

**NOTICE OF LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE  
TELECONFERENCE MEETING**

The Board of Psychology will hold a Legislative and Regulatory Affairs Committee  
via teleconference

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

**Action may be taken on any item on the agenda. Items may be taken out of order,  
tabled or held over to a subsequent meeting, for convenience, to accommodate  
speakers, or to maintain a quorum.**

**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:**

[https://dca-meetings.webex.com/dca-  
meetings/onstage/g.php?MTID=e579d79093d3382479793b7e118afcb8e](https://dca-meetings.webex.com/dca-meetings/onstage/g.php?MTID=e579d79093d3382479793b7e118afcb8e)

Instructions to connect to the meeting can be found at the end of this agenda. Due to  
potential technical difficulties, please consider submitting written comments by June 4,  
2021, to [bopmail@dca.ca.gov](mailto:bopmail@dca.ca.gov) for consideration.

**Friday, June 11, 2021**

**Committee Members**

Marisela Cervantes, Chair  
Sheryll Casuga, PsyD  
Stephen Phillips, JD, PsyD

**Legal Counsel**

William Maguire  
Heather Hoganson

**Board Staff**

Antonette Sorrick, Executive Officer  
Jonathan Burke, Assistant Executive  
Officer  
Stephanie Cheung, Licensing Manager  
Jason Glasspiegel, Central Services  
Manager  
Sandra Monterrubio, Enforcement  
Program Manager  
Cristina Rivera, Legislative and  
Regulatory Analyst

Friday, June 11, 2021

**AGENDA**

**10:00 a.m. – 2:00 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 Committee meeting.**

The Committee welcomes and encourages public participation at its meetings. The public may take appropriate opportunities to comment on any issue before the Committee at the time the item is heard.

1. Call to Order/Roll Call/Establishment of a Quorum
2. Chairperson's Welcome and Opening Remarks
3. Public Comment for Items Not on the Agenda. Note: The Committee 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. COVID-19 Waiver Update (A. Sorrick)
5. Discussion and Possible Approval of the Committee Meeting Minutes: March 19, 2021 (J. Glasspiegel)
6. Board Sponsored Legislation for the 2021 Legislative Session: Review and Possible Action (M. Cervantes)
  - a) SB 401 (Pan) Healing arts: psychology - Amendments to sections 2960 and 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact
  - b) 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
  - c) Sunset Provisions – Amendments to section 2912 of the Business and Professions Code, and Addition of Sections Related to Reinstatement to Active after Voluntary Surrender, Licensure Committee Delegated Authority, and Authority to Issue Waivers
7. Legislative Update, Review, and Consideration of Additional Changes (M. Cervantes)
  - a) 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

b) 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 885 (Quirk) Bagley-Keene Open Meeting Act: teleconferencing
11. AB 1026 (Smith) Business licenses: veterans.
12. AB 1236 (Ting) Healing arts: licensees: data collection
13. AB 1386 (Cunningham) License fees: military partners and spouses
14. SB 102 (Melendez) COVID-19 emergency order violation: license revocation
15. SB 221 (Wiener) Health care coverage: timely access to care
16. SB 224 (Portantino) Pupil instruction: mental health education

- c) Update, Consideration, and Possible action on Governor's Budget Trailer Bill proposal on Bagley-Keene Open Meeting Act: Remote Participation in Meetings.
8. Legislative Items for Future Meeting. The Committee May Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such Items Should be on a Future Committee or Board Meeting Agenda and/or Whether to Hold a Special Meeting of the Committee or Board to Discuss Such Items Pursuant to Government Code Section 11125.4
  9. Regulatory Update, Review, and Consideration of Additional Changes (J. Glasspiegel)
    - 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
10. Recommendations for Agenda Items for Future Board Meetings. Note: The Committee 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)].

## ADJOURNMENT

*All times are approximate and subject to change. The meeting may be canceled or changed without notice. For verification, please check the Board's Web site at [www.psychology.ca.gov](http://www.psychology.ca.gov), or call (916) 574-7720.*

*In the event a quorum of the committee is unable to attend the meeting, or the committee is unable to maintain a quorum once the meeting is called to order, the President or Chair of the meeting may, at his or her discretion, continue to discuss items from the agenda and to vote to make recommendations to the full board at a future meeting.*

*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 or its committees, at the time the item is heard, but the President or Committee Chair may, at his or her discretion, apportion available time among those who wish to speak. Board members who are present who are not members of the Committee may observe but may not participate or vote.*

*This meeting is being held via WebEx Events. 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](mailto: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. Links to agenda items, with exhibits are available at [www.psychology.ca.gov](http://www.psychology.ca.gov), prior to the meeting date.*

*The goal of this committee is to advocate and promote legislation that advances the ethical and competent practice of psychology to protect consumers of psychological services. The committee reviews and tracks legislation that affects the Board, consumers, and the profession of psychology, and recommends positions on legislation for consideration by the Board.*

# HOW TO – Join – DCA WebEx Event

The following contains instructions on how to join a WebEx event hosted by the Department of Consumer Affairs (DCA).

NOTE: The preferred audio connection to our event is via telephone conference and not the microphone and speakers on your computer. Further guidance relevant to the audio connection will be outlined below.

1. Navigate to the WebEx event link provided by the DCA entity (an example link is provided below for reference) via an internet browser.

Example link:

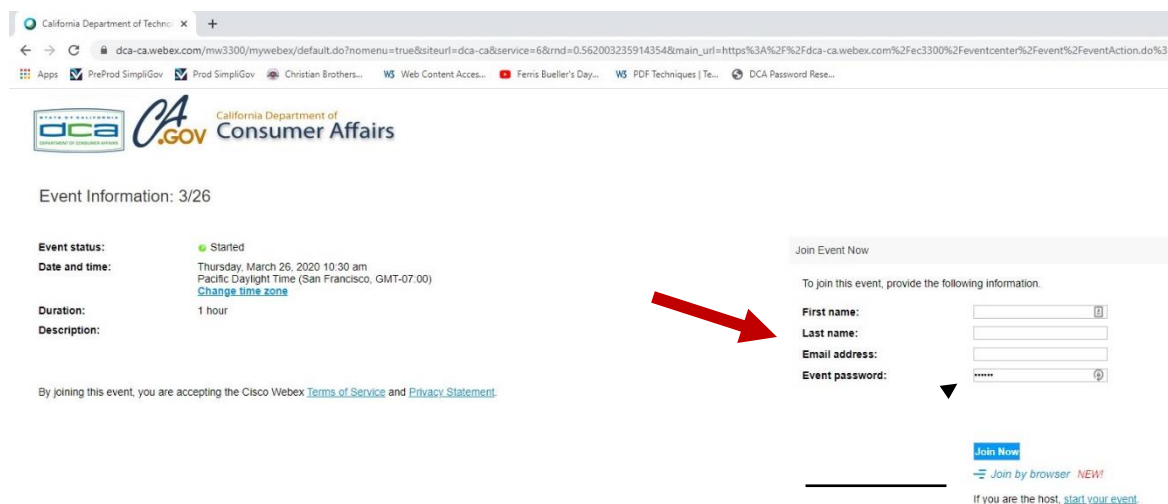
<https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=eb0a73a251f0201d9d5ef3aaa9e978bb5>

The screenshot shows a web browser window displaying the WebEx event page for the California Department of Consumer Affairs. The page is titled "Event Information: 3/26". On the left side, there is a section for "Event status" which is "Started", "Date and time" which is "Thursday, March 26, 2020 10:30 am Pacific Daylight Time (San Francisco, GMT-07:00)", "Duration" which is "1 hour", and "Description" which is blank. Below this, there is a link to "Change time zone". On the right side, there is a "Join Event Now" section. It says "To join this event, provide the following information." and has four input fields: "First name:", "Last name:", "Email address:", and "Event password:". Below the input fields, there is a "Join Now" button and a link "Join by browser NEW!". At the bottom, there is a link "If you are the host, start your event".

2. The details of the event are presented on the left of the screen and the required information for you to complete is on the right.

NOTE: If there is a potential that you will participate in this event during a Public Comment period, you must identify yourself in a manner that the event Host can then identify your line and unmute it so the event participants can hear your public comment. The 'First name', 'Last name' and 'Email address' fields do not need to reflect your identity. The department will use the name or moniker you provide here to identify your communication line should you participate during public comment.

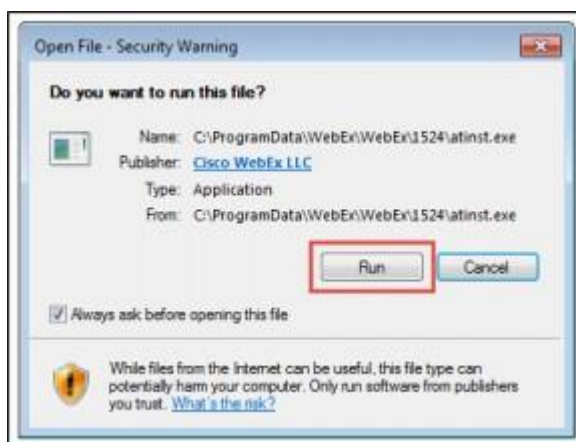
# HOW TO – Join – DCA WebEx Event



3. Click the 'Join Now' button.

*NOTE: The event password will be entered automatically. If you alter the password by accident, close the browser and click the event link provided again.*

4. If you do not have the WebEx applet installed for your browser, a new window may open, so make sure your pop-up blocker is disabled. You may see a window asking you to open or run new software. Click 'Run'.



Depending on your computer's settings, you may be blocked from running the necessary software. If this is the case, click 'Cancel' and return to the browser tab that looks like the window below. You can bypass the above process.

## Starting Webex...



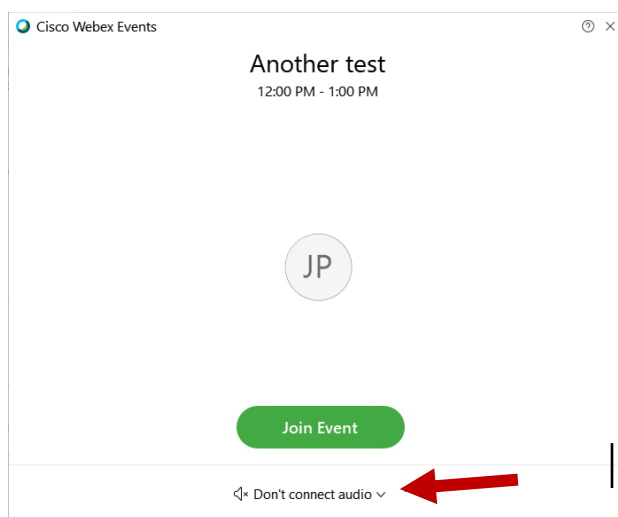
Still having trouble? [Run a temporary application](#) to join this meeting immediately.

5. To bypass step 4, click 'Run a temporary application'.
6. A dialog box will appear at the bottom of the page, click 'Run'.



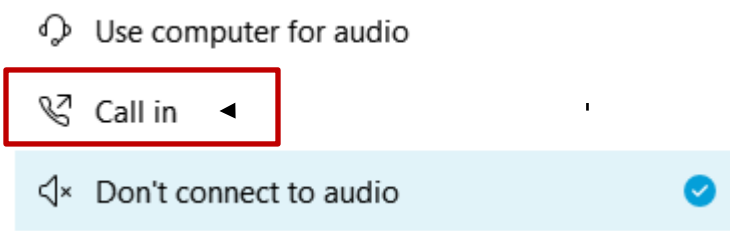
The temporary software will run, and the meeting window will open.

7. Click the audio menu below the green 'Join Event' button.

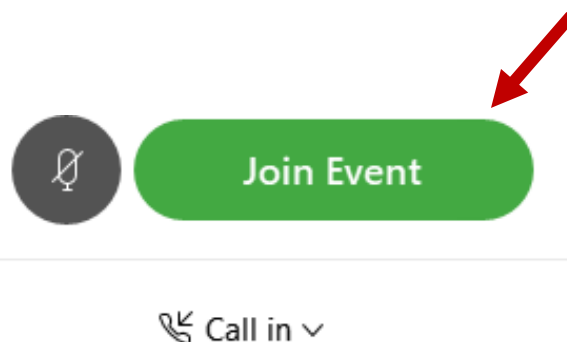


8. When the audio menu appears click 'Call in'.

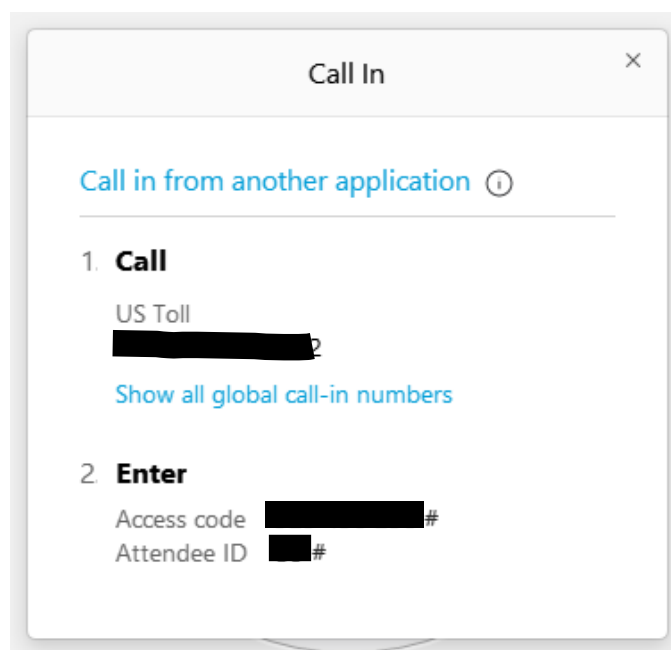
# HOW TO – Join – DCA WebEx Event



9. Click 'Join Event'. The audio conference call in information will be available after you join the Event.



10. Call into the audio conference with the details provided.



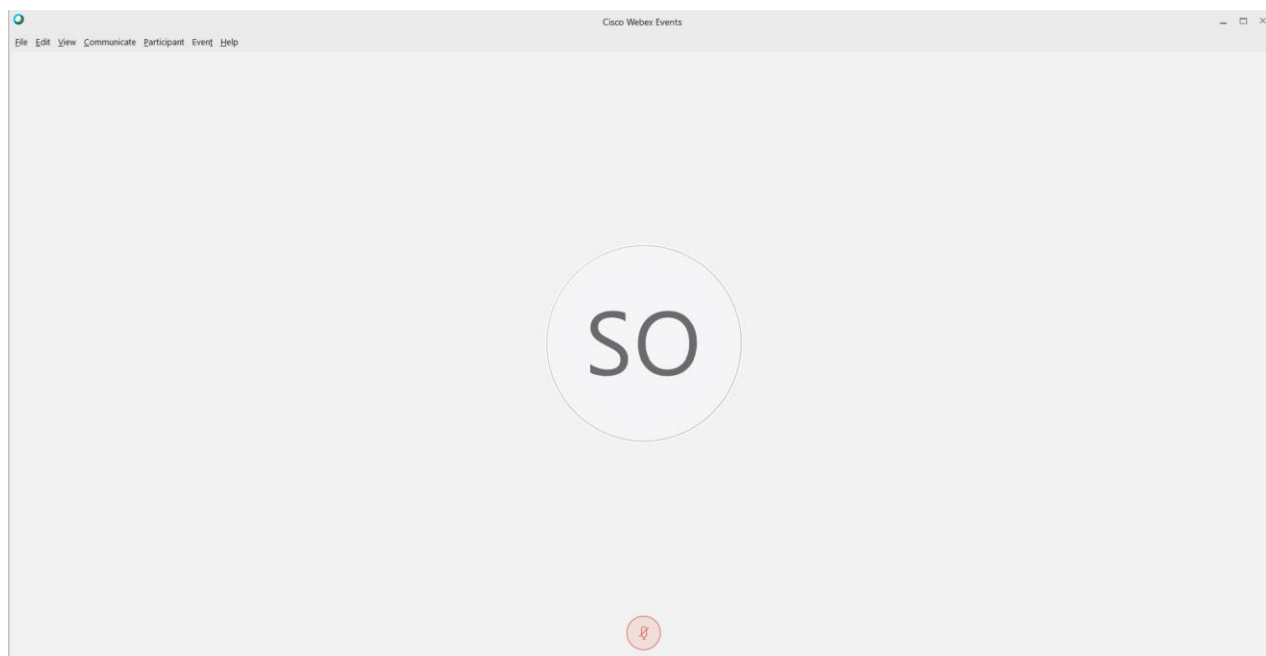
*NOTE: The audio conference is the preferred method. Using your computer's microphone and speakers is not recommended.*



# HOW TO – Join – DCA WebEx Event

Once you successfully call into the audio conference with the information provided, your screen will look like the screen below and you have joined the event.

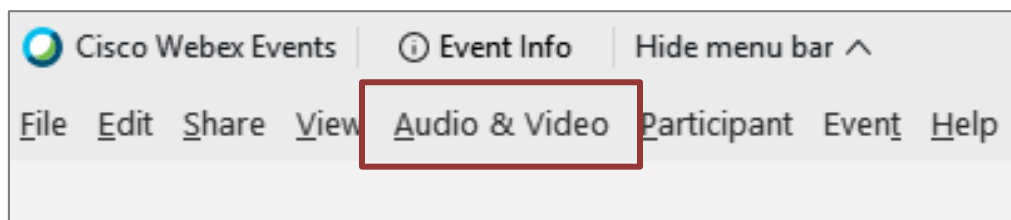
Congratulations!



*NOTE: Your audio line is muted and can only be unmuted by the event host.*

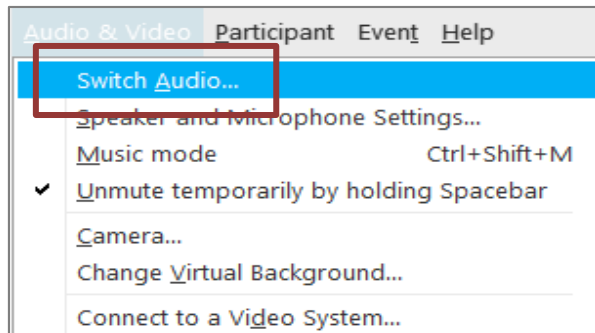
If you join the meeting using your computer's microphone and audio, or you didn't connect audio at all, you can still set that up while you are in the meeting.

1. Select 'Audio & Video' from the menu bar at the top of your screen.

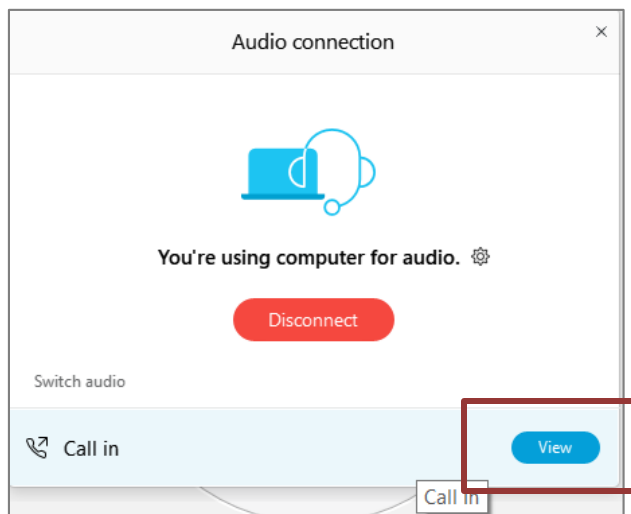


# HOW TO – Join – DCA WebEx Event

2. Select “Switch Audio” from the drop-down menu.



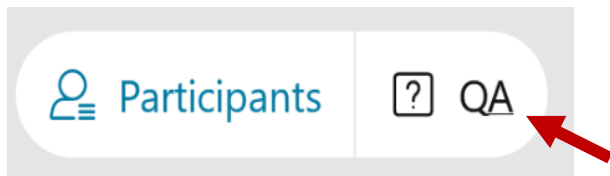
3. The 'Call In' information can be displayed by selecting 'View'



You will then be presented the dial in information for you to call in from any phone.

## Participating During a Public Comment Period

At certain times during the event, the facilitator may call for public comment. If you would like to make a public comment, click on the 'Q and A' button near the bottom, center of your WebEx session.



This will bring up the 'Q and A' chat box.

*NOTE: The 'Q and A' button will only be available when the event host opens it during a public comment period.*

To request time to speak during a public comment period, make sure the 'Ask' menu is set to 'All panelists' and type 'I would like to make a public comment'.

Ask:  ▼

Select a panelist in the Ask menu first and then type your question

Attendee lines will be unmuted in the order the requests were received, and you will be allowed to present public comment.

*NOTE: Your line will be muted at the end of the allotted public comment duration. You will be given a warning that your time is about to expire.*

## MEMORANDUM

<b>DATE</b>	June 2, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee Members
<b>FROM</b>	Antonette Sorrick Executive Officer
<b>SUBJECT</b>	Agenda Item #4 – Coronavirus (COVID-19) Update

### **Background:**

#### **1. COVID-19 – Update on DCA Activities**

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](mailto: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](mailto: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](mailto: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!

### **Action Requested:**

No further action is needed.

**Attachment:**

Waiver Update 5/28/21

Waiver Topic	Code Section(s) Waived	Summary	Submission Date	Approval Status	Submitted By	Waiver Status
Face to Face Supervision	California Code of Regulations Sections 1387(b)(4) and 1391.5(b)	This waiver would allow the Board to relax the requirement of face-to-face supervision to a psychological trainee by allowing the one hour face-to-face, direct, individual supervision to be conducted via HIPAA-compliant means from March 16, 2020, until June 30, 2020, or when the state declaration of emergency is lifted, whichever is sooner. The Board would still require that the trainee indicate the type of supervision on the required weekly log and the primary supervisor should verify this information. This waiver would help with the workforce surge.	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
CE Extra Six Months	All DCA Boards	Accordingly, for individuals whose active licenses expire between March 31, 2020, and June 30, 2020, the Director temporarily waives: 1. any statutory or regulatory requirement that individuals renewing a license pursuant to Division 2 of the Code take and pass an examination in order to renew a license; and, 2. any statutory or regulatory requirement that an individual renewing a license pursuant to Division 2 of the Code complete, or demonstrate compliance with, any continuing education requirements in order to renew a license. These temporary waivers do not apply to any continuing education, training, or examination required pursuant to a disciplinary order against a license. Licensees must satisfy any waived renewal requirements within six months of this order, unless further extended.	N/A	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.  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.	DCA	Active
CPLEE for Restoration of License	Business and Professions Code Section 2986 California Code of Regulation Section 1397.67(b)	This waiver would allow the board to restore licenses of psychologists whose California licenses have cancelled without requiring the board's law and ethics examination (CPLEE). This waiver would become effective 3/4/20 until 6/30/20, or when the declaration of emergency is lifted. This would be consistent with the DCA Waiver DCA-20-02 Reinstatement of Licensure. This waiver would help with the workforce surge.	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
SPE Time Limitation	California Code of Regulations Section 1387(a)	The regulation allows a psychological trainee to request that the Board extend the time limitations of 30/60 consecutive months to accrue their pre-doctoral and post-doctoral hours of supervised professional experience (respectively) required for licensure. The waiver requested would be to allow applicants who reach the 30/60 month limitations between 3/4/20 and 6/30/20 up to an additional 6 months, or when the declaration of emergency is lifted, whichever is sooner, to accrue their hours. This waiver would help with the workforce surge.	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
Psych Asst 72 month Limit	California Code of Regulations Section 1391.1(b)	This waiver would allow a psychological assistant to continue their registration, beyond the 72 months limit upon request, and to provide services to clients for up to six months from the expiration date, or when the state of emergency ceases to exist, whichever is sooner. A psychological assistant who has reached the registration limit between 3/4/2020 and 6/30/2020 will qualify for the waiver and can request for such waiver during the state of emergency. This will help with the workforce surge.	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

Withdraw Application	California Code of Regulations Section 1381.4	This waiver extends the eligibility period for candidates to take or re-take an examination from 12 to 18 months prior to their application is deemed withdrawn by the Board due to failing to appear for, take, or re-take the examination. This waiver applies to psychologist applicants whose applications are deemed to be withdrawn within a specific period per the waiver, but does not retroactively apply to withdrawn applications prior to September 30, 2020 where applicants have already reapplied.	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
Waive Live CE Course Requirement	California Code of Regulations Section 1397.60(e)	This waiver would allow a psychologist to complete all of their required continuing education hours online and waive the in-person requirement. Currently the regulation requires 9 hours of the required 36 hours be taken in-person. Given the lack of availability of conferences where most licensees accrue their live hours, the Board would like to waive this requirement. This waiver is requested to run concurrently with DCA Waiver DCA-20-01 Continuing Education.	Submitted to Director Kirchmeyer on 4/9/2020	Denied on 4/16/20	Board of Psychology	N/A
Fingerprints and Exams for Applicants of BBS and Board of Psychology	Business and Professions Code section 144 & 2941		Unknown	Denied on 5/20/20	California Council of Community Behavioral Health Agencies	N/A
Temporary Practice	Business and Professions Code section 2912	BPC §2912 - This waiver request would extend this section of law from 30 days to a temporary 6 months. Additionally, this waiver request would extend this section to an out of state trainee and supervisor that is not in a training program or school to still be able to provide services to a CA resident.	5/12/2020	Denied on 6/11/20	DCA	N/A
SPE All Trainees	California Code of Regulations Section 1387(a)	For trainees who were accruing supervised professional experience hours at any point during the declared emergency, the Board grants six additional months to accrue their pre-doctoral and/or post-doctoral hours of supervised professional experience (respectively) required for licensure	Submitted to Director Kirchmeyer on 4/22/20	Denied on 7/17/20	Board of Psychology	N/A
Psych Asst Extend Time for All	California Code of Regulations Section 1391.1(b)	For psychological assistants who were registered at any time during the declared emergency, the Board allows for the registration to be effective an additional six months.	Submitted to Director Kirchmeyer on 4/22/20	Denied on 7/17/20	Board of Psychology	N/A

Waive Discipline solely for practicing out of state	Cal. Bus. & Prof. Code §§ 2052, 2290.5, and 2305; and 16 CCR 1815.5	A waiver, or at least formal guidance, issued by DCA, providing clarity to providers employed by colleges and universities located in California that neither DCA nor any individual health professions board will initiate or pursue disciplinary action based solely on interstate practice during the pandemic related to the care of a currently enrolled student. Any guidance could be clear that California of course can make no promises regarding the actions of other state boards; and that disciplinary action may be imposed for conduct that is otherwise inconsistent with the applicable standard of care, individual board regulations, or professional standards of ethical conduct.	Submitted to Director Kirchmeyer on 6/16/20	Denied on 7/9/20	University of California	N/A
Fingerprint Inactive/Canceled	Business and Professions Code Section 144(b)(20) Business and Professions Code Section 2986 California Code of Regulations Section 1397.67(b)	This waiver would allow the board to restore licenses of psychologists whose California licenses have canceled without requiring submission of fingerprints for a period of six months, or until the declaration of emergency is lifted, whichever is sooner. This would be consistent with the DCA waiver DCA-20-02 Reinstatement of Licensure. This waiver would help with the workforce surge by increasing the licensed population.	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
180 Day Limitation for Out of State Applicants	Business and Professions Code section 2946	For individuals who have applied to the Board for a license and are unable to take the examination or complete the pre-licensure coursework during the emergency, the Board grants six additional months to perform activities and services of a psychological nature.	Submitted to Director Kirchmeyer on 4/22/20		Board of Psychology	N/A
Reinstatement of Inactive or Canceled License	All DCA Boards	Accordingly, the Director temporarily waives any statutory or regulatory requirement that an individual seeking to reactivate or restore a license originally issued pursuant to Division 2 of the Code: <ul style="list-style-type: none"> <li>• Complete, or demonstrate compliance with, any continuing education requirements in order to reactivate or restore a retired, inactive, or canceled license; and</li> <li>• Pay any fees in order to reactivate or restore a retired, inactive, or canceled license (including renewal, delinquency, penalty, or late fees, or any other statutory or regulatory fees).</li> </ul> These waivers apply only to an individual's license that: (1) is in a retired, inactive, or canceled status, and (2) has been in such status no longer than five years. These waivers do not apply to any license that was surrendered or revoked pursuant to disciplinary proceedings or any individual who entered a retired, inactive, or canceled status following initiation of a disciplinary proceeding. A license reactivated or restored pursuant to these waivers is valid for a maximum of six months, or when the State of Emergency ceases to exist, whichever is sooner.	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.



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## MEMORANDUM

<b>DATE</b>	June 2, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Jason Glasspiegel Central Services Manager
<b>SUBJECT</b>	Agenda Item #5 – Approval of Committee Minutes: March 19, 2021

### **Background:**

Attached are the draft minutes for the March 19, 2021 Legislative and Regulatory Affairs Committee Meeting.

### **Action Requested:**

Approve the attached minutes for the March 19, 2021 Legislative and Regulatory Affairs Committee Meeting.

Attachment: Draft minutes of the March 19, 2021 Legislative and Regulatory Affairs Committee Meeting.

1                   **NOTICE OF LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE**  
2   **TELECONFERENCE MEETING**

3  
4 NOTE: Pursuant to the provisions of Governor Gavin Newsom’s Executive Order  
5 N-29-20, dated March 17, 2020, neither Committee member locations nor a public  
6 meeting location were provided.

7  
8 **Committee Members**

9 Marisela Cervantes, Chair  
10 Sheryll Casuga, PsyD  
11 Stephen Phillips, JD, PsyD

12  
13 **Legal Counsel**

14 William Maguire  
15 Clay Jackson

16  
17 **Board Staff**

18 Antonette Sorrick, Executive Officer  
19 Jonathan Burke, Assistant Executive Officer  
20 Stephanie Cheung, Licensing Manager  
21 Jason Glasspiegel, Central Services Manager  
22 Sandra Monterrubio, Enforcement Program Manager  
23 Cristina Rivera, Legislative and Regulatory Analyst  
24 Liezel McCockran, Continuing Education/Renewals Coordinator

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Friday, March 19, 2021
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26  
27 **Agenda Item #1: Call to Order/Roll Call/Establishment of a Quorum**

28  
29 Marisela Cervantes, Chair, called the meeting to order at 10:00 a.m.

30  
31 **Agenda Item #2: Chairperson’s Welcome and Opening Remarks**

32  
33 Ms. Cervantes read opening remarks and welcomed new Board staff, Jonathan  
34 Burke and Cristina Rivera, as well as new Board Counsel, Will Maguire.

35  
36 **Agenda Item #3: Public Comment for Items Not on the Agenda. Note: The**  
37 **Committee May Not Discuss or Take Action on Any Matter Raised During this**  
38 **Public Comment Section, Except to Decide Whether to Place the Matter on the**  
39 **Agenda of a Future Meeting [Government Code sections 11125 and**  
40 **11125.7(a)].**

41  
42 No Committee question or public comment was given.

43  
44 **Agenda Item #4: COVID-19 Waiver Update**

45  
46 Ms. Sorrick provided the COVID-19 update. Ms. Sorrick explained the waiver updates  
47 on the extension of meeting Continuing Education requirements for renewals and the  
48 face to face supervision for licensure.

49  
50 Dr. Elizabeth Winkelman, California Psychological Association (CPA), asked if the  
51 public can get information earlier on the waiver extensions. Dr. Winkelman provided an  
52 example of how the face-to-face requirement was only extended three days before it  
53 was due to expire.

54  
55 Ms. Sorrick stated that the Board has communicated to the Department of Consumer  
56 Affairs (DCA) about establishing longer waiver periods and extending the waivers with  
57 more time before they are due to expire.

58  
59 **Agenda Item #5: Discussion and Possible Approval of the Committee Meeting**  
60 **Minutes: June 12, 2020**

61  
62 Dr. Phillips provided Board staff with edits/comments regarding the language.

63  
64 It was M(Phillips)/S(Casuga)/C to adopt the June 12, 2020 Legislative and Regulatory  
65 Affairs Committee minutes as amended.

66  
67 No Committee or public comment was given.

68  
69 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes

70  
71 **Agenda Item #6: Board Sponsored Legislation for the 2021 Legislative Session:**  
72 **Review and Possible Action**

73  
74 **a) SB 401 (Pan) Healing arts: psychology - Amendments to sections 2960 and**  
75 **2960.1 of the Business and Professions Code Regarding Denial, Suspension and**  
76 **Revocation for Acts of Sexual Contact**

77  
78 Ms. Rivera provided a summary of this bill proposal.

79  
80 Dr. Phillips stated that when Board staff and Board Members met with joint committees  
81 for the Sunset Review, they seemed highly receptive to this bill.

82  
83 It was M(Casuga)/S(Phillips)/C to recommend to the Board support SB 401 (Pan).

84  
85 Dr. Winkelman stated that CPA took a neutral position on SB 401. She also thanked the  
86 Board for working with CPA's initial concerns and clarifying the language.

87  
88 Ms. Sorrick extended gratitude to Dr. Phillips for the flexibility of his schedule and his  
89 willingness to represent the Board at the upcoming hearing.

90  
91 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes  
92

93 **b) Pathways to Licensure Statutory Revisions – Amendments to sections 27,**  
94 **2909, 2909.5, 2910, 2911, 2913, 2914, 2915, 2915.5, 2915.7, 2942, 2944, 2946, and**  
95 **2960 of the Business and Professions Code, and section 1010 of the Evidence**  
96 **Code**

97  
98 Ms. Rivera provided the update on this item. She stated that the item is informational,  
99 and no action is requested of the Committee.

100  
101 Ms. Cervantes is anticipating that the full language will be provided at the April Board  
102 Meeting.

103  
104 No Committee or public comment was given.

105  
106 **c) Sunset Provisions – Amendments to section 2912 of the Business and**  
107 **Professions Code, and Addition of Sections Related to Reinstatement to Active**  
108 **after Voluntary Surrender, Licensure Committee Delegated Authority, and**  
109 **Authority to Issue Waivers**

110  
111 Ms. Rivera provided the update on this item. She stated that the item is informational,  
112 and no action is requested of the Committee.

113  
114 Ms. Cervantes is anticipating that the full language will be provided at the April Board  
115 Meeting.

116  
117 No Committee or public comment was given.

118  
119 **Agenda Item #7: Review and Consideration of Proposed Legislation**

120 **a) Review of Bills for Active Position Recommendations to the Board**

121  
122 **1. AB 54 (Kiley) COVID-19 emergency order violation: license revocation**

123  
124 Ms. Rivera provided the background of this bill. She stated that staff recommends the  
125 Legislative and Regulatory Affairs Committee Watch AB 54 (Kiley) as compliance with  
126 COVID-19 emergency orders is enforced at the local level.

127  
128 Ms. Cervantes stated that the committee does not need to vote on watch bills. Mr. Maguire  
129 stated that if it looks like a bill is moving further in the process, the Committee may want  
130 to consider an oppose unless amended position.

131  
132 No Committee or public comment was given.

133  
134 **2. AB 1236 (Ting) Healing arts: licensees: data collection**

135  
136 Ms. Rivera stated that the bill is currently in the Assembly Business and Professions  
137 Committee. Ms. Rivera stated due to the anticipated cost to implement this bill, and the  
138 Board's need for a fee increase, staff is recommending the Legislative and Regulatory  
139 Affairs Committee watch AB 1236 (Ting).

140  
141 Ms. Cervantes stated that she does not agree with the staff recommendation. She stated  
142 that it is important for staff to collect demographic data but has concerns that the data  
143 points identified in the bill will not be beneficial to licensees or the public. Ms. Cervantes  
144 provided the following example: for job satisfaction rating, many licensees renewal fees  
145 are paid by their employer and asking psychologists that question is not going to help in  
146 meeting overall workforce needs of the state. Ms. Cervantes provided more examples of  
147 how the items listed in the bill were not helpful. Ms. Cervantes suggested that a survey  
148 question about retirement would be helpful. She suggested that a position other than  
149 Watch should be taken on this bill, so that the Board is engaged in how the bill develops  
150 and can raise operational concerns.

151  
152 Committee discussion ensued regarding survey questions presented in this bill. Board  
153 staff informed the Committee that the board currently has a voluntary questionnaire in the  
154 initial application and renewal but there is no statutory requirement to report.

155  
156 It was M(Casuga)/S(Phillips)/C to direct the Chair and board staff to meet with the authors  
157 staff on AB 1236 (Ting) to gather additional information about the bill.

158  
159 Colin Sueyres, Director of Government Affairs at CPA, stated that CPA took an oppose  
160 position on AB 1236 (Ting). Mr. Sueyres stated the CPA Board received several  
161 comments regarding concerns of information provided for the survey being leaked. Mr.  
162 Sueyres stated CPA will be submitting the oppose position letter within the next week.

163  
164 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes

165  
166 **3. SB 772 (Ochoa Bogh) Professions and vocations: citations: minor violations**

167  
168 Ms. Rivera provided the background of the bill and the staff recommendation for the  
169 Legislative and Regulatory Affairs Committee to take an Oppose Unless Amended  
170 position on SB 772 (Ochoa Bogh), requesting the removal of the Board of Psychology,  
171 as this bill would prohibit the assessment of an administrative fine for a minor violation.  
172 While violations may be deemed minor, violations speak to the character of the licensee  
173 and thus all violations should be addressed as part of a larger context.

174  
175 It was M(Phillips)/S(Casuga)/C to approve the staff recommendation to recommend to  
176 the Board take an oppose unless amended position on SB 772 (Ochoa Bogh).

177  
178 No Committee or public comment was given.

179

180 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes

181

182 **b) Review of Watch Bills**

183

184 Dr. Casuga stated she would like to discuss the following bills: AB 32 (Aguiar-Curry)  
185 and SB 224 (Portantino).

186 Dr. Phillips stated he would like to discuss the following bills: AB 107 (Salas), AB 657  
187 (Bonta), and AB 810 (Flora).

188

189 **1. AB 32 (Aguiar-Curry) Telehealth**

190

191 Ms. Rivera provided the background of this bill.

192

193 Dr. Casuga stated that telehealth has been very helpful providing access to mental health  
194 services. She stated she hopes the committee will recommend supporting this bill.

195

196 It was M(Casuga)/S(Phillips)/C to recommend to the full Board to support AB 32 (Aguiar-  
197 Curry).

198

199 Dr. Phillips asked for staff input. Ms. Sorrick stated that if this bill intends to accomplish  
200 what it says it does then it would be in line with strategic plan items related to access to  
201 care.

202

203 Mr. Sueyres stated the CPA took a position of strong support.

204

205 Committee discussion ensued regarding taking a position of support.

206

207 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes

208

209 **2. AB 107 (Salas) Department of Consumer Affairs: boards: temporary licenses:  
210 military spouses**

211

212 Ms. Rivera provided the background of this bill.

213

214 It was M(Phillips)/S(Casuga)/C to recommend to the Board to support if amended AB  
215 107 (Salas).

216

217 No Committee or public comment was given.

218

219 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes

220

221 **3. AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military  
222 spouses: licenses**

223

224 Ms. Rivera provided the background of this bill.

225  
226 Dr. Phillips asked if applicants only have to attest that they qualify. Ms. Rivera answered  
227 by stating that documentation will have to be provided along with the attestation.  
228

229 No Committee or public comment was given.  
230

231 **4. AB 339 (Lee) State and local government: open meetings**  
232

233 Ms. Rivera provided the background of this bill and provided an update. Ms. Rivera  
234 stated the staff recommendation is to Watch this bill.  
235

236 No Committee or public comment was given.  
237

238 **5. AB 646 (Low) Department of Consumer Affairs: boards: expunged convictions**  
239

240 Ms. Rivera provided the background of this bill.  
241

242 Mr. Sueyres stated CPA has taken a position of support on AB 646 (Low).  
243

244 No Committee or public comment was given.  
245

246 **6. AB 657 (Bonta) State civil service system: personal services contracts:**  
247 **professionals**  
248

249 Ms. Rivera provided the background of this bill.  
250

251 It was M(Phillips)/S(Casuga)/C to recommend to the Board to take an Oppose Unless  
252 Amended position on AB 657 (Bonta).  
253

254 Dr. Phillips suggested the term 'clinical' be removed as the Board does not issue  
255 specialty licenses for psychologists.  
256

257 No Committee or public comment was given.  
258

259 Vote: 3 ayes (Cervantes, Casuga, Phillips), 0 noes  
260

261 **7. AB 810 (Flora) Healing arts: reports: claims against licensees**  
262

263 Ms. Rivera provided the background of this bill. Ms. Rivera stated that the staff  
264 recommends the Committee to Watch AB 810 (Flora).  
265

266 No Committee or public comment was given.  
267

268 **8. AB 830 (Flora) Department of Consumer Affairs: director: powers and duties**  
269

270 Ms. Rivera provided the background of this bill. Ms. Rivera stated that staff  
271 recommends the Committee to Watch AB 830 (Flora).

272  
273 **9. AB 1026 (Smith) Business licenses: veterans.**

274 Ms. Rivera provided the background of this bill.

275  
276 Ms. Cervantes had a question regarding the following statement, "This bill would  
277 authorize a board to adopt regulations necessary to administer these provisions." Ms.  
278 Cervantes asked if the Board could raise its licensing fees to accommodate the  
279 additional cost.

280  
281 Mr. Glasspiegel responded that if the Board cannot implement the legislation as written,  
282 the Board can promulgate regulations to specify how the Board will meet the legislative  
283 requirement of the bill.

284  
285 Ms. Sorrick stated that if there are enough individuals taking advantage of the authority  
286 presented in this bill, it would add financial strain on the Board budget.

287  
288 Ms. Cheung stated there is a relatively small number of military applicants; one year can  
289 be 30 applicants and the next may be ten applicants.

290  
291 No Committee or public comment was given.

292  
293  
294 **10. AB 1386 (Cunningham) License fees: military partners and spouses**

295 Ms. Rivera provided background of the bill.

296  
297 Dr. Phillips stated that he appreciates this bills' desire to help people. He stated that the  
298 people benefiting from this bill is a relatively small number and that in the long run other  
299 licensees may be picking up the cost.

300  
301 No Committee or public comment was given.

302  
303  
304 **11. SB 102 (Melendez) COVID-19 emergency order violation: license revocation**

305 Ms. Rivera provided the background of this bill. Ms. Rivera stated that staff  
306 recommends the Committee to Watch SB 102 (Melendez).

307  
308 No Committee or public comment was given.

309  
310  
311 **12. SB 224 (Portantino) Pupil instruction: mental health education**

312 Ms. Rivera provided the background of this bill.

313  
314



315 Ms. Cervantes stated that as an educator she appreciates the intent of this legislation,  
316 but it would be difficult for school districts to implement without additional funding.

317  
318 Dr. Phillips stated that conceptually this bill is a good idea. Dr. Phillips stated that part of  
319 the problem with psychological healthcare delivery is access. For there to be access to  
320 care, people must be cognizant of the situations in which they would need to access  
321 care. Dr. Phillips stated there are pockets of resistance to the use of mental health care.  
322 Dr. Phillips stated it would be most cost efficient and more compassionate if people  
323 were readily willing to consider that option. Dr. Phillips shares the Chair's concern as it  
324 relates to imposing yet more obligations on overtaxed school systems without providing  
325 appropriate additional revenue sources.

326  
327 Dr. Casuga wanted to discuss this bill because some of the provisions would increase  
328 education and outreach for mental health, especially to younger students. Dr. Casuga  
329 stated she appreciates the bill's provisions that provide information on how to seek and  
330 find assistance from mental health professionals. Dr. Casuga supports the outreach  
331 aspect proposed in this bill.

332  
333 Ms. Sorrick stated that this bill is not directly tied to access to care or the provision of  
334 care but instead about education. Ms. Sorrick stated that, historically, the Board has  
335 seen several bills about curriculum or programs within the educational system and has  
336 not been involved in advocating for those. Advocacy for this bill would be inconsistent  
337 with what the Board has done in the past.

338  
339 Dr. Winkelman stated that CPA is supporting this bill. She stated the CPA Board  
340 discussed this bill and thought it would be very useful to have education on mental  
341 health issues and could lead to a decrease in stigma and provide more access. Dr.  
342 Winkelman stated that there have been two middle school suicides in her county. She  
343 stated that the CPA Board also discussed the financing issue, but that the  
344 recommendation for a one-time medically accurate, age-appropriate mental health  
345 education in elementary, middle, and high school seemed like a relatively inexpensive  
346 burden.

347  
348 **13. SB 534 (Jones) Department of Consumer Affairs**

349  
350 Ms. Rivera provided the background of this bill. Ms. Rivera stated that staff  
351 recommends the Committee to Watch SB 534 (Jones).

352  
353 No Committee or public comment was given.

354  
355 **Agenda Item #8 - Legislative Items for Future Meeting. The Committee May**  
356 **Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such**  
357 **Items Should be on a Future Committee or Board Meeting Agenda and/or Whether**  
358 **to Hold a Special Meeting of the Committee or Board to Discuss Such Items**  
359 **Pursuant to Government Code Section 11125.4**

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Dr. Casuga wanted to watch SB 221 (Wiener) regarding health care access.

Mr. Glasspiegel stated that the upcoming April 2<sup>nd</sup> Board meeting agenda will include two bills were not included in this agenda, AB 562 (Low) and SB 731 (Bradford).

No public comments were made, and no further Committee comments were made.

**Agenda Item #9 - Regulatory Update, Review, and Consideration of Additional Changes**

Mr. Glasspiegel stated that there are no updates on the following items.

**a) 16 California Code of Regulations (CCR) 1396.8 – Standards of Practice for Telehealth**

No Committee or public comment was given.

**b) 16 CCR Sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Assistants**

No Committee or public comment was given.

**c) 16 CCR Sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Psychologist Fees**

No Committee or public comment was given.

**d) 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development**

The following comments public comments were given:

Dr. Winkelman asked the expected timeline of adoption of telehealth and CPD regulations and if there will be FAQs on both CPD and telehealth.

Mr. Glasspiegel stated that both packages are in the drafting phase. He stated that for CPD the effective date in the language is January 1, 2022, and the Board intends to do an FAQ.

Dr. Winkelman stated she understands the implementation date will not be before January 1, 2022, and she also understands there will be a transitional year. Dr. Winkelman provided an example of why there should be sufficient notice: a licensee's renewal would be impacted if they are due to renew January 5<sup>th</sup> and the new regulations are implemented January 1, 2022.

405  
406 Ms. Sorrick stated within the next 3-6 months we will know if both regulations will be  
407 approved by the Office of Administrative Law (OAL). She stated that once the package  
408 is submitted to and approved by OAL then Board staff would work on an implementation  
409 plan. This would include issuing an advisory and creating an FAQ. Ms. Sorrick  
410 acknowledged and thanked Dr. Winkelman for offering to help Board staff in creating  
411 the FAQ. Ms. Sorrick stated that in the regulations a straddle year was created so that  
412 licensees can use either the CPD model or the prior model to fulfill the renewal.

413  
414 Dr. Phillips stated he recognizes the regulatory approval process is one that is difficult to  
415 predict but that the Board will do everything within its abilities to expedite the regulatory  
416 approval process and that psychologists are adequately informed in advance of the  
417 implementation of the regulations.

418  
419 **e) 16 CCR Sections 1391.13, and 1391.14 – Inactive Psychological Assistant**  
420 **Registration and Reactivating a Psychological Assistant Registration**

421  
422 No Committee or public comment was given.

423  
424 **f) 16 CCR 1392 – Psychologist Fees – California Psychology Law and Ethics**  
425 **Examination (CPLÉE) and Initial License and Biennial Renewal Fee for a**  
426 **Psychologist**

427  
428 No Committee or public comment was given.

429  
430 **g) 16 CCR 1395.2 Disciplinary Guidelines and Uniform Standards Related to**  
431 **Substance-Abusing Licensees**

432  
433 No Committee or public comment was given.

434  
435 **Agenda Item #10 - Recommendations for Agenda Items for Future Board**  
436 **Meetings. Note: The Committee May Not Discuss or Take Action on Any Matter**  
437 **Raised During This Public Comment Section, Except to Decide Whether to Place**  
438 **the Matter on the Agenda of a Future Meeting [Government Code Sections 11125**  
439 **and 11125.7(a)].**

440  
441 No Committee or public comment was given.

442  
443 **Adjournment**

444  
445 The Committee adjourned at 1:21 p.m.

## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #6 (a) – 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.

On 5/25/2021, Board staff was notified that given the bill reduction directive this year, SB 401 will be a 2-year bill.

**Location:** Assembly

**Status:** 5/25/2021 In the Assembly. 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

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CONSENT

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

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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

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

**SOURCE:** Board of Psychology

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**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)**

### **As Amends the Law Today (5/28/2021)**

#### **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~~ *functions*, or duties of a ~~psychologist~~ *psychologist* or ~~psychologist, psychological assistant~~ *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 728, ~~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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #6(b) - 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.

Staff has been advised that the vehicle for these amendments will be SB 801 (Roth), however amendments specific to the Board of Psychology are pending.

### **Action Requested:**

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

## ISSUE MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #6 (c) - 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.

Staff has been advised that the vehicle for these amendments will be SB 801 (Roth), however amendments specific to the Board of Psychology are pending.

### **Action Requested:**

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



## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(a)(1) – AB 32 (Aguiar-Curry) Telehealth

### **Background:**

This bill would require the State Department of Health Care Services to indefinitely continue the telehealth flexibilities put 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

**Status:** 5/25/2021 Read second time. Ordered to third reading.

### **Action Requested:**

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

Attachment A: Board Letter of Support

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](mailto: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

ASSEMBLY THIRD READING  
AB 32 (Aguilar-Curry and Robert Rivas)  
As Amended May 24, 2021  
Majority vote

## SUMMARY

Expands coverage of telehealth to require health plans and health insurers to cover audio only (telephone), and to reimburse for services delivered using telephone at the same payment rate as in-person visits. Continues some telehealth payment and enrollment flexibilities put in place by the Department of Health Care Services (DHCS) for the Medi-Cal program during the COVID-19 pandemic.

### Major Provisions

- 1) Expands the definition of synchronous interaction for purposes of the definition of telehealth to include audio-video, audio-only, and other virtual communication.
- 2) 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").
- 3) 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.
- 4) Requires 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).
- 5) Requires DHCS, in consultation with affected stakeholders, to develop one or more federally permissible APM that FQHCs and RHCs may elect to participate in. 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, except requires specified mental health services 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.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) 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.
- 10) Requires DHCS to convene an advisory group to provide input to DHCS on the development of a revised Medi-Cal telehealth policy, and requires DHCS to complete an evaluation to assess the benefits of telehealth.

## COMMENTS

*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. DHCS issued revised trailer bill language in May 2021. The main difference between this bill and the DHCS proposal is DHCS does not propose to pay for telephone visits at parity (the revised trailer bill language requires reimbursement at 65% of the equivalent office visit rate) and DHCS propose to permit FQHCs and RHC to bill for telephone services at a rate comparable to the telephone rate for non-FQHC providers (a rate lower than the center's PPS rate). In addition, DHCS does not address payment for telephone services at parity in commercial health plan and insurance coverage.

### **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.

### **Arguments in 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.

### **Arguments in 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.

### **Arguments in Opposition**

The California Association of Health Plans (CAHP), the Association of California Life and Health Insurance Companies (ACLHIC) and America's Health Insurance Plans (AHIP) write in opposition to this bill and 13 other bills. CAHP, ACLHIC and AHIP write that these 14 bills will increase costs, reduce choice and competition, and further incent some employers and individuals to avoid state regulation by seeking alternative coverage. The opponents argue that now is not the time to inhibit competition with proscriptive mandates that reduce choice and increase costs, and conclude that California needs to protect the coverage gains we've made and stay focused on the stability and long-term affordability of our health care system.

### **Arguments in Opposition 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.

## FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) The California Health Benefits Review Program (CHBRP) states that some telehealth services replace existing in-person visits, while others are new supplemental visits that would not have taken place in the absence of telehealth coverage. As the supplemental visits increase overall utilization of health care services, this bill increases health care costs as follows:
  - a) Total state costs as follows:
    - i) \$136.5 million total funds (\$49 million General Fund (GF)) to Medi-Cal managed care. \$24.5 million of this total funds cost (\$9 million GF) is attributable to the increase in coverage and payment parity requirements for telehealth services provided by FQHCs and RHCs. The General Fund calculation assumes a federal financial participation (FFP, or federal matching percentage) of 64%, the same as that calculated for the Remote Patient Monitoring proposal in the Medi-Cal November 2020 Local Assistance Estimate.
    - ii) \$42.6 million (\$15 million GF) for services delivered to beneficiaries enrolled in Medi-Cal County Organized Health Systems and Medi-Cal fee-for-service.
    - iii) \$1.1 million to The California Public Employees' Retirement System (CalPERS) for premium increases, \$624,000 of which would be borne by the General Fund, federal funds and various special funds, with the remainder borne by local funds.
  - b) Total non-state costs as follows:
    - i) \$39.6 million in commercial health care premium increases paid by non-CalPERS employers.
    - ii) \$21.9 million in premium increases, and \$41.7 million in increased cost-sharing, paid by individuals and employees.
  - c) CHBRP does not identify cost offsets or savings as a result of this bill because it requires payment parity with in-person services and results in increased utilization. CHBRP notes it is unlikely the actual cost of staff, technology and resources used to deliver services via telehealth are less expensive than in-person care.
- 2) There is a significant amount of uncertainty related to cost estimates. Costs may be higher or lower than estimated by CHBRP. In particular, DHCS estimates potential costs due to the

payment parity requirement are indeterminate but could be as high as \$300 million total funds annually (about \$100 million GF annually), higher than CHBRP estimates.

- 3) Administrative costs to DHCS to develop an alternative payment methodology for clinics, likely in the hundreds of thousands of dollars (GF and federal funds). To implement SB 147 (Hernandez), Chapter 760, Statutes of 2015, a prior bill that authorized a pilot project to deploy an alternative payment methodology for FQHCs, DHCS requested three-year limited-term positions and spending authority of \$240,000 per year for three years and a \$300,000 contract for evaluation
- 4) One-time staff or contract costs to DHCS of \$50,000 (GF and federal funds) to support facilitation of an advisory board to provide input to telehealth policies. Costs would be higher if the facilitator was asked to draft recommendations or policies.
- 5) Unknown potential Medi-Cal costs for increased number of beneficiaries associated with the option for remote eligibility determinations and recertifications, which should reduce the frictional costs of gaining and retaining Medi-Cal eligibility (GF and federal funds).

## VOTES

### ASM HEALTH: 13-0-2

**YES:** Wood, Aguiar-Curry, Bigelow, Burke, Carrillo, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago, Waldron, Calderon

**ABS, ABST OR NV:** Mayes, Flora

### ASM APPROPRIATIONS: 16-0-0

**YES:** Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

## UPDATED

VERSION: May 24, 2021

CONSULTANT: Scott Bain and Kristene Mapile / HEALTH / (916) 319-2097 FN: 0000724

## **AB 32 (Aguiar-Curry)**

### **As Amends the Law Today (5/28/2021)**

#### **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 (d).*

*(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. The department shall utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this subdivision.*

*(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. The department shall utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this subdivision.*

*(2) The department shall provide data and information to the evaluator, as appropriate, and 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (a)(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). On 4/2/2021, the Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation of **Support if Amended** on AB 107 (Salas).

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.

On 5/20/2021, the Assembly Committee on Appropriations voted 16 – 0 to pass the bill out of committee and onto the Assembly Floor.

**Location:** Assembly Floor Process.

**Status:** 5/24/2021 Read second time. Ordered to third reading.

**Action Requested:**

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

Attachment A: Support if Amended Letter

Attachment B: Assembly Floor 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.

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**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](mailto: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

## ASSEMBLY THIRD READING

AB 107 (Salas)

As Amended April 20, 2021

Majority vote

**SUMMARY**

Expands to all Department of Consumer Affairs (DCA) licensing boards the requirement that specified boards issue temporary licenses to the spouses of active-duty members of the United States (U.S.) Armed Forces, as specified, and requires the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the Department of Public Health to compile information on military, veteran, and spouse licensure into an annual report for the Legislature.

**Major Provisions**

- 1) Makes the following changes to the existing temporary license requirement:
  - a) Expands the requirement from seven specified boards and license types to all DCA boards and all license types.
  - b) Specifies that the revenues from fees for temporary licenses issued by the California Board of Accountancy must be credited to the Accountancy Fund and makes a conforming change.
  - c) Requires a board to issue a temporary license within 30 days of receiving the required documentation if the results of a criminal background check do not show grounds for denial.
  - d) 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, or denial of the application.
  - e) 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 June 15, 2022.
  - f) Exempts boards from the temporary license requirements if the board already has a similar process in place.
  - g) Clarifies that the requirement applies only to the extent that it does not amend an initiative or violate constitutional requirements.
- 2) 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 temporary license submitted by active duty service members, veterans, or military spouses per calendar year, pursuant to Business and Professions Code Section 115.6.

- b) The number of applications for expedited licenses submitted by veterans and active duty spouses.
- c) The number of licenses issued and denied per calendar year.
- d) The number of licenses issued that were suspended or revoked per calendar year.
- e) The number of applications for waived renewal fees received and granted per calendar year.
- f) The average length of time between application and issuance of licenses per board and occupation.

## COMMENTS

This bill seeks to improve license portability for military spouses. It would increase the number of boards required to issue temporary licenses to military spouses, establish a similar licensing process for the boards not included under the temporary license provisions, and establish various website posting and reporting requirements.

In California, many professions require a license to legally practice. 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.

As a result, when the spouse or partner of an active duty member of the military travels with the member to California under military orders, they may be required to apply for a new license, even if they are licensed in a different state. However, the process of applying for a new license can be lengthy, expensive, and burdensome. Military spouses may undergo this process multiple times, despite having little choice in when or how often they move.

To assist with these burdens, existing law provides for several accommodations of both military family and veteran license applicants. DCA boards are required to ask about the military status of each of their applicants so that military experience may potentially be applied toward licensure training requirements. DCA boards are also required to expedite licensure for military veterans as well as the spouses and partners of active duty military to reduce license processing wait times.

*Temporary Licenses.* If licensed in another state, and depending on the license, military spouses and other applicants may be able to utilize provisions that recognize out-of-state licenses, also known as reciprocity or licensure by endorsement. However, depending on the specific license requirements and the potential differences in requirements between states, applicants may still experience long wait times as their qualifications are reviewed.

To address this issue, some DCA boards may issue temporary licenses. In general, temporary licenses allow an applicant to practice for a limited period, allowing them to practice while the remainder of the qualifications is obtained or verified. Because license requirements are intended to protect the public, applicants usually must be able to immediately demonstrate meeting some of the qualifications required for licensure and pass a background check.

**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."

**Arguments in Support**

The *United States Department of Defense, Office of the Assistant Secretary of Defense* writes in support:

Addressing licensure issues for the spouses of our military Service members has been a priority for the Department for several years. 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.

In closing, DoD is very appreciative of California's ongoing commitment and efforts to support our military Service members and their families, especially concerning licensure and career portability for military spouses.

**Arguments in Opposition**

The *Board of Professional Engineers, Land Surveyors and Geologists* is opposed unless the bill is amended to clarify that an applicant must also show they have met that the requirement that an applicant for a temporary license pass the state-specific examinations by cross-referencing the subdivision within the existing code section that contains the requirement.

The *Board of Behavioral Sciences* is opposed unless the bill is amended to remove the board. The boards writes that it "recently successfully implemented license portability legislation for its marriage and family therapist (LMFT), clinical social worker (LCSW), and professional clinical counselor (LPCC) applicants. SB 679 [(Bates)], Chapter 380, Statutes of 2019, became effective on January 1, 2020 and established what the Board now calls 'licensure by credential.' SB 679 was the result of a two-year deliberation process by the Board's special license portability committee on the best way to balance ease of licensure across state lines with public protection and the need for practitioners to be prepared to practice safely and effectively in California's diverse environment. The Board is concerned that [this bill] makes some key omissions of consumer protection requirements that were carefully considered and placed in SB 679."

The *Dental Hygiene Board of California* is opposed unless the bill is amended to extend the review period to 90 days. 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. The board also states that applicants may not be able to complete necessary training and coursework required of out-of-state applicants to safely practice in California.

## FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Estimated total costs of \$728,000 (various special funds) annually to DCA boards and bureaus required to issue a temporary license pursuant to this bill. DCA estimates it will cost affected boards between \$0 and \$294,000 each to meet these requirements.
- 2) Estimated one-time costs of \$5.1 million (special fund) for programming and configuration changes as well as testing for over 200 additional individual license types across multiple information technology (IT) platforms. DCA indicates contractor resources will be required and IT implementation is projected to take 18 months.
- 3) Minor costs to state agencies to compile information and report to the Legislature.

## VOTES

### ASM BUSINESS AND PROFESSIONS: 17-0-2

**YES:** Low, Flora, Arambula, Berman, Bloom, Chen, Chiu, Cunningham, Megan Dahle, Fong, Gipson, Grayson, Holden, McCarty, Medina, Salas, Ward  
**ABS, ABST OR NV:** Irwin, Mullin

### ASM MILITARY AND VETERANS AFFAIRS: 11-0-0

**YES:** Irwin, Voepel, Boerner Horvath, Daly, Frazier, Mathis, Muratsuchi, Petrie-Norris, Ramos, Salas, Smith

### ASM APPROPRIATIONS: 16-0-0

**YES:** Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

## UPDATED

VERSION: April 20, 2021

CONSULTANT: Vincent Chee / B. & P. / (916) 319-3301

FN: 0000486



## **AB 107 (Salas)**

### **As Amends the Law Today (5/28/2021)**

#### **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 (d).*

*(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. The department shall utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this subdivision.*

*(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. The department shall utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this subdivision.*

*(2) The department shall provide data and information to the evaluator, as appropriate, and 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(a)(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).

On 5/20/2021, amendments were accepted in the Appropriations Committee. These amendments exclude serious, violent, and sex felonies from automatic relief; delay automatic relief for four years where there is a supervision violation or a new felony conviction; strike the restriction on the access to cleared records; and limit retroactivity to January 1, 2005.

**Location:** Senate Floor.

**Status:** 5/24/2021 Read second time. Ordered to third reading.

**Action Requested:**

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

Attachment A: Board Letter of Opposition

Attachment B: Senate Floor 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

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THIRD READING

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Bill No: SB 731  
Author: Durazo (D) and Bradford (D), et al.  
Amended: 5/20/21  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/13/21  
AYES: Bradford, Kamlager, Skinner, Wiener  
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21  
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski  
NOES: Bates, Jones

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**SUBJECT:** Criminal records: relief

**SOURCE:** Californians for Safety and Justice

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**DIGEST:** This bill permits additional relief by way of withdrawing a plea and deleting arrest records for the purpose of most criminal background checks.

**ANALYSIS:**

Existing law:

- 1) 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:
  - a) The arrest was for a misdemeanor and the charge dismissed.
  - b) The arrest was for a misdemeanor and no criminal proceedings have been initiated one year from the date of the arrest.

- c) 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.
  - d) If the person successfully completed a specified diversion program.
- 2) Subjects the relief granted to the following conditions:
- a) It does not relieve a person of an obligation to disclose an arrest in an application for employment as a peace officer.
  - b) It does not limit the ability of a criminal justice agency to access the arrest information.
  - c) It does not limit the ability of a district attorney to prosecute for the offense if it is within the statute of limitations.
  - d) It does not impact a person's authorization to own or possess a firearm
  - e) It does not impact any prohibition on holding public office.
  - f) It does not impact licensing for foster homes and similar facilities.
  - g) It does not limit other motions for relief. (Penal Code Section 851.93)
- 3) 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)
- 4) 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 criterial and are eligible for automatic conviction relief. A person is eligible for relief if they meet all of the following conditions:
- a) The person is not required to register as a Sex Offender.
  - b) The person does not have an active record for local, state, or federal supervision in the Supervised Release file.
  - c) 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.
  - d) There is no indication that the conviction resulted in a sentence of incarceration in state prison.

- e) 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))
- 5) Provides that automatic conviction record relief is subject to the following conditions:
- a) It does not relieve a person of the obligation to disclose a conviction when applying to be a peace officer.
  - b) 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
  - c) It does not affect a person's authorization to own, possess, etc. a firearm.
  - d) It does not affect a prohibition from holding public office that would otherwise apply as a result of the conviction.
  - e) It does not affect the authority to receive, or take action based on, criminal history information including the authority to receive certified court records.
  - f) It does not make eligible a person otherwise ineligible to provide in-home supportive services.
  - g) It may still act as a prior for future arrests and convictions. (Penal Code Section 1203.425(a)(3))

This bill:

- 1) Makes, also, 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 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.
- 2) 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.
- 3) Deletes the prohibition on granting relief if the person was incarcerated in the state prison.
- 4) Provides, in addition, that relief granted does not release the defendant from the terms and conditions of any unexpired criminal protective orders.

- 5) Adds an additional criteria for relief providing for relief if the conviction occurred on or after January 1, 2005, 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 and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction during which the person was not convicted of a new felony. This does not apply to a serious or violent felony as defined in the Penal Code or an offense for which a person must register as a sex offender.

### **Comments**

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.<sup>1</sup> 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.

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

According to the Senate Appropriation Committee, unknown, potentially-major costs to the Department of Justice (DOJ) to expand the current automatic record relief system. To establish the current system, the department indicated initial annual costs in the low millions of dollars for the first few years and ongoing annual costs of \$1.9 million after implementation was complete. It is unclear if the expansion proposed by this measure could be, in whole or in part, incorporated into the implementation of the current system, but it may not be likely given that DOJ is required to have the current system operational by July 1, 2022. (General Fund)



**SUPPORT:** (Verified 5/20/21)

Californians for Safety and Justice (source)  
A New Way of Life Re-entry Project  
All of Us or None Los Angeles  
All of Us or None Riverside  
Alliance of Californians for Community Empowerment Action  
American Civil Liberties Union/northern California/Southern California/San Diego  
and Imperial Counties  
Anti-recidivism Coalition  
Arts for Healing and Justice Network  
Asian Americans Advancing Justice - California  
Asian Solidarity Collective  
Bend the Arc: Jewish Action  
Black Los Angeles Young Democrats  
Blameless and Forever Free Ministries  
Building Opportunities for Self-sufficiency  
California Attorneys for Criminal Justice  
California Calls  
California Catholic Conference  
California Coalition for Women Prisoners  
California Immigrant Policy Center  
California Labor Federation, AFL-CIO  
California Public Defenders Association  
California Religious Action Center of Reform Judaism  
California State Council of Laborers  
Californians United for a Responsible Budget  
Cat Clark Consulting Services LLC  
Center of Hope LA  
Chrysalis Center  
Code for America  
Communities United for Restorative Youth Justice  
Community Advocates for Just and Moral Governance  
Community Legal Services in East Palo Alto  
Community Works  
County of Los Angeles Board of Supervisors  
Courage California  
Cure California  
Defy Ventures  
Dignity and Power Now  
Drug Policy Alliance

Ella Baker Center for Human Right  
Faith in Action Bay Area  
Faith in Action East Bay  
Family Reunification Equity & Empowerment  
Felony Murder Elimination Project  
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  
Kehilla Community Synagogue  
LA Voice  
Last Prisoner Project  
Law Enforcement Action Partnership  
Legal Aid At Work  
Legal Services for Prisoners With Children  
Livefree California  
Los Angeles Regional Reentry Partnership  
Michelson Center for Public Policy  
National Association of Social Workers, California Chapter  
People Objective LLC  
Phenomenal Angels of the Community  
Pico California  
Pillars of the Community  
Re:store Justice  
Riverside Community College District  
Root & Rebound  
Rubicon Programs  
San Bernardino Free Them All  
San Francisco Public Defender  
Santa Cruz Barrios Unidos Inc.  
Shields for Families  
Showing Up for Racial Justice Bay Area  
Showing Up for Racial Justice North County  
Showing Up for Racial Justice San Diego  
Social & Environmental Justice Committee of The Universalist Unitarian Church  
of Riverside  
Social Justice Research Partnership

Smart Justice California  
Starting Over, Inc.  
Team Justice  
The Dream Corps  
The Experience Christian Ministries  
The Reverence Project  
Think Dignity  
Time for Change Foundation  
Timelist Group  
Transitions Clinic Network  
Uncommon Law  
Underground Grit  
Underground Scholars Initiative At UC Riverside  
Underground Scholars Initiative Berkeley  
Underground Scholars Initiative, University of California Davis  
Unite-la, Inc.  
We the People - San Diego  
Young Women's Freedom Center

**OPPOSITION:** (Verified 5/20/21)

California Association of Licensed Investigators  
California Board of Psychology  
California District Attorneys Association  
California Statewide Law Enforcement Association  
Peace Officers Research Association of California  
One individual

**ARGUMENTS 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 joint

heir 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.

**ARGUMENTS 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.

Prepared by: Mary Kennedy / PUB. S. /  
5/25/21 15:30:26

\*\*\*\* **END** \*\*\*\*

## AB 731 (Durazo)

### As Amends the Law Today (5/28/2021)

#### 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 4470, 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~~ *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 ~~1170.~~ *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:~~

~~(I) (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.~~

~~(I) (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, 2005, 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, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense. This subclause does not apply to a conviction of a serious felony defined in subdivision (c) of Section 1192.7, a violent felony as defined in Section 667.5, or a felony offense requiring registration pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.~~

(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 ~~4203.4 and 4204.4a~~ 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 ~~4203.4~~ 1203.4, 1203.4a, or ~~4203.4a~~ 1203.41. 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.

## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (a)(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

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](mailto: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

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**SENATE COMMITTEE ON  
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**  
Senator Richard Roth, Chair  
2021 - 2022 Regular

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**Bill No:** SB 772 **Hearing Date:** April 19, 2021  
**Author:** Ochoa Bogh  
**Version:** February 19, 2021  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Sarah Mason

**Subject:** Professions and vocations: citations: minor violations

**SUMMARY:** 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.

**Existing law:**

- 1) Authorizes a program within the Department of Consumer Affairs (DCA) to implement regulations to issue a citation or an order to pay an administrative fine if the licensee is in violation of the applicable licensing act or any regulation adopted pursuant to that act. Specifies requirements for citations, including but not limited to capping the administrative fine amount at \$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. Establishes a process for contesting the finding of a violation and appealing. Clarified that a citation may be issued without the assessment of an administrative fine. (Business and Professions Code (BPC) § 125.9)
- 2) Specifies that, in assessing a fine, a program must 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. (BPC § 125.9.)
- 3) Requires, by the Administrative Procedure Act, that a state agency make available to the public facts, evidence, documents, testimony, or other evidence on which the state agency relied to support the agency's determination that a proposed action will not have a significant adverse impact on business. (Government Code (GOV) §§ 11346–11348)
- 4) Requires, under the federal Small Business Regulatory Enforcement Fairness Act, that federal agencies must have a penalty reduction policy for small businesses, involve small businesses in the development of some proposed rules through Small Business Advocacy Review Panels, produce Small Entity Compliance Guides for some rules, and be responsive to small business inquiries about compliance with the agency's regulations. (Title 5 U.S.C. Ch. 6 §§ 601-612)



**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)**

### **As Amends the Law Today (5/28/2021)**

#### **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.*

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## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(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:** Assembly

**Status:** 5/20/2021 In committee: Held under submission.

**Action Requested:**

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

Attachment A: AB 29 (Cooper) Bill Text

## AB 29 (Cooper)

### As Amends the Law Today (5/28/2021)

#### SECTION 1.

Section 11125 of the Government Code is amended to read:

##### 11125.

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the ~~Internet~~ *state body's internet website* at least 10 days in advance of the ~~meeting,~~ *meeting* and shall include the name, address, and telephone number of any person who can provide further information ~~prior to before the meeting,~~ *meeting* but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the ~~Internet site~~ *internet website* where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

*(c) (1) A notice provided pursuant to subdivision (a) shall 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.*

*(2) The writings or materials described in paragraph (1) shall 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.*

*(3) A state body may not distribute or discuss writings or materials described in paragraph (1), or take 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 this subdivision.*

~~(e)~~ *(d)* Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

~~(d)~~ *(e)* A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

~~(e)~~ *(f)* A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

~~(f)~~ (g) The notice shall be made available in appropriate alternative formats, 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, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.



## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(b)(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).

On 4/5/2021, this bill was amended to exempt healing arts boards.

**Location:** Committee on Business and Professions

**Status:** 4/13/2021 In committee: Set, first hearing. Failed passage.  
Ayes: 6; Noes: 7; Abstain: 6.

**Action Requested:**

This is for informational purposes only. No action is requested as this time.

Attachment A: AB 54 (Kiley) Bill Text

**AB 54 (Kiley)**

**As Amends the Law Today (5/28/2021)**

**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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(b)(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 Floor

**Status:** 5/25/2021 Read second time. Ordered to third reading.

**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)**

### **As Amends the Law Today (5/28/2021)**

#### **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 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, 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(b)(4) – AB 339 (Lee): Local government: open and public meetings

### **Background:**

This bill requires the following: all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing at least 250,000 people to include an opportunity for members of the public to attend via a telephonic option or an internet-based service option; all open and public meetings include an in-person public comment opportunity, except in specified circumstances during a declared state or local emergency; all open and public meetings to provide the public with an opportunity to comment on proposed legislation in person and remotely via a telephonic or an internet-based service option.

This bill sunsets on December 31, 2023.

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).

On 4/15/2021, this bill was amended to remove state bodies from the requirements. It pertains to local governments with more than 250,000 residents.

**Location:** Assembly Floor

**Status:** 5/20/2021 Read second time. Ordered to third reading.

### **Action Requested:**

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

Attachment A: AB 339 (Lee) Bill Text





## AB 339 (Low)

### As Amends the Law Today (5/28/2021)

#### 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 open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing at least 250,000 people shall include an opportunity for members of the public to attend via a telephonic option or an internet-based service option. All members of the public shall be entitled to participate in open and public meetings, regardless of national origin or language ability.*

~~(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 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)~~ (f). 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.

*(d) All open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing at least 250,000 people shall comply with the following requirements:*

*(1) 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 open and public 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.*

*(2) All open and public meetings shall provide the public with an opportunity to comment on proposed legislation, both in person and remotely via a telephonic or 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.*

~~(e)~~ (e) (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)~~ (f) (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.

*(g) This section shall remain in effect only until December 31, 2023, and as of that date is repealed.*

## **SEC. 2.**

*Section 54953 is added to the Government Code, 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, except as otherwise provided in this chapter.*

*(b) (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 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). 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.*

*(c) (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) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), 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 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.*

*(e) This section shall become operative on December 31, 2023.*

**SEC. 3.**

*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. 4.**

*The Legislature finds and declares that Section 1 of this act, which amends Section 54953 of the Government Code, furthers, 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 or internet-based service option and instructions on how to access these options to the public for specified meetings.*

## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(b)(5) – AB 562 (Low) Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: health care providers: mental health services.

### **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).

On 4/8/2021, this bill was amended to, among other things, define "board" as 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; define "eligible licensee" as a person licensed as a healing arts provider who is or was also a frontline health care COVID-19 provider; and define "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.

**Location:** Senate

**Status:** 5/28/2021 Read first time. To Committee on Rules for Assignment.

### **Action Requested:**

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

Attachment A: Assembly Floor Analysis

Attachment B: AB 562 (Low) Bill Text

## ASSEMBLY THIRD READING

AB 562 (Low)

As Amended April 8, 2021

2/3 vote. Urgency

**SUMMARY**

Requires the Department of Consumer Affairs (DCA) to establish a mental health resiliency program, until January 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.

**Major Provisions**

- 1) Establishes the Frontline COVID-19 Provider Mental Health Resiliency Act of 2021.
- 2) Defines "board" as 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.
- 3) Defines "eligible licensee" as a person licensed as a healing arts provider 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) Requires the DCA director to, 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.
- 8) 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.
- 9) Exempts the development of the mental health resiliency program from the requirements for regulations.
- 10) Requires the relevant boards to notify licensees and solicit applications for access to the mental health resiliency program immediately upon the availability of any services contracted for.

- 11) Requires an applicant to the program to attest that they are an eligible licensee and deems an applicant an eligible licensee if the attestation is complete and any facility and unit listed would provide care to COVID-19 patients.
- 12) Requires the relevant boards to include in the application a voluntary survey of race or ethnicity and gender identity
- 13) Sunsets the provisions relating to the administration of the mental health resiliency program on January 1, 2025.
- 14) Requires the DCA and relevant 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 de-identified aggregate number of applicants and eligible licensees and a monthly breakdown.
  - c) The de-identified 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.
- 15) 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.
- 16) 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.
- 17) Contains an urgency clause, declaring the necessity for the provisions to into effect immediately.

## COMMENTS

*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.

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.

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:

- 1) Consistently coming into an ICU with several patients and ending the shift with none because they all passed away.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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.

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.

### **According to the Author**

"If 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."

### **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 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 *American Federation of State, County and Municipal Employees (AFSCME)*, *AFL-CIO*, a co-sponsor of this bill, writes in support:

A recent study supported by the Johnson & Johnson Foundation showed that 93% of surveyed healthcare workers were experiencing general stress, 86% reported anxiety, 77% reported overall frustration, 76% reported exhaustion and burnout, and 75% said that they were overwhelmed. Additionally, 76% surveyed worried about exposing their children to the virus while approximately half worried about exposure to their spouses and elderly family members. Based on the DSM-5, post-traumatic stress symptoms can follow the witnessing of death, the threat of death to oneself or the threat of death to loved ones; frontline workers have faced these each day for the past year. After witnessing unfathomable suffering, bearing the brunt of the pandemic, and sacrificing for their families and communities, healthcare workers have been pushed beyond what is reasonable to expect them to endure. COVID-19 frontline workers deserve to have their traumatic experiences acknowledged and the effects mitigated, both for their own well-being and for the sustainability of our healthcare infrastructure.

Mental health among frontline workers is just as imperative to their overall wellness as their physical condition and [this bill] provides immediate support to those who have taken care of our communities throughout the pandemic.

### **Arguments in Opposition**

None on file

### **FISCAL COMMENTS**

According to the Assembly Committee on Appropriations,

- 1) Costs to DCA to develop the program of \$200,000 for a program manager and \$625,000 in costs to various boards within DCA, as well as \$295,000 for information technology to create an online application process and interface with the mental health services provider (various healing arts board special funds).
- 2) Ongoing costs, either to DCA to through a contract, to process applications and verify eligibility for the program. The amount of the costs are unknown but could range from the hundreds of thousands to millions of dollars, depending on the number of enrollees (various healing arts board special funds).
- 3) Ongoing costs in the millions to over \$10 million, depending on the number of enrollees and intensity of services offered through the program (various healing arts board special funds).

## **VOTES**

### **ASM BUSINESS AND PROFESSIONS: 18-0-1**

**YES:** Low, Flora, Arambula, Berman, Bloom, Chen, Chiu, Valladares, Megan Dahle, Fong, Gipson, Grayson, Holden, Irwin, McCarty, Medina, Salas, Ting

**ABS, ABST OR NV:** Mullin

### **ASM APPROPRIATIONS: 16-0-0**

**YES:** Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

## **UPDATED**

VERSION: April 8, 2021

CONSULTANT: Vincent Chee / B. & P. / (916) 319-3301

FN: 0000577

## **AB 562 (Low)**

### **As Amends the Law Today (5/28/2021)**

#### **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 detainment, 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(7) – 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).

On 4/14/2021, this bill was amended to remove the fee amount of \$50.

**Location:** Assembly

**Status:** 5/20/2021 In committee: Hearing postponed by committee.

### **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)**

**As Amends the Law Today (5/28/2021)**

**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.*

## **AB 657 (Cooper)**

### **As Amends the Law Today (5/28/2021)**

#### **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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	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:** Assembly 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)

### As Amends the Law Today (5/28/2021)

#### 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 ~~fifty~~ *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~~



~~he~~ *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*) 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(9) – AB 830 (Flora): Business: Department of Consumer Affairs: Alarm Company Act: Real Estate Law.

**Background:**

Requires the Director of Consumer Affairs to 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.

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).

On 4/19/2021, this bill was amended to make various technical changes and noncontroversial reforms to laws governing professions regulated by boards and bureaus under the Department of Consumer Affairs.

**Location:** Assembly Floor

**Status:** 5/10/2021 Ordered to third reading.

**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)

### As Amends the Law Today (5/28/2021)

#### **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  $\frac{1}{4}$ " by 1  $\frac{1}{2}$ ", with a face size no greater than 1" by 1  $\frac{1}{4}$ ", 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7(b)(10) – 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.

On 5/21/2021, the Board agreed with staff's recommendation to watch AB 885 and directed staff to seek clarification from the author's staff on a few matters of interest.

**Location:** 3/25/2021 Assembly Governmental Organization



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

**Action Requested:**

This is for informational purposes only. Not action is required at this time.

Attachment A: AB 885 (Quirk) Bill Text

## AB 885 (Quirk)

### As Amends the Law Today (5/28/2021)

#### 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~~ ~~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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(11) – 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).

On 5/20/2021, this bill was held in committee.

**Location:** Assembly

**Status:** 5/20/2021 In committee: Held under submission.

**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)**

**As Amends the Law Today (5/28/2021)**

**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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(12) – 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).

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. Staff has learned from the author's that they are considering making the report a requirement for OSHPD instead of each board.

**Location:** Assembly Floor

**Status:** 5/24/2021 Read second time. Ordered to third reading.

**Action Requested:**

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

Attachment A: Assembly Floor Analysis

Attachment B: AB 1236 Bill Text



## ASSEMBLY THIRD READING

AB 1236 (Ting)

As Amended April 29, 2021

Majority vote

**SUMMARY**

Requires health care regulatory boards under the jurisdiction of the Department of Consumer Affairs (DCA) to collect demographic information from its licensees and registrants, as specified. Requires such boards to post de-identified, aggregate information on the data collected on their websites, and to transmit the data to the Office of Statewide Health Planning and Development (OSHPD) beginning July 1, 2022.

**Major Provisions**

- 1) Requires health care regulatory boards to request demographic workforce data from their licensees and registrants for the purposes of future workforce planning. Specifies that 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.
- 2) Specifies the data that must be requested, which includes location of practice, employer classification, work hours, work titles, time spent in patient care, clinical practice area, race or ethnicity, gender identity, languages spoken, educational background, future work intentions, job satisfaction rating, sexual orientation, and disability status.
- 3) Clarifies that data submission is optional, and that a licensee or registrant is not required to submit the information listed above. Directs each board collecting data to maintain the confidentiality of the information and specifies that any information may only be released in aggregate form.
- 4) Requires each health care regulatory board, or DCA on its behalf, beginning July 1, 2022, to provide the data collected to OSHPD for inclusion into OSHPD's annual report to the legislature related to California's healthcare workforce.

**COMMENTS**

*OSHPD and the Healthcare Workforce Clearinghouse (HWC).* The HWC, established in 2007 and housed under OSHPD's Healthcare Workforce Development Division, serves as California's central source for collection, analysis, and reporting of information on the healthcare workforce employment and educational data trends for the state. As part of its statutory duties, OSHPD is mandated to prepare an annual report to the Legislature that accomplishes the following three goals: (1) identifying education and employment trends in the health care professions (2) reporting on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas; and (3) recommending state policy needed to address issues of workforce shortage and distribution.

*Data Collection under AB 2102.* AB 2102 (Ting, Chapter 420, Statutes of 2014) required four specific boards – the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care Board of California, and the Board of Vocational Nursing and Psychiatric Technicians – to collect and report specific demographic data related to its licensees.

Additionally, the bill required the data to be provided to OSHPD for inclusion in the OSHPD annual report to the legislature. The bill was enacted, in part, because race, language capacity and gender demographic information for many important allied health professionals was at the time incomplete and uncollected. Access to this data was critical to determining California's capacity to provide culturally and linguistically competent care to its diverse population.

This bill expands upon existing data collection mandates on California's health care workforce. Specifically, AB 1236 requires all healing arts boards under DCA to collect specified demographic data, and to produce and publish online a report containing such workforce data collected on a biennial basis. The bill specifies the data to be collected, which spans 14 categories: 1) City, county, and ZIP Code of practice; 2) type of employer or classification of primary practice site among the types of practice sites such as a clinic, hospital, managed care organization, or private practice; 3) work hours; 4) titles of positions held; 5) time spent in direct patient care; 6) clinical practice area; 7) race or ethnicity; 8) gender identity; 9) languages spoken; 10) educational background; 11) future work intentions; 12) job satisfaction ratings and 13) sexual orientation and 14) disability status. Beginning July 1, 2022 and every year thereafter, this bill also requires each board or DCA to provide the data collected to OSHPD for the purpose of OSHPD's annual report to the Legislature related to health care workforce planning.

*Healthcare Boards under the Department of Consumer Affairs.* This bill applies to 20 health care boards that are responsible for licensing and regulating health professionals. The healing arts boards include the following entities: Acupuncture Board; Board of Behavioral Sciences; Board of Chiropractic Examiners; Dental Board of California; Dental Hygiene Board of California; Medical Board of California; Naturopathic Medicine Committee; California Board of Occupational Therapy; Board of Optometry; Osteopathic Medical Board of California; Board of Pharmacy; Physical Therapy Board of California; Physician Assistant Board; Podiatric Medical Board of California; Board of Psychology; Board of Registered Nursing; Respiratory Care Board; Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board; Veterinary Medical Board; and the Board of Vocational Nursing and Psychiatric Technicians.

### **According to the Author**

This bill is sponsored by the *San Francisco Jewish Vocational Service and the California Pan-Ethnic Health Network*. According to the author: "For millions of Californians, comprehensive access to healthcare depends on professionals who can provide culturally and linguistically appropriate medical services. The state recognizes that communities of color are more likely to use needed health care services when their provider speaks their language or shares the same cultural background, but the current data is insufficient for determining the state's capacity to address the needs of our diverse population. By expanding demographic data collection on healthcare workers, the state can better identify healthcare disparities, conduct targeted outreach strategies, and craft solutions to ensure comprehensive coverage and greater healthcare access for all Californians."

### **Arguments in Support**

*The San Francisco Jewish Vocational Service, the California Pan-Ethnic Health Network, the California LGBT Health and Human Services Network, the California State Council of Service Employees International Union, and the National Association of Social Workers – California Chapter* collectively write in support: "The demographic data collected would [...] would provide the state with a greater sense of the workforce shortage needs including the need to serve

specific underserved populations. This data would be useful in conducting more targeted outreach strategies."

*CaliforniaHealth+ Advocates write in support:* "National reports suggest a more diverse health workforce are better equipped to serve diverse patient populations and form patient-provider concordance, which result in better health outcomes. CHCs recognize provider race and ethnicity data collection as a vital tool to expand California's workforce diversity and close gaps in the provider shortage.

*The Little Hoover Commission writes in support:* "While anecdotal reports suggest that minorities are often negatively and disproportionately affected by licensing regulations, it is impossible to know for sure without demographic information. To remedy this, the Commission recommended the Legislature authorize the collection of demographic information, supplied voluntarily, for license applications across all licensed occupations in California. AB 1236 advances our recommendation by requiring all healing arts boards to request demographic information.

### **Arguments in Opposition**

None on file.

## **FISCAL COMMENTS**

According to the Assembly Committee on Appropriations, this bill has a fiscal effect of \$230,000 in information technology changes to collect the required data (various fee-supported special funds). Cost to aggregate data and provide data to OSHPD, as well as the cost for OSHPD to include the data in an annual report, is expected to be minor and absorbable.

## **VOTES**

### **ASM BUSINESS AND PROFESSIONS: 19-0-0**

**YES:** Low, Flora, Arambula, Berman, Bloom, Chen, Chiu, Cunningham, Megan Dahle, Fong, Gipson, Grayson, Holden, Irwin, McCarty, Medina, Mullin, Salas, Ting

### **ASM APPROPRIATIONS: 16-0-0**

**YES:** Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

## **UPDATED**

VERSION: April 29, 2021

CONSULTANT: Patrick Le / B. & P. / (916) 319-3301

FN: 0000705

**AB 1236 (Ting)**

**As Amends the Law Today (5/28/2021)**

**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.*



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## MEMORANDUM

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(13) – 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).

On 5/5/2021, this bill was in committee: Set, first hearing. Referred to APPR. suspense file.

**Location:** Assembly

**Status:** 5/20/2021 In committee: Held under submission.

**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)**

**As Amends the Law Today 5/28/2021)**

**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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(14) – 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**

### **As Amends the Law Today (5/28/2021)**

#### **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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(15)– 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.

On 5/20/2021, this bill was amended to clarify that timely access standards are intended solely to be minimum requirements and not to replace clinical judgment in decisions regarding speed and frequency of medically necessary care.

**Location:** Senate Floor

**Status:** 5/24/2021 Read second time. Ordered to third reading.

**Action Requested:**

Staff recommends the Board watch SB 221 (Wiener).

Attachment A: SB 221 (Wiener) Bill Text

## **SB 221 (Wiener)**

### **As Amends the Law Today (5/28/2021)**

#### **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.*

*(f) Closing this loophole would in no way prohibit a health care service plan or health insurer from offering enrollees or insureds followup appointments with nonphysician mental health care or substance use disorder providers faster or more frequently than required by this act. The timely access standards codified by this act are intended solely to be minimum requirements. The clinical judgment of the treating mental health care or substance use disorder provider shall continue to play the primary role in decisions regarding the speed and frequency of medically necessary care for mental health and substance use disorders.*

#### **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). This section shall not permit a health care service plan summarily to deny enrollees coverage for faster or more frequent followup appointments if the treating*



mental health care or substance use disorder provider determines the care to be medically necessary in the provider's clinical judgment.

(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-elapsed 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.

~~(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-elapsing 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. it, including demonstration of the average waiting time for each class of appointment regulated under this section. 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). This section shall not permit a health insurer summarily to deny insureds coverage for faster or more frequent followup appointments if the treating mental health care or substance use disorder provider determines the care to be medically necessary in the provider's clinical judgment.*

*(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-elapsed 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-elapsed 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

<b>DATE</b>	June 1, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Cristina Rivera Legislative and Regulatory Analyst
<b>SUBJECT</b>	Agenda Item #7 (b)(16) – 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).

On 5/20/2021, this bill was amended to make clarifying changes regarding the mental health education instruction to be provided and to add coauthors to the bill.

**Location:** Senate Floor

**Status:** 5/28/2021 Ordered to special consent calendar.

### **Action Requested:**

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

Attachment A: SB 224 (Portantino) Bill Text

## **SB 772 (Portantino)**

### **As Amends the Law Today (5/28/2021)**

#### **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 evidence-based, 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 signs and symptoms of 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 evidence-based services and supports that effectively help individuals manage mental health challenges.*

*(d) Promoting mental health wellness and protective factors, which includes positive development, social and cultural 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 professionals and services within the school district that includes, but is not limited to, school counselors with a pupil personnel services credential, school psychologists, and school social workers, and in the community for themselves or others.*

*(2) Evidence-based 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.*

*(d) Be coordinated with any existing on-campus mental health providers including, but not limited to, providers with a pupil personnel services credential, who may be immediately called upon by pupils for assistance.*

**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) "Evidence-based" 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.*

*(d) "Instructors trained in the appropriate courses" means instructors with knowledge of the most recent evidence-based research on mental health.*

**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.*



Unit at the Department of Finance

According to the Department of Finance, since the beginning of the COVID-19 Pandemic, California has received nearly \$425 billion in federal stimulus funds from five federal stimulus bills, and is estimated to receive over \$190 billion more from the American Recovery Plan Act of 2021, the sixth federal stimulus bill. Due to the immediacy of expenditure requirements in the initial bills, existing staff were redirected to manage the funding plan and establish tracking and oversight. Given the unprecedented size and scope of recent relief bills, the redirection of existing staff is not sustainable. The proposed coordinated approach to tracking and reporting will support consistency and transparency of federal reporting. To help standardize and streamline reporting, staff will evaluate enhancements needed to the Financial Information System for California (FI\$Cal).

**STAFF COMMENTS**

The Assembly intends continued oversight and hearings on the use of these critical federal funds. These additional staff should provide durable and dedicated staff that can facilitate these discussions in future years.

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**Staff Recommendation: Adopt May Revision**

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**VARIOUS**

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**VOTE-ONLY ISSUE 86: BAGLEY-KEENE OPEN MEETINGS ACT**

The May Revision includes trailer bill related to changing Bagley-Keene to allow remote participation in these public meetings.

**BACKGROUND**

The May Revision includes a trailer bill provision to amend the Government Code to allow open meetings governed by Bagley-Keene to be attended and observed remotely.

The Bagley-Keene Open Meeting Act covers all state boards and commissions. Generally, it requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by the Act to meet in closed session.

**STAFF COMMENTS**

This proposal has a great deal of merit and should be considered seriously. Staff believes the proposed changes could improve public access to these hearings and allow greater participation

from Californians that cannot afford the travel or take off time to attend in-person meeting that are largely held in Sacramento.

However, including this proposal in the May Revision means that there is no chance for stakeholders to weigh in on this change to the public process of decision making. This policy should go through a slower process, like the policy process, to allow for deliberation and discussion. Staff recommends denying the proposal with the intent that the administration continue this discussion outside of the 2021-22 budget process.

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**Staff Recommendation: Deny Without Prejudice**

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**0650 OFFICE OF PLANNING AND RESEARCH**

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**VOTE-ONLY ISSUE 87: ADMINISTRATIVE STAFF AUGMENTATION**

The Subcommittee will conform to Senate Action on OPR administrative staffing.

**BACKGROUND**

The Governor's budget included \$1.1 million General Fund and 7 positions to support increasing OPR workload. The Subcommittee approved this proposal on May 4, 2021.

**STAFF COMMENTS**

The Senate Budget Subcommittee #4 heard this issue on May 5, 2021 and partially approved the request: \$622,000 to fund increased personnel in the CEQA Clearinghouse and OPR's cross-programmatic administrative functions.

Staff recommends conforming to the Senate to resolve this issue and allow the Legislature to put forward a unified budget proposal.

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**Staff Recommendation: Conform to Senate**

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**VOTE-ONLY ISSUE 88: PRECISION MEDICINE: ADVERSE CHILDHOOD EXPERIENCES**

The May Revision includes a proposal to study adverse childhood experiences in youth homelessness.

An act to amend Sections 11122.5, 11123, 11124, 11125, 11128.5, and 11129 of, and to repeal Section 11123.5 of, the Government Code, relating to state government.

SEC. 8. The Legislature finds and declares that during the COVID-19 public health emergency, certain Bagley-Keene Open Meeting Act requirements were suspended by Executive Order N-29-20 during the period in which state or local public health officials imposed or recommended social distance measures. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, protected the health and safety of civil servants and the public, and resulted in significant cost savings for the state, including travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

The Legislature finds and declares that Section 2 of this act, which amends Section 11123 of the Government Code, both increases and potentially limits 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 that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public, does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location, and will result in significant cost savings for the state.

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.

#### LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: State bodies: open meetings.

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act defines a "meeting" to include any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of

the state body to which it pertains. The act authorizes teleconferenced meetings under specified circumstances, provided that at least one member of the state body is physically present at the location specified in the notice of the meeting, and all votes taken during a teleconferenced meeting are taken by rollcall. The act provides that if the state body elects to conduct a meeting or proceeding by teleconference, the state body is required to post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. The act requires each teleconference location to be identified in the notice and agenda of the meeting or proceeding, and each teleconference location to be accessible to the public, and the agenda to provide an opportunity for members of the public to address the state body at each teleconference location.

Existing law requires a state body to provide notice of its meeting to any person who requests that notice in writing and to provide notice of the meeting of its internet website at least 10 days in advance of the meeting, as prescribed. Existing law exempts from the 10-day notice requirement, special meetings and emergency meetings in accordance with specified provisions. Existing law authorizes a state body to adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment, and authorizes a state body to similarly continue or reconvene any hearing being held, or noticed, or ordered to be held by a state body at any meeting.

This bill would specify that a “meeting” under the act, includes a meeting held by teleconference. The bill would require all meetings to be held by teleconference and would remove the provisions of the act that require each teleconference location to be identified in the notice and agenda and accessible to the public. The bill would instead require the state body to provide a means by which the public may remotely hear or observe the meeting, as specified, and would require information to be provided in any notice to the public indicating how the public can access the meeting remotely. The bill would require the state body to provide an opportunity for members of the public to address the state body. The bill would specify that no member of the state body would be required to be physically present at any physical meeting location designated in the agenda of the meeting, and that the agenda would be required to be posted 10 days in advance of the meeting, or as provided in accordance with the

If a state body discovers that a means of remote access required by these provisions has failed for the majority of participants during a meeting, the state body would be required to end or adjourn the meeting and take specified actions to notify participants and communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of, or observe, the meeting. This bill would exclude from that prohibition an internet website or other online platform that may require identification to log into a teleconference.

provisions applicable to a special or emergency meeting, as well as posted on the state body’s internet website and at any physical meeting location designated in the agenda.

The bill would also provide that the notice of the meeting is required to specify the means by which a meeting may be accessed by teleconference. The bill would prohibit the agenda from disclosing any information regarding any remote location from which a member is participating.

If a state body discovers that a means of remote access required by these provisions has failed for the majority of participants during a meeting, the state body would be required to end or adjourn the meeting and take specified actions to notify participants and communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of, or observe, the meeting.

Existing law prohibits a state body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition an internet website or other online platform that may require identification to log into a teleconference.

This bill would also make conforming changes.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

## MEMORANDUM

<b>DATE</b>	May 25, 2021
<b>TO</b>	Legislative and Regulatory Affairs Committee
<b>FROM</b>	Jason Glasspiegel Central Services Manager
<b>SUBJECT</b>	Agenda Item #9 – 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. On 6/1/2021, this package was delivered to OAL for final review and approval.

**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.