and beyond to protect the lives and well-being of our sick and vulnerable residents who are the most susceptible to COVID-19. Now more than ever, it is critical to ensure that our members' frontline healthcare workers and others have access to mental health screening and treatment.

CAHF is in strong support of [this bill]. We would also like to recommend that the Legislature consider expanding the bill to include frontline healthcare workers licensed by the California Department of Public Health (CDPH). Certified nursing assistants (CNAs), along with registered nurses and licensed vocational nurses, provide quality care to some of the state's sickest and most frail residents. CNAs are under the purview of CDPH and therefore would not have access to the mental health services allowed under [this bill]. CNAs are considered the backbone of any SNF and are just as susceptible to debilitating mental health impacts as other

frontline workers. We support [this bill] as drafted but urge you to ensure CNAs are also afforded access to these critical mental health services.

CAHF is supportive of any legislation that will provide nursing facilities additional support and tools to assist their staff in combatting COVID-19 and treating patients effectively now and beyond the Public Health Emergency. We believe [this bill] is consistent with these goals.

ARGUMENTS IN OPPOSITION:

None on file

IMPLEMENTATION ISSUES:

Funding. This bill currently does not have a funding source and would therefore the costs of the programs would be paid from the participating boards' special funds. However, each of the board's special funds is funding solely through licensing fees and other regulatory fees. To the extent the new cost pressures are not absorbable, this bill as drafted may create the need for fee increases.

The author notes that funding mechanisms are currently being explored and is committed to ensuring fee increases are not triggered. If there is no outside source of funding, or if the costs of the program are not absorbable, the author is willing to amend the bill to narrow the bill, including reducing the scope of services.

AMENDMENTS:

- 1) *Coauthor.* Add Assemblymember Flora as a Principal Coauthor.
- 2) *Relevant Healing Arts Boards.* The bill requires the participation of "relevant healing arts boards" but does not specify which healing arts boards are relevant. The boards that have licensees that work in intensive care units and emergency departments tend to the Board of Registered Nursing, the Medical Board of California, the Osteopathic Medical Board of California, the Physician Assistant Board, and the Respiratory Care Board, however, the author is open to including other boards and licensees under other departments if feasible:

On page 3 of the bill, in line 31, insert after "(a)"

(a) "*Board*" means the following:

(1) *Board of Registered Nursing.*

(2) *Medical Board of California.*

(3) *Osteopathic Medical Board of California.*

(4) *Physician Assistant Board.*

(5) Respiratory Care Board.

Throughout the bill, delete “healing arts” from “relevant healing arts boards”

- 3) *Facility Name on Application.* This bill requires applicants to include on their application, among other things, the name, location, and type of the facility or facilities the applicant worked as a frontline COVID-19 provider. Because it is unclear whether the name of the facility is useful, the bill should be amended to delete the requirement:

Page 4, line 34:

(B) The ~~name, location,~~ *location* and type of the facility or facilities the applicant worked as a frontline COVID-19 provider.

- 4) *Existing Resources.* There are free resources that include some of the services specified under this bill. For example, the CalHOPE website offers resources, including a peer counseling “warm” line, and Mental Health America, inc. offers free self-assessments and other tools. Going forward, identifying those existing resources may help narrow the scope of what services are being paid for. Therefore, the bill should be amended to authorize the DCA to contract or partner with vendors or agencies that that offer services that are publicly available and free of charge:

Page 4, line 12:

(2) The director shall contract with one or more vendors of mental health services for the duration of the program. *The director may in addition contract or partner with vendors or agencies that that offer services that are publicly available and free of charge.*

- 5) *Equity Impact Survey.* Amend the bill to require the boards to include a voluntary limited survey of race, ethnicity, and gender identity in the application. Boards already do this for all license applicants. Also, the provision related to discipline and confidentiality should be moved to a non-sunsetting section, as discussed below under amendment 6). The equity data should also be added to the reporting requirements.

Page 5, lines 5-7:

~~(6) The relevant boards shall include in the application a voluntary survey of race or ethnicity and gender identity. Application to or participation in the mental health resiliency program shall not be used for purposes of disciplinary action and, except as specified under Section 954, shall be kept confidential.~~

Page 5, after line 17, insert:

(c) The de-identified and aggregate number of eligible licensees by location, race, ethnicity, and gender identity.

- 6) *Survivability of Discipline and Confidentiality.* Currently, the prohibition against the use of participation for discipline and the requirement that boards keep the information confidential

would sunset along with the rest of the program. To preserve the prohibition and confidentiality in the event the program sunsets, the bill should be amended move those provisions to other section containing the Public Records Act exemptions:

Page 5, after line 24:

(b) Application to or participation in the mental health resiliency program shall not be used for purposes of disciplinary action and, except as specified under Section 954, shall be kept confidential.

- 7) *Technical Clean-Up.* The bill should be amended to make the following technical and conforming changes:

Pages 3-4, lines 37-40 and 1-3:

~~(e)~~ (d) “Mental health services” means targeted in-person, online, and telehealth ~~psychological~~ *psychological* distress and behavioral health ~~service~~ assessments and ~~interventions—(professional or self-administered)~~ *interventions, professional or self-administered*, to support mental and behavioral health needs resulting from the COVID-19 pandemic. Interventions include counseling, wellness coaching, and any other mental health treatment to improve the psychological and behavioral health of the eligible licensee.

Page 5, lines 16-17:

(b) The ~~depersonalized~~ *de-identified* aggregate number of applicants and eligible licensees and a monthly breakdown.

On page 5, line 18:

~~(e) Any available utilization~~ (d) *Utilization* rates from the vendors.

- 8) *Urgency Clause.* To ensure the development of the program begins as soon as possible, add an urgency clause:

Page 9, after line 4, insert:

***SEC. 5.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

In order to preserve the current and future health care workforce by ensuring that frontline health care providers have access to necessary services to address the ongoing stress and trauma of the COVID-19 pandemic as soon as possible, it is necessary that this act take effect immediately.

REGISTERED SUPPORT:

United Nurses Associations of California/Union of Health Care Professionals (co-sponsor)
California Society of Anesthesiologists (co-sponsor)
California Medical Association (co-sponsor)
California Association of Health Facilities

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

AB 562 (Low) Frontline COVID-19 Provider Mental Health Resiliency Act of 2021:
health care providers: mental health services.

As Amends the Law Today (04/30/2012)

SECTION 1.

Chapter 1.7 (commencing with Section 950) is added to Division 2 of the Business and Professions Code, to read:

**CHAPTER 1.7. Frontline COVID-19 Provider Mental Health Resiliency Act of 2021
950.**

This chapter shall be known, and may be cited, as the Frontline COVID-19 Provider Mental Health Resiliency Act of 2021.

951.

(a) The Legislature finds and declares the following:

(1) Since the start of the pandemic, California's frontline health care workers have been caring for COVID-19 patients through multiple surges, which included a record-shattering death toll in December 2020.

(2) Nurses, physicians and surgeons, and other frontline health care providers are suffering from burnout and have been experiencing, or are at high risk of, a variety of mental health conditions, including depression, anxiety, post-traumatic stress disorder, and suicidal thoughts.

(3) As the result of prolonged stress and repeated trauma, frontline health care providers may continue to endure the negative effects of the pandemic long after it ends.

(4) To bolster the resiliency of the health care workforce through the COVID-19 pandemic and beyond, it is imperative that additional mental health services are made immediately available.

(b) It is the intent of the Legislature that the Department of Consumer Affairs, through the relevant boards, immediately establish a mental health resiliency program for frontline health care providers who have provided direct and in-person care to COVID-19 patients during the pandemic.

952.

For the purposes of this chapter, the following definitions apply:

(a) "Board" means the following:

(1) The Board of Registered Nursing.

(2) The Medical Board of California.

(3) The Osteopathic Medical Board of California.

(4) The Physician Assistant Board.

(5) The Respiratory Care Board of California.

(b) "Eligible licensee" means a person licensed pursuant to this division who is or was also a frontline health care COVID-19 provider.

(c) "Frontline COVID-19 health care provider" means a person who provides or has provided consistent in-person health care services to patients with COVID-19.

(d) "Mental health services" means targeted in-person, online, and telehealth psychological distress and behavioral health assessments and interventions, professional or self-administered, to support mental and behavioral health needs resulting from the COVID-19 pandemic. Interventions include counseling, wellness coaching, and any other mental health treatment to improve the psychological and behavioral health of the eligible licensee.

(e) "Vendor of mental health services" means a third-party vendor that provides mental health services, assessments, or interventions.

953.

(a) (1) Within three months of the effective date of this section, the director shall, in consultation with the relevant boards, establish a mental health resiliency program to provide mental health services to frontline COVID-19 providers.

(2) The director shall contract with one or more vendors of mental health services for the duration of the program. The director may in addition contract or partner with vendors or agencies that offer services that are publicly available and free of charge.

(3) The director, or the director's designee, shall supervise all vendors, shall monitor vendor utilization rates, and may terminate any contract. If the vendor's contract is terminated, the director shall contract with a replacement vendor as soon as practicable.

(4) The contract shall specify that all personal or identifiable program participant data shall be kept confidential, and that the confidentiality obligations shall survive the termination of the contract.

(5) The development of the mental health resiliency program under this section shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(b) (1) The relevant boards shall notify licensees and solicit applications for access to the mental health resiliency program immediately upon the availability of any services contracted for.

(2) An applicant to the program shall make an attestation that states all of the following:

(A) The applicant is an eligible licensee, as defined under subdivision (a) of Section 952.

(B) The location and type of the facility or facilities the applicant worked as a frontline COVID-19 provider.

(C) The applicant's assigned unit or units at the facility or facilities.

(3) An applicant shall be deemed an eligible licensee if the attestation is complete and any facility and unit listed would provide care to COVID-19 patients.

(4) An applicant who willfully makes a false statement in their attestation is guilty of a misdemeanor.

(5) The relevant boards shall grant all eligible licensees access to the program.

(6) The relevant boards shall include in the application a voluntary survey of race or ethnicity and gender identity.

(c) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

954.

No later than June 30, 2025, the department and relevant boards shall report to the relevant policy committees of the Legislature the following information regarding the mental health resiliency program:

(a) A description of the contracted vendors, services provided, and contract dates.

(b) The deidentified aggregate number of applicants and eligible licensees and a monthly breakdown.

(c) The deidentified and aggregate number of eligible licensees by location, race, ethnicity, and gender identity.

(d) Utilization rates from the vendors.

(e) The costs associated with the program.

955.

(a) Except as specified under Section 954, records associated with the mental health resiliency program are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) Application to or participation in the mental health resiliency program shall not be used for purposes of disciplinary action and, except as specified under Section 954, shall be kept confidential.

SEC. 2.

Section 6276.30 of the Government Code is amended to read:

6276.30.

Managed care health plans, confidentiality of proprietary information, Section 14091.3 of the Welfare and Institutions Code.

Managed Risk Medical Insurance Board, negotiations with entities contracting or seeking to contract with the board, subdivisions (v) and (y) of Section 6254.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975 of the Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Sections 1603.1, 1603.3, and 121022 of the Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015 of the Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081 of the Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987 of the Evidence Code.

Market reports, confidential, subdivision (e) of Section 6254.

Marketing of commodities, confidentiality of financial information, Section 58781 of the Food and Agricultural Code.

Marketing orders, confidentiality of processors' or distributors' information, Section 59202 of the Food and Agricultural Code.

Marriage, confidential, certificate, Section 511 of the Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2 of the Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89 of the Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528.

Medi-Cal managed care program, exemption from disclosure for financial and utilization data submitted by Medi-Cal managed care health plans to establish rates, Section 14301.1 of the Welfare and Institutions Code.

Medi-Cal program, exemption from disclosure for best price contracts between the State Department of Health Care Services and drug manufacturers, Section 14105.33 of the Welfare and Institutions Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16 of the Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30 of the Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157 of the Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828 of the Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5 of the Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1.

Mental health resiliency program, records, Section 955 of the Business and Professions Code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135 of the Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620 of the Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202 of the Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detention, Section 5326.4 of the Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.15, 5328.2, 5328.4, 5328.8, and 5328.9 of the Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103 of the Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443 of the Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121 of the Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243 of the Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946 of the Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716 of the Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207 of the Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1 of the Penal Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5 of the Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5 of the Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167 of the Penal Code.

Missing persons' information, disclosure of, Sections 14204 and 14205 of the Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330 of the Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014 of the Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, of the Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3 of the Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628 of the Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8.

SEC. 3.

The Legislature finds and declares that Section 1 of this act, which adds Section 955 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of frontline providers of health care services to COVID-19 patients, it is necessary to prevent disclosure of records associated with the mental health resiliency program.

SEC. 4.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.

SEC. 5.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve the current and future health care workforce by ensuring that frontline health care providers have access to necessary services to address the ongoing stress and trauma of the COVID-19 pandemic as soon as possible, it is necessary that this act take effect immediately.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15 (d)(6) – AB 646 (Low) Department of Consumer Affairs: boards: expunged convictions

Background:

This bill would require a board within the department that has posted on its internet website that a person's license was revoked because the person was convicted of a crime, within 90 days of receiving an expungement order for the underlying offense from the person, if the person reapplies for licensure or is relicensed, to post notification of the expungement order and the date thereof on the board's internet website. The bill would require the board, on receiving an expungement order, if the person is not currently licensed and does not reapply for licensure, to remove within the same period the initial posting on its internet website that the person's license was revoked and information previously posted regarding arrests, charges, and convictions.

A board within the department may charge a fee to the applicant not to exceed the reasonable cost of administering this section. The fee shall be deposited by the board into the appropriate fund and shall be available only upon appropriation by the Legislature.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 646 (Low).

On 3/23/2021, the Assembly Business and Professions Committee voted 17 – 0 to refer the bill to the Appropriations Committee.

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 646 (Low).

Location: Assembly Committee on Appropriations.

Status: 4/21/2021 In committee: Set, first hearing. Referred to suspense file.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 646 (Low) Bill Text

AB 646 (Low) Department of Consumer Affairs: boards: expunged convictions.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 493.5 is added to the Business and Professions Code, to read:

493.5.

(a) A board within the department that has posted on its internet website that a person's license was revoked because the person was convicted of a crime, upon receiving from the person a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code for the underlying offense, shall, within 90 days of receiving the expungement order, unless it is otherwise prohibited by law, or by other terms or conditions, do either of the following:

(1) If the person reapplies for licensure or has been relicensed, post notification of the expungement order and the date thereof on its internet website.

(2) If the person is not currently licensed and does not reapply for licensure, remove the initial posting on its internet website that the person's license was revoked and information previously posted regarding arrests, charges, and convictions.

(b) A board within the department may charge a fee to a person described in subdivision (a), not to exceed the reasonable cost of administering this section. The fee shall be deposited by the board into the appropriate fund and shall be available only upon appropriation by the Legislature.

(c) For purposes of this section, "board" means an entity listed in Section 101.

(d) If any provision in this section conflicts with Section 2027, Section 2027 shall prevail.

MEMORANDUM

DATE	April 29, 2020
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(7) – AB 657 (Cooper) State civil service system: personal services contracts: professionals

Background:

This bill would prohibit a state agency from entering into a contract with a professional, as defined, for a period of more than 365 consecutive days or for a period of 365 nonconsecutive days in a 24-month period. The bill would define “professional,” for these provisions, to include, among others, a physician and surgeon, dentist, and clinical psychologist. The bill would require each state agency that has a contract with a professional pursuant to these provisions to prepare a monthly report to the exclusive bargaining representative for the professional, if the professional is represented, providing certain information, including the name and contact information of the professionals subject to a contract with the state agency, the details of the contract period for each professional, and the number of open professional positions available, as specified.

This bill would also require a state agency that uses a personal services contract for an employee position for each state agency that has a budgetary allocation to provide the applicable employee organization that represents employees who provide the same or similar services with certain information, including, among other things, the expenditures for recruiting and advertising to fill positions for which contractors are hired, and the number of applications for personal services received in the most recent quarter of the fiscal year.

On 3/19/2021, staff received notice from the author’s office, that they will be submitting an amendment to remove programs under the Department of Consumer Affairs from this requirement.

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee’s recommendation to watch AB 657 (Cooper).

On 4/21/2021, this bill was amended to add Assemblymember Cooper as the lead author and to exempt boards within DCA.

Location: Committee on Public Employment and Retirement

Status: 4/22/2021 Referred to Committee on Public Employment and Retirement;
Set for hearing on 4/29/2021

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 657 (Cooper) Bill Text as Amended

AB 657 (Cooper) State civil service system: personal services contracts: professionals.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 19136 is added to the Government Code, to read:

19136.

(a) Notwithstanding Section 19130 or any other law, a professional, as defined in subdivision (c), who has a personal services contract with any state agency, shall not be under contract with the state agency for a time period that exceeds either of the following:

(1) Three hundred sixty-five consecutive days to the state agency.

(2) Three hundred sixty-five nonconsecutive days in a 24-month period.

(b) (1) Notwithstanding subdivision (a), during a state of emergency declared by the Governor pursuant to Section 8625, a state agency may renew a personal services contract with a professional even if the renewal will exceed the time period limitations described in subdivision (a) if it receives approval for such renewal from _____. The request to renew shall include at least all of the following:

(A) A detailed accounting of the state agency's expenditures in efforts to increase and expand recruitment and retention efforts for the agency.

(B) An analysis of the state agency's vacancies for the position the professional was contracted for. The analysis shall include a comparison of current vacancies for the position and vacancies for the position one year prior.

(C) A detailed analysis of the state agency's efforts to fill the position with permanent civil service employees.

(D) A discussion of how the renewal of the contract will assist the agency in addressing the state of emergency.

(2) A state agency shall be required to seek authorization to renew pursuant to this subdivision each time it renews a contract under this subdivision. A renewed personal services contract pursuant to this subdivision shall not be between a professional and any state agency for a time period that exceeds either of the following:

(A) Three hundred sixty-five consecutive days to the state agency.

(B) Three hundred sixty-five nonconsecutive days in a 24-month period.

(3) The _____ shall not approve a renewal of a personal services contract with a professional pursuant to this subdivision unless the renewal is necessary for the state agency to address the state of emergency.

(4) This subdivision shall not be construed to limit the Governor's authority to suspend statutes pursuant to Section 8571.

(c) For purposes of this section, "professional" means any of the following:

(1) A physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California.

(2) A dentist licensed by the Dental Board of California.

(3) A clinical psychologist licensed by the Board of Psychology.

(4) A clinical social worker licensed by the Board of Behavioral Sciences.

(5) A pharmacist licensed by the California State Board of Pharmacy.

(d) Each state agency that has a contract with a professional pursuant to this section shall assign a unique identification number to each of those professionals for purposes of determining compliance with this section and complying with subdivisions (e) and (f).

(e) Each state agency that has a contract with a professional pursuant to this section shall prepare a monthly report to the exclusive bargaining representative for the professional, if the professional is represented. The monthly report shall include all of the following information:

(1) The names and unique identification numbers, as assigned pursuant to subdivision (d), of the professionals subject to a contract with the state agency.

(2) The details of the contract period for each professional, including, but not limited to, their hourly rate, beginning and end date, and the number of days worked pursuant to their current contract.

(3) The number of "open" professional positions for the state agency and the number of "contract" professional positions. For purposes of this paragraph, "open" means a position authorized in the budget for the state agency.

(f) If a state agency uses a personal services contract for an employee position for which the agency has a budgetary allocation, the agency shall provide to the applicable employee organization that represents employees who provide the same or similar services the following information:

(1) The expenditures for recruiting and advertising in the most recent quarter of the fiscal year to fill positions for which contractors are hired.

(2) The number of applications for personal services contracts received in the most recent quarter of the fiscal year.

(3) The number of applicants interviewed for personal services contracts received in the most recent quarter of the fiscal year.

(4) The number of applicants rejected for personal services contracts received in the most recent quarter of the fiscal year.

(g) This section shall not apply to a board or bureau of the Department of Consumer Affairs, as described in Section 101 of the Business and Professions Code.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(8) – AB 810 (Flora) Healing arts: reports: claims against licensees

Background:

Existing law makes failure of a licensee of the Medical Board of California, the Podiatric Medical Board of California, the Board of Psychology, the Dental Board of California, the Dental Hygiene Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, or the Physician Assistant Board, a claimant, or their counsel to report a settlement, judgment, or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from one of those boards, who does not possess professional liability insurance as to the claim, within 30 days to the agency that issued the license, certificate, or similar authority, punishable by a fine of not less than \$50 or more than \$500, as specified.

This bill would increase the minimum fine for a violation of that provision to \$100.

Existing law makes failure of a marriage and family therapist, clinical social worker, professional clinical counselor, a claimant, or their counsel to report a settlement, judgment, or arbitration award over \$10,000 of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor who does not possess professional liability insurance as to that claim, within 30 days to the agency that issued the license, certificate, or similar authority, punishable by a fine of not less than \$50 nor more than \$500, as specified.

This bill would increase the minimum fine for a violation of that provision to \$100.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 810 (Flora).

On 4/2/2020, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 810 (Flora).

Location: Committee on Business and Professions

Status: 2/25/2021 Referred to Committee on Business and Professions

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 810 (Flora) Bill Text

AB 810 (Flora) Healing arts: reports: claims against licensees.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 802 of the Business and Professions Code is amended to read:

802.

(a) Every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency specified in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act) who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or ~~his or her~~ *their* counsel, with a copy of the communication to be sent to the claimant through ~~his or her~~ *their* counsel if the person is so represented, or directly if ~~he or she is~~ *they are* not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the ~~claimant himself or herself~~ *claimant*) has not received a copy of the report, ~~he or she shall himself or herself~~ *they shall* make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than ~~forty~~ *one hundred* dollars (~~\$50~~) (*\$100*) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist, a clinical social worker, or a professional clinical counselor licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10), respectively, who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or ~~his or her~~ *their* counsel, with a copy of the communication to be sent

to the claimant through ~~his or her~~ *their* counsel if ~~he or she is~~ *they are* so represented, or directly if ~~he or she is~~ *they are* not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if ~~he or she is~~ *they are* not represented by counsel, the ~~claimant himself or herself~~ *claimant*) has not received a copy of the report, ~~he or she shall himself or herself~~ *they shall* make a complete report. Failure of the marriage and family therapist, clinical social worker, or professional clinical counselor or claimant (or, if represented by counsel, ~~his or her~~ *their* counsel) to comply with this section is a public offense punishable by a fine of not less than ~~fifty one hundred~~ dollars (~~\$50~~) (*\$100*) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(9) – AB 830 (Flora): Business: Department of Consumer Affairs: Alarm Company Act: Real Estate Law.

Background:

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 830 (Flora).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 830 (Flora).

Location: Assembly Committee on Appropriations

Status: 4/28/2021 From committee: Do pass and re-refer to Committee on Appropriations with recommendation: To Consent Calendar. (Ayes 19. Noes 0.) (April 27). Re-referred to Committee on Appropriations. Set for hearing on May 5, 2021.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 830 (Flora) Bill Text

AB 830 (Flora) Business: Department of Consumer Affairs: Alarm Company Act: Real Estate Law.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 308 is added to the Business and Professions Code, to read:

308.

The director shall notify the appropriate policy committees of the Legislature within 60 days after the position of chief or executive officer of any bureau or board within the department becomes vacant pursuant to Section 1770 of the Government Code.

SEC. 2.

Section 7590.1 of the Business and Professions Code is amended to read:

7590.1.

The following terms as used in this chapter have the meaning expressed in this article:

(a) (1) "Advertisement" means:

(A) Any written or printed communication for the purpose of soliciting, describing, or promoting the licensed business of the licensee, including a brochure, letter, pamphlet, newspaper, periodical, publication, or other writing.

(B) A directory listing caused or permitted by the licensee which indicates ~~his or her~~ *their* licensed activity.

(C) A radio, television, or similar airwave transmission that solicits or promotes the licensed business of the licensee.

(2) "Advertisement" does not include any of the following:

(A) Any printing or writing used on buildings, vehicles, uniforms, badges, or other property where the purpose of the printing or writing is identification.

(B) Any printing or writing on communications, memoranda, or any other writings used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of business.

(C) Any printing or writing on novelty objects used in the promotion of the licensee's business where the printing of the information required by this chapter would be impractical due to the available area or surface.

(b) "Alarm agent" means a person employed by an alarm company operator whose ~~duties~~ *duties, being physically conducted within the state*, include selling on premises, altering, installing, maintaining, moving, repairing, replacing, servicing, responding, or monitoring an alarm system, *and those ancillary devices connected to and controlled by the alarm system, including supplementary smoke detectors*, or a

person who manages or supervises a person employed by an alarm company to perform any of the duties described in this subdivision or any person in training for any of the duties described in this subdivision.

(c) (1) "Alarm system" means an assembly of equipment and devices arranged to *detect a hazard or* signal the presence of a hazard requiring urgent attention and to which police may respond. ~~an off-normal situation.~~

(2) "Alarm system" does not include a fire protection system, as defined in the California Fire Code.

(d) "Branch office" means any location, other than the principal place of business of the licensee, which is licensed as set forth in Article 11 (commencing with Section 7599.20).

(e) "Branch office manager" means an individual designated by the qualified manager to manage the licensee's branch office and who has met the requirements as set forth in Article 11 (commencing with Section 7599.20).

(f) "Bureau" means the Bureau of Security and Investigative Services.

(g) "Chief" means the Chief of the Bureau of Security and Investigative Services.

(h) "Deadly weapon" means and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles; any dirk, dagger, pistol, revolver, or any other firearm; any knife having a blade longer than five inches; any razor with an unguarded blade; or any metal pipe or bar used or intended to be used as a club.

(i) "Department" means the Department of Consumer Affairs.

(j) "Director" means the Director of Consumer Affairs.

(k) "Employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control.

(l) "Employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions.

(m) "Employer-employee relationship" means an individual who works for another and where the individual's name appears on the payroll records of the employer.

(n) "Firearm permit" means and includes "firearms permit," "firearms qualification card," "firearms qualification," and "firearms qualification permit."

(o) "Firearms permit" means a permit issued by the bureau, pursuant to Article 6 (commencing with Section 7596), to a licensee, a qualified manager, or an alarm agent, to carry an exposed firearm while on duty.

(p) "Licensee" means a business entity, whether an individual, partnership, limited liability company, or corporation licensed under this chapter.

(q) ~~“Manager” means~~ *“Manager” means* an individual designated under an operating agreement of a manager-managed limited liability company who is responsible for performing the management functions for the limited liability company specified in subdivision (c) of Section 17704.07 of the Corporations Code.

(r) “Member” means an individual who is a member of a limited liability company as defined in subdivision (p) of Section 17701.02 of the Corporations Code.

(s) “Person” means any individual, firm, company, association, organization, partnership, limited liability company, or corporation.

(t) “Qualified manager” means an individual who is in active control, management, and direction of the licensee’s business, and who is in possession of a current and valid qualified manager’s certificate pursuant to this chapter.

(u) “Registrant” means any person registered or who has applied for registration under this chapter.

(v) “Residential sales agreement” means and includes an agreement between an alarm company operator and an owner or tenant for the purchase of an alarm system to be utilized in the personal residence of the owner or tenant.

SEC. 3.

Section 7590.2 of the Business and Professions Code is amended to read:

7590.2.

(a) An “alarm company operator” means a person who, for any consideration whatsoever, engages in business or accepts employment to install, maintain, alter, sell on premises, monitor, or service alarm ~~systems~~ *systems, and those ancillary devices connected to and controlled by the alarm system, including supplementary smoke detectors*, or who responds to alarm systems except for any alarm agent. “Alarm company operator,” includes any entity that is retained by a licensed alarm company operator, a customer, or any other person or entity, to monitor one or more alarm systems, whether or not the entity performs any other duties within the definition of an alarm company operator. The provisions of this chapter, to the extent that they can be made applicable, shall be applicable to the duties and functions performed in monitoring alarm systems.

(b) A person licensed as an alarm company operator shall not conduct any investigation or investigations except those that are incidental to personal injury, or the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which ~~he or she has~~ *they have* been hired or engaged to protect.

(c) A person who is licensed, certified, or registered pursuant to this chapter is exempt from locksmithing requirements, pursuant to subdivision (e) of Section 6980.12, if the duties performed that constitute locksmithing are performed in combination with the installation, maintenance, moving, repairing, replacing, servicing, or reconfiguration of an alarm system, as defined in Section 7590.1, and limited to work on electronic locks

or access control devices that are controlled by an alarm system control device, including the removal of existing hardware.

SEC. 4.

Section 7590.6 is added to the Business and Professions Code, immediately following Section 7590.5, to read:

7590.6.

(a) Notwithstanding any law, any application for a license, registration, certification, or permit required by this chapter shall be submitted electronically through the online licensing and enforcement platform, including, but not limited to, applications for an original, renewal, reinstatement, or replacement license, registration, certificate, or permit.

(b) This section shall become operative on July 1, 2022.

SEC. 5.

Section 7592.9 of the Business and Professions Code is amended to read:

7592.9.

Notwithstanding Section 7592.8, a city, county, or city and county that requires a person who owns, leases, rents, or otherwise possesses an alarm system to obtain a local use permit to operate the alarm system shall not fine an alarm company for requesting dispatch to a customer, whether residential or commercial, that does not have a current local use permit if either apply:

(a) It was not the alarm company's legal responsibility to obtain the local use permit for the customer or renew the local use permit for the customer.

(b) If it is the alarm company's legal responsibility to renew the local use permit for the customer, the alarm company was not notified that the customer's local use permit had expired.

(c) Except as otherwise required by this chapter, this section shall not be construed to require the bureau to investigate, hear, or adjudicate a cause of action between an alarm company and a city, county, or city and county that pertains to liability for penalties imposed under an ordinance enacted by the city, county, or city and county.

SEC. 6.

Section 7593.1 of the Business and Professions Code, as amended by Section 10 of Chapter 406 of the Statutes of 2018, is amended to read:

7593.1.

(a) Each individual applicant, partner of a partnership, designated officer of a corporation, member, officer, or manager of a limited liability company, and a qualified manager *shall submit* with the application one personal identification form provided by the chief, ~~upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together~~ with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation

for purposes of a background check, and personal description of each such person, respectively. The identification form shall include residence addresses and employment history for the previous five years.

(b) The bureau may impose a fee not to exceed three dollars (\$3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(c) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 7.

Section 7593.1 of the Business and Professions Code, as amended by Section 11 of Chapter 406 of the Statutes of 2018, is amended to read:

7593.1.

(a) Each individual applicant, partner of a partnership, designated officer of a corporation, and a qualified manager shall submit with the application, one personal identification form provided by the chief ~~upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together~~ *chief*, with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, and personal description of each such person, respectively. The identification form shall include residence addresses and employment history for the previous five years.

(b) The bureau may impose a fee not to exceed three dollars (\$3) for processing classifiable fingerprint cards submitted by applicants excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(c) This section shall become operative on January 1, 2024.

SEC. 8.

Section 7593.7 of the Business and Professions Code is amended to read:

7593.7.

The chief shall issue a pocket identification card to the owner; any partner, officer, member, or manager active in the licensed business; and qualified manager. The chief shall determine the form and content of the card. ~~A photo identification card will be furnished to any owner, partner, officer, member, manager, qualified manager, or branch office manager upon written request and payment of the fee prescribed by this chapter.~~

SEC. 9.

Section 7596.3 of the Business and Professions Code is amended to read:

7596.3.

The director shall issue a firearms permit when all of the following conditions exist:

(a) The applicant is a licensee, a qualified manager of a licensee, a designated branch office manager of a licensee, or a registered alarm agent. A firearms permit may only be associated with the following:

- (1) A sole owner of a sole ownership licensee.
- (2) A partner of a partnership licensee.
- (3) A qualified manager of a licensee.
- (4) A designated branch office manager of a licensee.
- (5) A registered alarm agent.

(b) The applicant has filed with the bureau a classifiable fingerprint card, a completed application for a firearms permit on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct. In lieu of a classifiable fingerprint card, the applicant may submit fingerprints into an electronic fingerprinting system administered by the Department of Justice. An applicant who submits their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The terminal operator may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(c) *(1) A ~~certified~~ bureau-certified firearms training instructor certifies that the applicant has successfully completed the ~~bureau-approved~~ a written examination prepared by the bureau and a training course in the carrying and use of ~~firearms~~. *firearms approved by the bureau.**

(2) An applicant who is a bureau-certified firearms training instructor is prohibited from self-certifying as having successfully carried out the requirement of paragraph (1) and shall instead carry out the requirements under another bureau-certified firearms training instructor.

(d) The applicant has provided the bureau with evidence that the applicant has completed a course in the exercise of the powers to arrest.

(e) The applicant is at least 21 years of age and the bureau has determined, after investigation, that the carrying and use of a firearm by the applicant, in the course of their duties, presents no apparent threat to the public safety, or the carrying and use of a firearm by the applicant is not in violation of the Penal Code.

(f) The applicant has produced evidence to the firearm training facility that the applicant is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status shall be that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(g) The application is accompanied by the fee prescribed in this chapter.

SEC. 10.

Section 7596.7 of the Business and Professions Code is amended to read:

7596.7.

A firearms qualification card expires two years from the date of issuance, if not renewed. A person who wishes to renew a firearms qualification card shall file an application for renewal at least 60 days prior to the card's expiration. A person whose card has expired shall not carry a firearm until the person has been issued a renewal card by the bureau.

The director shall not renew a firearms qualification card unless all of the following conditions exist:

(a) The cardholder has filed with the bureau a completed application for renewal of a firearms qualification card, on a form prescribed by the director, dated and signed by the applicant under penalty of perjury certifying that the information on the application is true and correct.

(b) The application is accompanied by a firearms requalification fee as prescribed in this chapter.

(c) (1) The applicant has requalified on the range and has successfully passed a written examination based on course content as specified in the firearms training manual approved by the department and taught at a training facility approved by the bureau.

(2) *An applicant who is a bureau-certified firearms training instructor is prohibited from self-certifying as having successfully carried out the requirement of paragraph (1) and shall instead carry out the requirements under another bureau-certified firearms training instructor.*

(d) The applicant has produced evidence to the firearm training facility, either upon receiving an original qualification card or upon filing for renewal of that card, that the applicant is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status is that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, United States Citizenship and Immigration Services Form I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(e) An expired firearms qualification card may not be renewed. A person with an expired firearms qualification card is required to apply for a new card in the manner required of persons not previously registered. A person whose card has expired shall not carry a firearm until the person has been issued a new firearms qualification card by the bureau.

SEC. 11.

Section 7598.14 of the Business and Professions Code is amended to read:

7598.14.

~~(a)~~ Upon approval of an application for registration, the chief shall cause to be issued to the applicant, at ~~his or her~~ *their* last known address, a registration card in a form approved by the director. ~~A photo identification card shall be issued upon written request of the applicant, submission of two recent photographs of the applicant, and payment of the fee.~~ The applicant may request to be issued an enhanced pocket card that shall be composed of a durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department's costs for furnishing the enhanced license. The fee charged may not exceed the actual costs for system development, maintenance, and processing necessary to provide this service, and may not exceed six dollars (\$6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant. Every person, while engaged in any activity for which registration is required, shall display their valid pocket card as provided by regulation.

~~(b) This section shall become operative on July 1, 2018.~~

SEC. 12.

Section 7598.51 of the Business and Professions Code is amended to read:

7598.51.

(a) (1) An alarm agent shall carry on ~~his or her~~ *their* person, while on duty, either a valid and current registration card or a temporary application for ~~registration.~~ *registration and a valid photo identification. The registration card or temporary application may be in a digital format.*

(2) *The temporary application shall include the application number that is assigned at the time that the application is received.*

(b) *For purposes of this section, "digital format" shall include, but not be limited to, an easily legible screenshot or image of the registration card or temporary application.*

~~(b)~~ (c) A fine of one hundred fifty dollars (\$150) may be assessed for each violation of subdivision (a).

SEC. 13.

Section 7599 of the Business and Professions Code is amended to read:

7599.

Except as otherwise provided in this chapter, an applicant for a qualified manager certificate for an alarm company operator license shall:

(a) Have had at least two years' experience in alarm company work or the equivalent thereof as determined by the director.

A year's experience shall consist of not less than 2,000 hours of actual compensated alarm company work performed by each applicant preceding the filing of an application.

Applicants shall substantiate the claimed years and hours of qualifying experience and the exact details as to the character and nature thereof by written certifications from employers on forms prescribed by the director, subject to independent verification by the director as ~~he or she~~ *they* may determine. In the event the applicant is unable to supply a written certification from an employer, the applicant may offer such other written certifications as may be properly considered by the director. In addition, applicants shall supply such evidence for consideration, as may be required by the director.

(b) Be at least 18 years of age.

(c) Complete and forward to the bureau an application for a qualified manager certificate for an alarm company operator license, which shall be on a form prescribed by the director. The application shall be accompanied by two ~~recent photographs of the applicant, measuring 1 1/4" by 1 1/2", with a face size no greater than 1" by 1 1/4", and two~~ classifiable sets of ~~his or her~~ *the applicant's* fingerprints.

(d) Pass the required examination.

(e) Pay the required application and examination fees to the chief.

SEC. 14.

Section 7599.54 of the Business and Professions Code is amended to read:

7599.54.

(a) Except as provided by Section 7599.56, every agreement, including, but not limited to, lease agreements, monitoring agreements, and service agreements, including all labor, services, and materials to be provided for the installation of an alarm system, shall be in writing. Except as provided by Section 7599.56, all amendments subject to the provisions of this section to an initial agreement shall be in writing. Each initial agreement shall contain, but not be limited to, the following:

(1) (A) The name, business address, business telephone number, ~~and~~ *and, except as provided in subparagraphs (B) and (C),* license number of the licensed alarm company operator and the *name and* registration number of any alarm agent who solicited or negotiated the agreement.

(B) *An alarm agent that is working with a temporary registration pursuant to Section 7598.7 shall include the application number in lieu of the registration number.*

(C) *This paragraph does not apply to an agreement that was not solicited or negotiated by a registered alarm agent.*

(2) The approximate dates when the work will begin and be substantially completed.

(3) A description of the work to be done, a description of the materials to be used, and the agreed consideration for the work.

(4) A disclosure that alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, including the bureau's current address and contact information.

(5) A description of the alarm system including the major components thereof and services to be provided to the purchaser once the alarm is installed, including response or monitoring services, if any.

(6) Other matters agreed to by the parties of the contract. The agreement shall be legible and shall be in a form as to clearly describe any other document which is to be incorporated into the contract, and, before any work is done, the client shall be furnished with a copy of the written agreement signed by the licensee.

(7) A statement setting forth that upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system.

(8) In the event a mechanic's lien is to be utilized, a notice-to-owner statement which shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state's mechanics' lien laws and the rights and responsibilities of an owner of property and a contractor thereunder, including the provisions relating to the filing of a contract concerning a work of improvement with the county recorder and the recording in the office of a contractor's payment bond for private work.

(9) For residential agreements entered into on or after January 1, 2017, that include an automatic renewal provision renewing the agreement for a period of more than one month, a clear and distinct disclosure shall be included separate from the terms and conditions of the agreement advising the consumer that the agreement ~~he or she~~ *is they are* entering into contains an automatic renewal provision. The disclosure shall include the length of time of the renewal term and specify that failure to provide notification of nonrenewal to the licensee, as required in the agreement, will result in the automatic renewal of the agreement. The consumer shall acknowledge being advised of the automatic renewal provision by signing or initialing the disclosure. The disclosure may be included on the same document as the three-day right to cancel form required by Section 1689.7 of the Civil Code. The automatic renewal provision shall be void and invalid without a separate acknowledgment of the disclosure by the consumer.

(10) In addition to the above, every initial residential sales and lease agreement, the total cost which over the time period fixed by the agreement exceeds two hundred fifty dollars (\$250), including the cost of all labor, service, or material to be provided by the licensee for the installation, shall include, but not be limited to, the following:

(A) A schedule of payments showing the amount of each payment as a sum in dollars and cents. This schedule of payments shall be referenced to the amount of work for services to be performed or to any materials or equipment to be supplied.

(B) If the payment schedule contained in the agreement provides for a downpayment to be paid to the licensee by the owner or the tenant before commencement of the work, that downpayment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract price, excluding finance charges, whichever is the lesser.

(C) In no event shall the payment schedule provide that the licensee receive, nor shall the licensee actually receive, payment in excess of 100 percent of the value of the work

performed on the project at any time, excluding finance charges, except that the licensee may receive an initial downpayment authorized by subparagraph (B). A failure by the licensee, without legal excuse, to substantially commence work within 20 days of the approximate date specified in the contract when work is to commence, shall postpone the next succeeding payment to the licensee for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur.

(D) A notice-to-owner statement which shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state's mechanics' lien laws and the rights and responsibilities of an owner of property and a contractor thereunder, including the provisions relating to the filing of a contract concerning a work of improvement with the county recorder and the recording in the office of a contractor's payment bond for private work.

(E) A description of what constitutes substantial commencement of work pursuant to the contract.

(F) A disclosure that failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act.

(G) A disclosure informing the buyer of any potential permit fees which may be required by local jurisdictions concerning the monitoring of an existing alarm system.

(H) This section shall not be construed to prohibit the parties to a residential alarm system sale contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(b) A violation of this section or failure to commence work pursuant to subparagraph (F) of paragraph (10) of subdivision (a) may result in a fine of one hundred dollars (\$100) for the first violation and a fine of five hundred dollars (\$500) for each subsequent violation.

SEC. 15.

Section 7599.62 is added to the Business and Professions Code, to read:

7599.62.

Notwithstanding any other law, the failure of any person licensed to do business as a corporation or limited liability company in this state to be registered and in good standing with the Secretary of State and the Franchise Tax Board after notice from the bureau shall result in the automatic suspension of the licensee by operation of law. The bureau shall notify the licensee in writing of its failure to be registered and in good standing with the Secretary of State or the Franchise Tax Board, or both, and that the licensee shall be suspended 30 days from the date of the notice if the licensee does not provide proof satisfactory to the bureau that it is properly registered and in good standing with the Secretary of State or the Franchise Tax Board, or both. Reinstatement may be made at any time following the suspension by providing proof satisfactory to the

bureau that the licensee is properly registered and in good standing and the payment of the reinstatement fee as prescribed by this chapter.

SEC. 16.

Section 7599.70 of the Business and Professions Code is amended to read:

7599.70.

~~(a)~~ -The bureau shall establish and assess fees and penalties for licensure and registration as follows:

~~(1)~~ (a) An alarm company operator license application fee shall be at least three hundred seventy dollars (\$370) and may be increased to an amount not to exceed four hundred seven dollars (\$407).

~~(2)~~ (b) An original license fee for an alarm company operator license shall be at least six hundred dollars (\$600) and may be increased to an amount not to exceed six hundred sixty dollars (\$660). A renewal fee for an alarm company operator license shall be seven hundred fifty dollars (\$750) and may be increased to an amount not to exceed eight hundred twenty-five dollars (\$825).

~~(3)~~ (c) A qualified manager certificate application and examination fee shall be at least three hundred fifty dollars (\$350) and may be increased to an amount not to exceed three hundred eighty-five dollars (\$385).

~~(4)~~ (d) A renewal fee for a qualified manager certificate shall be at least two hundred twenty-five dollars (\$225) and may be increased to an amount not to exceed two hundred forty-eight dollars (\$248).

~~(5)~~ (e) An original license fee for a branch office certificate shall be at least two hundred fifty dollars (\$250) and may be increased to an amount not to exceed two hundred seventy-five dollars (\$275). A renewal fee for a branch office certificate shall be at least one hundred fifty dollars (\$150) and may be increased to an amount not to exceed one hundred sixty-five dollars (\$165).

~~(6)~~ (f) Notwithstanding Section 163.5, the reinstatement fee as required by Sections 7593.12 and 7598.17 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

~~(7)~~ (g) A fee for reexamination of an applicant for a qualified manager shall be at least sixty dollars (\$60) and may be increased to an amount not to exceed sixty-six dollars (\$66).

~~(8)~~ (h) An initial registration fee for an alarm agent shall be at least fifty-five dollars (\$55) and may be increased to an amount not to exceed sixty dollars (\$60).

~~(9)~~ (i) A registration renewal fee for an alarm agent shall be at least forty dollars (\$40) and may be increased to an amount not to exceed forty-four dollars (\$44).

~~(10)~~ (j) A firearms permit fee shall be at least one hundred dollars (\$100) and may be increased to an amount not to exceed one hundred ten dollars (\$110), and a firearms

permit renewal fee shall be at least eighty dollars (\$80) and may be increased to an amount not to exceed eighty-eight dollars (\$88).

~~(11)~~ (k) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

~~(12)~~ (l) The processing fee required pursuant to ~~Sections 7593.7 and~~ Section 7598.14 is the amount equal to the expenses incurred to provide a photo identification card.

~~(13)~~ (m) The fee for a Certificate of Licensure, as specified in Section 7593.8, shall be twenty-five dollars (\$25).

~~(14)~~ (n) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars (\$25).

~~(15)~~ (o) The processing fee for the assignment of an alarm company operator license pursuant to Section 7593.15 shall be at least four hundred dollars (\$400) and may be increased to an amount not to exceed four hundred forty dollars (\$440).

~~(16)~~ (p) The fee for the replacement of a lost or destroyed registration card, license, certificate, or permit authorized by this chapter shall be twenty-five dollars (\$25). The request for a replacement of a registration card, license, certificate, or permit shall be made in the manner prescribed by the bureau.

~~(17)~~ (q) The fee for an endorsed verification of licensure, certification, registration, or permit shall be twenty-five dollars (\$25). The verification document shall include the license, certificate, registration, or permit number, the ~~date of issuance and expiration of the license, certificate, registration, or permit, the current license, certificate, registration, or permit~~ permit history and current status, the date of the endorsement, an embossed seal, and the signature of the chief.

~~(b)~~ (r) ~~This section shall become operative on July 1, 2018. The reinstatement fee following a suspension pursuant to subdivision (f) of Section 7599.34 and Section 7599.62 shall be 25 percent of the renewal fee.~~

SEC. 17.

Section 10140.6 of the Business and Professions Code is amended to read:

10140.6.

(a) A real estate licensee shall not publish, circulate, distribute, or cause to be published, circulated, or distributed in any newspaper or periodical, or by mail, any matter pertaining to any activity for which a real estate license is required that does not contain a designation disclosing that ~~he or she~~ the licensee is performing acts for which a real estate license is required.

(b) (1) A real estate licensee shall disclose ~~his or her~~ their name, license identification number and unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, if that licensee is a mortgage loan originator, and responsible broker's identity, as defined in Section 10015.4, on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting in a manner that requires a real estate license or mortgage

loan originator license endorsement in those transactions. The commissioner may adopt regulations identifying the materials in which a licensee must disclose a license identification number and unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, and responsible broker's identity.

(2) A real estate licensee who is a natural person and who legally changes the surname in which their license was originally issued may continue to utilize their former surname for the purpose of conducting business associated with their license so long as both names are filed with the department. Use of a former surname shall not constitute a fictitious name for the purposes of Section 10159.5.

~~(2)~~ (3) For purposes of this section, "solicitation materials" include business cards, stationery, advertising flyers, advertisements on television, in print, or electronic media, "for sale," rent, lease, "open house," and directional signs, and other materials designed to solicit the creation of a professional relationship between the licensee and a consumer.

~~(3)~~ (4) Nothing in this section shall be construed to limit or change the requirement described in Section 10236.4 as applicable to real estate brokers.

(c) This section shall not apply to "for sale," rent, lease, "open house," and directional signs that do either of the following:

(1) Display the responsible broker's identity, as defined in Section 10015.4, without reference to an associate broker or licensee.

(2) Display no licensee identification information.

(d) "Mortgage loan originator," "unique identifier," and "Nationwide Mortgage Licensing System and Registry" have the meanings set forth in Section 10166.01.

~~(e) This section shall become operative on January 1, 2018.~~

SEC. 18.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(10) – AB 1026 (Smith) Business licenses: veterans

Background:

This bill would require the department and any board within the department to grant a 50% fee reduction for an initial license to an applicant who provides satisfactory evidence, as defined, that the applicant has served as an active duty member of the United States Armed Forces or the California National Guard and was honorably discharged.

This bill would authorize a board to adopt regulations necessary to administer these provisions.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 1026 (Smith).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 1026 (Smith).

Location: Assembly Committee on Appropriations

Status: 4/20/2021 From committee: Do pass and re-refer to Committee. on Appropriations. (Ayes 19. Noes 0.) Re-referred to Committee on Appropriations.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 1026 (Cunningham) Bill Text

AB 1026 (Smith) Business licenses: veterans.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 115.4 of the Business and Professions Code is amended to read:

115.4.

(a) Notwithstanding any other law, on and after July 1, 2016, a board within the department shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged.

(b) The department and any board within the department shall grant a 50-percent fee reduction for an initial license to an applicant who provides satisfactory evidence the applicant has served as an active duty member of the United States Armed Forces or the California National Guard and was honorably discharged.

(c) Satisfactory evidence, as referenced in this section, shall be a copy of a current and valid driver's license or identification card with the word "Veteran" printed on its face.

~~(b)~~ (d) A board may adopt regulations necessary to administer this section.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(11) – AB 1236 (Ting): Healing arts: licensees: data collection.

Background:

As amended, this bill would require all boards oversee healing arts licensees to request workforce data from licensees and registrants for the purposes of future workforce planning. It specifies that the data may be requested at the time of electronic application for a license or license renewal, or at least biennially, from a scientifically selected random sample of licensees and registrants. The bill would require these boards to maintain the confidentiality of the information they receive from licensees and to only release information in aggregate form that cannot be used to identify an individual.

In addition, AB 1236 directs these boards to post the specified demographic information in aggregate, which was collected on the internet website that they each maintain. Lastly, beginning July 1, 2022, this bill would require each board, or the Department of Consumer Affairs on its behalf, to provide the information annually to the Office of Statewide Health Planning and Development.

On 3/19/2021, the Legislative and Regulatory Affairs Committee voted to watch AB 1236 and directed the Chair of the Committee and staff to have a conversation with the author's office about the data points being collected to allow a more informed discussion at the April 2021 Board meeting.

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 1236 (Ting).

On 4/29/2021, this bill was on the Assembly 2nd Reading File.

Since the Board's initial review of this bill, it has been amended to add sexual orientation and disability status as data points. It also states that a licensee or registrant shall not be required to provide any of the data outlined in the legislation.

The bill is keyed fiscal however, the exact costs are still undetermined.

Staff remains concerned about the requirement that each board be required to produce reports at least biennially, and post the raw data on its respective website.

Location: Assembly Committee on Appropriations

Status: 4/28/2021 From committee: Amend and do pass as amended and re-refer to Committee on Appropriations (Ayes 19. Noes 0.) (April 27).

Action Requested:

Due to the requirement to produce a report at least biennially, Staff recommends the Board take an **Oppose unless Amended** position on AB 1236 (Ting). While staff supports the voluntary collection of information, the requirement that the Board compile and submit a report of this data would be cost prohibitive to our program which is currently in need of a fee increase.

Attachment A: Assembly Business and Professions Committee Analysis

Attachment B: Bill Text

AB 1236 (Ting) Healing arts: licensees: data collection.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 502 is added to the Business and Professions Code, to read:

502.

(a) A board that supervises healing arts licensees under this division shall request workforce data from its licensees and, if designated by the board, its registrants, as specified in subdivision (b) for future workforce planning. The data may be requested at the time of electronic application for a license and license renewal, or at least biennially from a scientifically selected random sample of licensees and registrants.

(b) The workforce data collected by each board about its licensees and, if applicable, registrants shall include, at a minimum, information concerning all of the following:

(A) City, county, and ZIP Code of practice.

(B) Type of employer or classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.

(C) Work hours.

(D) Titles of positions held.

(E) Time spent in direct patient care.

(F) Clinical practice area.

(G) Race or ethnicity, subject to paragraph (2).

(H) Gender identity.

(I) Languages spoken.

(J) Educational background.

(K) Future work intentions.

(L) Job satisfaction ratings.

(M) Sexual orientation.

(N) Disability status.

(c) Each board shall maintain the confidentiality of the information it receives from licensees and registrants under this section and shall release information only in an aggregate form that cannot be used to identify an individual.

(d) Each board shall produce reports containing the workforce data it collects pursuant to this section, at a minimum, on a biennial basis. Aggregate information collected pursuant to this section shall be posted on each board's internet website.

(e) Each board, or the Department of Consumer Affairs on its behalf, shall, beginning on July 1, 2022, and annually thereafter, provide the data it collects pursuant to this section to the Office of Statewide Health Planning and Development in a manner directed by the office that allows for inclusion of the data into the annual report it produces pursuant to Section 128052 of the Health and Safety Code.

(f) A licensee or registrant shall not be required to provide any of the information listed in subdivision (b).

SEC. 2.

Section 2717 of the Business and Professions Code is repealed.

2717.

~~(a) The board shall collect and analyze workforce data from its licensees for future workforce planning. The board may collect the data at the time of license renewal or from a scientifically selected random sample of its licensees. The board shall produce reports on the workforce data it collects, at a minimum, on a biennial basis. The board shall maintain the confidentiality of the information it receives from licensees under this section and shall only release information in an aggregate form that cannot be used to identify an individual. The workforce data collected by the board shall include, at a minimum, employment information such as hours of work, number of positions held, time spent in direct patient care, clinical practice area, type of employer, and work location. The data shall also include future work intentions, reasons for leaving or reentering nursing, job satisfaction ratings, and demographic data.~~

~~(b) Aggregate information collected pursuant to this section shall be placed on the board's Internet Web site.~~

~~(c) (1) Notwithstanding subdivision (a), the board shall collect, at least biennially, at the times of both issuing an initial license and issuing a renewal license, all of the following data on nurses licensed under this chapter:~~

~~(A) Location of practice, including city, county, and ZIP Code.~~

~~(B) Race or ethnicity, subject to paragraph (3).~~

~~(C) Gender.~~

~~(D) Languages spoken.~~

~~(E) Educational background.~~

~~(F) Classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.~~

~~(2) The board shall annually provide the data collected pursuant to paragraph (1) to the Office of Statewide Health Planning and Development in a manner directed by the office~~

~~that allows for inclusion of the data into the annual report required by Section 128052 of the Health and Safety Code.~~

~~(3) A licensee may, but is not required to, report his or her race or ethnicity to the board.~~

~~(d) The board is authorized to expend the sum of one hundred forty-five thousand dollars (\$145,000) from the Board of Registered Nursing Fund in the Professions and Vocations Fund for the purpose of implementing this section.~~

SEC. 3.

Section 2852.5 of the Business and Professions Code is repealed.

~~2852.5.~~

~~(a) The board shall collect, at least biennially, at the times of both issuing an initial license and issuing a renewal license, all of the following data on vocational nurses licensed under this chapter:~~

~~(1) Location of practice, including city, county, and ZIP Code.~~

~~(2) Race or ethnicity, subject to subdivision (c).~~

~~(3) Gender.~~

~~(4) Languages spoken.~~

~~(5) Educational background.~~

~~(6) Classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.~~

~~(b) The board shall annually provide the data collected pursuant to subdivision (a) to the Office of Statewide Health Planning and Development in a manner directed by the office that allows for inclusion of the data into the annual report required by Section 128052 of the Health and Safety Code.~~

~~(c) A licensee may, but is not required to, report his or her race or ethnicity to the board.~~

SEC. 4.

Section 3518.1 of the Business and Professions Code is repealed.

~~3518.1.~~

~~(a) The board shall collect, at least biennially, at the times of both issuing an initial license and issuing a renewal license, all of the following data on physician assistants licensed under this chapter:~~

~~(1) Location of practice, including city, county, and ZIP Code.~~

~~(2) Race or ethnicity, subject to subdivision (c).~~

~~(3) Gender.~~

~~(4) Languages spoken.~~

~~(5) Educational background.~~

~~(6) Classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.~~

~~(b) The board shall annually provide the data collected pursuant to subdivision (a) to the Office of Statewide Health Planning and Development in a manner directed by the office that allows for inclusion of the data into the annual report required by Section 128052 of the Health and Safety Code.~~

~~(c) A licensee may, but is not required to, report his or her race or ethnicity to the board.~~

SEC. 5.

Section 3770.1 of the Business and Professions Code is repealed.

3770.1.

~~(a) The board shall collect, at least biennially, at the times of both issuing an initial license and issuing a renewal license, all of the following data on respiratory therapists licensed under this chapter:~~

~~(1) Location of practice, including city, county, and ZIP Code.~~

~~(2) Race or ethnicity, subject to subdivision (c).~~

~~(3) Gender.~~

~~(4) Languages spoken.~~

~~(5) Educational background.~~

~~(6) Classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.~~

~~(b) The board shall annually provide the data collected pursuant to subdivision (a) to the Office of Statewide Health Planning and Development in a manner directed by the office that allows for inclusion of the data into the annual report required by Section 128052 of the Health and Safety Code.~~

~~(c) A licensee may, but is not required to, report his or her race or ethnicity to the board.~~

SEC. 6.

Section 4506 of the Business and Professions Code is repealed.

4506.

~~(a) The board shall collect, at least biennially, at the times of both issuing an initial license and issuing a renewal license, all of the following data on psychiatric technicians licensed under this chapter:~~

~~(1) Location of practice, including city, county, and ZIP Code.~~

~~(2) Race or ethnicity, subject to subdivision (c).~~

~~(3) Gender.~~

~~(4) Languages spoken.~~

~~(5) Educational background.~~

~~(6) Classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.~~

~~(b) The board shall annually provide the data collected pursuant to subdivision (a) to the Office of Statewide Health Planning and Development in a manner directed by the office that allows for inclusion of the data into the annual report required by Section 128052 of the Health and Safety Code.~~

~~(c) A licensee may, but is not required to, report his or her race or ethnicity to the board.~~

SEC. 7.

The Legislature finds and declares that Section 1 of this act, which adds Section 502 of the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of licensees and registrants, while also gathering useful workforce data, it is necessary that some information collected from licensees and registrants only be released in aggregate form.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(12) – AB 1386 (Cunningham) License fees: military partners and spouses

Background:

This bill prohibits a licensing board under the Department of Consumer Affairs from charging an initial or original license fee to an applicant who holds a current similar license in another state and is the spouse of an active duty member of the Armed Forces that is stationed in California.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 1386 (Cunningham).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 1386 (Cunningham).

Location: Assembly Committee on Appropriations

Status: 4/28/2021 From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
(Ayes: 19; Noes: 0; Abstain: 0)

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 1386 (Cunningham) Bill Text

AB 1386 (Cunningham) License fees: military partners and spouses.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 115.5 of the Business and Professions Code is amended to read:

115.5.

(a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license from the board.

(b) (1) A board shall not charge an applicant who meets the requirements in subdivision (a) an initial application fee or an initial license issuance fee.

(2) The board shall not charge an applicant who meets the requirements in subdivision (a) an initial examination fee if the examination is administered by the board.

~~(b)~~ (c) A board may adopt regulations necessary to administer this section.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(13) – SB 102 (Melendez) COVID-19 emergency order violation: license revocation

Background:

This bill would prohibit a board within the Department of Consumer Affairs that does not regulate healing arts licensees, and the Department of Alcoholic Beverage Control from revoking a license or imposing a fine or penalty for failure to comply with any COVID-19 state of emergency orders or COVID-19 stay-at-home orders, unless the board or department can prove that lack of compliance resulted in transmission of COVID-19. The bill would specify that the provisions do not preclude issuance of fines, penalties, or revoking a license for any action that is not related to the issuance of any COVID-19 state of emergency orders or COVID-19 stay-at-home order. The provisions of the bill would remain in effect until either the COVID-19 state of emergency is terminated or all COVID-19 stay-at-home orders are no longer in effect, whichever occurs later, but in no case would the provisions remain in effect after January 1, 2024.

This bill would declare that it is to take effect immediately as an urgency statute.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch SB 102 (Melendez).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch SB 102 (Melendez).

Location: Senate

Status: 4/5/2021 April 5 set for final hearing. Failed passage in committee. (Ayes 6. Noes 7.) Reconsideration granted.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: SB 102 (Melendez) Bill Text

SB 102 (Melendez) COVID-19 emergency order violation: license revocation.

As Amends the Law Today (04/30/2021)

SECTION 1.

Section 464.5 is added to the Business and Professions Code, to read:

464.5.

(a) The department and any board shall not revoke a license, fine, or impose a penalty for failure to comply with any COVID-19 state of emergency orders or COVID-19 stay-at-home orders, unless the department or board can prove that lack of compliance resulted in the transmission of COVID-19.

(b) For the purposes of this section, board does not include a healing arts board as described in Division 2 (commencing with Section 500).

(c) For the purposes of this section:

(1) "COVID-19 state of emergency" means the state of emergency proclaimed by the Governor on March 4, 2020.

(2) "COVID-19 stay-at-home order" means either of the following:

(A) Executive Order No. N-33-20, or any similar order issued by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) or the State Department of Public Health that requires the closure of businesses in response to the COVID-19 state of emergency.

(B) Any order by a local government that requires the closure of businesses in response to the COVID-19 state of emergency, including, but not limited to, an order issued pursuant to the police power of a city or county or any order issued by a local health officer pursuant to Section 101040 or 120175 of the Health and Safety Code.

(d) Nothing in this section shall preclude the department or any board from issuing fines, penalties, or revoking a license for any action that is not related to the issuance of any COVID-19 state of emergency orders or COVID-19 stay-at-home orders.

(e) This section shall remain in effect only until either the COVID-19 state of emergency terminates pursuant to Section 8629 of the Government Code or all COVID-19 stay-at-home orders are no longer in effect, whichever occurs later, and as of that date is repealed. However, if those contingencies are not met, then in no case shall this section remain in effect after January 1, 2024, and as of that date is repealed.

SEC. 2.

Section 24200.8 is added to the Business and Professions Code, to read:

24200.8.

(a) The Department of Alcoholic Beverage Control shall not revoke the license, fine, or impose a penalty of any licensee for failure to comply with any COVID-19 state of emergency orders, or COVID-19 stay-at-home orders, unless the department can prove that lack of compliance resulted in transmission of COVID-19.

(b) For the purposes of this section:

(1) "COVID-19 state of emergency" means the state of emergency proclaimed by the Governor on March 4, 2020.

(2) "COVID-19 stay-at-home order" means either of the following:

(A) Executive Order No. N-33-20, or any similar order issued by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) or the State Department of Public Health that requires the closure of businesses in response to the COVID-19 state of emergency.

(B) Any order by a local government that requires the closure of businesses in response to the COVID-19 state of emergency, including, but not limited to, an order issued pursuant to the police power of a city or county or any order issued by a local health officer pursuant to Section 101040 or 120175 of the Health and Safety Code.

(c) Nothing in this section shall preclude the department or any board from issuing fines, penalties, or revoking a license for any action that is not related to the issuance of any COVID-19 state of emergency orders or COVID-19 stay-at-home orders.

(d) This section shall remain in effect only until either the COVID-19 state of emergency terminates pursuant to Section 8629 of the Government Code or all COVID-19 stay-at-home orders are no longer in effect, whichever occurs later, and as of that date is repealed. However, if those contingencies are not met, then in no case shall this section remain in effect after January 1, 2024, and as of that date is repealed.

SEC. 3.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect businesses, including small businesses, which continue to make significant contributions to economic security, which helps ensure public safety, during these unprecedented times caused by the COVID-19 pandemic, as soon as possible, it is necessary for this act to take effect immediately.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(14)– SB 221 (Wiener): Health care coverage – timely access to care.

Background:

This bill codifies existing timely access to care standards for health plans and health insurers, applies these requirements to Medi-Cal managed care plans, and adds a standard for non-urgent follow-up appointments for nonphysician mental health care or substance use disorder providers within ten business days of the prior appointment.

Location: Senate Committee on Appropriations

Status: 4/21/2021 Set for hearing on May 3, 2021

Action Requested:

Staff recommends the Board watch SB 221 (Wiener).

Attachment A: SB 221 (Wiener) Bill Text

SB 221 (Wiener) Health care coverage: timely access to care.

As Amends the Law Today (04/30/2021)

SECTION 1.

The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to ensure that all enrollees of health care service plans and health insurers who require ongoing courses of medically necessary treatment for mental health and substance use disorders are able to obtain followup appointments with nonphysician providers of mental health and substance use disorder services within timeframes that are clinically appropriate to care for their diagnoses.

(b) Existing law and regulations have been interpreted to set clear timely access standards for health care service plans and health insurers to meet enrollees' requests for initial appointments with nonphysician providers of mental health and substance use disorder services, but not to set similarly clear timely access standards for the provision of followup appointments with these providers for the many enrollees who need them.

(c) This loophole in existing law and regulations has resulted in failures to provide enrollees followup appointments with nonphysician providers of mental health and substance use disorder services within the timeframes consistent with generally accepted standards of care.

(d) Closing this loophole is urgently necessary to address the widespread and lengthy delays in access to followup appointments with nonphysician providers of mental health and substance use disorder services experienced by thousands of Californians, including individuals suffering from major disorders and reporting suicidal ideation.

(e) Closing this loophole has grown even more urgent as the prevalence of mental health and substance use disorders has increased dramatically during the COVID-19 pandemic, and efforts to meet increased demand have focused on providing initial appointments while timely access to appropriate followup care has further diminished.

SEC. 2.

Section 1367.03 of the Health and Safety Code is amended to read:

1367.03.

(a) A health care service plan that provides or arranges for the provision of hospital or physician services, including a specialized mental health plan that provides physician or hospital services, or that provides mental health services pursuant to a contract with a full service plan, shall comply with the following timely access requirements:

~~(a) (1) Not later than January 1, 2004, the department shall develop and adopt regulations to ensure that enrollees have access to needed~~ *A health care service plan shall provide or arrange for the provision of covered health care services in a timely manner. In developing these regulations, the department shall develop indicators*

~~of timeliness of access to care and, in so doing, shall consider the following as indicators of timeliness of access to care: manner appropriate for the nature of the enrollee's condition consistent with good professional practice. A plan shall establish and maintain provider networks, policies, procedures, and quality assurance monitoring systems and processes sufficient to ensure compliance with this clinical appropriateness standard. A health care service plan that uses a tiered network shall demonstrate compliance with the standards established by this section based on providers available at the lowest cost-sharing tier.~~

(2) A health care service plan shall ensure that all plan and provider processes necessary to obtain covered health care services, including, but not limited to, prior authorization processes, are completed in a manner that assures the provision of covered health care services to an enrollee in a timely manner appropriate for the enrollee's condition and in compliance with this section.

(3) If it is necessary for a provider or an enrollee to reschedule an appointment, the appointment shall be promptly rescheduled in a manner that is appropriate for the enrollee's health care needs, and ensures continuity of care consistent with good professional practice, and consistent with this section and the regulations adopted thereunder.

(4) Interpreter services required by Section 1367.04 of this code and Section 1300.67.04 of Title 28 of the California Code of Regulations shall be coordinated with scheduled appointments for health care services in a manner that ensures the provision of interpreter services at the time of the appointment without imposing delay on the scheduling of the appointment. This subdivision does not modify the requirements established in Section 1300.67.04 of Title 28 of the California Code of Regulations, or approved by the department pursuant to Section 1300.67.04 of Title 28 of the California Code of Regulations for a plan's language assistance program.

(5) In addition to ensuring compliance with the clinical appropriateness standard set forth in paragraph (1), a health care service plan shall ensure that its contracted provider network has adequate capacity and availability of licensed health care providers to offer enrollees appointments that meet the following timeframes:

(A) Urgent care appointments for services that do not require prior authorization: within 48 hours of the request for appointment, except as provided in subparagraph (H).

(B) Urgent care appointments for services that require prior authorization: within 96 hours of the request for appointment, except as provided in subparagraph (H).

(C) Nonurgent appointments for primary care: within 10 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(D) Nonurgent appointments with specialist physicians: within 15 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(E) Nonurgent appointments with a nonphysician mental health care or substance use disorder provider: within 10 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(F) Nonurgent followup appointments with a nonphysician mental health care or substance use disorder provider: within 10 business days of the prior appointment for those undergoing a course of treatment for an ongoing mental health or substance use disorder condition, except as provided in subparagraph (H).

(G) Nonurgent appointments for ancillary services for the diagnosis or treatment of injury, illness, or other health condition: within 15 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(H) The applicable waiting time for a particular appointment may be extended if the referring or treating licensed health care provider, or the health professional providing triage or screening services, as applicable, acting within the scope of their practice and consistent with professionally recognized standards of practice, has determined and noted in the relevant record that a longer waiting time will not have a detrimental impact on the health of the enrollee.

(I) Preventive care services, as defined in subdivision (e), and periodic followup care, including standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac, mental health, or substance use disorder conditions, and laboratory and radiological monitoring for recurrence of disease, may be scheduled in advance consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of their practice.

(J) A referral to a specialist by a primary care provider or another specialist shall be subject to the relevant time-elapsed standard in subparagraph (A), (B), or (D) and shall be subject to the other provisions of this section.

(K) A plan may demonstrate compliance with the primary care time-elapsed standards established by this subdivision through implementation of standards, processes, and systems providing advanced access to primary care appointments, as defined in subdivision (e).

(6) In addition to ensuring compliance with the clinical appropriateness standard set forth at paragraph (1), each dental plan, and each full service plan offering coverage for dental services, shall ensure that contracted dental provider networks have adequate capacity and availability of licensed health care providers to offer enrollees appointments for covered dental services in accordance with the following requirements:

(A) Urgent appointments within the dental plan network shall be offered within 72 hours of the time of request for appointment, if consistent with the enrollee's individual needs and as required by professionally recognized standards of dental practice.

(B) Nonurgent appointments shall be offered within 36 business days of the request for appointment, except as provided in subparagraph (C).

(C) Preventive dental care appointments shall be offered within 40 business days of the request for appointment.

(7) A plan shall ensure it has sufficient numbers of contracted providers to maintain compliance with the standards established by this section.

(A) This section does not modify the requirements regarding provider-to-enrollee ratio or geographic accessibility established by Section 1300.51, 1300.67.2, or 1300.67.2.1 of Title 28 of the California Code of Regulations.

(B) A plan operating in a service area that has a shortage of one or more types of providers shall ensure timely access to covered health care services as required by this section, including applicable time-elapsd standards, by referring an enrollee to, or, in the case of a preferred provider network, by assisting an enrollee to locate available and accessible contracted providers in neighboring service areas consistent with patterns of practice for obtaining health care services in a timely manner appropriate for the enrollee's health needs. A plan shall arrange for the provision of specialty services from specialists outside the plan's contracted network if unavailable within the network if medically necessary for the enrollee's condition. Enrollee costs for medically necessary referrals to nonnetwork providers shall not exceed applicable copayments, coinsurance, and deductibles. This requirement does not prohibit a plan or its delegated provider group from accommodating an enrollee's preference to wait for a later appointment from a specific contracted provider. If medically necessary treatment of a mental health or substance use disorder is not available in network within the geographic and timely access standards set by law or regulation, a health care service plan shall arrange coverage outside the plan's contracted network in accordance with subdivision (d) of Section 1374.72.

(8) A plan shall provide or arrange for the provision, 24 hours per day, 7 days per week, of triage or screening services by telephone, as defined in subdivision (e).

(A) A plan shall ensure that telephone triage or screening services are provided in a timely manner appropriate for the enrollee's condition, and that the triage or screening waiting time does not exceed 30 minutes.

~~*(1) (B) Waiting times for appointments with physicians, including*~~ *A plan may provide or arrange for the provision of telephone triage or screening services through one or more of the following means: plan-operated telephone triage or screening services, telephone medical advice services pursuant to Section 1348.8, the plan's contracted primary care and specialty physicians, mental health care or substance use disorder provider network, or another method that provides triage or screening services consistent with this section.*

(i) A plan that arranges for the provision of telephone triage or screening services through contracted primary care, mental health care, and substance use disorder providers shall require those providers to maintain a procedure for triaging or screening enrollee telephone calls, which, at a minimum, shall include the employment, during and after business hours, of a telephone answering machine, an answering service, or office staff, that shall inform the caller of both of the following:

(I) Regarding the length of wait for a return call from the provider.

(II) How the caller may obtain urgent or emergency care, including, if applicable, how to contact another provider who has agreed to be on call to triage or screen by phone, or if needed, deliver urgent or emergency care.

(ii) A plan that arranges for the provision of triage or screening services through contracted primary care, mental health care, and substance use disorder providers who are unable to meet the time-elapsed standards established in subparagraph (A) shall also provide or arrange for the provision of plan-contracted or operated triage or screening services, which shall, at a minimum, be made available to enrollees affected by that portion of the plan's network.

(iii) An unlicensed staff person handling enrollee calls may ask questions on behalf of a licensed staff person to help ascertain the condition of an insured so that the enrollee may be referred to licensed staff. However, an unlicensed staff person shall not, under any circumstances, use the answers to those questions in an attempt to assess, evaluate, advise, or make a decision regarding the condition of an enrollee or determine when an enrollee needs to be seen by a licensed medical professional.

(9) Dental, vision, chiropractic, and acupuncture plans shall ensure that contracted providers employ an answering service or a telephone answering machine during nonbusiness hours, which provide instructions regarding how an enrollee may obtain urgent or emergency care, including, if applicable, how to contact another provider who has agreed to be on call to triage or screen by phone, or if needed, deliver urgent or emergency care.

(10) A plan shall ensure that, during normal business hours, the waiting time for an enrollee to speak by telephone with a plan customer service representative knowledgeable and competent regarding the enrollee's questions and concerns shall not exceed 10 minutes.

(b) Dental, vision, chiropractic, and acupuncture plans shall comply with paragraphs (1), (3), (4), (7), (9), and (10) of subdivision (a).

(c) The obligation of a plan to comply with this section shall not be waived if the plan delegates to its medical groups, independent practice associations, or other contracting entities any services or activities that the plan is required to perform. A plan's implementation of this section shall be consistent with the Health Care Providers' Bill of Rights, and a material change in the obligations of a plan's contracting providers shall be considered a material change to the provider contract, within the meaning of subdivision (b) and paragraph (2) of subdivision (h) of Section 1375.7.

(d) A plan shall not prevent, discourage, or discipline a contracting provider or employee for informing an enrollee or subscriber about the timely access standards.

(e) For purposes of this section:

(2) ~~(1) Timeliness of care in an episode of illness, including the timeliness of referrals and obtaining other services, if needed. "Advanced access" means the provision, by an individual provider, or by the medical group or independent practice association to which an enrollee is assigned, of appointments with a primary care physician, or other~~

qualified primary care provider such as a nurse practitioner or physician's assistant, within the same or next business day from the time an appointment is requested, and advance scheduling of appointments at a later date if the enrollee prefers not to accept the appointment offered within the same or the next business day.

(2) "Appointment waiting time" means the time from the initial request for health care services by an enrollee or the enrollee's treating provider to the earliest date offered for the appointment for services inclusive of time for obtaining authorization from the plan or completing any other condition or requirement of the plan or its contracting providers.

(3) "Preventive care" means health care provided for prevention and early detection of disease, illness, injury, or another health condition and, in the case of a full service plan includes all of the basic health care services required by paragraph (5) of subdivision (b) of Section 1345, and subdivision (f) of Section 1300.67 of Title 28 of the California Code of Regulations.

(4) "Provider group" has the meaning set forth as in subdivision (g) of Section 1373.65.

~~(3) (5) Waiting time to speak to-~~ *"Triage" or "screening" means the assessment of an enrollee's health concerns and symptoms via communication with a physician, registered nurse, or other qualified health professional acting within his or her- their scope of practice and who is trained to screen or triage an enrollee who may need care for the purpose of determining the urgency of the enrollee's need for care.*

~~(b) In developing these standards for timeliness of access, the department shall consider the following:~~

~~(1) Clinical appropriateness.~~

~~(2) The nature of the specialty.~~

~~(3) The urgency of care.~~

~~(4) The requirements of other provisions of law, including Section 1367.01 governing utilization review, that may affect timeliness of access.~~

~~(c) (6) The department may adopt standards other than the time elapsed between the time an enrollee seeks health care and obtains care. If the department chooses a standard other than the time elapsed between the time an enrollee first seeks health care and obtains it, the department shall demonstrate why that standard is more appropriate. In developing these standards, the department shall consider the nature of the plan network. "Triage or screening waiting time" means the time waiting to speak by telephone with a physician, registered nurse, or other qualified health professional acting within their scope of practice and who is trained to screen or triage an enrollee who may need care.~~

~~(d) The department shall review and adopt standards, as needed, concerning the availability of primary care physicians, specialty physicians, hospital care, and other health care, so that consumers have timely access to care. In so doing, the department shall consider the nature of physician practices, including individual and group practices as well as the nature of the plan network. The department shall also consider various~~

~~circumstances affecting the delivery of care, including urgent care, care provided on the same day, and requests for specific providers. If the department finds that health care service plans and health care providers have difficulty meeting these standards, the department may make recommendations to the Assembly Committee on Health and the Senate Committee on Insurance of the Legislature pursuant to subdivision (i).~~

~~(e) (7) In developing standards under subdivision (a), the department shall consider requirements under federal law, requirements under other state programs, standards adopted by other states, nationally recognized accrediting organizations, and professional associations. The department shall further consider the needs of rural areas, specifically those in which health facilities are more than 30 miles apart and any requirements imposed by the State Department of Health Care Services on health care service plans that contract with the State Department of Health Care Services to provide Medi-Cal managed care. "Urgent care" means health care for a condition that requires prompt attention, consistent with paragraph (2) of subdivision (h) of Section 1367.01.~~

~~(f) (1) Contracts between health care service plans and health care providers shall ensure compliance with the standards developed under this section. chapter. These contracts shall require reporting by health care providers to health care service plans and by health care service plans to the department to ensure compliance with the standards.~~

~~(2) Health care service plans shall report annually to the department on compliance with the standards in a manner specified by the department. The reported information shall allow consumers to compare the performance of plans and their contracting providers in complying with the standards, as well as changes in the compliance of plans with these standards.~~

~~(3) The department may shall develop standardized methodologies for reporting that shall be used by health care service plans to demonstrate compliance with this section and any regulations adopted pursuant to it. The methodologies shall be sufficient to determine compliance with the standards developed under this section for different networks of providers if a health care service plan uses a different network for Medi-Cal managed care products than for other products or if a health care service plan uses a different network for individual market products than for small group market products. The development and adoption of these methodologies shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) until January 1, 2020. The department shall consult with stakeholders in developing standardized methodologies under this paragraph.~~

~~(g) (1) When evaluating compliance with the standards, the department shall focus more upon patterns of noncompliance rather than isolated episodes of noncompliance.~~

~~(2) (g) (1) The director may investigate and take enforcement action against plans regarding noncompliance with the requirements of this section. Where substantial harm to an enrollee has occurred as a result of plan noncompliance, the director may, by order, assess administrative penalties subject to appropriate notice of, and the opportunity for, a hearing in accordance with Section 1397. The plan may provide to the~~

director, and the director may consider, information regarding the plan's overall compliance with the requirements of this section. The administrative penalties shall not be deemed an exclusive remedy available to the director. These penalties shall be paid to the Managed Care Administrative Fines and Penalties Fund and shall be used for the purposes specified in Section 1341.45. The director shall periodically evaluate grievances to determine if any audit, investigative, or enforcement actions should be undertaken by the department.

~~(3)~~ (2) The director may, after appropriate notice and opportunity for hearing in accordance with Section 1397, by order, assess administrative penalties if the director determines that a health care service plan has knowingly committed, or has performed with a frequency that indicates a general business practice, either of the following:

(A) Repeated failure to act promptly and reasonably to assure timely access to care consistent with this chapter.

(B) Repeated failure to act promptly and reasonably to require contracting providers to assure timely access that the plan is required to perform under this chapter and that have been delegated by the plan to the contracting provider when the obligation of the plan to the enrollee or subscriber is reasonably clear.

(C) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed warranted by the director to enforce this chapter.

~~(4)~~ (3) The administrative penalties shall be paid to the Managed Care Administrative Fines and Penalties Fund and shall be used for the purposes specified in Section 1341.45.

(h) The department shall work with the patient advocate to assure that the quality of care report card incorporates information provided pursuant to subdivision (f) regarding the degree to which health care service plans and health care providers comply with the requirements for timely access to care.

(i) The department shall annually review information regarding compliance with the standards developed under this section and shall make recommendations for changes that further protect enrollees. Commencing no later than December 1, 2015, and annually thereafter, the department shall post its final findings from the review on its ~~Internet Web site~~. *internet website*.

(j) The department shall post on its ~~Internet Web site~~ *internet website* any waivers or alternative standards that the department approves under this section on or after January 1, 2015.

(k) This section shall apply to Medi-Cal managed care plan contracts entered into with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 3.

Section 1367.031 of the Health and Safety Code is amended to read:

1367.031.

(a) A health care service plan contract that is issued, renewed, or amended on or after July 1, 2017, shall provide information to an enrollee regarding the standards for timely access to care adopted pursuant to Section 1367.03 and the information required by this section, including information related to receipt of interpreter services in a timely manner, no less than annually.

(b) A health care service plan contract that is issued, renewed, or amended on or after July 1, 2022, shall provide information to an enrollee regarding the standards for timely access to care required by Section 1367.032, adopted pursuant to Section 1367.03, and the information required by this section, including information related to receipt of interpreter services in a timely manner, no less than annually.

~~(b)~~ (c) A health care service plan at a minimum shall provide information regarding appointment wait times for urgent care, nonurgent primary care, nonurgent specialty care, and telephone screening established *in Section 1367.032 or* pursuant to Section 1367.03 to enrollees and contracting providers. The information shall also include notice of the availability of interpreter services at the time of the appointment pursuant to Section 1367.04. A health care service plan may indicate that exceptions to appointment wait times may apply if the department has found exceptions to be permissible.

~~(c)~~ (d) The information required to be provided pursuant to this section shall be provided to an enrollee with individual coverage upon initial enrollment and annually thereafter upon renewal, and to enrollees and subscribers with group coverage upon initial enrollment and annually thereafter upon renewal. A health care service plan may include this information with other materials sent to the enrollee. The information shall also be provided in the following manner:

(1) In a separate section of the evidence of coverage titled "Timely Access to Care."

(2) At least annually, in or with newsletters, outreach, or other materials that are routinely disseminated to the plan's enrollees.

(3) Commencing January 1, 2018, in a separate section of the provider directory published and maintained by the health care service plan pursuant to Section 1367.27. The separate section shall be titled "Timely Access to Care."

(4) On the ~~Internet Web site~~ *internet website* published and maintained by the health care service plan, in a manner that allows enrollees and prospective enrollees to easily locate the information.

~~(d)~~ (e) (1) A health care service plan shall provide the information required by this section to contracting providers on no less than an annual basis.

(2) A health care service plan shall also inform a contracting provider of all of the following:

(A) Information about a health care service plan's obligation under California law to provide or arrange for timely access to care.

(B) How a contracting provider or enrollee can contact the health care service plan to obtain assistance if a patient is unable to obtain a timely referral to an appropriate provider.

(C) The toll-free telephone number for the Department of Managed Health Care where providers and enrollees can file a complaint if they are unable to obtain a timely referral to an appropriate provider.

(3) A health care service plan may comply with this subdivision by including the information with an existing communication with a contracting provider.

~~(e)~~ (f) This section shall apply to Medi-Cal managed care plan contracts entered into with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 4.

Section 10133.53 of the Insurance Code is amended to read:

10133.53.

(a) (1) A health insurance policy that is issued, renewed, or amended on or after July 1, 2017, that provides benefits through contracts with providers for alternative rates pursuant to Section 10133 shall provide information to an insured regarding the standards for timely access to care adopted pursuant to Section 10133.5 and the information required by this section, including information related to receipt of interpreter services in a timely manner, no less than annually.

(2) A health insurance policy that is issued, renewed, or amended on or after July 1, 2022, that provides benefits through contracts with providers for alternative rates pursuant to Section 10133 shall provide information to an insured regarding the standards for timely access to care required by Section 10133.54, adopted pursuant to Section 10133.5, and the information required by this section, including information related to receipt of interpreter services in a timely manner, no less than annually.

(b) A health insurer that contracts with providers for alternative rates of payment pursuant to Section 10133 shall, at a minimum, provide information regarding appointment wait times for urgent care, nonurgent primary care, nonurgent specialty care, and telephone screening established *in Section 10133.54 or* pursuant to Section 10133.5 to insureds and contracting providers. The information shall also include notice of the availability of interpreter services at the time of the appointment pursuant to Section 10133.8. A health insurer may indicate that exceptions to appointment wait times may apply if the department has found exceptions to be permissible.

(c) The information required to be provided pursuant to this section shall be provided to an insured with individual coverage upon initial enrollment and annually thereafter upon renewal, and to insureds and group policyholders with group coverage upon initial enrollment and annually thereafter upon renewal. An insurer may include this information with other materials sent to the insured. The information shall also be provided in the following manner:

- (1) In a separate section of the evidence of coverage titled "Timely Access to Care."
 - (2) At least annually, in or with newsletters, outreach, or other materials that are routinely disseminated to the policy's insureds.
 - (3) Commencing January 1, 2018, in a separate section of the provider directory published and maintained by the insurer pursuant to Section 10133.15. The separate section shall be titled "Timely Access to Care."
 - (4) On the ~~Internet Web site~~ *internet website* published and maintained by the insurer, in a manner that allows insureds and prospective insureds to easily locate the information.
- (d) (1) A health insurer shall provide the information required by this section to contracting providers on no less than an annual basis.
- (2) A health insurer shall also inform a contracting provider of all of the following:
- (A) Information about a health insurer's obligation under California law to provide or arrange for timely access to care.
 - (B) How a contracting provider or insured can contact the health insurer to obtain assistance if a patient is unable to obtain a timely referral to an appropriate provider.
 - (C) The toll-free telephone number for the Department of Insurance where providers and insureds can file a complaint if they are unable to obtain a timely referral to an appropriate provider.
- (3) A health insurer may comply with this subdivision by including the information with an existing communication with a contracting provider.

SEC. 5.

Section 10133.54 is added to the Insurance Code, to read:

10133.54.

(a) This section applies to policies of health insurance, as defined by subdivision (b) of Section 106. The requirements of this section apply to all health care services covered by a health insurance policy.

(b) Notwithstanding Section 10133.5, a health insurer shall comply with the timely access requirements in this section, but a specialized health insurance policy as defined in subdivision (c) of Section 106, other than a specialized mental health insurance policy, is exempt from the provisions of this section, except as specified in paragraph (6) and subdivision (c).

(1) A health insurer shall provide or arrange for the provision of covered health care services in a timely manner appropriate for the nature of the insured's condition, consistent with good professional practice. An insurer shall establish and maintain provider networks, policies, procedures, and quality assurance monitoring systems and processes sufficient to ensure compliance with this clinical appropriateness standard. An insurer that uses a tiered network shall demonstrate compliance with the standards established by this section based on providers available at the lowest cost-sharing tier.

(2) A health insurer shall ensure that all insurer and provider processes necessary to obtain covered health care services, including, but not limited to, prior authorization processes, are completed in a manner that assures the provision of covered health care services to an insured in a timely manner appropriate for the insured's condition and in compliance with this section.

(3) If it is necessary for a provider or an insured to reschedule an appointment, the appointment shall be promptly rescheduled in a manner that is appropriate for the insured's health care needs, and ensures continuity of care consistent with good professional practice, and consistent with the objectives of Section 10133.5, the regulations adopted pursuant to Section 10133.5, and this section.

(4) Interpreter services required by Section 10133.8 of this code and Article 12.1 (commencing with Section 2538.1) of Title 10 of the California Code of Regulations shall be coordinated with scheduled appointments for health care services in a manner that ensures the provision of interpreter services at the time of the appointment, consistent with Section 2538.6 of Title 10 of the California Code of Regulations, without imposing delay on the scheduling of the appointment. This subdivision does not modify the requirements established in Section 10133.9 of this code and Section 2538.6 of Title 10 of the California Code of Regulations, or approved by the department pursuant to Section 2538.6 of Title 10 of the California Code of Regulations for an insurer's language assistance program.

(5) In addition to ensuring compliance with the clinical appropriateness standard set forth in paragraph (1), a health insurer shall ensure that its contracted provider network has adequate capacity and availability of licensed health care providers to offer insureds appointments that meet the following timeframes:

(A) Urgent care appointments for services that do not require prior authorization: within 48 hours of the request for appointment, except as provided in subparagraph (H).

(B) Urgent care appointments for services that require prior authorization: within 96 hours of the request for appointment, except as provided in subparagraph (H).

(C) Nonurgent appointments for primary care: within 10 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(D) Nonurgent appointments with specialist physicians: within 15 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(E) Nonurgent appointments with a nonphysician mental health care or substance use disorder provider: within 10 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(F) Nonurgent followup appointments with a nonphysician mental health care or substance use disorder provider: within 10 business days of the prior appointment for those undergoing a course of treatment for an ongoing mental health or substance use disorder condition, except as provided in subparagraph (H).

(G) Nonurgent appointments for ancillary services for the diagnosis or treatment of injury, illness, or other health condition: within 15 business days of the request for appointment, except as provided in subparagraphs (H) and (I).

(H) The applicable waiting time for a particular appointment may be extended if the referring or treating licensed health care provider, or the health professional providing triage or screening services, as applicable, acting within the scope of their practice and consistent with professionally recognized standards of practice, has determined and noted in the relevant record that a longer waiting time will not have a detrimental impact on the health of the insured.

(I) Preventive care services, as defined in subdivision (e), and periodic follow up care, including standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac, mental health, or substance use disorder conditions, and laboratory and radiological monitoring for recurrence of disease, may be scheduled in advance consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of their practice.

(J) A referral to a specialist by a primary care provider or another specialist shall be subject to the relevant time-elapsed standard in subparagraph (A), (B) or (D) and shall be subject to the other provisions of this section.

(6) (A) The following types of health insurance policies shall be subject to the requirements in subparagraph (B):

(i) A health insurance policy covering the pediatric oral or vision essential health benefit.

(ii) A specialized health insurance policy that provides coverage for the pediatric oral essential health benefit, as defined in paragraph (5) of subdivision (a) of Section 10112.27.

(iii) A specialized health insurance policy that covers dental benefits only, as defined in subdivision (c) of Section 106.

(B) In addition to ensuring compliance with the clinical appropriateness standard set forth at paragraph (1), each health insurance policy specified in subparagraph (A) shall ensure that contracted oral or vision provider networks have adequate capacity and availability of licensed health care providers, including generalist and specialist dentists, ophthalmologists, optometrists, and opticians, to offer insureds appointments for covered oral or vision services in accordance with the following requirements:

(i) Urgent appointments within the plan network shall be offered within 72 hours of the time of request for appointment, if consistent with the insured's individual needs and as required by professionally recognized standards of dental practice.

(ii) Nonurgent appointments shall be offered within 36 business days of the request for appointment, except as provided in clause (iii).

(iii) Preventive care appointments shall be offered within 40 business days of the request for appointment.

(iv) The applicable waiting time for a particular appointment in this paragraph may be extended if the referring or treating licensed health care provider, or the health professional providing triage or screening services, as applicable, acting within the scope of the provider's practice and consistent with professionally recognized standards of practice, has determined and noted in the relevant record that a longer waiting time will not have a detrimental impact on the health of the insured.

(7) An insurer shall ensure it has sufficient numbers of contracted providers to maintain compliance with the standards established by this section.

(A) This section does not modify the requirements regarding accessibility established by Article 6 (commencing with Section 2240) of Title 10 of the California Code of Regulations.

(B) An insurer shall ensure timely access to covered health care services as required by this section, including applicable time-elapsing standards, by assisting an insured to locate available and accessible contracted providers in a timely manner appropriate for the insured's health needs. An insurer shall arrange for the provision of services outside the insurer's contracted network if unavailable within the network if medically necessary for the insured's condition. Insured costs for medically necessary referrals to nonnetwork providers shall not exceed applicable in-network copayments, coinsurance, and deductibles.

(8) An insurer shall provide or arrange for the provision, 24 hours per day, 7 days per week, of triage or screening services by telephone, as defined in subdivision (f).

(A) An insurer shall ensure that telephone triage or screening services are provided in a timely manner appropriate for the insured's condition, and that the triage or screening waiting time does not exceed 30 minutes.

(B) An insurer may provide or arrange for the provision of telephone triage or screening services through one or more of the following means: insurer-operated telephone triage or screening services, telephone medical advice services pursuant to Section 10279, the insurer's contracted primary care and mental health care or substance use disorder provider network, or other method that provides triage or screening services consistent with this section.

(i) An insurer that arranges for the provision of telephone triage or screening services through contracted primary care and mental health care and substance use disorder providers shall require those providers to maintain a procedure for triaging or screening insured telephone calls, which, at a minimum, shall include the employment, during and after business hours, of a telephone answering machine, an answering service, or office staff, that shall inform the caller of both of the following:

(I) Regarding the length of wait for a return call from the provider.

(II) How the caller may obtain urgent or emergency care, including, if applicable, how to contact another provider who has agreed to be on call to triage or screen by phone, or if needed, deliver urgent or emergency care.

(ii) An insurer that arranges for the provision of triage or screening services through contracted primary care and mental health care and substance use disorder providers who are unable to meet the time-elapsd standards established in subparagraph (A) shall also provide or arrange for the provision of insurer-contracted or operated triage or screening services, which shall, at a minimum, be made available to insureds affected by that portion of the insurer's network.

(iii) An unlicensed staff person handling insured calls may ask questions on behalf of a licensed staff person to help ascertain the condition of an insured so that the insured may be referred to licensed staff. However, an unlicensed staff person shall not, under any circumstances, use the answers to those questions in an attempt to assess, evaluate, advise, or make a decision regarding the condition of an insured or determine when an insured needs to be seen by a licensed medical professional.

(9) A health insurance policy providing coverage for the pediatric oral and vision essential health benefit, and a specialized health insurance policy that provides coverage for dental care expenses only, shall require that contracted providers employ an answering service or a telephone answering machine during nonbusiness hours, which provides instructions regarding how an insured may obtain urgent or emergency care, including, if applicable, how to contact another provider who has agreed to be on call to triage or screen by phone, or if needed, deliver urgent or emergency care.

(10) An insurer shall ensure that, during normal business hours, the waiting time for an insured to speak by telephone with an insurer customer service representative knowledgeable and competent regarding the insured's questions and concerns shall not exceed 10 minutes, or that the covered person will receive a scheduled call-back within 30 minutes.

(c) Notwithstanding subdivision (b), a specialized health insurance policy, as defined in subdivision (c) of Section 106, other than a specialized mental health insurance policy, is exempt from this section, except as specified in this subdivision. A specialized health insurance policy that provides coverage for dental care expenses only shall comply with paragraphs (1), (3), (4), (6), (7), (9), and (10) of subdivision (b).

(d) An insurer shall not prevent, discourage, or discipline a contracting provider or employee for informing an insured or policyholder about the timely access standards.

(e) For purposes of this section:

(1) "Appointment waiting time" means the time from the initial request for health care services by an insured or the insured's treating provider to the earliest date offered for the appointment for services inclusive of time for obtaining authorization from the insurer or completing any other condition or requirement of the insurer or its contracting providers.

(2) "Preventive care" means health care provided for prevention and early detection of disease, illness, injury, or other health condition and, in the case of a full service insurer includes, but is not limited to, all of the services required by all of the following laws:

(A) Section 146.130 of Title 45 of the Code of Federal Regulations.

(B) Section 10112.2 (incorporating the requirements of Section 2713 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-13)).

(C) Clause (ii) of subparagraph (A) of paragraph (2) of subdivision (a) of Section 10112.27.

(3) "Provider group" has the meaning set forth in subdivision (v) of Section 10133.15.

(4) "Triage" or "screening" means the assessment of an insured's health concerns and symptoms via communication with a physician, registered nurse, or other qualified health professional acting within their scope of practice and who is trained to screen or triage an insured who may need care for the purpose of determining the urgency of the insured's need for care.

(5) "Triage or screening waiting time" means the time waiting to speak by telephone with a physician, registered nurse, or other qualified health professional acting within their scope of practice and who is trained to screen or triage an insured who may need care.

(6) "Urgent care" means health care for a condition which requires prompt attention, consistent with paragraph (2) of subdivision (h) of Section 10123.135.

SEC. 6.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #15(d)(14) – SB 224 (Portantino) Pupil instruction: mental health education

Background:

This bill would require each school district, county office of education, state special school, and charter school to ensure that all pupils in grades 1 to 12, inclusive, receive medically accurate, age-appropriate mental health education from instructors trained in the appropriate courses at least once in elementary school, at least once in junior high school or middle school, as applicable, and at least once in high school. The bill would require that instruction to include, among other things, reasonably designed instruction on the overarching themes and core principles of mental health. The bill would require that instruction and related materials to, among other things, be appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch SB 224 (Portantino).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch SB 224 (Portantino).

Location: Senate

Status: 4/5/2021 April 5 hearing: Placed on Appropriations suspense file.
(Ayes: 7; Noes: 0; Abstain: 0).

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: SB 224 (Portantino) Bill Text

SB 224 (Portantino) Pupil instruction: mental health education.

As Amends the Law Today (04/30/2021)

SECTION 1.

(a) The Legislature finds and declares all of the following:

(1) Mental health is critical to overall health, well-being, and academic success.

(2) Mental health challenges affect all age groups, races, ethnicities, and socioeconomic classes.

(3) Millions of Californians, including at least one in five youths, live with mental health challenges. Millions more are affected by the mental health challenges of someone else, such as a close friend or family member.

(4) Mental health education is one of the best ways to increase awareness and the seeking of help, while reducing the stigma associated with mental health challenges. The public education system is the most efficient and effective setting for providing this education to all youth.

(b) For the foregoing reasons, it is the intent of the Legislature in enacting this measure to ensure that all California pupils in grades 1 to 12, inclusive, have the opportunity to benefit from a comprehensive mental health education.

SEC. 2.

Article 6 (commencing with Section 51925) is added to Chapter 5.5 of Part 28 of Division 4 of Title 2 of the Education Code, to read:

**Article 6. Mandatory Mental Health Education
51925.**

Each school district, county office of education, state special school, and charter school shall ensure that all pupils in grades 1 to 12, inclusive, receive medically accurate, age-appropriate mental health education from instructors trained in the appropriate courses. Each pupil shall receive this instruction at least once in elementary school, at least once in junior high school or middle school, as applicable, and at least once in high school. This instruction shall include all of the following:

(a) Reasonably designed instruction on the overarching themes and core principles of mental health.

(b) Defining common mental health challenges. Depending on pupil age and developmental level, this may include defining conditions such as depression, suicidal thoughts and behaviors, schizophrenia, bipolar disorder, eating disorders, and anxiety, including post-traumatic stress disorder.

(c) Elucidating the medically accurate services and supports that effectively help individuals manage mental health challenges.

(d) Promoting mental health wellness, which includes positive development, social connectedness and supportive relationships, resiliency, problem solving skills, coping skills, self-esteem, and a positive school and home environment in which pupils feel comfortable.

(e) The ability to identify warning signs of common mental health problems in order to promote awareness and early intervention so that pupils know to take action before a situation turns into a crisis. This shall include instruction on both of the following:

(1) How to seek and find assistance from mental health professionals and services within the school district, county office of education, state special school, or charter school and in the community for themselves or others.

(2) Medically accurate evidence-based research and culturally responsive practices that are proven to help overcome mental health challenges.

(f) The connection and importance of mental health to overall health and academic success and to co-occurring conditions, such as chronic physical conditions, chemical dependence, and substance abuse.

(g) Awareness and appreciation about the prevalence of mental health challenges across all populations, races, ethnicities, and socioeconomic statuses, including the impact of race, ethnicity, and culture on the experience and treatment of mental health challenges.

(h) Stigma surrounding mental health challenges and what can be done to overcome stigma, increase awareness, and promote acceptance. This shall include, to the extent possible, classroom presentations of narratives by trained peers and other individuals who have experienced mental health challenges and how they coped with their situations, including how they sought help and acceptance.

51926.

Instruction and materials required pursuant to this article shall satisfy all of the following:

(a) Be appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners.

(b) Be accessible to pupils with disabilities, including, but not limited to, providing a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.

(c) Not reflect or promote bias against any person on the basis of any category protected by Section 220.

51927.

(a) This article does not limit a pupil's health and mental health privacy or confidentiality rights.

(b) A pupil receiving instruction pursuant to this article shall not be required to disclose their confidential health or mental health information at any time in the course of receiving that instruction, including, but not limited to, for the purpose of the peer component described in subdivision (h) of Section 51925.

51928.

For purposes of this article, the following definitions apply:

(a) "Age appropriate" has the same meaning as defined in Section 51931.

(b) "English learner" has the same meaning as defined in Section 51931.

(c) "Instructors trained in the appropriate courses" means instructors with knowledge of the most recent medically accurate research on mental health.

(d) "Medically accurate" means verified or supported by research conducted in compliance with scientific methods and published in peer-reviewed journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the mental health field.

SEC. 3.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

MEMORANDUM

DATE	April 29, 2021
TO	Board of Psychology
FROM	Cristina Rivera Legislative and Regulatory Analyst
SUBJECT	Agenda Item #16 – Regulatory Update

The following is a list of the Board's regulatory packages, and their status in the regulatory process:

a) Update on 16 CCR sections 1389.8 – Standards of Practice for Telehealth

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package was delivered to OAL on 8/4/2020 and was in the Notice Register published on 8/14/2020. The language was subsequently modified and put out for an additional 15-day comment period. The Board reviewed those comments at its February meeting and approved the language. This package was given to the Department of Consumer Affairs for final review on April 20, 2021.

b) Update on 16 CCR sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Assistants

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package was provided to the Department of Consumer Affairs (DCA) on November 12, 2019 and is now in the Initial Departmental Review Stage. This stage involves a review by DCA's legal, budget, and executive offices, and the State's Business Consumer Services and Housing Agency (Agency). Upon approval by DCA and Agency, staff will notice this package for a 45-day comment period and subsequent hearing.

c) Update on 16 CCR sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package was provided to the Department of Consumer Affairs (DCA) on November 14, 2019 and is now in the Initial Departmental Review Stage. This stage involves a review by DCA's legal, budget, and executive offices, and the State's Business Consumer Services and Housing Agency (Agency). Upon approval by DCA and Agency, staff will notice this package for a 45-day comment period and subsequent hearing.

d) Update on 16 CCR sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package was delivered to OAL on 9/22/2020 and was in the Notice Register published on 10/2/2020. The language was subsequently modified and put out for an additional 15-day comment period. The Board reviewed those comments at its February meeting and approved the language.

e) Update on 16 CCR sections 1391.13, and 1391.14 – Inactive Psychological Assistant Registration and Reactivating a Psychological Assistant Registration

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package is in the Initial Review Stage. Staff received feedback from Legal Counsel on September 17, 2019 and have incorporated the recommended changes. Staff is waiting to submit the package back to Board Counsel until the Sunset Psychological Assistant regulatory package is farther through the regulatory process. Upon approval by Board Legal Counsel, the package will be submitted for the Initial Departmental Review which involves reviews by DCA Legal Affairs Division, DCA Budget Office, DCA's Division of Legislative Affairs, DCA Chief Counsel, DCA Director, and the Business Consumer Services and Housing Agency.

f) Addition to 16 CCR section 1392 – Psychologist Fees – California Psychology Law and Ethics Exam (CPLEE) and Initial License and Biennial Renewal Fee for Psychologist

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package is in the Drafting Phase. This phase includes preparation of the regulatory package and collaborative reviews by Board staff and legal counsel.

g) Addition to 16 CCR section 1395.2 – Disciplinary Guidelines and Uniform Standards Related to Substance-Abusing Licensees

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation
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This package is in the Drafting Phase. This phase includes preparation of the regulatory package and collaborative reviews by Board staff and legal counsel.

Action Requested:

No action required at this time. This is for informational purposes only.