
MEMORANDUM

DATE	June 26, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item #4 – Approval of Committee Minutes: March 18, 2019

Background:

Attached is the draft minutes for the March 18, 2019 Policy and Advocacy Committee Meeting.

Action Requested:

Approve the attached minutes for the March 18, 2019 Policy and Advocacy Committee Meeting.

Attachment: Draft minutes of the March 18, 2019 Policy and Advocacy Committee Meeting.

1 **Policy and Advocacy Committee Meeting Minutes**
2 **Department of Consumer Affairs**
3 **1625 N. Market Blvd., Trinity Room (Third Floor, Room 307)**
4 **Sacramento, CA 95834**
5 **(916) 574-7720**

6
7 **Monday, March 18, 2019**
8

9 Seyron Foo, Chairperson, called the meeting to order at 10:20 a.m. A quorum was present
10 and due notice had been sent to all interested parties.

11
12 **Members Present**

13 Seyron Foo, Chairperson
14 Sheryll Casuga, PsyD
15 Stephen Phillips, JD, PsyD
16

17 **Others Present**

18 Norine Marks, DCA Legal Counsel
19 Antonette Sorrick, Executive Officer
20 Jeffrey Thomas, Assistant Executive Officer
21 Cherise Burns, Central Services Manager
22 Stephanie Cheung, Licensing Manager
23 Sandra Monterrubio, Enforcement Program Manager
24 Jason Glasspiegel, Central Services Coordinator
25

26 **Agenda Item #2: Welcome from the Chair**
27

28 Mr. Foo welcomed those in attendance.
29

30 **Agenda Item #3: Public Comment(s) for Items not on the Agenda**
31

32 No public comment was received.
33

34 **Agenda Item #4: Review and Consideration of Revisions to the Goal of the Policy**
35 **and Advocacy Committee – Recommendations to the Board**
36

37 Mr. Foo introduced this agenda item. He discussed the confusion regarding the function
38 of the Policy and Advocacy Committee and advised that this agenda item was here to
39 clarify the Goal of this Committee.
40

41 Dr. Phillips advised that in his opinion, the name “Policy and Advocacy” is a poor name
42 for the Committee since all Board committees deal with policy. He suggested
43 “Legislative and Regulatory Affairs Committee” and believes that to be a more fitting
44 name.
45

46 Discussion ensued regarding the appropriate name of the Committee, the scope of the
47 Committee, and how to encompass that within the Committee name.

48
49 It was M (Phillips)/S(Casuga)/C to recommend the Board rename the Policy and
50 Advocacy Committee to the Legislative and Regulatory Affairs Committee.

51
52 Vote: Aye-3 (Casuga, Foo, Phillips), No-0

53
54 Discussion moved into the description of an appropriate Goal for the Committee.

55
56 The Committee chose the following language:

57
58 The goal of this committee is to advocate for legislation and develop regulations
59 that provide for the protection of consumer health and safety. The committee
60 reviews, monitors and recommends positions on legislation that affect the Board,
61 consumers, and the profession of psychology. The committee also recommends
62 and informs the Board on regulations and the status of regulatory packages.

63
64 It was M (Casuga)/S(Phillips)/C to recommend the Board adopt the updated Goal of the
65 Committee.

66
67 Vote: Aye-3 (Casuga, Foo, Phillips), No-0

68
69 **Agenda Item #5: Approval of Committee Minutes: April 19, 2018**

70
71 Dr. Phillips requested the following changes:
72 Line 261, amend to read “this bill will not be moving forward”.
73 Line 267: amend to read “some facilities will not provide services to them”.
74 Line 405: change “doesn’t” to “does not”.

75
76 It was M (Phillips)/S(Casuga)/C to adopt the minutes as amended.

77
78 Vote: Aye-3 (Casuga, Foo, Phillips), No-0

79
80
81 **Agenda Item #6: Board Sponsored Legislation for the 2019 Legislative Session:**
82 **Review and Potential Action, Recommendations to the Board**

83
84 a. **SB 275 (Pan) – Amendments to Section 2960.1 of the Business and**
85 **Professions Code Regarding Denial, Suspension and Revocation for**
86 **Acts of Sexual Contact**

87
88 Ms. Burns introduced the agenda item. She advised the bill is planning to be heard in
89 the Senate Committee on Business, Professions, and Economic Development, on April
90 1, 2019. Discussion ensued regarding the impetus for the bill and the message that the
91 bill is intended to convey to the legislature. Ms. Burns and Ms. Monterrubio provided
92 additional detail regarding the impetus and message the bill is intended to convey.

93

94 **b. Update on Amendments to Sections 2912, 2940-2944 of the Business**
95 **and Professions Code Regarding Examinations, and New Section to**
96 **the Business and Professions Code Regarding Voluntary Surrender**
97

98 Ms. Burns introduced the agenda item. She advised that the language the Board submitted
99 is still under review by the Senate Committee on Business, Professions, and Economic
100 Development. At this time, staff have not received any questions from the committee.
101

102 **Agenda Item #7: Review and Consideration of Proposed Legislation: Potential**
103 **Action to Recommend Positions to the Board**
104

105 **a. Newly Introduced Bills –Potential Action to Recommend Active**
106 **Positions to the Board**

107 **1) AB 744 (Aguiar-Curry) Healthcare coverage: telehealth.**
108

109 Mr. Foo introduced the bill and gave an overview of staff's recommendation. Ms. Burns
110 then discussed the bill in further detail. Ms. Marks commented on the lack of necessity
111 for including psychology interns in the provision of the bill due to the Board's other
112 statutory provisions. Discussion ensued and a decision by the Committee was made to
113 watch the bill for now, pending any future amendments to the bill.
114

115 **2) SB 66 (Atkins) Medi-Cal: federally qualified health center and**
116 **rural health clinic services.**
117

118 Mr. Foo introduced the bill and gave an overview of staff's recommendation. Ms. Burns
119 then discussed the bill in further detail. She advised that this bill is the same as last
120 year's bill, which was vetoed by the governor, but is important to support as it increases
121 access to mental health services for consumers.
122

123 It was M (Casuga)/S(Phillips)/C to take a Support position and recommend a Support
124 position to the full Board.
125

126 Vote: Aye-3 (Casuga, Foo, Phillips), No-0
127

128 **3) SB 163 (Portantino) Healthcare coverage: pervasive**
129 **developmental disorder or autism.**
130

131 Mr. Foo introduced the bill and gave an overview of staff's recommendation. Ms. Burns
132 then discussed the bill in further detail. She specified that the provision staff was
133 concerned about is the supervision of paraprofessionals by the psychological assistant.
134 Discussion ensued regarding the prevalence of this practice and whether it was
135 appropriate for the psychological assistant to be supervising these paraprofessionals.
136 The Committee decided to watch the bill, but asked staff to flag the bill for further review
137 by the Board at the next meeting.
138

139 **b. Newly Introduced Bills –Potential Action to Recommend the**
140 **Committee Watch Bills**

141 **1) Recommendations for Committee to Watch Bills**
142

143 Mr. Foo advised that he would read down the list of Watch Bills, and if the Committee or
144 staff wanted to discuss any, to stop him at that particular bill.

145

146

A. AB 8 (Chu) Pupil health: mental health professionals.

147

148 Dr. Philips wished to discuss this bill as he had concerns with licensed psychologists
149 being required to be supervised by master's level providers with a services credential.

150 Discussion ensued regarding the provision relating to supervision of psychologists in
151 school settings. It was M (Phillips)/S(Casuga)/C to recommend the Board write a letter
152 of concern.

153

154 Vote: Aye-3 (Casuga, Foo, Phillips), No-0

155

156

**B. AB 71 (Melendez) Employment standards: independent
contractors and employees.**

157

158

159 Ms. Burns wished to discuss this bill. Discussion ensued regarding who the bill impacts,
160 insurance coverage of supervisees, and whether or not the bill is a concern to the
161 Board. The Committee determined that while it would be helpful to know the outcome of
162 the bill, it declined to take a position.

163

164

**C. AB 184 (Mathis) Board of Behavioral Sciences: registrants
and licensees.**

165

166

167 Mr. Foo introduced the bill. No discussion was requested.

168

169

**D. AB 189 (Kamlager-Dove) Child abuse or neglect:
mandated reporters: autism service personnel.**

170

171

172 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
173 discussion was requested

174

175

E. AB 193 (Patterson) Professions and vocations.

176

177 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
178 discussion was requested

179

180

**F. AB 312 (Cooley) State government: administrative
regulations: review.**

181

182

183 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
184 discussion was requested

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186

**G. AB 396 (Eggman) School employees: School Social
Worker Pilot Program.**

187

188

189 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
190 discussion was requested

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H. AB 469 (Petrie-Norris) State records management: records management coordinator.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No discussion was requested

I. AB 476 (Rubio, Blanca) Department of Consumer Affairs: task force: foreign-trained professionals.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. Discussion ensued regarding how and whether this bill would interact with the Board’s current discussions in Licensing Committee and its review of foreign trained psychologist requirements. The Committee agreed that watching the bill is the best choice for now.

J. AB 496 (Low) Business and professions.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. Discussion ensued regarding steps the Board is already taking to incorporate gender neutral terms.

K. AB 512 (Ting) Medi-Cal: specialty mental health services.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No discussion was requested.

L. AB 536 (Frazier) Developmental services.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. Discussion ensued regarding the eligibility process for these services and the uncertainty of whether this bill affects the Board’s licensees. The Committee agreed to keep the bill as a watch bill for now.

M. AB 565 (Maienschein) Mental health workforce planning: loan forgiveness, loan repayment, and scholarship programs.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No discussion was requested.

N. AB 577 (Eggman) Medi-Cal: maternal mental health.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No discussion was requested.

O. AB 613 (Low) Professions and vocations: regulatory fees.

Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. Discussion ensued regarding whether the bill would be a useful tool for the Board in the management of its budget and whether or not to take a position on the bill. The Committee chose to continue to watch this bill for now.

242 **P. AB 630 (Arambula) Board of Behavioral Sciences:**
243 **marriage and family therapists: clinical social workers:**
244 **educational psychologists: professional clinical**
245 **counselors: required notice.**
246

247 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
248 discussion was requested.

249
250 **Q. AB 669 (Holden) Attorney General: assurance of voluntary**
251 **compliance.**
252

253 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. Discussion
254 ensued regarding the need for this provision. The Committee requested staff bring the
255 bill before our OAG liaison on why this is needed.

256
257 **R. AB 768 (Brough) Professions and vocations.**
258

259 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
260 discussion was requested.

261
262 **S. AB 770 (Garcia, Eduardo) Medi-Cal: federally qualified**
263 **health clinics: rural health clinics.**
264

265 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
266 discussion was requested.

267
268
269 **T. AB 895 (Muratsuchi) School-based early mental health**
270 **intervention and prevention services.**
271

272 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
273 discussion was requested.

274
275 **U. AB 1055 (Levine) Mental health: involuntary commitment.**
276

277 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
278 discussion was requested.

279
280 **V. AB 1271 (Diep) Licensing examinations: report.**
281

282 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
283 discussion was requested.

284
285 **W. AB 1601 (Ramos) Office of Emergency Services:**
286 **behavioral health response.**
287

288 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
289 discussion was requested.

290

291 **X. SB 201 (Wiener) Medical procedures: treatment or**
292 **intervention: sex characteristics of a minor.**
293
294 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. Discussion
295 ensued regarding the change in policy and practice regarding the removal of mental
296 health evaluations for gender and sex related medical procedures. The Committee
297 requested staff to reach out to Medical Board staff about the bill and present additional
298 information on the bill at the April Board meeting.

299
300 **Y. SB 331 (Hurtado) Suicide-prevention: strategic plans.**
301
302 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
303 discussion was requested.

304
305 **Z. SB 601 (Morrell) State agencies: licenses: fee waiver.**
306
307 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
308 discussion was requested.

309
310 **AA. SB 639 (Mitchell) Medical services: credit or loan.**
311
312 Mr. Foo introduced the bill. Ms. Burns discussed additional details of the bill. No
313 discussion was requested.

314
315 **2) Recommendations for Committee to Watch Spot Bills**
316

317 Ms. Burns gave an overview of all spot bills and advised that staff will be watching them
318 to see what language is added in the near future. Ms. Burns advised she will be
319 providing more information on two specific bills.

- 320
321 **A. AB 5 (Gonzalez) Worker status: independent contractors.**
322 **B. AB 166 (Gabriel) Medi-Cal: violence prevention**
323 **counseling services.**

324
325 Ms. Burns discussed additional details of the bill.

- 326
327 **C. AB 241 (Kamlager-Dove) Implicit bias.**
328 **D. AB 289 (Fong) Public records appeals: ombudsman.**

329
330 Ms. Burns discussed additional details of the bill.

- 331
332 **E. AB 862 (Kiley) Professional licenses.**
333 **F. AB 994 (Mathis) Health care practitioner identification.**
334 **G. AB 1058 (Salas) Medi-Cal: specialty mental health**
335 **services and substance use disorder treatment.**
336 **H. AB 1132 (Gabriel) The Information Practices Act of 1977.**
337 **I. AB 1184 (Gloria) Public records.**
338 **J. AB 1201 (Boerner Horvath) Unfair Practices Act.**
339 **K. AB 1264 (Petrie-Norris) Department of Consumer Affairs.**
340 **L. AB 1474 (Wicks) Mental Health Master Plan.**

- 341 M. AB 1752 (Kalra) Consumers.
342 N. SB 144 (Mitchell) Fees: criminal administrative fees.
343 O. SB 180 (Chang) Health care professionals.
344 P. SB 181 (Chang) Healing arts boards.
345 Q. SB 342 (Hertzberg) Consumer complaints.
346 R. SB 546 (Hueso) Unlicensed activity.
347 S. SB 700 (Roth) Business and professions: noncompliance
348 with support orders and tax delinquencies.
349 T. SB 749 (Durazo) California Public Records Act.
350

351 There were no comments from the Committee on any of the spot bills.
352

353 **Agenda Item #8: Regulatory Update, Review, and Consideration of Additional**
354 **Changes**

- 355 a. 16 CCR Sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10,
356 1391.11, 1391.12, 1392.1 – Psychological Assistants
357 b. 16 CCR Section 1396.8 – Standards of Practice for Telehealth
358 c. 16 CCR Sections 1381.9, 1381.10, 1392 – Retired License, Renewal of
359 Expired License, Psychologist Fees
360 d. 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 –
361 Continuing Professional Development
362 e. 16 CCR Section 1395.2 – Disciplinary Guidelines
363 f. 16 CCR Sections 1394 – Substantial Relationship Criteria; Section
364 1395 – Rehabilitation Criteria for Denials and Reinstatements;
365 Section 1395.1 – Rehabilitation Criteria for Denials Suspensions or
366 Revocations; Section 1395.2 – Disciplinary Guidelines
367

368 Mr. Glasspiegel reviewed the status of the regulatory packages. He advised the
369 Standard of Practice for Telehealth package was in the official department review.
370 There were no questions or comments from the Committee on this item.
371

372 **Agenda Item #9: Update on California Psychological Association Legislative**
373 **Proposal Regarding New Registration Category for Psychological Testing**
374 **Technicians**

375
376 Mr. Foo introduced this agenda item. Ms. Sorrick discussed the technical assistance
377 given to California Psychological Association (CPA) by staff and legal counsel. The
378 Committee agreed that it sees value in the discussion of oversight of these individuals.
379 However, the Committee could not provide any further support without knowing the
380 technical details of the proposal regarding licensure of this category and the operational
381 and fiscal impacts of those provisions. The Committee directed staff to continue to
382 provide technical assistance to CPA on this issue.
383

384 **Agenda Item #10: Recommendations for Agenda Items for Future Committee**
385 **Meetings.**

386
387 Ms. Burns advised the following bills will be presented at the next Board meeting: SB 53
388 (Wilk) and SB 425 (Hill).
389

390 **ADJOURNMENT**

391
392 The Committee adjourned at 3:38 p.m.

393

394

395

396 _____ Date _____

MEMORANDUM

DATE	June 21, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item #5(a) – SB 275 (Pan) – Amendments to Section 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact

Background:

The Board of Psychology (Board) proposed adding sexual behavior to the offenses in Business and Professions Code (BPC) section 2960.1 that require a proposed decision to contain an order of revocation when the finding of facts prove that there were acts of sexual behavior between a psychologist and their client or former client. This change to section 2960.1 would require revocation to be in the proposed decision and not allow an administrative law judge to propose an alternate decision. The proposed language would also clarify that the Board would retain the final adjudicatory discretion to apply a lower level of discipline if the circumstances of the case warranted such a reduction.

The impetus to add inappropriate sexual behavior to the statutory provisions requiring revocation in the proposed decision for cases involving inappropriate sexual behaviors that did not rise to the definition of sexual contact was due to the Board's experiences prosecuting cases with clearly inappropriate sexual behavior but being unable to achieve disciplinary terms that matched the egregiousness of the acts in the case. In other cases, clients did not complain to the Board or know that the behavior was inappropriate until sexual contact was initiated, but there were clear sexual grooming behaviors exhibited by the psychologist before sexual contact was initiated. Some examples of inappropriate sexual behaviors that the Board has seen in a variety of cases include:

- kissing a client,
- touching or exposing oneself inappropriately,
- sending flirtatious, sexually suggestive or sexually explicit texts (sexting), messages or emails to a client,
- sending clients photos that include nudity, genitals, or sexually suggestive poses, and
- buying romantic/sexual gifts for a client.

Regarding the proposed changes to BPC Section 2960.1, the Policy and Advocacy Committee (Committee) began discussions and policy activities at its April 19, 2018 meeting, where it reviewed and revised the proposed language. During this discussion, the Committee members expressed support for a broader definition of sexual behavior, as the violation could be a series or pattern of lesser behaviors or one extremely egregious behavior, and specific behaviors would change over time with advances in

technology and communication mediums. In December 2018, the Committee held a teleconference stakeholder meeting to obtain stakeholder input on the proposed changes to BPC Section 2960.1. Board staff invited a diverse group of stakeholders to attend the teleconference as well as posted the meeting to social media sites and through the Board's email listserv. During the December teleconference meeting, the Committee listened to stakeholder comments and Board staff and Board Legal Counsel provided clarification on how the proposed language would operate within the disciplinary process and how that process has built-in protections to ensure that allegations of sexual behavior would be reviewed by subject matter experts and sworn peace-officers, thus ensuring that those allegations prosecuted as sexual behavior were serious violations that were not part of appropriate therapeutic interventions relating to sexual issues. The Committee also voted to add language to BPC 2960.1 to provide additional clarity to the public and licensees regarding the Board's ability to stay the revocation if the Board determined that the allegations did not warrant revocation.

At the Board's February meeting, the Board approved the language and for staff to seek an author. The week after the Board meeting, Senator Richard Pan agreed to author the bill for the Board, which became SB 275 (Pan).

On April 1, 2019, the Senate Committee on Business, Professions and Economic Development heard SB 275. Board President Stephen Phillips, JD, PsyD, testified on the Board's behalf. SB 275 received unanimous support from the committee and passed through the Senate Floor on May 5, 2019. The bill will be heard next by the Assembly Committee on Business and Professions on July 9, 2019.

Location: 5/16/2019 Assembly Committee on Business and Professions

Status: 5/16/2019 Referred to Committee on Business and Professions

Votes: 4/1/2019 Senate Committee on Business, Professions and Economic Development (9-0-0)
5/2/2019 Senate Floor (38-0-0)

Action Requested:

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

Attachment A: SB 275 (Pan) Assembly Business and Professions Analysis
(Hand Carry)

Attachment B: SB 275 (Pan) Letter of Support Assembly Business and Professions
(Hand Carry)

Attachment C: SB 275 (Pan) Bill Text

Agenda Item 5(a)

SB 275 - (I) Amends the Law

SECTION 1.

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

2960.1.

(a) 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, *or sexual behavior, as defined in subdivision (b)*, when that act is with a ~~patient;~~ *client*, or with a former ~~patient~~ *client* within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law ~~judge.~~ *judge, but may be stayed by the board.*

(b) For purposes of this section, "sexual behavior" means 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.

MEMORANDUM

DATE	June 26, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item #5(b) – SB 786 (Committee on Business Professions and Economic Development) Healing Arts – Update on Amendments to Sections 2940-2944 of the Business and Professions Code Regarding Examinations.

Background:

The Board of Psychology (Board) submitted its legislative proposals to revise Business and Professions Code (BPC) Sections 2940-2944 regarding Examinations, BPC Section 2912 regarding temporary practice provisions, and the addition of a new section of the BPC regarding Voluntary Surrender to the Senate Committee on Business, Professions and Economic Development (Committee) for inclusion in their 2019 Committee Bill. For the 2019 Committee Bill, the Committee reviewed legislative proposals from DCA boards and bureaus that make technical, non-substantive, and/or non-controversial changes to the BPC that clarify, update and/or strengthen current law related to health professions.

The Board's proposal included the following provisions:

- Removal of outdated examination requirements and make the remaining provisions consolidated, more concise, and more easily understood by consumers and applicants.
- Clarification to the Board's temporary practice provisions that would have clarified that temporary practice is allowed for 30 days in a calendar year which do not need to be consecutive, and that practice for any portion of a day counts for a full day.
- Addition of provisions that would have clarified the Board's authority to accept a non-disciplinary surrender of a license and clearly identified that a licensee who voluntarily surrenders their license outside of the formal discipline process has the option to petition the Board for reinstatement of that license after a period of not less than one (1) year after the effective date of the Board's acceptance of the voluntary surrender.

In April, the Committee advised the Board that they intend to include the Board's provisions related to the examination language. The Committee declined to include the language related to temporary practice or voluntary surrender.

On June 26, 2019, SB 786 was amended to include changes to 2940 and 2941 as requested by the Board.

Action Requested:

Staff recommend the Committee take a Support position on SB 786 and recommend that position to the full Board.

Attachment A: SB 786 Applicable Bill Text

Agenda Item 5(b)

SB 786 - (A) Amends the Law

SEC. 59.

Section 2940 of the Business and Professions Code is repealed.

~~2940.~~

~~Each person desiring to obtain a license from the board shall make application to the board. The application shall be made upon a form and shall be made in a manner as the board prescribes in regulations duly adopted under this chapter.~~

~~The application shall be accompanied by the application fee prescribed by Section 2949. This fee shall not be refunded by the board.~~

SEC. 60.

Section 2940 is added to the Business and Professions Code, to read:

2940.

To obtain a license from the board, an applicant shall submit any applications and pay any applicable fees as prescribed in Section 2987. These fees shall not be refunded by the board.

SEC. 61.

Section 2941 of the Business and Professions Code is repealed.

~~2941.~~

~~Each applicant for a psychology license shall be examined by the board, and shall pay to the board, at least 30 days prior to the date of examination, the examination fee prescribed by Section 2987, which fee shall not be refunded by the board.~~

SEC. 62.

Section 2941 is added to the Business and Professions Code, to read:

2941.

(a) Each applicant for licensure as a psychologist shall take and pass any examination required by the board. An applicant may be examined for knowledge in any theoretical or applied fields of psychology, as well as professional skills and judgment in the use of

psychological techniques and methods and the ethical practice of psychology, as the board deems appropriate.

(b) Each applicant shall pay any applicable examination fees as prescribed in Section 2987. These fees shall not be refunded by the board.

MEMORANDUM

DATE	June 25, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item #6(a)(1)(i) – AB 1076 (Ting) Criminal Records: automatic relief

Background:

Current law allows an individual who has been arrested or convicted to petition the courts, under specified circumstances, to have certain arrest and criminal conviction information sealed. In addition to this option, this bill would require the California Department of Justice (DOJ) to automatically seal specified arrest and conviction records that meet certain criteria and timeframes without requiring the individual to petition the court. Additionally, this bill would prohibit DOJ from providing any licensing board under the Department of Consumer with information on arrests or convictions that have been sealed.

AB 1076 (Ting) would remove the Board's ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly diminish the Board's ability to carry out its mission of consumer protection.

Location: Senate Committee on Public Safety

Status: 6/24/2019 In committee: Set, first hearing. Hearing canceled at the request of author.

Votes: 4/2/2019 Assembly Committee on Public Safety (6-2-0)
5/16/2019 Assembly Committee on Appropriations (12-5-1)
5/29/2019 Assembly Floor (52-21-7)

Action Requested:

Staff recommends the Legislative and Regulatory Affairs Committee take an **Oppose** position on AB 1076 (Ting), and recommend that position to the full Board, as this bill would significantly diminish the Board' ability to carry out its mission of consumer protection.

Attachment A: AB 1076 (Ting) Analysis

Attachment B: AB 1076 (Ting) Senate Floor Analysis

Attachment C: AB 1076 (Ting) Bill Text

2019 Bill Analysis

Author: Ting	Bill Number: AB 1076	Related Bills:
Sponsor: Californians for Safety and Justice	Version: Amended May 16, 2019	
Subject: Criminal records: automatic relief.		

SUMMARY

Current law allows an individual who has been arrested or convicted to petition the courts, under specified circumstances, to have certain arrest and criminal conviction information sealed. In addition to this option, this bill would require the California Department of Justice (DOJ) to automatically seal specified arrest and conviction records that meet certain criteria and timeframes without requiring the individual to petition the court. Additionally, this bill would prohibit DOJ from providing any licensing board under the Department of Consumer with information on arrests or convictions that have been sealed.

RECOMMENDATION

OPPOSE – Board staff recommends the Board Oppose AB 1076 as it would remove the Board’s ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly diminish the Board’s ability to carry out its mission of consumer protection.

REASON FOR THE BILL

According to the author, “Everybody deserves a second chance. We must open doors for those facing housing and employment barriers and use available technology to clear arrest and criminal records for individuals already eligible for relief. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better

Other Boards/Departments that may be affected:	
<input type="checkbox"/> Change in Fee(s)	<input type="checkbox"/> Affects Licensing Processes
<input checked="" type="checkbox"/> Affects Enforcement Processes	
<input type="checkbox"/> Urgency Clause	<input type="checkbox"/> Regulations Required
<input type="checkbox"/> Legislative Reporting	<input type="checkbox"/> New Appointment Required
Legislative & Regulatory Affairs Committee Position:	Full Board Position:
<input type="checkbox"/> Support <input type="checkbox"/> Support if Amended	<input type="checkbox"/> Support <input type="checkbox"/> Support if Amended
<input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended	<input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended
<input type="checkbox"/> Neutral <input type="checkbox"/> Watch	<input type="checkbox"/> Neutral <input type="checkbox"/> Watch
Date: _____	Date: _____
Vote: _____	Vote: _____

future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals.”

ANALYSIS

Existing law requires the DOJ to maintain state summary criminal history information and specifies procedures and prohibitions on the disclosure and use of that information. Existing law defines “criminal offender record information” (CORI) as records and data compiled by agencies to identify offenders and a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Existing law also allows persons who are arrested, subject to specified circumstances, and has successfully completed a pretrial diversion program in lieu of entering a plea, or whose arrest did not result in a conviction, to petition the court to have these CORI records sealed. Existing law also allows persons who are convicted, subject to specified circumstances, who fulfill the conditions of their probation, who are discharged prior to the end of probation, or whose cases the court determines should be granted relief, to petition to withdraw the guilty plea and have those charges dismissed and be released from all penalties resulting from the offense and conviction. Note that in both circumstances, relief is granted when the individual takes action to petition the court and a judge determines if relief is warranted.

This bill, would instead create an automatic arrest and conviction relief process where DOJ would be required to review its databases on a weekly basis to identify persons who meet specified eligibility conditions and require DOJ to provide automatic arrest and conviction record relief. This relief would deem the arrests and convictions to not have occurred and provides that the individual in question may answer any questions regarding those arrests or convictions accordingly. While this may be inconsequential for initial applicants due to AB 2138 (Chiu, Chapter 995, Statutes of 2018), it would not be inconsequential for the purposes of reviewing the rehabilitation of individuals petitioning the Board for reinstatement of their license. This arrest and conviction information would be unavailable to the Board through DOJ and would only be available if the petitioner voluntarily told the Board about the subsequent arrest and conviction.

Arrest Relief and Removal of Board Access to Arrest Information

The eligibility criteria for arrest record relief in the bill, for arrests that occurred on or after January 1, 1973, are as follows:

- 1) The arrest was for a misdemeanor offense and the charge was dismissed.
- 2) The arrest was for a misdemeanor offense, 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.
- 3) The arrest was for a felony offense punishable by imprisonment for up to three years pursuant to Penal Code Section 1170(h)(1) or 1170(h)(2), 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.

- 4) The person successfully completed any of the following diversion programs related to that arrest:
- A prefiling diversion program, as defined in Penal Code Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.
 - A drug diversion program administered by a superior court pursuant to Penal Code Section 1000.5, or a deferred entry of judgment program pursuant to Penal Code Section 1000 or 1000.8.
 - A pretrial diversion program, pursuant to Penal Code Section 1000.4.
 - A diversion program, pursuant to Penal Code Section 1001.9.
 - Any diversion program under Title 6 of the Penal Code:
 - Chapter 2.8 (commencing with Penal Code Section 1001.20),
 - Chapter 2.8A (commencing with Penal Code Section 1001.35),
 - Chapter 2.81 (commencing with Penal Code Section 1001.40),
 - Chapter 2.9 (commencing with Penal Code Section 1001.50),
 - Chapter 2.9A (commencing with Penal Code Section 1001.60),
 - Chapter 2.9B (commencing with Penal Code Section 1001.70),
 - Chapter 2.9C (commencing with Penal Code Section 1001.80),
 - Chapter 2.9D (commencing with Penal Code Section 1001.81),
 - Chapter 2.92 (commencing with Penal Code Section 1001.85).

It is critical to note that eligibility criteria 2 and 3 above have an inherent loophole within these criteria, where the individual could have been arrested and has not been convicted within the eligibility timeframe (one or three years) because the individual has failed to appear in court, failed to fulfill the terms of bail, evaded a warrant, or has filed multiple continuances to delay a trial, or because the court system are so backlogged that the individuals case has not gone to trial yet. The eligibility criteria in AB 1076 assumes that the court system runs smoothly and efficiently and that these individuals are not evading trial and judgement.

Another component of the arrest relief in AB 1076 is the outright prohibition on DOJ from disclosing any arrest information concerning those arrests that have been granted relief to DCA boards. While criminal justice agencies and law enforcement will continue to see this information, the bill deliberately removes this ability for all DCA boards. As referenced earlier, this loss of information would impede the Board's ability to accurately assess the rehabilitation of a petitioner who petitions the Board for reinstatement of a revoked or surrendered license.

Board staff is additionally concerned about the loss of this arrest information due to reliability and timeliness issues with subsequent arrest notifications through DOJ's secure server. While it does not occur frequently, the Board has had multiple instances in the past five years where the Board was not notified at all regarding a licensee's subsequent arrest (disclosure occurred on the licensee's renewal application) or the Board was notified up to a year after the arrest. Under AB 1076's arrest relief eligibility criteria, the subsequent arrest notifications that the Board received over a year after the arrest would have been automatically granted relief and barring self-disclosure by the

licensee (which AB 1076 would say is unnecessary), the Board would have gotten no notification of the arrest at all. The Board's Enforcement Program relies on subsequent arrest information from DOJ to protect the health and safety of the public. These subsequent arrest notifications alert the Board of arrests of its licensees where the crime may demonstrate an unfitness to independently practice psychology, where patient abuse is occurring (financial or elder abuse), or where danger to the public is imminent and merits an interim suspension order or order to cease practice pursuant to Penal Code Section 23 be placed on the licensee to bar practice.

Due to these factors, Board staff is seriously concerned with AB 1076's removal of Board access to arrest information based on eligibility criteria that include dangerous loopholes and arbitrary timelines.

Conviction Relief and Removal of Board Access to Conviction Information

The eligibility criteria for conviction record relief in the bill are as follows (note that the individual must meet all conditions):

- 1) The person is not required to register pursuant to Section 290 (sex offender registration).
- 2) The person is not under active probation or parole (local, state, or federal supervision) according to the Supervised Release File.
- 3) The person is not currently serving a sentence for any offense and does not have any pending criminal charges.
- 4) The conviction occurred on or after January 1, 1973, and meets one of the following criteria:
 - a. The defendant was sentenced to probation and has completed their term of probation without revocation.
 - b. The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence or paid their fine, sentence, and at least one calendar year has elapsed since the date of judgment.
 - c. The defendant was sentenced pursuant to Penal Code Section 1170(h)(B), and one year has elapsed following the completion of sentence, or, the defendant was sentenced pursuant to Penal Code Section 1170(h)(5)(A), and two years has elapsed following the completion of sentence.
 - d. The defendant was sentenced before January 1, 2012, for a crime which, on or after January 1, 2012, would have been eligible for sentencing pursuant to Penal Code Section 1170(h), and two years have elapsed following the defendant's completion of the sentence.

Similar to the arrest relief provisions, the bill also prohibits DOJ from disclosing to DCA boards any conviction information concerning convictions that have been granted relief. While criminal justice agencies and law enforcement will continue to see this information, the bill deliberately removes the ability of all DCA boards to see this conviction information. It is critical to note that the bill's conviction relief is slightly

different than arrest relief, in that an individual who receives conviction relief must still disclose the conviction to any licensing agency in response to any direct question contained in a questionnaire or application as where the arrest relief includes relief from disclosure. Therefore, the bill would require the petitioner for license reinstatement to disclose a conviction that had been granted relief, but the Board would not have access to the DOJ information necessary to verify whether a petitioner has properly disclosed a conviction or not.

The loss of conviction information in AB 1076 is even more concerning than the loss of arrest information as it directly impedes the Board's ability to accurately assess a petitioner's fitness to practice independently and the degree of rehabilitation achieved by the petitioner. In these instances, the petitioner's past violations were egregious enough to warrant formal discipline and probationary terms or was so egregious that the Board revoked their license (or the license was surrendered in lieu of revocation). To adequately protect consumers, it is paramount for the Board to have access to this conviction information for purposes of determining fitness to practice and rehabilitation.

Additionally, in relation to AB 2138 and the Board's associated regulations, AB 1076's removal of conviction information for certain felony convictions runs counter to the provisions of AB 2138 and the Board's associated regulations. AB 1076 would provide relief for felonies meeting certain criteria if they resulted in county jail for a specified period and two years have passed since completion of the sentence, such as financial felonies and elder abuse, and remove the Board's ability to access this conviction information. The Board recently developed regulations to comply with and implement AB 2138 while continuing to uphold consumer protection. An integral part of that public protection is being able to review and evaluate those criminal convictions that occurred within the past seven (7) years, as allowed in AB 2138, that are substantially related to the practice of psychology and determining if those convictions bear on an applicant's fitness to practice without terms and conditions. AB 1076's conviction relief does not match the timeframes in AB 2138 and therefore further diminishes the Board's ability to assess fitness for licensure and thus protect vulnerable consumers.

Due to these factors, Board staff is extremely concerned with AB 1076's removal of Board access to conviction information that is necessary for the Board to use when evaluating fitness to practice and rehabilitation of a petitioner or applicant.

LEGISLATIVE HISTORY

AB 972 (Bonta) would establish a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). AB 972 is pending in the Assembly Appropriations Committee.

AB 1372 (Grayson) would allow a criminal justice agency to inquire about, seek, and utilize information about certain nonsworn employees concerning an arrest or detention that did not result in a conviction, information concerning a referral or participation in a diversion program, and information that has been judicially dismissed or ordered sealed.

AB 2138 (Chiu), Chapter 995, Statutes of 2018, amends various provisions of the Business and Professions Code relating to a board's ability to deny a license or take disciplinary action in relation to criminal convictions based on various factors related to the crime, and revises requirements related to the criteria of rehabilitation that boards must consider when evaluating the denial of an application, a petition for reinstatement, or a petition for early termination of probation.

AB 2599 (Holden), Chapter 653, Statutes of 2018, requires law enforcement agencies and probation departments to increase awareness and access to the arrest record sealing and expungement process.

AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required automatic expungements of certain convictions, as specified. AB 2438 was held of the Assembly Appropriations Suspense File.

AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentencing, redesignate, or dismiss cannabis-related convictions.

AB 1008 (McCarty), Chapter 789, Statutes of 2017, directed employers to follow certain procedures if they wish to consider job applicants' criminal history as part of a hiring process.

AB 813 (Gonzalez Fletcher) Chapter 739, Statutes of 2016 created a mechanism of post-conviction relief for a person to vacate a conviction or sentence based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.

SB 124 (Lara), Chapter 789, Statutes of 2016, authorized a person who was sentenced to a term of one year prior to January 1, 2015, to submit an application to the trial court to have the term of the sentence reduced to the maximum term of 364 days.

OTHER STATES' INFORMATION

Not Applicable

PROGRAM BACKGROUND

The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

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 petitioner (reinstatement and early termination of probation) and every applicant with a criminal history, determines whether the crimes committed are

substantially related to the duties of licensure, and then the Board determines if the convictions demonstrate a petitioner's lack of fitness for independent practice and rehabilitation or demonstrate cause for a denial of an initial application for licensure. This bill would significantly diminish the Board's ability to make these determinations without access to the necessary arrest and conviction information.

FISCAL IMPACT

Not Applicable

ECONOMIC IMPACT

Not Applicable

LEGAL IMPACT

Not Applicable

APPOINTMENTS

Not Applicable

SUPPORT/OPPOSITION

Support: Californians for Safety and Justice

Opposition: California Law Enforcement Association of Records Supervisors, Inc.;
Contractors State Licensing Board

ARGUMENTS

Proponents: Californians for Safety and Justice states "Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California's economy. Nationally, it has been estimated that the U.S. loses roughly \$65 billion per year in terms of gross domestic product due to employment losses among people with convictions."

Opponents: California Law Enforcement Association of Records Supervisors states that "AB 1076 will unnecessarily put the burden on records management personnel, who are short staffed and without sufficient resources, to move arrest dispositions to an automated system, a very labor intensive and cost-prohibitive task. This proposed policy further creates a liability for law enforcement agencies that may inadvertently miss a defendant's record eligible for dismissal.

Contractors State Licensing Board states "Assembly Bill (AB) 1076 would preclude the Department of Justice from disclosing to the Board records of certain arrests, misdemeanors or felonies on the Criminal Offender Record Information (CORI) of licensed contractors and applicants for

contractor's licenses. Under AB 1076, an arrest for a misdemeanor offense would automatically be removed from the CORI if a calendar year elapsed without conviction. This precludes the Board from receiving notice of the arrest of a licensee or applicant who is subject to an active warrant, did not fulfill the terms of bail, or for any number of reasons was not prosecuted and convicted within a year from arrest.

The bill would also preclude the Board's receipt of felony convictions meeting certain criteria if they resulted in county jail for a specified period and two years have passed since completion of the sentence. And the Board would be precluded from using for licensing or enforcement purposes these types of convictions, which would include financial felonies, such as embezzlement or diversion of construction funds and elder abuse. In the last legislative session, the Board worked with the author of AB 2138 (Chiu, Ch. 995, Stats. 2018) to ensure these types of crimes would be excluded from any time restrictions and remain subject to consideration in the denial of license applications due to these types of convictions resulting in outstanding financial liabilities owed to consumers.

Business and Professions Code Section 7000.6 mandates that protection of the public shall be the highest priority of the Board. Current law authorizes the Board to review the CORI to determine whether the criminal information bears upon the offender's fitness to perform the functions of a contractor in a manner consistent with public health, safety, and welfare. By deleting the arrests of those who may have unlawfully evaded a warrant for over a year, or the convictions of a large range of felonies after some months or years, many of which include financial harm to consumers, the Board believes AB 1076 severely confounds its ability to serve its public protection purpose."

ASSEMBLY THIRD READING

AB 1076 (Ting)

As Amended May 16, 2019

Majority vote

SUMMARY:

Requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and requires the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.

Major Provisions

- 1) Requires the DOJ to review its statewide criminal justice databases and Automated Criminal History System on a weekly basis and identify persons who meet specified conditions and are therefore eligible for automatic arrest record relief.
- 2) States the conditions that must be met in order for a person to be eligible for relief.
- 3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person identified as eligible, provided that there is sufficient information in DOJ's database to ascertain eligibility, without requiring a petition or motion by a party for that relief, and further requires such a person thereafter be released from all penalties and disabilities resulting from the offense of which the person has been convicted, except for the suspension or revocation of the person's driving privilege, as specified.
- 4) Requires DOJ to include on the OpenJustice Web portal statistics regarding the total number of convictions granted relief and the total number of convictions prohibited from automatic relief, as well as the number of persons for which there is insufficient information to ascertain eligibility for relief, on an annual basis.

COMMENTS:**According to the Author:**

"Everybody deserves a second chance. We must open doors for those facing housing and employment barriers and use available technology to clear arrest and criminal records for individuals already eligible for relief. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals."

Arguments in Support:

According to the *Californians for Safety and Justice*, "Eight million California residents have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles to employment. Nearly 90% of employers, 80% of landlords, and 60% of colleges screen applicants' criminal records.

"The *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions* found that 76 percent of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job or call back by 50%.

"Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California's economy. Nationally, it has been estimated that the U.S. loses roughly \$65 billion per year in terms of gross domestic product due to employment losses among people with convictions."

Arguments in Opposition:

According to the *California Law Enforcement Association of Records Supervisors, Inc.*: "Under current law, a person already has the ability to petition the courts to get their criminal records expunged. Once the judge grants the expungement, a person can lawfully answer they have never been convicted of the crime. This process allows for a successful reentry into the community and the ability to obtain housing and employment. Furthermore, existing law also allows for an indigent defendant to get the necessary fees waived for costs associated with the expungement process.

"AB 1076 will unnecessarily put the burden on records management personnel, who are short staffed and without sufficient resources, to move arrest dispositions to an automated system, a very labor intensive and cost-prohibitive task. This proposed policy further creates a liability for law enforcement agencies that may inadvertently miss a defendant's record eligible for dismissal."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 1) One-time costs (General Fund (GF)) to DOJ, likely in the low millions of dollars, to review records and submit notices to superior courts, as required by this bill. Given the magnitude of the work involved and the limited timeline specified in this bill, it is likely that DOJ would require a significant temporary increase in staffing.
- 2) Costs (Trial Court Trust Fund/GF) between \$3.2 million dollars and \$9.8 million dollars annually for increased trial court workload assuming one million notifications over three years. Costs will depending on the number of convictions identified by the DOJ for relief.

VOTES:

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Kamlager-Dove, Quirk, Santiago, Wicks

NO: Lackey, Diep

ASM APPROPRIATIONS: 12-5-1

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Brough, Diep, Fong, Obernolte

ABS, ABST OR NV: Maienschein

UPDATED:

VERSION: May 16, 2019

CONSULTANT: Matthew Fleming (Counsel) / PUB. S. / (916) 319-3744

FN: 0000977

Agenda Item 6(a)(1)(i)

AB 1076 - (A) Amends the Law

SECTION 1.

Section 851.93 is added to the Penal Code, to read:

851.93.

(a) (1) On a weekly 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, 1973, 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, 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) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, 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.

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

(i) A prefiling diversion program, as defined in 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) Any 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 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 weekly 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 February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, 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 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) 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 any 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.

(4) 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.

(e) This section shall 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 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.

(g) This section shall be operative commencing January 1, 2021.

SEC. 2.

Section 1203.425 is added to the Penal Code, immediately following Section 1203.42, to read:

1203.425.

(a) (1) On a weekly 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 paragraph (2) and are eligible for automatic conviction record relief.

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

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

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

(C) The person is not currently serving a sentence for any offense and does not have any pending criminal charges.

(D) Except as otherwise provided in clause (iii) of subparagraph (E), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(E) The conviction occurred on or after January 1, 1973, and meets one of the following criteria:

(i) The defendant was sentenced to 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.

(ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, has completed their sentence, and, based upon the disposition date in the department's record, at least one calendar year has elapsed since the date of judgment.

(iii) The defendant was sentenced for a crime which is, or on or before January 1, 2012, would have been, eligible for sentencing pursuant to subdivision (h) of Section 1170, and, based upon the disposition date and the sentence specified in the department's records, it appears that two years have elapsed following the defendant's completion of the sentence.

(b) (1) Except as specified in subdivision (g), the department shall grant relief, including dismissal of a conviction, 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 records.

(2) 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.

(3) Except as otherwise provided in subdivision (d) 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.

(c) On a weekly 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 February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, the court shall not disclose information concerning a conviction granted relief pursuant to this section or Sections 1203.4, 1203.4a, 1203.41, and 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.

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

(1) 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.

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

(3) 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.

(4) Relief granted pursuant to this section does not limit the jurisdiction of the court over any 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.

(5) 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 any 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.

(6) 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 criminal conviction.

(7) 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 relief had not been granted.

(e) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.41, and 1203.42.

(f) 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 (h), on the OpenJustice Web portal, as defined in Section 13010.

(g) Subdivisions (a) to (g), inclusive, shall be operative commencing January 1, 2021.

(h) For convictions entered on or after January 1, 2018, the prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a motion to prohibit the department from granting automatic relief pursuant to this section. The court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed. If the court grants that motion, the court shall report that outcome to the department, and the department shall not grant relief pursuant to this section. The person may continue to be eligible for relief pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42, and if the court subsequently grants such a motion, the court shall report that outcome to the department and the department shall grant relief pursuant to the applicable section.

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

SEC. 3.

Section 11105 of the Penal Code is amended to read:

11105.

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

(2) As used in this section:

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

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

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

(1) The courts of the state.

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

(3) District attorneys of the state.

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

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

(6) Probation officers of the state.

(7) Parole officers of the state.

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

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

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) To a peace officer of another country.

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

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

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

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

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

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

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

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

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who

may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

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

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

(D) Every successful diversion.

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

(F) Sex offender registration status of the applicant.

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

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

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

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

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

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

(E) Sex offender registration status of the applicant.

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

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

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

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

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

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

(D) Sex offender registration status of the applicant.

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

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

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

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

(B) Section 11105.3 or 11105.4.

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

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

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

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

agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

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

(C) Sex offender registration status of the applicant.

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

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

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

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

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

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

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

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section [1203.425](#) or 1203.49.

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

(C) Sex offender registration status of the applicant.

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

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

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

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

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

Agenda Item 6(a)(1)(i)

AB 1076 - (A) Amends the Law

SECTION 1.

Section 851.93 is added to the Penal Code, to read:

851.93.

(a) (1) On a weekly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the Automated Criminal History System, 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, 1973, 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, 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) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, 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.

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

(i) A prefiling diversion program, as defined in 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) Any diversion program described in Chapters 2.8 (commencing with Section 1001.20), 2.8A (commencing with Section 1001.35), 2.81 (commencing with Section 1001.40), 2.9 (commencing with Section 1001.50), 2.9A (commencing with Section 1001.60), 2.9B (commencing with Section 1001.70), 2.9C (commencing with Section 1001.80), 2.9D (commencing with Section 1001.81), or 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 record contains sufficient information.

(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.

(4) As used in paragraph (1), "sufficient information" means the date of the arrest and the arrest charges.

(c) (1) On a weekly 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 relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, 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.

(2) The department shall not disclose information concerning an arrest that is granted relief pursuant to this section to a board, as defined in Section 22 of the Business and Professions Code.

(d) Relief granted pursuant to this section is subject to 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) 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 any 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.

(4) 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.

(5) Subject to the requirement prescribed in paragraph (2) of subdivision (b), an arrest for which relief has been granted pursuant to this section is subject to the provisions of Section 11105.

(e) This section shall 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 statistics for each county regarding the total number of arrests granted relief pursuant to this section and the total number of arrests lacking sufficient information as described in subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(g) This section shall be operative commencing January 1, 2021.

SEC. 2.

Section 1203.425 is added to the Penal Code, immediately following Section 1203.42, to read:

1203.425.

(a) (1) On a weekly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the Automated Criminal History System and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in paragraph (2) and are eligible for automatic conviction record relief.

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

(A) The person is not required to register pursuant to Section 290.

(B) The person is not under active local, state, or federal supervision, according to the Supervised Release File.

(C) The person is not currently serving a sentence for any offense and does not have any pending criminal charges.

(D) The conviction occurred on or after January 1, 1973, and meets one of the following criteria:

(i) The defendant was sentenced to probation and has completed their term of probation without revocation.

(ii) The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(iii) The defendant was sentenced pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, and one year has elapsed following the completion of sentence, or, the defendant was sentenced pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section 1170, and two years has elapsed following the completion of sentence.

(iv) The defendant was sentenced before January 1, 2012, for a crime which, on or after January 1, 2012, would have been eligible for sentencing pursuant to subdivision (h) of Section 1170, and two years have elapsed following the defendant's completion of the sentence.

(b) (1) Except as specified in subdivision (g), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the record contains sufficient information.

(2) 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.

(3) Except as otherwise provided in subdivision (d) 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.

(4) As used in paragraph (1), "sufficient information" means the date of the disposition, the conviction charges, and the sentence imposed.

(c) (1) On a weekly 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 relief was granted pursuant to this section. Commencing on February 1, 2021, for any record retained by the court pursuant to Section 68152 of the Government Code, the court shall not disclose information concerning a conviction granted relief pursuant to this section or Sections 1203.4, 1203.4a, 1203.41, and 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.

(2) The department shall not disclose information concerning a criminal conviction record that is granted relief pursuant to this section to a board, as defined in Section 22 of the Business and Professions Code.

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

(1) 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.

(2) Relief granted pursuant to this section does not relieve a person 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) 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.

(4) Relief granted pursuant to this section does not limit the jurisdiction of the court over any 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.

(5) 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 any 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.

(6) 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 criminal conviction.

(7) 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 relief had not been granted.

(8) Subject to the requirement prescribed in paragraph (2) of subdivision (b), a conviction for which relief has been granted pursuant to this section shall be subject to the requirements of Section 11105.

(e) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.41, and 1203.42.

(f) The department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section, the total number of convictions prohibited from automatic relief pursuant to subdivision (h), and the total number of arrests lacking sufficient information as described in subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(g) Subdivisions (a) to (g) inclusive, shall be operative commencing January 1, 2021.

(h) For convictions entered on or after January 1, 2018, the prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a motion to prohibit the department from granting automatic relief pursuant to this section. The court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed. If the court grants that motion, the department shall not grant relief pursuant to this section, but the person may continue to be eligible for relief pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42.

(i) 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

DATE	June 21, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item #6(a)(2)(i) – AB 798 (Cervantes) – Maternal Mental Health

Background:

This bill would declare the intent of the Legislature to address the shortage of treatment options for women suffering from maternal mental health disorders, including postpartum depression and anxiety disorders. This bill would create a pilot program, in counties that elect to participate, designed to increase the capacity of health care providers that serve pregnant and postpartum women up to one year after delivery to effectively prevent, identify, and manage postpartum depression and other mental health conditions. The pilot program would be coordinated by the California Department of Public Health (CDPH) and be privately funded. The bill would require CDPH to submit a report to the Legislature regarding the pilot program 6 months after the results of the pilot program are reported, as specified. The bill would repeal these provisions on January 1, 2025.

Note: in 2017 the Board took a Support if Amended position to request the author include “postpartum” and “psychological” in the bill so as to cover the spectrum of time and service needs that mothers with maternal mental health conditions experience. This bill died in its house of origin that session.

Location: 6/12/2019 Senate Committee on Appropriations

Status: 6/13/2019 Read second time and amended. Re-referred to Committee on Appropriations.

Votes: 4/2/2019 Assembly Committee on Health (15-0-0)
5/16/2019 Assembly Committee on Appropriations (18-0-0)
5/22/2019 Assembly Floor (78-0-2)
6/12/2019 Senate Committee on Health (9-0-0)

Action Requested:

Staff recommends the Committee Watch AB 798 (Cervantes).

Attachment A: AB 798 (Cervantes) Bill Text

Agenda Item 6(a)(2)(i)

AB 798 - (A) Amends the Law

SECTION 1.

It is the intent of the Legislature to address the shortage of treatment options for women suffering from maternal mental health disorders, including postpartum depression and anxiety disorders.

SEC. 2.

Section 131120 is added to the Health and Safety Code, to read:

131120.

(a) There is hereby created a pilot program, in counties that elect to participate, including the County of Riverside, to increase the capacity of health care providers that serve pregnant and postpartum women up to one year after delivery to effectively prevent, identify, and manage postpartum depression and other mental health conditions. The pilot program shall be coordinated by the State Department of Public Health and shall be privately funded. The pilot program may include a provider-to-provider or patient-to-provider consultation program and utilize telehealth or e-consult technologies. The pilot program may include the following elements:

- (1) Training and toolkits on screening, assessment, and the range of treatment options.*
- (2) Coordination of care to link women with individual services in their communities.*
- (3) Access to perinatal psychiatric consultations.*

(b) Within six months after the results of the pilot program are reported, the State Department of Public Health, in consultation with the California Task Force on the Status of Maternal Mental Health Care and state entities, shall submit a report to the Legislature, in accordance with the requirements of Section 9795 of the Government Code, regarding the pilot program described in subdivision (a). The report shall do all of the following:

- (1) Document the impact of the pilot program on increasing the number of women who were screened, assessed, and treated for maternal mental health disorders.*
- (2) Identify methods to expand the pilot program to additional counties or statewide.*
- (3) Identify funding opportunities to support the expansion of the pilot program, including federal funding, state funding, and surcharges.*

(c) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

MEMORANDUM

DATE	June 21, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item 6(a)(2)(ii) SB 660 (Pan) Postsecondary Education: Mental Health

Background:

This bill would require the Trustees of the California State University and the governing board of each community college district to establish a goal of having one full-time equivalent mental health counselor with an applicable California license per 1,500 students enrolled at each of their respective campuses to the extent consistent with state and federal law. The bill would define a mental health counselor, for purposes of this bill, as a person who provides individual counseling, group counseling, crisis intervention, emergency services, referrals, program evaluation and research, or outreach and consultation interventions to the campus community, or any combination of these, and who holds an active license and is in good standing with the Board of Behavioral Sciences, the Board of Psychology, or the Medical Board of California.

The bill would also require each campus of those institutions to, at least every 3 years, conduct a campus survey and focus groups to understand students' needs and challenges regarding, among other things, their mental health, would require each campus of those institutions to collect data on attempted suicides, as specified, and would require that data, without any personally identifiable information and collected in accordance with state and federal privacy law, to be included in the report to the Legislature.

Location: 6/6/2019 Assembly Committee on Higher Education

Status: 6/6/2019 Referred to Committee on Higher Education.

Votes: 4/10/2019 Senate Committee on Education (7-0-0)
4/29/2019 Senate Committee on Appropriations (6-0-0)
5/23/2019 Senate Floor (38-0-0)

Action Requested:

Staff recommends the Committee Watch SB 660 (Pan).

Attachment A: SB 660 (Pan) Bill Text

Agenda Item 6(a)(2)(ii)

SB 660 - (A) Amends the Law

SECTION 1.

The Legislature finds and declares all of the following:

- (a) Students face anxiety, depression, and stress as they confront challenges of campus life.*
- (b) Suicide is the second leading cause of death among college students, claiming more than 1,100 lives every year nationally.*
- (c) One in four students has a diagnosable mental illness and 40 percent of students do not seek mental health services when they need it.*
- (d) For students of color, these challenges may be even more acute as they face additional stressors, such as discrimination, immigration status, financial hardship, and being the first of their families to attend college, and students of color are less likely to access needed services.*
- (e) Among the many benefits of mental health counseling are lower college dropout rates, improved academic performance, and reduced legal liability for campuses.*
- (f) The California State University system in particular is woefully understaffed with mental health counselors to address the needs of their campuses.*

SEC. 2.

Section 66027.2 is added to the Education Code, to read:

66027.2.

- (a) (1) The Trustees of the California State University and the governing board of each community college district shall establish a goal of having one full-time equivalent mental health counselor per 1,500 students enrolled at each of their respective campuses to the extent consistent with state and federal law.*
- (2) Where possible, mental health counselors hired under paragraph (1) should be full-time staff, and efforts should be made so that mental health counselors reflect the diversity of the student body.*
- (3) The ratio specified in paragraph (1) shall apply as a goal during all academic terms, including summer and winter sessions.*
- (b) The number of mental health counselors as computed pursuant to subdivision (a) shall constitute the goal for the minimum number of mental health counselors to be hired on a campus based on the campus student population. Additional mental health counselors may be hired in accordance with additional needs identified on a campus.*
- (c) For purposes of this section, "mental health counselor" means a person who provides individual counseling, group counseling, crisis intervention, emergency services, referrals, program evaluation and research, or outreach and consultation interventions to the campus community, or any combination of these, and who holds an active license and is in good standing with the Board of Behavioral Sciences, the Board of Psychology, or the Medical Board of California.*
- (d) (1) On or before January 1, 2021, and every three years thereafter, a postsecondary educational institution subject to this section shall report to the Legislature, consistent with Section 9795 of the*

Government Code, how funding was spent and the number of mental health counselors employed on each of its campuses.

(2) Each campus of a postsecondary educational institution subject to this section shall, at least every three years, conduct a campus survey and focus groups, including focus groups with students of color, to understand students' needs and challenges regarding their mental health and emotional well-being, sense of belonging on campus, and academic success.

(A) The campus surveys and data collection required in this paragraph shall be conducted in accordance with state and federal privacy law, including, but not limited to, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g), and the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(B) The data collected, without any personally identifiable information, shall be included in the report required to be submitted to the Legislature pursuant to paragraph (1).

(3) Each campus of a postsecondary educational institution subject to this section shall collect data on attempted suicides through self-reporting, mental health counselor records, and known hospitalizations. This data, without any personally identifiable information, shall be included in the report required to be submitted to the Legislature pursuant to paragraph (1).

SEC. 3.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

MEMORANDUM

DATE	June 21, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #6(b)(1) – AB 1145 (Garcia, Christina) Child abuse: reportable conduct

Background:

For the purposes of the Child Abuse Neglect Reporting Act (CANRA), this bill revises the definition of sexual assault to no longer include any acts under Penal Code Sections 286 (sodomy), 287 or former Section 288a (oral copulation), and Section 289 (sexual penetration), if committed voluntarily and if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

This bill provides for equal treatment of consenting minors under the law regardless of the type of consensual sexual activities they engage in and provides clarity on the requirements of mandatory reporters under CANRA in these situations.

At the April 24-26 Board Meeting, the Board took a Support position on AB 1145 (Garcia, Christina). Due to the bill being held in the Assembly Appropriations Committee, this bill is now a two-year bill.

Location: Assembly Committee on Appropriations

Status: 4/24/2019 In committee: Hearing postponed by committee

Votes: 3/12/2019 Assembly Public Safety (5-2-1)

Action Requested:

No action is required at this time. Staff will continue to advocate for AB 1145.

Attachment A: AB 1145 (Garcia, Christina) Assembly Appropriations Analysis

Attachment B: AB 1145 (Garcia, Christina) Letter to Assembly Appropriations

Attachment C: AB 1145 (Garcia, Christina) Bill Text

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 1145 (Cristina Garcia) – As Introduced February 21, 2019

Policy Committee: Public Safety

Vote: 5 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill excludes for purposes of reporting as defined by the Child Abuse and Neglect Reporting Act, from the definition of “sexual abuse” voluntary sodomy, oral copulation or sexual penetration, if there are no indicators of abuse, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

FISCAL EFFECT:

Negligible costs to the Department of Social Services to update training materials for mandated reporters.

COMMENTS:

1) **Purpose.** According to the author:

AB 1145 simply makes sure that when it comes to reporting voluntary acts of sexual conduct that all types of sexual conduct get the same treatment. Clearing up the contradictions and inconsistencies will allow mandated reporters to better protect teens and better identify cases where there is non-voluntary behavior.

2) **Background.** Under CANRA, the definition of “child abuse” includes sexual assault or sexual exploitation. The definition of sexual assault includes specific crimes involving sexual contact. CANRA does not include within the definition of “sexual assault” situations where a minor engages in voluntary intercourse, unless it is with a person 21 years of age or older and the minor is under 16 years of age. In 2013, the Department of Consumer Affairs (DCA) evaluated whether CANRA requires mandated reporters to report all conduct that falls under the definition of sodomy and oral copulation. Relying on case law and the legislative intent behind CANRA, DCA concluded that mandated reporters are not required to report consensual sex between minors of like age for any of the conduct listed as sexual assault unless the reporter reasonably suspects that the conduct resulted from force, undue influence, coercion or other indicators of child abuse.

3) **Support.** According to California Psychological Association:

Currently, CANRA requires a psychologist, among other mandated reporters, to report whenever they (in their professional capacity or within the scope of his or her employment) has knowledge of or observes a child whom the mandated reporter knows

or reasonably suspects has been the victim of child abuse or neglect, including sexual abuse. Further, under existing law, sexual abuse is reportable if it involves unlawful sexual intercourse between a person 21 years of age or older with a minor who is under 16 years of age. Existing law also makes sexual abuse reportable if any person participates in an act of sodomy or oral copulation with a person who is under 18 years of age.

This bill would instead make instances of sodomy or oral copulation reportable as sexual abuse only if any person over 21 years of age engages in a sexual act with a person who is under 16 years of age. For years, professionals in the field have felt that the current statute discriminated against LGBT youths, and could put practitioners at risk of professional and legal discipline for not reporting what they did not deem to be child abuse, but that a strict interpretation of the statute deemed to be child abuse. Several years ago, the Department of Consumer Affairs issued a legal opinion which clarifies that oral or anal copulation between two minors does not need to be report if the professional deems it is not abuse; much like non-abusive consensual intercourse is not reported as child abuse. However, the statute remains intact, and could be interpreted by practitioners, attorneys, and future department heads in a different manner.

- 4) **Prior Legislation.** AB 832 (C. Garcia), of 2015-2016 Legislative Session, was identical to this bill. AB 832 failed passage on the Assembly Floor.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081

May 13, 2019

The Honorable Lorena Gonzalez
Chair, Assembly Committee on Appropriations
State Capitol, Room 2114
Sacramento, CA 95814

RE: AB 1145 (Garcia, Cristina) – Child abuse: reportable conduct - SUPPORT

Dear Assembly Member Gonzalez:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on AB 1145 (Garcia, Cristina). This bill revises the definition of sexual assault to no longer include any acts under Penal Code Sections 286 (sodomy), 287 or former Section 288a (oral copulation), and Section 289 (sexual penetration), if committed voluntarily and if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.

This bill provides for equal treatment of consenting minors under the law regardless of the type of consensual sexual activities they engage in, and for these situations, provides clarity on the requirements of mandatory reporters under the Child Abuse and Neglect Reporting Act (CANRA).

For these reasons, the Board asks for your support of AB 1145 (Garcia, Cristina) when it is heard in the Assembly Committee on Appropriations. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Cherise Burns, at (916) 574-7227. Thank you.

Sincerely,



STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Appropriations
Assembly Member Cristina Garcia
Lisa Murawski, Principal Consultant, Assembly Committee on Appropriations
Ellen Cesaretti, Consultant, Assembly Republican Caucus

Agenda Item 6(b)(1)

AB 1145 - (I) Amends the Law

SECTION 1.

Section 11165.1 of the Penal Code is amended to read:

11165.1.

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), Section 287 or former Section 288a (oral copulation), subdivision (a) or ~~(b)~~, (b) of, or paragraph (1) of subdivision (c) ~~of of~~, Section 288 (lewd or lascivious acts upon a child), Section 289 (sexual penetration), or Section 647.6 (child molestation). *"Sexual assault" for the purposes of this article does not include voluntary conduct in violation of Section 286, 287, or 289, or former Section 288a, if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.*

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(1) Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(2) Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(3) Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

(5) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(c) "Sexual exploitation" refers to any of the following:

(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

(2) A person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.

(3) A person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

(d) "Commercial sexual exploitation" refers to either of the following:

(1) The sexual trafficking of a child, as described in subdivision (c) of Section 236.1.

(2) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in this section or subdivision (c) of Section 236.1.

MEMORANDUM

DATE	June 24, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #6(b)(2) – SB 53 (Wilk) Open meetings

Background:

This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by funds provided by the state body.

All items that are created or modified during two-member advisory committees are brought to the Board in an open meeting for discussion and approval. The Board of Psychology only utilizes a two-person committee structure when necessary due to concerns for employee safety and the necessity for a collaborative discussion of confidential information which could not be discussed in depth during a public meeting.

At the April 24-26, 2019 Board Meeting, the Board voted to Oppose SB 53 (Wilk).

Location: Assembly Committee on Governmental Organization

Status: 5/06/2019 Referred to Committee on Governmental Organization.

Votes: 3/12/2019 Sen Governmental Organization (14-0-2)
4/8/2019 Senate Committee on Appropriations (6-0-0)
4/22/2019 Senate Floor (38-0-0)

Action Requested:

No action is required at this time. Staff will continue to advocate an **Oppose** position on SB 53 (Wilk).

Attachment A: SB 53 (Wilk) Senate Floor Analysis

Attachment B: SB 53 (Wilk) Letter to Assembly Governmental Organization

Attachment C: SB 53 (Wilk) Bill Text

THIRD READING

Bill No: SB 53
Author: Wilk (R), et al.
Amended: 3/5/19
Vote: 27 - Urgency

SENATE GOVERNMENTAL ORG. COMMITTEE: 14-0, 3/12/19
AYES: Dodd, Wilk, Archuleta, Borgeas, Bradford, Chang, Galgiani, Glazer, Hill,
Hueso, Nielsen, Portantino, Rubio, Wiener
NO VOTE RECORDED: Allen, Jones

SENATE APPROPRIATIONS COMMITTEE: 6-0, 4/8/19
AYES: Portantino, Bates, Bradford, Hill, Jones, Wieckowski

SUBJECT: Open meetings

SOURCE: Author

DIGEST: This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by state funds.

ANALYSIS:

Existing law:

- 1) Requires, under Bagley-Keene, that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.
- 2) Defines a state body, for purposes of Bagley-Keene, to mean each of the following:

- a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings, and every commission created by executive order.
- b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
- c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
- d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- e) The State Bar of California, as specified.

This bill:

- 1) Clarifies that, under Bagley-Keene, a two-member advisory board, commission, committee, subcommittee, or similar multimember advisory body of a state body, is defined as a “state body” if a member of that larger state body sits on the advisory board, commission, committee, subcommittee, or similar multimember advisory body and the advisory board, commission, committee, subcommittee, or similar multimember advisory body is supported, in whole or in part, by funds provided by the state body.
- 2) Contains an urgency clause to take effect immediately.

Background

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

For the purposes of Bagley-Keene, existing law defines an advisory board, commission, committee, subcommittee, or similar multimember advisory board of a state body that is created by a formal action of the body or by any member of the

state body as a “state body” if it is comprised of three or more persons. This generally requires state agencies, boards, and commissions to publicly notice meetings, prepare formal agendas, accept public testimony, and conduct meetings in public, unless specifically authorized to meet in closed session.

This bill changes the definition of a “state body,” for the purposes of Bagley-Keene, to include any advisory board, commission, committee, subcommittee, or similar multimember advisory body comprised of two (not three) or more persons, if one member of the larger state body serves in their official capacity as a representative of the state body, and if the advisory board is funded by the state.

Previous attempts. In 2014 and in 2015, Governor Jerry Brown vetoed similar measures. In the veto message of AB 2058 (Wilk, 2014), Governor Brown wrote, “[a]ny meeting involving formal action by a state body should be open to the public. An advisory committee, however, does not have authority to act on its own and must present any findings and recommendations to a larger body in a public setting for formal action. That should be sufficient.”

The following year Governor Brown vetoed AB 85 (Wilk, 2015), writing “[t]his bill expands the Bagley-Keene Open Meeting Act to include advisory bodies, regardless of their size. My thinking on this matter has not changed from last year when I vetoed a similar measure, AB 2058. I believe strongly in transparency and openness but the more informal deliberation of advisory bodies is best left to current law.”

Comments

Purpose of the bill. According to the author, “SB 53 provides much-needed transparency to state government. The Bagley-Keene Act, which sets open meeting requirements for state government, is ambiguous in its definition of which state bodies must comply with Bagley-Keene.”

Further, the author states that “the ambiguity of Bagley-Keene has for years provided a loophole for state agencies that create two-member committees and claim they are exempt from open meeting requirements so long as they do not take action on anything. SB 53 clarifies Bagley-Keene to state in definite terms that any multimember body that is funded by a state body, created by formal action, or served by a state official is defined as a state body and falls under the scope of the Bagley-Keene.”

The author has provided examples of two-member advisory committees that have been created utilizing what the author argues is a loophole in current law, thereby

exempting these two-member advisory committees from the open meeting requirements of Bagley-Keene. Most prominently, during budget negotiations in 2015, the University of California (UC) Board of Regents endorsed forming a committee consisting of two members, Governor Jerry Brown and UC President Janet Napolitano. The author of this bill argues that this two-member committee was in fact a “state body,” and the exemption of this two-member advisory committee defies the original legislative intent of Bagley-Keene.

Related/Prior Legislation

AB 85 (Wilk, 2015) was substantially similar to SB 53, and would have modified Bagley-Keene to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by state funds. (Vetoed by Governor Brown)

AB 2058 (Wilk, 2014) would have modified the definition of “state body,” under Bagley-Keene, to exclude an advisory body with less than three individuals, except for certain standing committees. (Vetoed by Governor Brown)

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

According to the Senate Appropriations Committee, in general this bill imposes minor to moderate costs on affected state entities. Some state entities may simply decide to eliminate certain advisory bodies and specified standing committees rather than spend limited resources for compliance with open meeting requirements.

Additionally, many regulatory entities with the Department of Consumer Affairs use advisory committees of less than three members. These entities would incur costs to comply with open meeting requirements, including costs for board member and staff travel, communications, and providing public meeting space. Costs would be less than \$150,000 per entity per year. (Various special funds)

SUPPORT: (Verified 4/9/19)

CalAware
California Association of Licensed Investigators
California News Publishers Association
League of Women Voters of California

OPPOSITION: (Verified 4/9/19)

California Board of Accountancy

ARGUMENTS IN SUPPORT: In support of the bill, the California News Publishers Association writes that, “[o]ne of the purposes of the Bagley-Keene Act is to ensure that deliberations of state agencies be conducted openly. See Government Code § 11120. Unfortunately, ambiguity in the law is allowing state agencies to deliberate behind closed doors by limiting standing committees to fewer than three members. What this means is that decisions about policy development are being made without the public having a seat at the table. When two-member advisory committees are allowed to meet outside of public view, the public only gets the benefit of an abbreviated version of the deliberations that underlie actions taken by the state body.”

ARGUMENTS IN OPPOSITION: In opposition to the bill, the California Board of Accountancy (CBA) writes that, “[t]his bill would prevent the CBA, and its committees, from asking two members to review a document, draft a letter, provide expert analysis, or advise CBA staff on other matters without giving public notice. SB 53 may prevent the CBA from conducting certain outreach and communications activities that include more than one member present, as that may constitute a meeting, and therefore be subject to the Open Meeting Act. This bill would also appear to prohibit two board members meeting together with Legislators in support of any important consumer protection issues relating to the practice of public accountancy as it would be impractical, if not impossible, to publically notice such visits.”

Prepared by: Brian Duke / G.O. / (916) 651-1530
4/10/19 14:59:02

**** END ****

May 9, 2019

The Honorable Adam C. Gray
Chair, Assembly Committee on Governmental Organization
State Capitol, Room 3152
Sacramento, CA 95814

RE: **SB 53 (Wilk) – Open Meetings - OPPOSE**

Dear Assembly Member Gray:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted an **OPPOSE** position on SB 53 (Wilk). This bill modifies the Bagley-Keene Open Meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body, and the advisory committee is supported, in whole or in part, by funds provided by the state body.

The Board places a very high importance on transparency. This is evidenced by the adoption of the Board’s 2019-2023 Strategic Plan, which includes adoption of the Board’s revised Mission, Vision, and Values. The Values adopted for the next five years are: Transparency, Integrity, Fairness, Responsiveness, and Professionalism. The Board makes every effort to interweave transparency in its operations by webcasting all Board meetings, posting Board meeting materials and minutes online, and publicizing all public Board and Committee meetings via email listserv (to licensees and external stakeholders) and via social media. Moreover, the Board ensures that all items created or modified during two-member advisory committees are brought to the full Board in an open meeting for review, discussion, and approval. This existing format provides an opportunity for the public to comment on the policy-making function of the Board.

The Board of Psychology utilizes a two-person committee structure in a limited number of circumstances when necessary. This structure may be used due to concerns for employee safety, for a collaborative discussion of confidential information which could not be discussed in depth during a public meeting, or for collaborative working group meetings of limited duration and scope where the Committee’s task is drafting iterative versions of legislatively mandated reports, drafting letters, or providing expert analysis.

The Board’s Enforcement Committee is a two-person committee where Enforcement Analysts (who out of concern for their safety use an assigned alphabetical letter when communicating with the public instead of their real name) are present and active participants in the conversations of the Committee. This often involves discussion of confidential materials which would not be able to be discussed in an open meeting. Enforcement analyst participation would not be possible with the passage of SB 53 and enforcement analysts would no longer be able to participate in and provide invaluable information to the Committee. Again, for transparency purposes, all actions by the Enforcement Committee are reviewed, discussed, and approved by the full Board at a subsequent Board Meeting.

In addition, the Board has an ad hoc Sunset Review Committee which is an extremely collaborative committee used while the Board is preparing the legislatively mandated Sunset Review report and background paper. The ability to meet and communicate frequently and

SB 53 (Wilk): OPPOSE

May 10, 2019

with short notice is imperative to the success of the Committee and the Board as a whole while it prepares for Sunset Review. The Board also has a Telepsychology Committee that was tasked with providing staff with expert and profession-specific input necessary to analyze a national telepsychology compact proposal and to draft telepsychology regulation language for the full Board's consideration. This Committee met for a limited duration and with a limited scope to provide necessary input to staff regarding the provision of telepsychology. Again, all reports, analysis, and language drafted during these ad hoc meetings is reviewed by the full Board at a Board Meeting where the public has sufficient notice and ability to comment.

Lastly, the Board is also concerned that SB 53 would curb the Board's ability to effectively perform advocacy activities and limit Board outreach and education activities. Specifically, each year the Board organizes meetings with some or all members of the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee to inform legislators and legislative staff on issues impacting consumer protection, Board operations, and the profession of psychology. This bill would limit the Board's ability to have both a public and licensed Board member at each legislative meeting. SB 53 would also create potential Open Meetings Act issue when more than one Board Member attends a professional conference as part of the Board's outreach and education efforts. The Board does not believe that it is the intent of the bill to impact activities outside of committee meetings, but this bill would create additional barriers to effective advocacy and outreach activities intended to enhance consumer protection and educate the public.

For these reasons, the Board asks you to OPPOSE SB 53 (Wilk) when it is heard in the Assembly Committee on Governmental Organization. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Cherise Burns, at (916) 574-7227. Thank you.

Sincerely,



STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Governmental Organization
Senator Scott Wilk
Assembly Committee on Governmental Organization
Assembly Republican Caucus

Agenda Item 6(b)(2)

SB 53 - (A) Amends the Law

SECTION 1.

Section 11121 of the Government Code is amended to read:

11121.

As used in this article, "state body" means each of the following:

- (a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
- (b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
- (c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more ~~persons~~ *persons, except as provided in subdivision (d)*.
- (d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in ~~his or her~~ *their* official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- (e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

SEC. 2.

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 avoid unnecessary litigation and ensure the people's right to access the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that this act take effect immediately.

MEMORANDUM

DATE	June 24, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #6(b)(3) – SB 66 (Atkins) Medi-Cal: federally qualified health center and rural health clinic services

Background:

This bill would allow Medi-Cal reimbursement for a patient receiving both medical and mental health services at a federally qualified health center (FQHC) or rural health clinic (RHC) on the same day.

At the April 24-26, 2019 Board Meeting, the Board voted to **Support** SB 66 (Atkins).

Location: Assembly Committee on Health

Status: 6/3/2019 Referred to Committee on Health

Votes: 3/20/2019 Senate Health (8-0-1)
5/16/2019 Senate Committee on Appropriations (6-0-0)
5/23/2019 Senate Floor (38-0-0)

Action Requested:

No action is required at this time. Staff will continue to advocate a **Support** position on SB 66 (Atkins).

Attachment A: SB 66 (Atkins) Letter to Assembly Health

Attachment B: SB 66 (Atkins) Senate Floor Analysis

Attachment C: SB 66 (Atkins) Bill Text

June 19, 2019

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

RE: **SB 66 (Atkins) – Medi-Cal: federally qualified health center and rural health clinic services - SUPPORT**

Dear Assembly Member Wood:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on SB 66 (Atkins). This bill would require the state to allow Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) to bill Medi-Cal for two visits if a patient is provided mental health services on the same day they receive other medical services.

In California, if a patient receives treatment through Medi-Cal at a FQHC or RHC from both a medical provider and a mental health specialist on the same day, the State Department of Health Care Services will only reimburse the center for one "visit," meaning both providers cannot be adequately reimbursed for their time and expertise. In turn, the FQHC and RHC have to find alternative funds to cover that visit or deny the service on the same day. Allowing patients of FQHC's and RHC's to see a mental health provider and a medical provider on the same day would remove unnecessary barriers to access to mental health care and increase the likelihood that patients can start or continue receiving services at these clinics.

For these reasons, the Board asks for your support of SB 66 (Atkins) 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, Cherise Burns, at (916) 574-7227. Thank you.

Sincerely,



STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member Chad Mayes (Vice Chair)
Members of the Assembly Committee on Health
Senator Toni Atkins
Consultant, Assembly Committee on Health
Assembly Republican Caucus

THIRD READING

Bill No: SB 66
Author: Atkins (D) and McGuire (D), et al.
Amended: 3/21/19
Vote: 21

SENATE HEALTH COMMITTEE: 8-0, 3/20/19
AYES: Pan, Stone, Durazo, Hurtado, Leyva, Mitchell, Monning, Rubio
NO VOTE RECORDED: Grove

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/16/19
AYES: Portantino, Bates, Bradford, Hill, Jones, Wieckowski

SUBJECT: Medi-Cal: federally qualified health center and rural health clinic services

SOURCE: California Association of Public Hospitals and Health Systems
CaliforniaHealth+ Advocates
Local Health Plans of California

DIGEST: This bill requires Medi-Cal reimbursement to a federally qualified health center and a rural health center for two visits on the same day at the same location if after the first visit the patient suffers from illness or injury that requires additional treatment and diagnosis, or if the patient has a medical visit and a mental health or dental visit in the same day.

ANALYSIS:

Existing law:

- 1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low-income individuals are eligible for medical coverage. [WIC §14000 et seq.]

- 2) Requires federally qualified health center (FQHC) and rural health center (RHC) services to be covered benefits under the Medi-Cal program and these services be reimbursed on a per-visit basis, as defined. [WIC §14132.100]
- 3) Defines “visit” as a face-to-face encounter between a patient of an FQHC or RHC and a specified health care professional, including a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse, podiatrist, dentist, optometrist, chiropractor, comprehensive perinatal services practitioner providing comprehensive perinatal services, a dental hygienist, a dental hygienist in alternative practice, or a marriage and family therapist, a four-hour day of attendance at an Adult Day Health Care Center; and, any other provider identified in the state plan’s definition of an FQHC or RHC visit. [WIC §14132.100]
- 4) Requires FQHC and RHC per-visit rates to be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in federal law. [WIC §14132.100]
- 5) Authorizes an FQHC or RHC to apply for an adjustment to its per-visit rate based on a change in the scope of services provided by the FQHC or RHC. Requires rate changes based on a change in the scope of services provided by an FQHC or RHC to be evaluated in accordance with Medicare reasonable cost principles. [WIC §14132.100]
- 6) Authorizes an FQHC or RHC that currently includes the cost of services of a dental hygienist in alternative practice, or a marriage and family therapist in establishing its FQHC or RHC rates to bill those services as separate services. Requires an FQHC or RHC seeking to bill those services as separate visits to apply and receive approval by DHCS for an adjustment to its per-visit rate. [WIC §14132.100]

This bill:

- 1) Requires a maximum of two visits taking place on the same day at a single location to be reimbursed if one or both of the following conditions are met:
 - a) After the first visit, the patient suffers illness or injury that requires additional diagnosis or treatment; and,
 - b) In addition to a medical visit, the patient has a mental health or a dental visit.

- 2) Authorizes an FQHC or RHC that currently includes the cost of services of a medical visit and mental health visit as a single visit in establishing its FQHC or RHC rates to bill those services as separate visits. Requires an FQHC or RHC seeking to bill a medical visit and a mental health visit as separate visits to apply for an adjustment to its per-visit rate and receive approval by DHCS in order to receive reimbursement for those services as two visits. Defines “mental health visit,” “dental visit,” and “medical visit” for purposes of this bill.
- 3) Requires DHCS to develop and adjust all appropriate forms to determine which FQHCs or RHCs rates are adjusted, and to facilitate the calculation of the adjusted rates. Prohibits an FQHC or RHC application for, or DHCS’ approval of, a rate adjustment from constituting a change in scope of service within the meaning of existing law.
- 4) Authorizes an FQHC or RHC that applies for a rate adjustment under this bill to continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment has been approved.
- 5) Requires DHCS, by July 1, 2020, to submit a state plan amendment (SPA) to the federal Centers for Medicare and Medicaid Services reflecting the changes described in this bill.
- 6) Codifies the addition of licensed acupuncturists to the list of health care providers who are billable on a face-to-face per visit basis by FQHCs and RHCs.

Comments

- 1) *Author’s statement.* According to the author, community health centers are an essential component of our Medi-Cal primary care network. The author states that according to the California Future Health Workforce Commission Report, February 2019, approximately 25% of all people seen in primary care have diagnosable mental disorders and the prevalence varies by income with much higher rates at lower income levels for both children and adults. The report points out that primary care providers generally receive limited formal psychiatric education or experience during their training, but are often the first point of contact for detection and treatment. This bill will facilitate the ability to seamlessly transition patients from primary care to an onsite mental health

specialist on the same day, a proven way to ensure that a patient receives needed care and follows through with treatment.

- 2) *FQHCs and RHCs*. FQHCs and RHCs are clinics that meet federally defined qualifications and furnish federally specified services. FQHCs provide preventive and primary health care services to medically underserved populations. RHCs also provide outpatient primary care services and must be located within a designated medically underserved area. There are 1,040 FQHCs and 283 RHCs in California. The number of FQHCs has grown significantly—from 476 FQHCs in 2006 to 1,007 in 2015.
- 3) *Prospective Payment System*. Payment rules for FQHCs and RHCs differ from those for other providers. State and federal law requires that FQHCs and RHCs are paid for each patient visit, a cost-based per-visit rate known as the prospective payment system (PPS). Medi-Cal managed care plans, which must make FQHCs and RHCs available to their members, makes its payment to the FQHC and RHC. DHCS also makes a “wrap around” payment that makes up the difference between the managed care plan payment and the FQHC or RHC’s full per-visit PPS rate.
- 4) *DHCS policy on qualifying visits*. Federal law offers states flexibility in defining which services are included in a visit and establishing limits on the number of visits an FQHC can bill per member per day. DHCS specifies that encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. The exception is that two visits may be billed in the following instances:
 - a) When a patient, after the first visit, suffers illness or injury that requires another health diagnosis or treatment; and,
 - b) When a patient is seen by a health professional or a perinatal practitioner and also receives dental services on the same day.
- 5) *Medi-Cal acupuncture benefit codification*. In January 2018, DHCS announced outpatient acupuncture services for FQHCs and RHCs were restored as benefits provided to Medi-Cal recipients, effective retroactively for dates of service on or after July 1, 2016. This bill codifies acupuncture visits to an FQHC or RHC as billable under the PPS rate system.

Related/Prior Legislation

SB 1125 (Atkins of 2018) is substantially similar to this bill. *SB 1125 was vetoed by the Governor Brown, who stated the bill required “significant, ongoing general fund commitments” and “should be considered as part of the budget process.”*

SB 323 (Mitchell, Chapter 540, Statutes of 2017) authorized FQHCs and RHCs to provide Drug Medi-Cal services pursuant to the terms of a mutually agreed upon contract entered into between the FQHC or RHC and the county or county designee, or DHCS, as specified, and would set forth the reimbursement requirements for these services.

SB 1150 (Hueso and Correa of 2014) would have required Medi-Cal reimbursement to FQHC and RHCs for two visits taking place on the same day at a single location when the patient suffers illness or injury requiring additional diagnosis or treatment after the first visit, or when the patient has a medical visit and another health visit with a mental health provider or dental provider. *SB 1150 was held on the Senate Appropriations suspense file.*

AB 1445 (Chesbro of 2010) was substantially similar to SB 1150. *AB 1445 was held on the Senate Appropriations suspense file.*

SB 260 (Steinberg of 2007) would have authorized FQHCs and RHCs to bill separately for same day medical and mental health visits. *SB 260 was vetoed by Governor Schwarzenegger.*

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

According to the Senate Appropriations Committee, staff notes the following estimate reflects figures provided in a Department of Finance estimate, dated August 7, 2018, for a substantively similar bill (Senate Bill 1125, Atkins, 2018):

- \$272.7 million (\$109.1 million General Fund), assuming that 50 percent of clinics would request a rate adjustment, there will be a 25-percent increase for the number of eligible visits, and partially offset by an estimated 5-percent net decrease to the Prospective Payment System rate.
- \$3.6 to \$7.2 million (\$1.8 to \$3.6 million General Fund), the equivalent of 25 to 50 limited-term auditor positions, to implement the provisions of this bill.

- DOF notes “increased reimbursement costs for clinics and state operations costs are highly variable and depended on clinic behavior and timing of rate adjustment requests.”

SUPPORT: (Verified 5/17/19)

California Association of Public Hospitals and Health Systems (co-source)
CaliforniaHealth+ Advocates (co-source)
Local Health Plans of California (co-source)
ACCESS California
Alameda Health Consortium
Alameda Health System
Alliance of Catholic Health Care
AltaMed Health Services Corporation
American Academy of Pediatrics, California
American College of Emergency Physicians
American College of Obstetricians and Gynecologists
APLA Health
Arroyo Vista Family Health Center
Asian Americans for Community Involvement
Asian Health Services
Association of California Healthcare Districts
Behavioral Health Services, Inc.
Blue Shield of California
California Alliance of Child and Family Services
California Association of Local Behavioral Health Boards and Commissions
California Association of Marriage and Family Therapists
California Association of Public Hospitals and Health Systems
California Board of Psychology
California Children’s Hospitals
California Children’s Trust
California Chronic Care Coalition
California Dental Hygienists’ Association
California Hospital Association
California Pan - Ethnic Health Network
California Podiatric Medical Association
California Professional Firefighters
California Psychiatric Association
California Psychological Association
California School-Based Health Alliance

California School Employees Association, AFL-CIO
California Society of Addiction Medicine
California State Association of Counties
Center for Family Health & Education
Central City Community Health Center
Clinica Romero
Clinica Sierra Vista
Coalition of Orange County Community Health Centers
Coastal Health Alliance
CommuniCare Health Centers
Community Clinic Association of Los Angeles County
Community Clinic Consortium of Contra Costa and Solano Counties
Community Health Alliance of Pasadena (ChapCare)
Community Health Systems, Inc.
Contra Costa County
Corporation for Supportive Housing
County Behavioral Health Directors Association of California
County Health Executives Association of California
County of Santa Clara
Disability Rights California
Desert AIDS Project
El Dorado Community Health Centers
Essential Access Health
Golden Valley Health Centers
Harbor Community Clinic
Health Alliance of Northern California
Health Center Partners of Southern California
HealthRIGHT 360
Kedren Community Health Center
La Clinica de La Raza, Inc.
Latino Coalition for a Healthy California
LifeLong Medical Care
Local Health Plans of California
Los Angeles Christian Health Centers
Marin Community Clinics
Los Angeles Conservation Corps
Lucile Packard Children's Hospital Stanford
Maternal Mental Health NOW
Mendocino Community Health Clinics, Inc.
Mental Health Services Oversight and Accountability Commission

National Association of Social Workers, California Chapter
National Union of Healthcare Workers
Neighborhood Healthcare
North Coast Clinics Network
North East Medical Services
Northeast Valley Health Corporation
OLE Health
Omni Family Health
One Community Health
Open Door Community Health Centers
Peach Tree Health
Planned Parenthood Affiliates of California
Private Essential Access Community Hospitals
QueensCare Health Centers
Redwood Community Health Coalition
Redwoods Rural Health Center
Riverside County Board of Supervisors
SAC Health System
San Fernando Community Health Center
San Francisco Community Clinic Consortium
San Ysidro Health
Santa Barbara Neighborhood Clinics
Santa Rosa Community Health
SEIU California
Silicon Valley Leadership Group
Southside Coalition of Community Health Centers
Steinberg Institute
T.H.E. Health and Wellness Centers
UMMA Community Clinic
Valley Community Healthcare
The Children's Clinic
The Children's Clinic, Serving Children & Their Families
Valley Community Healthcare
Vista Community Clinic
Western Center on Law and Poverty
White Memorial Community Health Center

OPPOSITION: (Verified 5/17/19)

None received

ARGUMENTS IN SUPPORT: This bill is co-sponsored by the California Association of Public Hospitals and Health Systems, CaliforniaHealth+ Advocates, and the Steinberg Institute. CaliforniaHealth+ Advocates state that patients qualify for Medi-Cal based on having low-income often come from a background of economic hardship that makes getting to a health center difficult in the first place and requiring 24 hour gap in services results in costly visits down the line. The Steinberg Institute states the ability to seamlessly transition a consumer from primary care to an on-site mental health specialist on the same day is highly effective in ensuring that patients have timely access to services. The California Association of Public Hospitals and Health Systems writes that the existing billing rules have historically limited the capacity of their clinics to provide behavioral health services on a co-located basis.

Prepared by: Kimberly Chen / HEALTH / (916) 651-4111
5/18/19 11:42:20

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

Agenda Item 6(b)(3)

SB 66 - (A) Amends the Law

SECTION 1.

Section 14132.100 of the Welfare and Institutions Code is amended to read:

14132.100.

- (a) The federally qualified health center services described in Section 1396d(a)(2)(C) of Title 42 of the United States Code are covered benefits.
- (b) The rural health clinic services described in Section 1396d(a)(2)(B) of Title 42 of the United States Code are covered benefits.
- (c) Federally qualified health center services and rural health clinic services shall be reimbursed on a per-visit basis in accordance with the definition of "visit" set forth in subdivision (g).
- (d) Effective October 1, 2004, and on each October 1 thereafter, until no longer required by federal law, federally qualified health center (FQHC) and rural health clinic (RHC) per-visit rates shall be increased by the Medicare Economic Index applicable to primary care services in the manner provided for in Section 1396a(bb)(3)(A) of Title 42 of the United States Code. Prior to January 1, 2004, FQHC and RHC per-visit rates shall be adjusted by the Medicare Economic Index in accordance with the methodology set forth in the state plan in effect on October 1, 2001.
- (e) (1) An FQHC or RHC may apply for an adjustment to its per-visit rate based on a change in the scope of ~~services~~ *service* provided by the FQHC or RHC. Rate changes based on a change in the scope of ~~services~~ *service* provided by an FQHC or RHC shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.
- (2) Subject to the conditions set forth in subparagraphs (A) to (D), inclusive, of paragraph (3), a change in scope of service means any of the following:
- (A) The addition of a new FQHC or RHC service that is not incorporated in the baseline prospective payment system (PPS) rate, or a deletion of an FQHC or RHC service that is incorporated in the baseline PPS rate.
- (B) A change in service due to amended regulatory requirements or rules.
- (C) A change in service resulting from relocating or remodeling an FQHC or RHC.
- (D) A change in types of services due to a change in applicable technology and medical practice utilized by the center or clinic.
- (E) An increase in service intensity attributable to changes in the types of patients served, including, but not limited to, populations with HIV or AIDS, or other chronic diseases, or homeless, elderly, migrant, or other special populations.
- (F) Any changes in any of the services described in subdivision (a) or (b), or in the provider mix of an FQHC or RHC or one of its sites.
- (G) Changes in operating costs attributable to capital expenditures associated with a modification of the scope of any of the services described in subdivision (a) or (b), including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the center or clinic.

(H) Indirect medical education adjustments and a direct graduate medical education payment that reflects the costs of providing teaching services to interns and residents.

(I) Any changes in the scope of a project approved by the federal Health Resources and Services Administration (HRSA).

(3) ~~A No~~ change in costs ~~is not, shall,~~ in and of itself, ~~a scope-of-service change,~~ *be considered a scope of service change* unless all of the following apply:

(A) The increase or decrease in cost is attributable to an increase or decrease in the scope of ~~services~~ *service* defined in subdivisions (a) and (b), as applicable.

(B) The cost is allowable under Medicare reasonable cost principles set forth in Part 413 (commencing with Section 413) of Subchapter B of Chapter 4 of Title 42 of the Code of Federal Regulations, or its successor.

(C) The change in the scope of ~~services~~ *service* is a change in the type, intensity, duration, or amount of services, or any combination thereof.

(D) The net change in the FQHC's or RHC's rate equals or exceeds 1.75 percent for the affected FQHC or RHC site. For FQHCs and RHCs that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75-percent threshold shall be applied to the average per-visit rate of all sites for the purposes of calculating the cost associated with a ~~scope-of-service~~ *scope of service* change. "Net change" means the per-visit rate change attributable to the cumulative effect of all increases and decreases for a particular fiscal year.

(4) An FQHC or RHC may submit requests for ~~scope-of-service~~ *scope of service* changes once per fiscal year, only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(5) An FQHC or RHC shall submit a ~~scope-of-service~~ *scope of service* rate change request within 90 days of the beginning of any FQHC or RHC fiscal year occurring after the effective date of this section, if, during the FQHC's or RHC's prior fiscal year, the FQHC or RHC experienced a decrease in the scope of ~~services~~ *service* provided that the FQHC or RHC either knew or should have known would have resulted in a significantly lower per-visit rate. If an FQHC or RHC discontinues providing onsite pharmacy or dental services, it shall submit a ~~scope-of-service~~ *scope of service* rate change request within 90 days of the beginning of the following fiscal year. The rate change shall be effective as provided for in paragraph (4). As used in this paragraph, "significantly lower" means an average per-visit rate decrease in excess of 2.5 percent.

(6) Notwithstanding paragraph (4), if the approved ~~scope-of-service~~ *scope of service* change or changes were initially implemented on or after the first day of an FQHC's or RHC's fiscal year ending in calendar year 2001, but before the adoption and issuance of written instructions for applying for a ~~scope-of-service~~ *scope of service* change, the adjusted reimbursement rate for that ~~scope-of-service~~ *scope of service* change shall be made retroactive to the date the ~~scope-of-service~~ *scope of service* change was initially implemented. ~~Scope-of-service~~ *Scope of service* changes under this paragraph shall be required to be submitted within the later of 150 days after the adoption and issuance of the written instructions by the department, or 150 days after the end of the FQHC's or RHC's fiscal year ending in 2003.

(7) All references in this subdivision to "fiscal year" shall be construed to be references to the fiscal year of the individual FQHC or RHC, as the case may be.

(f) (1) An FQHC or RHC may request a supplemental payment if extraordinary circumstances beyond the control of the FQHC or RHC occur after December 31, 2001, and PPS payments are insufficient due to these extraordinary circumstances. Supplemental payments arising from extraordinary circumstances under this subdivision shall be solely and exclusively within the discretion of the department and shall not be subject to subdivision (I). These supplemental payments shall be determined separately from the ~~scope-of-service~~ *scope of service* adjustments described in subdivision (e). Extraordinary circumstances

include, but are not limited to, acts of nature, changes in applicable requirements in the Health and Safety Code, changes in applicable licensure requirements, and changes in applicable rules or regulations. Mere inflation of costs alone, absent extraordinary circumstances, shall not be grounds for supplemental payment. If an FQHC's or RHC's PPS rate is sufficient to cover its overall costs, including those associated with the extraordinary circumstances, then a supplemental payment is not warranted.

(2) The department shall accept requests for supplemental payment at any time throughout the prospective payment rate year.

(3) Requests for supplemental payments shall be submitted in writing to the department and shall set forth the reasons for the request. Each request shall be accompanied by sufficient documentation to enable the department to act upon the request. Documentation shall include the data necessary to demonstrate that the circumstances for which supplemental payment is requested meet the requirements set forth in this section. Documentation shall include both of the following:

(A) A presentation of data to demonstrate reasons for the FQHC's or RHC's request for a supplemental payment.

(B) Documentation showing the cost implications. The cost impact shall be material and significant, two hundred thousand dollars (\$200,000) or 1 percent of a facility's total costs, whichever is less.

(4) A request shall be submitted for each affected year.

(5) Amounts granted for supplemental payment requests shall be paid as lump-sum amounts for those years and not as revised PPS rates, and shall be repaid by the FQHC or RHC to the extent that it is not expended for the specified purposes.

(6) The department shall notify the provider of the department's discretionary decision in writing.

(g) (1) An FQHC or RHC "visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse. For purposes of this section, "physician" shall be interpreted in a manner consistent with the federal Centers for Medicare and Medicaid Services' Medicare Rural Health Clinic and Federally Qualified Health Center Manual (Publication 27), or its successor, only to the extent that it defines the professionals whose services are reimbursable on a per-visit basis and not as to the types of services that these professionals may render during these visits and shall include a ~~physician and surgeon,~~ *medical doctor*, osteopath, podiatrist, dentist, optometrist, and chiropractor. A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a comprehensive perinatal practitioner, as defined in Section 51179.7 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services, a four-hour day of attendance at an adult day health care center, and any other provider identified in the state plan's definition of an FQHC or RHC visit.

(2) (A) A visit shall also include a face-to-face encounter between an FQHC or RHC patient and a dental hygienist, a dental hygienist in alternative practice, ~~or~~ a marriage and family ~~therapist~~ *therapist, or a licensed acupuncturist*.

(B) Notwithstanding subdivision (e), if an FQHC or RHC that currently includes the cost of the services of a dental hygienist in alternative practice, or a marriage and family therapist for the purposes of establishing its FQHC or RHC rate chooses to bill these services as a separate visit, the FQHC or RHC shall apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, shall bill these services as a separate visit. However, multiple encounters with dental professionals or marriage and family therapists that take place on the same day shall constitute a single visit. The department shall develop the appropriate forms to determine which FQHC's or RHC's rates shall be adjusted and to facilitate the calculation of the adjusted rates. An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this subparagraph shall not constitute a change in scope of service within the meaning of subdivision (e). An FQHC or RHC that applies for an adjustment to its rate pursuant to this subparagraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment for visits between an FQHC or RHC patient and a dental hygienist, a dental hygienist in alternative practice, or a marriage and family

therapist has been approved. Any approved increase or decrease in the provider's rate shall be made within six months after the date of receipt of the department's rate adjustment forms pursuant to this subparagraph and shall be retroactive to the beginning of the fiscal year in which the FQHC or RHC submits the request, but in no case shall the effective date be earlier than January 1, 2008.

(C) An FQHC or RHC that does not provide dental hygienist, dental hygienist in alternative practice, or marriage and family therapist services, and later elects to add these services and bill these services as a separate visit, shall process the addition of these services as a change in scope of service pursuant to subdivision (e).

(3) Notwithstanding any other provision of this section, ~~no later than~~ by July 1, 2018, a visit shall include a marriage and family therapist.

(h) If FQHC or RHC services are partially reimbursed by a third-party payer, such as a managed care entity, as defined in Section 1396u-2(a)(1)(B) of Title 42 of the United States Code, the Medicare Program, or the Child Health and Disability Prevention (CHDP) Program, the department shall reimburse an FQHC or RHC for the difference between its per-visit PPS rate and receipts from other plans or programs on a contract-by-contract basis and not in the aggregate, and may not include managed care financial incentive payments that are required by federal law to be excluded from the calculation.

(i) (1) Provided that the following entities are not operating as intermittent clinics, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, each entity shall have its reimbursement rate established in accordance with one of the methods outlined in paragraph (2) or (3), as selected by the FQHC or RHC:

(A) An entity that first qualifies as an FQHC or RHC in 2001 or later.

(B) A newly licensed facility at a new location added to an existing FQHC or RHC.

(C) An entity that is an existing FQHC or RHC that is relocated to a new site.

(2) (A) An FQHC or RHC that adds a new licensed location to its existing primary care license under paragraph (1) of subdivision (b) of Section 1212 of the Health and Safety Code may elect to have the reimbursement rate for the new location established in accordance with paragraph (3), or notwithstanding subdivision (e), an FQHC or RHC may choose to have one PPS rate for all locations that appear on its primary care license determined by submitting a change in scope of service request if both of the following requirements are met:

(i) The change in scope of service request includes the costs and visits for those locations for the first full fiscal year immediately following the date the new location is added to the FQHC's or RHC's existing licensee.

(ii) The FQHC or RHC submits the change in scope of service request within 90 days after the FQHC's or RHC's first full fiscal year.

(B) The FQHC's or RHC's single PPS rate for those locations shall be calculated based on the total costs and total visits of those locations and shall be determined based on the following:

(i) An audit in accordance with Section 14170.

(ii) Rate changes based on a change in scope of service request shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successors.

(iii) Any approved increase or decrease in the provider's rate shall be retroactive to the beginning of the FQHC's or RHC's fiscal year in which the request is submitted.

(C) Except as specified in subdivision (j), this paragraph does not apply to a location that was added to an existing primary care clinic license by the State Department of Public Health, whether by a regional district office or the centralized application unit, prior to January 1, 2017.

(3) If an FQHC or RHC does not elect to have the PPS rate determined by a change in scope of service request, the FQHC or RHC shall have the reimbursement rate established for any of the entities identified in paragraph (1) or (2) in accordance with one of the following methods at the election of the FQHC or RHC:

(A) The rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or adjacent area with a similar caseload.

(B) In the absence of three comparable FQHCs or RHCs with a similar caseload, the rate may be calculated on a per-visit basis in an amount that is equal to the average of the per-visit rates of three comparable FQHCs or RHCs located in the same or an adjacent service area, or in a reasonably similar geographic area with respect to relevant social, health ~~care,~~ *care* and economic characteristics.

(C) At a new entity's one-time election, the department shall establish a reimbursement rate, calculated on a per-visit basis, that is equal to 100 percent of the projected allowable costs to the FQHC or RHC of furnishing FQHC or RHC services during the first 12 months of operation as an FQHC or RHC. After the first 12-month period, the projected per-visit rate shall be increased by the Medicare Economic Index then in effect. The projected allowable costs for the first 12 months shall be cost settled and the prospective payment reimbursement rate shall be adjusted based on actual and allowable cost per visit.

(D) The department may adopt any further and additional methods of setting reimbursement rates for newly qualified FQHCs or RHCs as are consistent with Section 1396a(bb)(4) of Title 42 of the United States Code.

(4) In order for an FQHC or RHC to establish the comparability of its caseload for purposes of subparagraph (A) or (B) of paragraph (1), the department shall require that the FQHC or RHC submit its most recent annual utilization report as submitted to the Office of Statewide Health Planning and Development, unless the FQHC or RHC was not required to file an annual utilization report. FQHCs or RHCs that have experienced changes in their services or caseload subsequent to the filing of the annual utilization report may submit to the department a completed report in the format applicable to the prior calendar year. FQHCs or RHCs that have not previously submitted an annual utilization report shall submit to the department a completed report in the format applicable to the prior calendar year. The FQHC or RHC shall not be required to submit the annual utilization report for the comparable FQHCs or RHCs to the department, but shall be required to identify the comparable FQHCs or RHCs.

(5) The rate for any newly qualified entity set forth under this subdivision shall be effective retroactively to the later of the date that the entity was first qualified by the applicable federal agency as an FQHC or RHC, the date a new facility at a new location was added to an existing FQHC or RHC, or the date on which an existing FQHC or RHC was relocated to a new site. The FQHC or RHC shall be permitted to continue billing for Medi-Cal covered benefits on a fee-for-service basis under its existing provider number until it is informed of its *new* FQHC or RHC ~~enrollment approval,~~ *provider number,* and the department shall reconcile the difference between the fee-for-service payments and the FQHC's or RHC's prospective payment rate at that time.

(j) (1) Visits occurring at an intermittent clinic site, as defined in subdivision (h) of Section 1206 of the Health and Safety Code, of an existing FQHC or RHC, in a mobile unit as defined by paragraph (2) of subdivision (b) of Section 1765.105 of the Health and Safety Code, or at the election of the FQHC or RHC and subject to paragraph (2), a location added to an existing primary care clinic license by the State Department of Public Health prior to January 1, 2017, shall be billed by and reimbursed at the same rate as the FQHC or RHC that either established the intermittent clinic site or mobile unit, or that held the clinic license to which the location was added prior to January 1, 2017.

(2) If an FQHC or RHC with at least one additional location on its primary care clinic license that was added by the State Department of Public Health prior to January 1, 2017, applies for an adjustment to its per-visit rate based on a change in the scope of ~~services~~ *service* provided by the FQHC or RHC as described in subdivision (e), all locations on the FQHC or RHC's primary care clinic license shall be

subject to a ~~scope-of-service~~ *scope of service* adjustment in accordance with either paragraph (2) or (3) of subdivision (i), as selected by the FQHC or RHC.

(3) Nothing in this subdivision precludes or otherwise limits the right of the FQHC or RHC to request a ~~scope-of-service~~ *scope of service* adjustment to the rate.

(k) An FQHC or RHC may elect to have pharmacy or dental services reimbursed on a fee-for-service basis, utilizing the current fee schedules established for those services. These costs shall be adjusted out of the FQHC's or RHC's clinic base rate as ~~scope-of-service~~ *scope of service* changes. An FQHC or RHC that reverses its election under this subdivision shall revert to its prior rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with applicable ~~scope-of-service~~ *scope of service* adjustments as provided in subdivision (e).

(l) (1) For purposes of this subdivision, the following definitions apply:

(A) A "mental health visit" means a face-to-face encounter between an FQHC or RHC patient and a psychiatrist, clinical psychologist, licensed clinical social worker, or marriage and family therapist.

(B) A "dental visit" means a face-to-face encounter between an FQHC or RHC patient and a dentist, dental hygienist, or registered dental hygienist in alternative practice.

(C) "Medical visit" means a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting nurse, or a comprehensive perinatal practitioner, as defined in Section 51179.7 of Title 22 of the California Code of Regulations, providing comprehensive perinatal services.

(2) A maximum of two visits, as defined in subdivision (g), taking place on the same day at a single location shall be reimbursed when one or both of the following conditions exists:

(A) After the first visit the patient suffers illness or injury requiring additional diagnosis or treatment.

(B) The patient has a medical visit and a mental health visit or a dental visit.

(3) (A) Notwithstanding subdivision (e), an FQHC or RHC that currently includes the cost of a medical visit and a mental health visit that take place on the same day at a single location as constituting a single visit for purposes of establishing its FQHC or RHC rate may elect to apply for an adjustment to its per-visit rate, and, after the rate adjustment has been approved by the department, the FQHC or RHC shall bill a medical visit and a mental health visit that take place on the same day at a single location as separate visits.

(B) The department shall develop and adjust all appropriate forms to determine which FQHC's or RHC's rates shall be adjusted and to facilitate the calculation of the adjusted rates.

(C) An FQHC's or RHC's application for, or the department's approval of, a rate adjustment pursuant to this paragraph shall not constitute a change in scope of service within the meaning of subdivision (e).

(D) An FQHC or RHC that applies for an adjustment to its rate pursuant to this paragraph may continue to bill for all other FQHC or RHC visits at its existing per-visit rate, subject to reconciliation, until the rate adjustment has been approved.

(4) The department, by July 1, 2020, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services reflecting the changes described in this subdivision.

(m) Reimbursement for Drug Medi-Cal services shall be provided pursuant to this subdivision.

(1) An FQHC or RHC may elect to have Drug Medi-Cal services reimbursed directly from a county or the department under contract with the FQHC or RHC pursuant to paragraph (4).

(2) (A) For an FQHC or RHC to receive reimbursement for Drug Medi-Cal services directly from the county or the department under contract with the FQHC or RHC pursuant to paragraph (4), costs

associated with providing Drug Medi-Cal services shall not be included in the FQHC's or RHC's per-visit PPS rate. For purposes of this subdivision, the costs associated with providing Drug Medi-Cal services shall not be considered to be within the FQHC's or RHC's clinic base PPS rate if in delivering Drug Medi-Cal services the clinic uses different clinical staff at a different location.

(B) If the FQHC or RHC does not use different clinical staff at a different location to deliver Drug Medi-Cal services, the FQHC or RHC shall submit documentation, in a manner determined by the department, that the current per-visit PPS rate does not include any costs related to rendering Drug Medi-Cal services, including costs related to utilizing space in part of the FQHC's or RHC's building, that are or were previously calculated as part of the clinic's base PPS rate.

(3) If the costs associated with providing Drug Medi-Cal services are within the FQHC's or RHC's clinic base PPS rate, as determined by the department, the Drug Medi-Cal services costs shall be adjusted out of the FQHC's or RHC's per-visit PPS rate as a change in scope of service.

(A) An FQHC or RHC shall submit to the department a ~~scope-of-service~~ *scope of service* change request to adjust the FQHC's or RHC's clinic base PPS rate after the first full fiscal year of rendering Drug Medi-Cal services outside of the PPS rate. Notwithstanding subdivision (e), the ~~scope-of-service~~ *scope of service* change request shall include a full fiscal year of activity that does not include Drug Medi-Cal services costs.

(B) An FQHC or RHC may submit requests for ~~scope-of-service~~ *scope of service* change under this subdivision only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any ~~scope-of-service~~ *scope of service* change request under this subdivision approved by the department shall be retroactive to the first day that Drug Medi-Cal services were rendered and reimbursement for Drug Medi-Cal services was received outside of the PPS rate, but in no case shall the effective date be earlier than January 1, 2018.

(C) The FQHC or RHC may bill for Drug Medi-Cal services outside of the PPS rate when the FQHC or RHC obtains approval as a Drug Medi-Cal provider and enters into a contract with a county or the department to provide these services pursuant to paragraph (4).

(D) Within 90 days of receipt of the request for a ~~scope-of-service~~ *scope of service* change under this subdivision, the department shall issue the FQHC or RHC an interim rate equal to 90 percent of the FQHC's or RHC's projected allowable cost, as determined by the department. An audit to determine the final rate shall be performed in accordance with Section 14170.

(E) Rate changes based on a request for ~~scope-of-service~~ *scope of service* change under this subdivision shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(F) For purposes of recalculating the PPS rate, the FQHC or RHC shall provide upon request to the department verifiable documentation as to which employees spent time, and the actual time spent, providing federally qualified health center services or rural health center services and Drug Medi-Cal services.

(G) After the department approves the adjustment to the FQHC's or RHC's clinic base PPS rate and the FQHC or RHC is approved as a Drug Medi-Cal provider, an FQHC or RHC shall not bill the PPS rate for any Drug Medi-Cal services provided pursuant to a contract entered into with a county or the department pursuant to paragraph (4).

(H) An FQHC or RHC that reverses its election under this subdivision shall revert to its prior PPS rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with the applicable ~~scope-of-service~~ *scope of service* adjustments as provided for in subdivision (e).

(4) Reimbursement for Drug Medi-Cal services shall be determined according to subparagraph (A) or (B), depending on whether the services are provided in a county that participates in the Drug Medi-Cal organized delivery system (DMC-ODS).

(A) In a county that participates in the DMC-ODS, the FQHC or RHC shall receive reimbursement pursuant to a mutually agreed upon contract entered into between the county or county designee and the FQHC or RHC. If the county or county designee refuses to contract with the FQHC or RHC, the FQHC or RHC may follow the contract denial process set forth in the Special Terms and Conditions.

(B) In a county that does not participate in the DMC-ODS, the FQHC or RHC shall receive reimbursement pursuant to a mutually agreed upon contract entered into between the county and the FQHC or RHC. If the county refuses to contract with the FQHC or RHC, the FQHC or RHC may request to contract directly with the department and shall be reimbursed for those services at the Drug Medi-Cal fee-for-service rate.

(5) The department shall not reimburse an FQHC or RHC pursuant to subdivision (h) for the difference between its per-visit PPS rate and any payments for Drug Medi-Cal services made pursuant to this subdivision.

(6) For purposes of this subdivision, the following definitions shall apply:

(A) "Drug Medi-Cal organized delivery system" or "DMC-ODS" means the Drug Medi-Cal organized delivery system authorized under the California Medi-Cal 2020 Demonstration, Number 11-W-00193/9, as approved by the federal Centers for Medicare and Medicaid Services and described in the Special Terms and Conditions.

(B) "Special Terms and Conditions" shall have the same meaning as set forth in subdivision (o) of Section 14184.10.

~~(m)~~ (n) Reimbursement for specialty mental health services shall be provided pursuant to this subdivision.

(1) An FQHC or RHC and one or more mental health plans that contract with the department pursuant to Section 14712 may mutually elect to enter into a contract to have the FQHC or RHC provide specialty mental health services to Medi-Cal beneficiaries as part of the mental health plan's network.

(2) (A) For an FQHC or RHC to receive reimbursement for specialty mental health services pursuant to a contract entered into with the mental health plan under paragraph (1), the costs associated with providing specialty mental health services shall not be included in the FQHC's or RHC's per-visit PPS rate. For purposes of this subdivision, the costs associated with providing specialty mental health services shall not be considered to be within the FQHC's or RHC's clinic base PPS rate if in delivering specialty mental health services the clinic uses different clinical staff at a different location.

(B) If the FQHC or RHC does not use different clinical staff at a different location to deliver specialty mental health services, the FQHC or RHC shall submit documentation, in a manner determined by the department, that the current per-visit PPS rate does not include any costs related to rendering specialty mental health services, including costs related to utilizing space in part of the FQHC's or RHC's building, that are or were previously calculated as part of the clinic's base PPS rate.

(3) If the costs associated with providing specialty mental health services are within the FQHC's or RHC's clinic base PPS rate, as determined by the department, the specialty mental health services costs shall be adjusted out of the FQHC's or RHC's per-visit PPS rate as a change in scope of service.

(A) An FQHC or RHC shall submit to the department a ~~scope-of-service~~ *scope of service* change request to adjust the FQHC's or RHC's clinic base PPS rate after the first full fiscal year of rendering specialty mental health services outside of the PPS rate. Notwithstanding subdivision (e), the ~~scope-of-service~~ *scope of service* change request shall include a full fiscal year of activity that does not include specialty mental health costs.

(B) An FQHC or RHC may submit requests for a ~~scope-of-service~~ *scope of service* change under this subdivision only within 90 days following the beginning of the FQHC's or RHC's fiscal year. Any ~~scope-of-service~~ *scope of service* change request under this subdivision approved by the department shall be retroactive to the first day that specialty mental health services were rendered and reimbursement for specialty mental health services was received outside of the PPS rate, but in no case shall the effective date be earlier than January 1, 2018.

(C) The FQHC or RHC may bill for specialty mental health services outside of the PPS rate when the FQHC or RHC contracts with a mental health plan to provide these services pursuant to paragraph (1).

(D) Within 90 days of receipt of the request for a ~~scope-in-service~~ *scope of service* change under this subdivision, the department shall issue the FQHC or RHC an interim rate equal to 90 percent of the FQHC's or RHC's projected allowable cost, as determined by the department. An audit to determine the final rate shall be performed in accordance with Section 14170.

(E) Rate changes based on a request for ~~scope-of-service~~ *scope of service* change under this subdivision shall be evaluated in accordance with Medicare reasonable cost principles, as set forth in Part 413 (commencing with Section 413.1) of Title 42 of the Code of Federal Regulations, or its successor.

(F) For the purpose of recalculating the PPS rate, the FQHC or RHC shall provide upon request to the department verifiable documentation as to which employees spent time, and the actual time spent, providing federally qualified health center services or rural health center services and specialty mental health services.

(G) After the department approves the adjustment to the FQHC's or RHC's clinic base PPS rate, an FQHC or RHC shall not bill the PPS rate for any specialty mental health services that are provided pursuant to a contract entered into with a mental health plan pursuant to paragraph (1).

(H) An FQHC or RHC that reverses its election under this subdivision shall revert to its prior PPS rate, subject to an increase to account for all Medicare Economic Index increases occurring during the intervening time period, and subject to any increase or decrease associated with the applicable ~~scope-of-service~~ *scope of service* adjustments as provided for in subdivision (e).

(4) The department shall not reimburse an FQHC or RHC pursuant to subdivision (h) for the difference between its per-visit PPS rate and any payments made for specialty mental health services under this subdivision.

~~(n)~~ (o) FQHCs and RHCs may appeal a grievance or complaint concerning ratesetting, ~~scope-of-service~~ *scope of service* changes, and settlement of cost report audits, in the manner prescribed by Section 14171. The rights and remedies provided under this subdivision are cumulative to the rights and remedies available under all other provisions of law of this state.

~~(e)~~ (p) The department shall promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

~~(e)~~ (q) The department shall implement this section only to the extent that federal financial participation is available.

~~(e)~~ (r) Notwithstanding any other law, the director may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific subdivisions ~~(m)~~ (m) and ~~(n)~~ (n) by means of a provider bulletin or similar instruction. The department shall notify and consult with interested parties and appropriate stakeholders in implementing, interpreting, or making specific the provisions of subdivisions ~~(m)~~ (m) and ~~(n)~~ (n), including all of the following:

(1) Notifying provider representatives in writing of the proposed action or change. The notice shall occur, and the applicable draft provider bulletin or similar instruction, shall be made available at least 10 business days prior to the meeting described in paragraph (2).

(2) Scheduling at least one meeting with interested parties and appropriate stakeholders to discuss the proposed action or change.

(3) Allowing for written input regarding the proposed action or change, to which the department shall provide summary written responses in conjunction with the issuance of the applicable final written provider bulletin or similar instruction.

(4) Providing at least 60 days advance notice of the effective date of the proposed action or change.

MEMORANDUM

DATE	June 24, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Cherise Burns Central Services Manager
SUBJECT	Agenda Item #6(b)(4) – SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct

Background:

SB 425 would require any health care facility, or other entity that arranges for healing arts licensees to practice or provide care for patients at their institution (such as a college), to report any written allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, or the patient's representative, to the relevant state licensing agency within 15 days of receiving the written allegation. This bill would also require the relevant agency to investigate the circumstances underlying a received report. The bill would require such a report to be kept confidential and not subject to discovery or disclosure, except that it may be reviewed and disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act. Additionally, the bill would make a willful failure to file the report by a health care facility or other entity punishable by a civil fine not to exceed \$100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed \$50,000 per violation.

SB 425 adds a critical reporting tool to ensure that when allegations of sexual misconduct with a patient are made against a licensee at a licensed health facility or college it is also reported to the Board for investigation and potential discipline. This new reporting requirement is similar to reports currently required under Business and Professions Code Section 805, but with the added safeguard that adverse action against the healing arts licensee's privileges does not have to occur before the health facility/peer review body reports the allegations to the Board. This additional sexual misconduct reporting requirement for health facilities/peer review bodies and licensees working in these facilities/peer review bodies is not only warranted but is long overdue.

At the April 24-26, 2019 Board Meeting, the Board voted to Support SB 425 (Hill).

Location: Assembly Committee on Business and Professions

Status: 6/17/2019 From committee with author's amendments. Read second time and amended. Re-referred to Committee on Business and Professions.

Votes: 4/08/2019 Senate Committee on Business, Professions and Economic Development (9-0-0)
4/23/2019 Senate Committee on Judiciary (7-2-0)
5/16/2019 Senate Committee on Appropriations (4-2-0)
5/28/2019 Senate Floor (33-5-0)

Action Requested:

No action is required at this time. Staff will continue to advocate a **Support** position on SB 425 (Hill).

Attachment A: SB 425 (Hill) Assembly Business and Professions Analysis

Attachment B: SB 425 (Hill) Letter of Support to Assembly Business and Professions

Attachment C: SB 425 (Hill) Bill Text

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 425 (Hill) – As Amended June 17, 2019

NOTE: This bill is double referred and, if passed by this Committee, will be referred to the Assembly Committee on Judiciary.

SENATE VOTE: 33-5

SUBJECT: Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct

SUMMARY: Requires a health care facilities or other entity with an arrangement authorizing a licensed health care provider to provide care to report allegations of sexual abuse and sexual misconduct made against a licensed health care professional by a patient, if the patient makes the allegation in writing, to the licensee's licensing board, within 15 days of receiving the written allegation of sexual abuse or sexual misconduct; specifies various penalties for failure to report; and makes changes to the disciplinary and enforcement provisions for the Medical Board of California.

EXISTING LAW:

- 1) Establishes various practice acts that license and regulate health care professionals, which are administered by various boards within the Department of Consumer Affairs (DCA), which provide for the. (Business and Professions Code (BPC) §§ 500-4999.129)
- 2) Specifies various acts that constitute unprofessional conduct and grounds for disciplinary action for licensed health care professionals, including sexual abuse, misconduct, or relations with a patient, client, or customer. (BPC §§ 725-733)
- 3) Establishes various reporting and record keeping requirements related to the practice of licensed healthcare providers for purposes of consumer protection. (BPC §§ 800-809.9)
- 4) Requires healing arts boards to create and maintain a central file of the names of all persons who hold a license or similar authority from a board confidentially containing an individual historical record for each licensee including, among other things, disciplinary information. (BPC § 800)
- 5) Specifies that the contents of a central file that are not public records must remain confidential, except that the licensee involved, or their counsel or representative, have the right to inspect and have copies made of the licensee's complete file, other than provisions that could potentially disclose the identity of an information source. A board is authorized to protect an information source by redacting the source's identifying information or providing a comprehensive summary of the material. (BPC § 800(c))
- 6) Defines "805 report" as a written report required to be submitted following certain actions of a peer review body, as specified. (805(a)(7))

- 7) Defines “peer review body” as specified multi-member bodies that review the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, as specified. (BPC § 805(a))
- 8) Requires a peer review body and a licensed health care facility or clinic to file an “805 report” with the relevant agency within 15 days after the effective date on which specified disciplinary actions occur as a result of an action of a peer review body. (BPC § 805(b))
- 9) Makes a willful failure to file an “805 report” punishable by a fine of \$100,000 per violation, and any other failure is punishable by a fine of \$50,000. (BPC § 805(k) & (l))
- 10) Requires a licensed health care facility to file a separate report with the relevant state agency within 15 days after a peer review body makes a final decision or recommendation to take disciplinary action against a licensee that must be reported as an “805 report,” if the peer review body determines, following a formal investigation, that specified acts occurred, including, sexual misconduct with one or more patients during a course of treatment or an examination. (BPC § 805.01(b))
- 11) Makes a willful failure to make the separate report punishable by a fine of \$100,000 per violation, and any other failure is punishable by a fine of \$50,000. (BPC § 805.01(g) & (h))
- 12) Regulates the practice of medicine under the Medical Practice Act and establishes the Medical Board of California for the licensure, regulation, and discipline of physicians and surgeons. (BPC §§ 2000-2525.5)
- 13) Authorizes the Board to deny a physician’s and surgeon’s certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license and authorizes the Board in its sole discretion to issue a probationary physician’s and surgeon’s certificate to an applicant subject to terms and conditions. (BPC § 2221)
- 14) Requires the Board to take action against any licensee who is charged with unprofessional conduct and provides that unprofessional conduct includes the repeated failure by a certificate holder who is the subject of an investigation by the Board, in the absence of good cause, to attend and participate in an interview by the Board. (BPC § 2234)

THIS BILL:

- 1) Defines “agency” as the relevant state licensing agency with regulatory jurisdiction over healing arts licensees.
- 2) Defines “healing arts licensee” or “licensee” as a licensee licensed by a healing arts board under the BPC or a person authorized to practice medicine as a medical school graduate or medical school faculty, as specified.
- 3) Defines “health care facility” as a clinic or health facility licensed or exempt from licensure, as specified.
- 4) Defines “other entity” as including a postsecondary educational institution, as defined.

- 5) Defines “sexual misconduct” as inappropriate contact or communication of a sexual nature.
- 6) Defines “willful” as a voluntary and intentional violation of a known legal duty.
- 7) Requires a health care facility or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients to file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, if the patient or the patient’s representative makes the allegation in writing, to the agency within 15 days of receiving the written allegation of sexual abuse or sexual misconduct.
- 8) Specifies that an arrangement under which a licensee is allowed to practice or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.
- 9) Requires a sexual misconduct report to be kept confidential and specifies that it is not be subject to discovery, except that the information may be reviewed if the source is kept confidential or the report is summarize, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act.
- 10) Makes a willful failure to file a sexual misconduct report punishable by a fine, not to exceed \$100,000 per violation, and not to exceed \$50,000 for non-willful failures, that must be paid by the health care facility or other entity.
- 11) Specifies that non-willful failures to report must be proportional to the severity of the failure to report and must differ based upon written findings, including:
 - a) Whether the failure to file caused harm to a patient or created a risk to patient safety;
 - b) Whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a required report would not be filed;
 - c) Whether there had been a prior failure to file a required report;
 - d) Whether a report was filed with another state agency or law enforcement; and
 - e) Whether a health care facility is a small or rural hospital, as defined.
- 12) Specifies that the fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the licensee regarding whom the report was or should have been filed as follows:
 - a) If the person who is designated or otherwise required to file the report under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California.

- b) If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California.
 - c) The fine shall be paid to that agency, but not expended until appropriated by the Legislature.
- 13) Specifies that a violation of the sexual misconduct reporting requirement may constitute unprofessional conduct by a licensee, and allows a person who is alleged to have violated the assert any defense available at law.
- 14) Provides that a person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity will not incur any civil or criminal liability as a result of making a required report if made in good faith.
- 15) Requires the agency receiving a sexual misconduct report required under this bill to investigate the circumstances underlying the report.
- 16) Deletes from the requirement that healing arts boards keep disciplinary reports confidential the term “comprehensive,” allowing them to protect the identity of information sources by using summaries of the reports rather than “comprehensive summaries.”
- 17) Requires the Medical Board of California to disclose a probationary physician’s and surgeon’s certificate and the operative statement of issues to an inquiring member of the public and to post the certificate and statement on the board’s internet website for 10 years from issuance.
- 18) Deletes the condition that the failure to attend and participate in an interview by the Medical Board of California must be repeated before constituting unprofessional conduct.
- 19) Deletes an obsolete provision and makes other conforming and non-substantive changes.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- No impact to the Department of Justice.
- No or minimal costs to significant costs (low millions, special fund) across the various Boards and Bureaus under the Department of Consumer Affairs.
- The following healing arts boards identified minimal or no fiscal impact:
 - Optometry: No Impact
 - Physicians Assistants: No Impact
 - Occupational Therapy: Minimal
 - Dental Board: No Impact
 - Dental Assistants: No Impact
 - Veterinary Medicine: No Impact
 - Speech/Hearing: Minor and absorbable. No significant increase in complaints expected.
 - Chiro: Minor and absorbable.
 - Registered Nursing: Minor and absorbable. Anticipates a 1% increase in sexual abuse complaints, which is absorbable at this time.
 - Voc Nurse/Psych Tech: Minor and absorbable.

- The following healing arts boards identified a fiscal impact. However, the increase to workload is undetermined or not quantifiable:
 - Behavioral Science: Potential significant increase in complaints. Could be absorbable but may need additional resources if the increase is greater than anticipated.
 - Physical Therapy: Increase in enforcement costs and may require additional staff (Board staff, expert witnesses, investigators) if sexual misconduct complaints increase.
 - Psychology: Unknown impact. Based on current reporting, impact would be minor and absorbable, based on the assumption that the licensee and the facility would both file a complaint, and therefore the two complaints would be worked as one.
- Both the Medical Board of California and the Division of Investigations (DOI)/Investigative Enforcement Unit (IEU) reported a significant increase in workload that cannot be absorbed within existing resources and will require additional staffing and funds as a result of this bill.
 - \$3.8 million and 12.5 positions for the Medical Board.
 - \$811,000 and 4.0 Investigators and 1.0 AGPA.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, this bill “closes legal loopholes that can allow a subject of repeated sexual abuse and misconduct complaints to work at a health facility for years because the relevant regulatory board is not notified by the facility of the allegations against a licensee. Allegations of sexual abuse or misconduct by doctors and other medical professionals must be reported swiftly to the appropriate licensing board for review so that regulators can determine whether to conduct an independent, confidential investigation. State regulatory boards cannot fulfill their responsibilities to protect patients and other consumers, if they are not notified of these serious allegations involving their licensees. The failure to do so shields bad actors while exposing patients to greater risks.”

Background. Existing law establishes mandatory reporting requirements for purposes of informing regulatory licensing boards of potential consumer harms. The purpose of the requirements is to inform the boards of potential unprofessional conduct, consumer harm, and other cases that might merit disciplinary action. Mandatory reporting helps facilitate the flow of information to boards so that they may investigate potential violations. Boards may have limited resources, and consumers may not know how to file a complaint or are simply hesitant to.

Licensees subject to mandatory reporting include physicians and surgeons, doctors of podiatric medicine, clinical psychologists, marriage and family therapists, clinical social workers, professional clinical counselors, dentists, licensed midwives or physician assistants.

Types of Mandatory Reporting. There are two types of reporting requirements similar to what would be required under this bill, (1) a report based on provider practice restrictions or changes and (2) a report based on specific acts. Both are separate reports that must be made by health facilities to a licensing agency and are triggered during a process called “peer review.”

Peer review is a process by which a body of health care practitioners evaluate their colleagues' work to determine compliance with the standard of care. Peer review aims to protect patients from incompetent or unprofessional practitioners. It can be proactive or reactive. In general, peer review is triggered by behavior that suggests patients or coworkers may be at risk, including patient injury, disruptive conduct, substance abuse, or other medical staff complaints. Once a

complaint is received, a peer review committee investigates the allegation, comes to a decision regarding the licensee's conduct, makes a recommendation, and, if necessary, takes remedial actions.

The practice restriction report, called an "805 report," is triggered when, based on the medical disciplinary findings of a peer review body, a licensee's application for staff privileges or membership is denied, the licensee's staff privileges or employment are terminated or revoked, or the licensee's staff privileges, membership, or employment are mandatorily or voluntarily restricted for 30-days or more for any 12-month period.

The specific acts report is triggered when a peer review body makes a final decision or recommendation to take disciplinary action if, after a formal investigation, the peer review body determines that any of the following may have occurred:

- 1) Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients in such a manner as to be dangerous or injurious to any person or the public;
- 2) The use of, or prescribing for or administering to him/herself, any controlled substance; or the use of any dangerous drug, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licentiate, or any other persons, or the public, or to the extent that such use impairs the ability of the licentiate to practice safely;
- 3) Repeated acts of clearly excessive prescribing, furnishing or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor; or
- 4) Sexual misconduct with one or more patients during a course of treatment or an examination.

This bill would establish a reporting requirement similar to those two. It also mirrors the 15-day timeline, the \$50,000-\$100,000 penalties. The difference would be the trigger. Under this bill, the required reports would be triggered upon receipt of a written allegation of sexual abuse or sexual misconduct instead of actions by a peer review body.

Contracting Entities. In 2018, the L.A. Times published a report on an investigation into allegations of sexual abuse by Dr. George Tyndall, who worked as a gynecologist for over 30 years at USC's student health facility. USC has agreed to pay \$215 million to former patients in a proposed settlement.

The student health center was organized under USC's university operations, rather than as an extension of its hospitals and medical schools. Complaints against Dr. Tyndall were treated as an employment matter and followed an investigation process that did not include peer review, given that the student health center did not have a peer review body. The Medical Board of California was not made aware of action taken against Dr. Tyndall by USC through one of the existing mandatory reporting requirements.

In light of cases like this, this bill seeks to include schools and other entities that contract with healthcare providers but are not technically health facilities.

ARGUMENTS IN SUPPORT:

Consumer Attorneys of California (CAOC) writes in support, this bill will “continue the important work of protecting vulnerable populations from individuals who abuse positions of trust.”

Consumer Watchdog writes in support, “the failure to investigate multiple, credible allegations of sexual misconduct placed thousands of additional patients in harm’s way...[this bill] will help ensure patient complaints are treated seriously and investigated with the alacrity they deserve.”

The *University of California* writes in support, this bill “will clarify reporting obligations across our system. We commend this effort to ensure consumer protection is at the heart of California’s licensing laws.”

ARGUMENTS IN OPPOSITION:

None on file

AMENDMENTS:

- 1) Because the reports required under this bill have been amended to only include mandatory reports, the author should amend the bill to delete the condition that the reports be made in “good faith”:

Page 8, lines 1-2, delete “section if made in good faith.” and insert “section.”:

(f) A person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity shall not incur any civil or criminal liability as a result of making a report required by this ~~section if made in good faith.~~ *section.*

REGISTERED SUPPORT:

Board of Chiropractic Examiners
Board of Psychology
California Acupuncture Board
Consumer Attorneys of California
Consumer Watchdog
Medical Board of California
University of California

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

June 19, 2019

The Honorable Evan Low
Chair, Assembly Committee on Business and Professions
State Capitol, Legislative Office Building, Room 379
Sacramento, CA 95814

RE: SB 425 (Hill) – Health care practitioners: licensee’s file: probationary physician’s and surgeon’s certificate: unprofessional conduct - SUPPORT

Dear Assembly Member Low:

At its April 26, 2019 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on SB 425 (Hill). This bill would require hospitals, clinics and other health facilities, to report written allegations of patient sexual abuse and other sexual misconduct by healing arts professionals to the appropriate state licensing authorities within 15 days. As this bill would also make changes to Medical Board of California’s (MBC) authority and operations that are unrelated to this Board’s purview, the Board is silent on those provisions of the bill.

SB 425 (Hill) adds a critical reporting tool to ensure that when written allegations of sexual misconduct with a patient are made against a licensee at a licensed health facility, it is also reported to the Board for investigation and potential discipline. This new reporting requirement is similar to reports currently required under Business and Professions Code Section 805, but with the added safeguard that adverse action against the healing arts licensee’s privileges does not have to occur before the health facility/peer review body reports the allegations to the Board. The Board of Psychology believes that the additional sexual misconduct reporting requirements in SB 425 (Hill) is not only warranted but is long overdue.

For these reasons, the Board asks for your support of SB 425 (Hill) when it is heard in the Assembly Committee on Business and Professions. If you have any questions or concerns, please feel free to contact the Board’s Central Services Manager, Cherise Burns, at (916) 574-7227.

Sincerely,



STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Member William P. Brough (Vice Chair)
Members of the Assembly Committee on Business and Professions
Senator Jerry Hill
Consultant, Assembly Committee on Business and Professions
Consultant, Assembly Republican Caucus

Agenda Item 6(b)(4)

SB 425 - (A) Amends the Law

SECTION 1.

Section 800 of the Business and Professions Code is amended to read:

800.

(a) The Medical Board of California, the ~~California- Podiatric Medical~~ Board of ~~Pediatric Medicine-~~ ~~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, and the Physician Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or ~~his or her-~~ ~~the licensee's~~ insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licensee pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

(2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or ~~his or her~~ *the licensee's* counsel or representative, ~~shall have the right to~~ *may* inspect and have copies made of ~~his or her~~ *the licensee's* complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a ~~comprehensive~~ summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

(2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

(3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

(4) These disclosures shall effect no change in the confidential status of these records.

SEC. 2.

Section 805.8 is added to the Business and Professions Code, to read:

805.8.

(a) As used in this section, the following terms shall have the following meanings:

(1) "Agency" means the relevant state licensing agency with regulatory jurisdiction over a healing arts licensee listed in paragraph (2).

(2) "Healing arts licensee" or "licensee" means a licensee licensed under Division 2 (commencing with Section 500) or any initiative act referred to in that division. "Healing arts licensee" or "licensee" also includes a person authorized to practice medicine pursuant to Sections 2064.5, 2113, and 2168.

(3) "Health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(4) "Other entity" includes, but is not limited to, a postsecondary educational institution as defined in Section 66261.5 of the Education Code.

(5) "Sexual misconduct" means inappropriate contact or communication of a sexual nature.

(b) A health care facility or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients shall file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, if the patient or the patient's representative makes the allegation in writing, to the agency within 15 days of receiving the written allegation of sexual abuse or sexual misconduct. An arrangement under which a licensee is allowed to practice or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(c) The report provided pursuant to subdivision (b) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided subdivision in (c) of Section 800 and

may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) A willful failure to file the report described in subdivision (b) shall be punishable by a fine, not to exceed one hundred thousand dollars (\$100,000) per violation, that shall be paid by the health care facility or other entity subject to subdivision (b). The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the licensee regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licensee. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(e) Except as provided in subdivision (c), any failure to file the report described in subdivision (b) shall be punishable by a fine, not to exceed fifty thousand dollars (\$50,000) per violation, that shall be paid by the health care facility or other entity subject to subdivision (b). The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report required under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required under this section would not be filed; whether there has been a prior failure to file a report required under this section; and whether a report was filed with another state agency or law enforcement. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(f) A person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity shall not incur any civil or criminal liability as a result of making a report required by this section if made in good faith.

(g) The agency shall investigate the circumstances underlying a report received pursuant to this section.

SEC. 3.

Section 2221 of the Business and Professions Code is amended to read:

2221.

(a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of ~~his or her~~ *their* license. The ~~board~~ *board*, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

(b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of ~~his or her~~ *their* application, except that the ~~board~~ *may*, ~~board~~, in its discretion and for good cause demonstrated, *may* permit reapplication after not less than one year has elapsed from the effective date of the denial.

(e) The board shall disclose a probationary physician's and surgeon's certificate issued pursuant to this section and the operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.

SEC. 4.

Section 2234 of the Business and Professions Code is amended to read:

2234.

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

~~(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.~~

~~(h)~~ (g) The ~~repeated~~ failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.

MEMORANDUM

DATE	June 24, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #6(c) – Review of Bills with Watch Status

Background:

The enclosed matrix lists the legislative bills the Board of Psychology watched during the 2019 legislative session, this matrix references the status and location of the bills to date.

Information on bills in the matrix can be found at: <http://leginfo.legislature.ca.gov>.

Action Requested:

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

Watch Bill Status Report
Tuesday, May 21, 2019

Watch

[AB 5](#) ([Gonzalez D](#)) Worker status: employees and independent contractors.

Current Text: Amended: 5/1/2019 [html](#) [pdf](#)

Last Amend: 5/1/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes. This bill would state the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill would provide that the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code and the Unemployment Insurance Code, unless another definition or specification of “employee” is provided. The bill would codify existing exemptions for specified professions that are not subject to wage orders of the Industrial Welfare Commission or the ruling in the *Dynamex* case. Because this bill would expand the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that these changes do not constitute a change in, but are declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned

[AB 8](#) ([Chu D](#)) Pupil health: mental health professionals.

Current Text: Amended: 5/16/2019 [html](#) [pdf](#)

Last Amend: 5/16/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: (1)Existing law requires the governing board of a school district to give diligent

care to the health and physical development of pupils and authorizes the governing board of a school district to employ properly certified persons for the work. Existing law requires a school of a school district or county office of education and a charter school to notify pupils and parents or guardians of pupils no less than twice during the school year on how to initiate access to available pupil mental health services on campus or in the community, or both, as provided. Existing law requires, subject to sufficient funds being provided, the State Department of Education, in consultation with the State Department of Health Care Services and appropriate stakeholders, to, on or before July 1, 2020, develop guidelines for the use of telehealth technology in public schools, including charter schools, to provide mental health and behavioral health services to pupils on school campuses. This bill would require, on or before December 31, 2024, a school of a school district or county office of education and a charter school to have at least one mental health professional, as defined, for every 600 pupils generally accessible to pupils on campus during school hours. The bill would require, on or before December 31, 2024, a school of a school district or county office of education and a charter school with fewer than 600 pupils to have at least one mental health professional generally accessible to pupils on campus during school hours, to employ at least one mental health professional to serve multiple schools, or to enter into a memorandum of understanding with a county agency or community-based organization for at least one mental health professional employed by the agency or organization to provide services to pupils. The bill would encourage a school subject to the bill's provisions with pupils who are eligible to receive Medi-Cal benefits to seek reimbursement for costs of implementing the bill's provisions, as specified. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[AB 166](#)

([Gabriel D](#)) Medi-Cal: violence preventive services.

Current Text: Amended: 4/30/2019 [html](#) [pdf](#)

Last Amend: 4/30/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes a schedule of benefits under the Medi-Cal program, including various mental health services. Existing federal law authorizes, at the option of the state, preventive services, as defined, that are recommended by a physician or other licensed practitioner of the healing arts. This bill would, no later than July 1, 2020, make violence preventive services provided by a qualified violence prevention professional, as defined, a covered benefit within the Medi-Cal fee-for-service and managed care delivery systems, subject to utilization controls. The bill would make the benefit available to a Medi-Cal beneficiary who has received medical treatment for a violent injury and for whom a licensed health care provider has determined that the beneficiary is at elevated risk of violent reinjury or retaliation and has referred the beneficiary to participate in a violence preventive services program. This bill contains other related provisions.

Position
Watch

Assigned

[AB 189](#)

([Kamlager-Dove](#) D) Child abuse or neglect: mandated reporters: autism service personnel.

Current Text: Amended: 5/7/2019 [html](#) [pdf](#)

Last Amend: 5/7/2019

Status: 5/7/2019-From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.

Location: 4/24/2019-S. PUB. S.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever they, in their professional capacity or within the scope of their employment, have knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor punishable by up to 6 months of confinement in a county jail, by a fine of \$1,000, or by both that imprisonment and fine. This bill would add qualified autism service providers, qualified autism service professionals, and qualified autism service paraprofessionals, as defined, to the list of individuals who are mandated reporters. By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned

[AB 241](#)

([Kamlager-Dove](#) D) Implicit bias: continuing education: requirements.

Current Text: Amended: 4/30/2019 [html](#) [pdf](#)

Last Amend: 4/30/2019

Status: 5/14/2019-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 5/14/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

Summary: Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under the act, a physician and surgeon is required to demonstrate satisfaction of continuing education requirements, including cultural and linguistic competency in the practice of medicine, as specified. This bill, by January 1, 2022, would require all continuing education courses for a physician and surgeon to contain curriculum that includes specified instruction in the understanding of implicit bias in medical treatment. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned

[AB 289](#)

([Fong R](#)) California Public Records Act Ombudsperson.

Current Text: Amended: 4/24/2019 [html](#) [pdf](#)

Last Amend: 4/24/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. The act declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. This bill would establish, within the California State Auditor’s Office, the California Public Records Act Ombudsperson. The bill would require the California State Auditor to appoint the ombudsperson subject to certain requirements. The bill would require the ombudsperson to receive and investigate requests for review, as defined, determine whether the denials of original requests, as defined, complied with the California Public Records Act, and issue written opinions of its determination, as provided. The bill would require the ombudsperson to create a process to that effect, and would authorize a member of the public to submit a request for review to the ombudsperson consistent with that process. The bill would require the ombudsperson, within 30 days from receipt of a request for review, to make a determination, as provided, and would require the ombudsperson to require the state agency to provide the public record if the ombudsperson determines that it was improperly denied. The bill would authorize the ombudsperson to require any state agency determined to have improperly denied a request to reimburse the ombudsperson for its costs to investigate the request for review. The bill would require the ombudsperson to report to the Legislature, on or before January 1, 2021, and annually thereafter, on, among other things, the number of requests for review the ombudsperson has received in the prior year. By expanding the duties of the California State Auditor’s Office, this bill would create an appropriation. This bill contains other existing laws.

Position
Watch

Assigned

[AB 469](#)

([Petrie-Norris D](#)) State records management: records management coordinator.

Current Text: Introduced: 2/11/2019 [html](#) [pdf](#)

Status: 5/8/2019-Referred to Com. on G.O.

Location: 5/8/2019-S. G.O.

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law, the State Records Management Act, requires the Secretary of State to establish and administer a records management program that will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records. The act requires the Secretary of State, as part of those duties, to obtain from agencies the reports required for administration of the records management program. This bill would require the Secretary of State to obtain those reports from agencies on a biennial basis, and would require the Secretary of State to

report statewide compliance with the act to the Department of Finance on an annual basis. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[AB 476](#)

([Rubio, Blanca](#) D) Department of Consumer Affairs: task force: foreign-trained professionals.

Current Text: Introduced: 2/12/2019 [html](#) [pdf](#)

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law establishes the Bagley-Keene Open Meeting Act, which requires state boards, commissions, and similar state-created multimember bodies to give public notice of meetings and conduct their meetings in public unless authorized to meet in closed session. This bill, the California Opportunity Act of 2019, would require the Department of Consumer Affairs to create a task force, as specified, to study and write a report of its findings and recommendations regarding the licensing of foreign-trained professionals with the goal of integrating foreign-trained professionals into the state's workforce, as specified. The bill would authorize the task force to hold hearings and invite testimony from experts and the public to gather information. The bill would require the task force to submit the report to the Legislature no later than January 1, 2021, as specified. This bill contains other related provisions.

Position Assigned
Watch

[AB 496](#)

([Low](#) D) Business and professions.

Current Text: Amended: 5/6/2019 [html](#) [pdf](#)

Last Amend: 5/6/2019

Status: 5/14/2019-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 5/14/2019-S. RLS.

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Under existing law, the Department of Consumer Affairs, which is under the control of the director of the Director of Consumer Affairs, is comprised of various boards, as defined, that license and regulate various professions and vocations. With respect to the Department of Consumer Affairs, existing law provides that the Governor has power to remove from office any member of any board appointed by the Governor for specified reasons, including incompetence. This bill would instead provide that the appointing authority has power to remove a board member from office for those specified reasons. This bill contains other related provisions and other existing laws.

Position Assigned

Watch

[AB 512](#)

([Ting](#) D) Medi-Cal: specialty mental health services.

Current Text: Amended: 5/16/2019 [html](#) [pdf](#)

Last Amend: 5/16/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law requires the department to implement managed mental health care for Medi-Cal beneficiaries through contracts with mental health plans, and requires mental health plans to be governed by various guidelines, including a requirement that a mental health plan assess the cultural competency needs of the program. Existing law requires mental health plan reviews to be conducted by an external quality review organization (EQRO) on an annual basis, and requires those reviews to include specific data for Medi-Cal eligible minor and nonminor dependents in foster care, such as the number of Medi-Cal eligible minor and nonminor dependents in foster care served each year. This bill would require each mental health plan to prepare a cultural competency assessment plan to address specified matters, including disparities in access, utilization, and outcomes by various categories, such as race, ethnicity, and immigration status. The bill would require a mental health plan to convene a committee for the purpose of reviewing and approving the cultural competency assessment plan, to annually update its cultural competency plan and progress, to post this material on its internet website, and to submit its cultural competency assessment plan to the department every 3 years for technical assistance and implementation feedback. The bill would require the department to develop at least 8 statewide disparities reduction targets, to post the cultural competency assessment plan submitted by each mental health plan to its internet website, and to consult with the Office of Health Equity and the office of the state Surgeon General to review and implement county assessments and statewide performance on disparities reductions. The bill would require the department to direct the EQRO to develop a protocol for monitoring performance of each mental health plan, and to report on statewide disparities reduction targets and statewide progress related to the disparities reduction targets. The bill would require the mental health plan to meet specified disparities reduction targets or make year-over-year improvements toward meeting the targets.

Position
Watch

Assigned

[AB 535](#)

([Brough](#) R) Personal income taxes: credit: professional license fees.

Current Text: Amended: 4/8/2019 [html](#) [pdf](#)

Last Amend: 4/8/2019

Status: 4/29/2019-In committee: Set, first hearing. Hearing canceled at the request of author.

Location: 3/21/2019-A. REV. & TAX

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
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1st House	2nd House	Conc			
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Summary: The Personal Income Tax Law allows various credits against the taxes imposed by that law. Existing law requires any bill authorizing a new tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements. This bill would allow a credit against those taxes for each taxable year beginning on or after January 1, 2020, and before January 1, 2025, in an amount equal to the cost paid or incurred during the taxable year for an initial professional license fee. The bill also would include additional information required for any bill authorizing a new income tax credit. This bill contains other related provisions.

Position Watch Assigned

[AB 536](#)

([Frazier](#) D) Developmental services.

Current Text: Introduced: 2/13/2019 [html](#) [pdf](#)

Status: 5/16/2019-Joint Rule 62(a), file notice suspended. Joint Rule 62(a), file notice suspended. In committee: Held under submission.

Location: 5/15/2019-A. APPR. SUSPENSE FILE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families, and requires regional centers to identify and pursue all possible sources of funding for consumers receiving those services. Existing law defines a “developmental disability” as a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for the individual. This bill would modify that definition to mean a disability that originates before an individual attains 22 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for the individual. The bill would make various technical and nonsubstantive changes.

Position Watch Assigned

[AB 565](#)

([Maienschein](#) D) Public health workforce planning: loan forgiveness, loan repayment, and scholarship programs.

Current Text: Amended: 3/28/2019 [html](#) [pdf](#)

Last Amend: 3/28/2019

Status: 5/8/2019-Referred to Com. on HEALTH.

Location: 5/8/2019-S. HEALTH

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law establishes the Steven M. Thompson Physician Corps Loan

Repayment Program (program) in the California Physician Corps Program within the Health Professions Education Foundation, which provides financial incentives, including repayment of educational loans, to a physician and surgeon who practices in a medically underserved area, as defined. Existing law establishes the Medically Underserved Account for Physicians, a continuously appropriated account, within the Health Professions Education Fund, to primarily provide funding for the ongoing operations of the program. This bill also would define “practice setting” to include a program or facility operated by, or contracted to, a county mental health plan. By expanding the group of persons eligible for financial incentives payable from a continuously appropriated fund, this bill would make an appropriation. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[AB 577](#)

([Eggman](#) D) Health care coverage: postpartum period.

Current Text: Amended: 5/17/2019 [html](#) [pdf](#)

Last Amend: 5/17/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes the Medi-Cal Access Program, which provides health care services to a woman who is pregnant or in her postpartum period and whose household income is within specified thresholds of the federal poverty level, and to a child under 2 years of age who is delivered by a mother enrolled in the program, as specified. Under this bill, if the above-described individual has a household income below 138% of the federal poverty level, continues to reside in the state, and would otherwise not be eligible for full-scope Medi-Cal coverage, the individual would remain eligible for coverage under the Medi-Cal program for up to one year beginning on the last day of the pregnancy. This bill would, for the above-described individual, or an individual under the Medi-Cal Access Program, who is disenrolling from coverage after the 60-day period, require the department to assist the individual in applying for and purchasing a qualified health plan in the California Health Benefit Exchange, also known as Covered California, if the individual is eligible for that coverage. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan and a health insurer, at the request of an enrollee or insured, to provide for the completion of services by a terminated or nonparticipating provider if the enrollee or insured is undergoing a course of treatment for one of specified conditions, including a serious chronic condition, at the time of the contract or policy termination or the time the coverage became effective. This bill would, for purposes of an individual who presents written documentation of being diagnosed with a maternal mental health condition, as defined, from the individual’s treating health care provider, require completion of covered services for that condition, not exceeding 12 months, as specified. By expanding the duties of health care service plans, the bill would expand the scope of an existing crime, thereby imposing a state-mandated

local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason. This bill contains other existing laws.

Position Assigned
Watch

[AB 613](#)

([Low](#) D) Professions and vocations: regulatory fees.

Current Text: Introduced: 2/14/2019 [html](#) [pdf](#)

Status: 5/8/2019-Referred to Com. on B., P. & E.D.

Location: 5/8/2019-S. B., P. & E.D.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Veto	Chapter
1st House				2nd House				Conc			

Summary: Existing law establishes the Department of Consumer Affairs, which is comprised of boards that are established for the purpose of regulating various professions and vocations, and generally authorizes a board to charge fees for the reasonable regulatory cost of administering the regulatory program for the profession or vocation. Existing law establishes the Professions and Vocations Fund in the State Treasury, which consists of specified special funds and accounts, some of which are continuously appropriated. This bill would authorize each board within the department to increase every 4 years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding 4 years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

Position Assigned
Watch

[AB 630](#)

([Arambula](#) D) Board of Behavioral Sciences: marriage and family therapists: clinical social workers: educational psychologists: professional clinical counselors: required notice.

Current Text: Amended: 3/28/2019 [html](#) [pdf](#)

Last Amend: 3/28/2019

Status: 5/8/2019-Referred to Com. on B., P. & E.D.

Location: 5/8/2019-S. B., P. & E.D.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Veto	Chapter
1st House				2nd House				Conc			

Summary: Existing law provides for the licensure and regulation of marriage and family therapists, educational psychologists, clinical social workers, and professional clinical counselors by the Board of Behavioral Sciences, which is within the Department of Consumer Affairs. A violation of these provisions is a crime. This bill, commencing July 1, 2020, would require those licensees and registrants, prior to initiating specified services, to provide a client with a specified written notice that the board receives and responds to complaints regarding services within the scope of the licensed practice and that the client

may contact the board. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[AB 744](#) ([Aguiar-Curry D](#)) Health care coverage: telehealth.
Current Text: Amended: 5/16/2019 [html](#) [pdf](#)
Last Amend: 5/16/2019
Status: 5/20/2019-Read second time. Ordered to third reading.
Location: 5/20/2019-A. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Under existing law, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teleophthalmology, teledermatology, and teledentistry by store and forward. Existing law requires a Medi-Cal patient receiving teleophthalmology, teledermatology, or teledentistry by store and forward to be notified of the right to receive interactive communication with a distant specialist physician, optometrist, or dentist, and authorizes a patient to request that interactive communication. This bill would delete those interactive communication provisions. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[AB 770](#) ([Garcia, Eduardo D](#)) Medi-Cal: federally qualified health clinics: rural health clinics.
Current Text: Amended: 5/2/2019 [html](#) [pdf](#)
Last Amend: 5/2/2019
Status: 5/16/2019-Joint Rule 62(a), file notice suspended. In committee: Held under submission.
Location: 5/15/2019-A. APPR. SUSPENSE FILE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law provides that federally qualified health center (FQHC) services and rural health clinic (RHC) services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, in accordance with Medicare reasonable cost principles, and to the extent that federal financial participation is obtained, to providers on a per-visit basis that is unique to each facility. Existing law prescribes the reimbursement rate methodology for establishing and adjusting the per-visit rate. Under existing law, if an FQHC or RHC is partially reimbursed by a 3rd-party payer, such as a managed care entity, the department is required to reimburse the FQHC or RHC for the difference between its per-visit rate programs on a contract-by-contract basis. Existing law

authorizes an FQHC or RHC to apply for an adjustment to its rate based on a change in the scope of service that it provides within 150 days following the beginning of the FQHC's or RHC's fiscal year. Existing law provides that the department's implementation of FQHC and RHC services is subject to federal approval and the availability of federal financial participation. This bill would require the methodology of the adjusted per-visit rate to exclude, among other things, a provider productivity standard. The bill would authorize an FQHC or RHC to apply for a rate adjustment for the adoption, implementation, or upgrade of a certified electronic health record system as a change in the scope of service. The bill would clarify specified terms, including the meaning of "scope of service," would expand the meaning of "visit" to include FQHC and RHC services rendered outside of the facility location, and would modify how the department reimburses an FQHC or RHC that is partially reimbursed by a 3rd-party payer. The bill would require a health care provider who contracts with an FQHC or RHC to provide services outside of the facility on behalf of the facility, and for which the facility bills for those services, to comply with specified requirements, including actively serving patients in the same county as, or a county adjacent to, the physical location of the billing FQHC or RHC. The bill would repeal the provisions authorizing an FQHC or RHC to apply for an adjustment to its rate based on a change in the scope of service that it provides within 150 days following the beginning of the FQHC's or RHC's fiscal year, and would instead extend the time frame for an FQHC or RHC to file a scope of service rate change to any time during the fiscal year. The bill would require the department to ensure that department staff conducting audits related to FQHC and RHC services receive appropriate training on federal and state laws governing those facilities, and would make various conforming and technical changes.

Position Assigned
Watch

[AB 798](#)

([Cervantes](#) D) Maternal mental health.

Current Text: Amended: 4/9/2019 [html](#) [pdf](#)

Last Amend: 4/9/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law requires the State Department of Public Health within the California Health and Human Services Agency to develop and maintain a statewide community-based comprehensive perinatal services program to, among other things, ensure the appropriate level of maternal, newborn, and pediatric care services necessary to provide the healthiest outcomes for mothers and infants. Existing law also requires the department, until January 1, 2023, to investigate and apply for federal funding opportunities to support maternal mental health. This bill would declare the intent of the Legislature to address the shortage of treatment options for women suffering from maternal mental health disorders, including postpartum depression and anxiety disorders. This bill would create a pilot program, in counties that elect to participate, designed to increase the capacity of health care providers that serve pregnant and postpartum women up to one year after delivery to effectively prevent, identify, and manage postpartum depression and other mental health conditions. The pilot program would be privately funded. The bill would require the California Health and Human Services Agency to submit a report to the Legislature regarding the pilot program 6 months after the results of the pilot program are reported, as specified. The bill would repeal these provisions on January 1, 2025. This bill contains other existing laws.

Position
Watch

Assigned

[AB 895](#)

([Muratsuchi](#) D) Pupil Mental Health Services Program Act.

Current Text: Amended: 4/8/2019 [html](#) [pdf](#)

Last Amend: 4/8/2019

Status: 4/9/2019-Re-referred to Com. on ED.

Location: 3/4/2019-A. ED.

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law, the School-Based Early Mental Health Intervention and Prevention Services for Children Act of 1991, authorizes the Director of Health Care Services, in consultation with the Superintendent of Public Instruction, to provide matching grants to local educational agencies to pay the state share of the costs of providing school-based early mental health intervention and prevention services to eligible pupils at schoolsites of eligible pupils, subject to the availability of funding each year. This bill would enact a similar program to be known as the Pupil Mental Health Services Program Act. The act would authorize the State Department of Education, in consultation with the Superintendent, beginning with grants for the 2020–21 school year and subject to the availability of funding each year, to award matching grants to local educational agencies, as defined, throughout the state for programs that provide supportive services, defined to mean services that enhance the mental health and social-emotional development of pupils, to eligible pupils at schoolsites. The act would award matching grants for a period of not more than 3 years and would prohibit a single schoolsite from being awarded more than one grant. For these purposes, an eligible pupil would be defined as a pupil who attends kindergarten, including transitional kindergarten, or any of grades 1 to 12, inclusive, at a local educational agency. The bill would prescribe the procedure for a local educational agency to apply for a matching grant. The bill would also prohibit more than 10% of the moneys allocated to the department for these purposes from being used for program administration and evaluation. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned

[AB 1058](#)

([Salas](#) D) Medi-Cal: specialty mental health services and substance use disorder treatment.

Current Text: Amended: 4/22/2019 [html](#) [pdf](#)

Last Amend: 4/22/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law provides for various benefits under the

Medi-Cal program, including substance use disorder treatment and mental health services that are delivered through the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services Program. This bill would require the department to engage, commencing no later than January 15, 2020, in a stakeholder process to develop recommendations for addressing legal and administrative barriers to the delivery of integrated behavioral health services for Medi-Cal beneficiaries with cooccurring substance use disorders and mental health conditions who access services through the Drug Medi-Cal Treatment Program, the Drug Medi-Cal organized delivery system, and the Medi-Cal Specialty Mental Health Services Program. The bill would require the stakeholder group to include specified individuals, such as behavioral health subject-matter experts and representatives from county behavioral health departments, and would require the stakeholder group to complete various tasks, including reviewing departmental policies and procedures on the department's implementation and operation of administrative and oversight responsibilities for the 3 programs and reporting recommendations to the Legislature by September 15, 2020. The bill would repeal these provisions on January 1, 2021.

Position Assigned
Watch

[AB 1184](#) ([Gloria D](#)) Public records: writing transmitted by electronic mail: retention.
Current Text: Amended: 5/16/2019 [html](#) [pdf](#)
Last Amend: 5/16/2019
Status: 5/20/2019-Read second time. Ordered to third reading.
Location: 5/20/2019-A. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: The California Public Records Act requires a public agency, defined to mean any state or local agency, to make public records available for inspection, subject to certain exceptions. Existing law specifies that public records include any writing containing information relating to the conduct of the public's business, including writing transmitted by electronic mail. The act requires any agency that has any information that constitutes a public record not exempt from disclosure, to make that public record available in accordance with certain provisions and authorizes every agency to adopt regulations stating the procedures to be followed when making its records available, if the regulations are consistent with those provisions. Existing law authorizes cities, counties, and special districts to destroy or to dispose of duplicate records that are less than two years old when they are no longer required by the city, county, or special district, as specified. This bill would, unless a longer retention period is required by statute or regulation, require a public agency for purposes of the California Public Records Act to retain and preserve for at least 2 years every writing containing information relating to the conduct of the public's business prepared, owned, or used by any public agency that is transmitted by electronic mail. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[AB 1601](#) ([Ramos D](#)) Office of Emergency Services: behavioral health response.
Current Text: Introduced: 2/22/2019 [html](#) [pdf](#)

Status: 5/16/2019-In committee: Held under submission.

Location: 4/24/2019-A. APPR. SUSPENSE FILE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: The California Emergency Services Act establishes the Office of Emergency Services within the Governor's office under the supervision of the Director of Emergency Services and makes the office responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies. Existing law authorizes the Governor, or the director when the governor is inaccessible, to proclaim a state of emergency under specified circumstances. This bill would establish a behavioral health deputy director within the Office of Emergency Services to ensure individuals have access to necessary mental and behavioral health services and supports in the aftermath of a natural disaster or declaration of a state of emergency and would require the deputy director to collaborate with the Director of Health Care Services to coordinate the delivery of trauma-related support to individuals affected by a natural disaster or state of emergency. The bill would require the Director of Health Care Services, in collaboration with the Office of Emergency Services, to immediately request necessary federal waivers to ensure the provision of healthcare services, as specified, during a natural disaster or declared state of emergency.

Position
Watch

Assigned

[SB 163](#)

([Portantino](#) D) Health care coverage: pervasive developmental disorder or autism.

Current Text: Amended: 5/17/2019 [html](#) [pdf](#)

Last Amend: 5/17/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-S. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families. Existing law defines developmental disability for these purposes to include, among other things, autism. This bill would revise the definition of behavioral health treatment to require the services and treatment programs provided to be based on behavioral, developmental, relationship-based, or other evidence-based models. The bill would remove the exception for health care service plans and health insurance policies in the Medi-Cal program, consistent with the MHPAEA. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned

[SB 181](#)

([Chang](#) R) Healing arts boards.

Current Text: Introduced: 1/28/2019 [html](#) [pdf](#)

Status: 2/6/2019-Referred to Com. on RLS.

Location: 1/28/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law creates various regulatory boards within the Department of Consumer Affairs. Existing law authorizes health-related boards to adopt regulations requiring licensees to display their licenses in the locality in which they are treating patients and to make specified disclosures to patients. This bill would make nonsubstantive changes to that license display and disclosure provision.

Position Assigned
Watch

[SB 331](#)

([Hurtado](#) D) Suicide prevention: strategic plans.

Current Text: Amended: 5/17/2019 [html](#) [pdf](#)

Last Amend: 5/17/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-S. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law, the California Suicide Prevention Act of 2000, authorizes the State Department of Health Care Services to establish and implement a suicide prevention, education, and gatekeeper training program to reduce the severity, duration, and incidence of suicidal behaviors. This bill would require counties to create and implement, and update every 3 years, a suicide-prevention strategic plan that places particular emphasis on preventing suicide in children who are less than 19 years of age and includes specified components, including long-term suicide-prevention goals and the selection or development of interventions to be used to prevent suicide. The bill would require counties, as part of the planning process to, among other things, provide recommendations to individuals and organizations working with youth on early intervention, implementation of crisis management systems, and addressing suicide risk for vulnerable populations. The bill would make these provisions inapplicable to a county that had a suicide-prevention strategic plan on January 1, 2020, that meets these requirements. By creating a new duty for counties, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[SB 546](#)

([Hueso](#) D) Unlicensed activity.

Current Text: Introduced: 2/22/2019 [html](#) [pdf](#)

Status: 3/7/2019-Referred to Com. on RLS.

Location: 2/22/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Existing law establishes the Department of Consumer Affairs and requires boards within the department to license and regulate various professions and vocations. Under existing law, the Legislature finds and declares that unlicensed activity in the professions and vocations regulated by the department is a threat to the health, welfare, and safety of the people of the State of California. This bill would make a nonsubstantive change to that provision.

Position Assigned
Watch

[SB 601](#)

([Morrell R](#)) State agencies: licenses: fee waiver.

Current Text: Amended: 3/28/2019 [html](#) [pdf](#)

Last Amend: 3/28/2019

Status: 5/16/2019-Read third time. Passed. (Ayes 37. Noes 0.) Ordered to the Assembly. In Assembly. Read first time. Held at Desk.

Location: 5/16/2019-A. DESK

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf Conc	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law requires various licenses to be obtained by a person before engaging in certain professions or vocations or business activities, including licensure as a healing arts professional by various boards within the Department of Consumer Affairs. This bill would authorize any state agency that issues any business license to reduce or waive any required fees for licensure, renewal of licensure, or the replacement of a physical license for display if a person or business establishes to the satisfaction of the state agency that the person or business has been displaced or affected by a declared federal emergency or proclaimed state emergency, as defined.

Position Assigned
Watch

[SB 639](#)

([Mitchell D](#)) Medical services: credit or loan.

Current Text: Amended: 4/11/2019 [html](#) [pdf](#)

Last Amend: 4/11/2019

Status: 5/20/2019-Read third time. Passed. (Ayes 27. Noes 10.) Ordered to the Assembly. In Assembly. Read first time. Held at Desk.

Location: 5/20/2019-A. DESK

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf Conc	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law prohibits a healing arts licensee, as defined, or an employee or agent of that licensee from charging treatment or costs to an open-end credit or loan extended by a third party that is arranged for or established in the licensee's office before the date on which the treatment is rendered or costs are incurred without first providing a specified written treatment plan, a specified written or electronic notice, and a specified list of which treatment and services are being charged. Existing law prohibits a licensee, or the licensee's employee or agent, from arranging for or establishing credit or a loan that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide. Existing law provides that a

person who willfully violates these provisions is subject to specified civil liability. This bill would also prohibit a licensee or employee or agent of that licensee from charging treatment or costs to an open-end credit or loan that is extended by a third party and that is arranged for, or established in, that licensee's office before the date on which the treatment is rendered or costs are incurred without providing that plan or list. The bill would additionally prohibit a licensee or employee or agent of that licensee from offering an open-end credit or loan that contains a deferred interest provision, as defined. The bill would require a licensee, if the licensee accepts Medi-Cal, to indicate on the treatment plan for a Medi-Cal patient if Medi-Cal would cover an alternate, medically appropriate service. The bill would prohibit a licensee or the licensee's employee or agent from arranging for or establishing credit or a loan that is extended by a third party for a patient in a treatment area where medical treatment is administered. The bill would also revise the content of the required written or electronic notice.

Position Assigned
Watch

[SB 660](#)

(Pan D) Postsecondary education: mental health counselors.

Current Text: Amended: 5/17/2019 [html](#) [pdf](#)

Last Amend: 5/17/2019

Status: 5/20/2019-Read second time. Ordered to third reading.

Location: 5/20/2019-S. THIRD READING

Des k	Policy	Fiscal	Floor	Des k	Policy	Fiscal	Floor	Conf .	Enrolle d	Veto ed	Chapter ed
1st House				2nd House				Conc .			

Summary: Existing law establishes the California State University, administered by the Trustees of the California State University, and the California Community Colleges, administered by the Board of Governors of the California Community Colleges. Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors. This bill would require the Trustees of the California State University and the governing board of each community college district to establish a goal of having one full-time equivalent mental health counselor with an applicable California license per 1,500 students enrolled at each of their respective campuses to the extent consistent with state and federal law. The bill would define mental health counselor for purposes of this provision. The bill would require those institutions, on or before January 1, 2021, and every 3 years thereafter, to report to the Legislature how funding was spent and the number of mental health counselors employed on each of its campuses, as specified. The bill would require each campus of those institutions to, at least every 3 years, conduct a campus survey and focus groups to understand students' needs and challenges regarding, among other things, their mental health, would require each campus of those institutions to collect data on attempted suicides, as specified, and would require that data, without any personally identifiable information and collected in accordance with state and federal privacy law, to be included in the report to the Legislature. To the extent that this bill would impose new duties on community college districts, it would constitute a state-mandated local program. This bill contains other related provisions and other existing laws.

Position Assigned
Watch

[SB 700](#)

([Roth](#) D) Business and professions: noncompliance with support orders and tax delinquencies.

Current Text: Introduced: 2/22/2019 [html](#) [pdf](#)

Status: 3/14/2019-Referred to Com. on RLS.

Location: 2/22/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: Under existing law, each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by specified entities, who is not in compliance with a judgment or order for child or family support, is subject to support collection and enforcement proceedings by the local child support agency. Existing law also makes each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies subject to suspension or revocation of the license or renewal by a state governmental licensing entity, as specified. This bill would make nonsubstantive changes to those provisions.

Position
Watch

Assigned

[SB 786](#)

(Committee on Business, Professions and Economic Development) Healing arts.

Current Text: Amended: 4/11/2019 [html](#) [pdf](#)

Last Amend: 4/11/2019

Status: 5/9/2019-Read third time. Passed. (Ayes 37. Noes 0.) Ordered to the Assembly. In Assembly. Read first time. Held at Desk.

Location: 5/9/2019-A. DESK

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc			

Summary: (1)Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board to disclose to an inquiring member of the public specified information regarding any enforcement action taken against a licensee. This bill would make nonsubstantive changes to those provisions. This bill contains other related provisions and other existing laws.

Position
Watch

Assigned
Burns

Total Measures: 32

Total Tracking Forms: 32

MEMORANDUM

DATE	June 24, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #6(d) – Review of Two-Year Bills with Watch Status

Background:

The enclosed matrix lists the legislative bills the Board of Psychology watched during the 2019 legislative session. These bills have failed to meet a legislative deadline in 2019, but can be heard again in 2020.

Information on bills in the matrix can be found at: <http://leginfo.legislature.ca.gov>.

Action Requested:

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

2-Year Report

2-Year Bill Report

[AB 71](#)

(Melendez R) Employment standards: independent contractors and employees.

Current Text: Amended: 2/25/2019 [html](#) [pdf](#)

Introduced: 12/3/2018

Last Amend: 2/25/2019

Status: 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was L. & E. on 1/17/2019)(May be acted upon Jan 2020)

Location: 4/26/2019-A. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship. Existing law makes it unlawful for a person or employer to avoid employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor. Existing law authorizes the Labor and Workforce Development Agency to take specified actions against violators of these provisions, authorizes civil penalties, and authorizes the Labor Commissioner to enforce those provisions pursuant to administrative authority or by civil suit. This bill would, instead, require a determination of whether a person is an employee or an independent contractor to be based on a specific multifactor test, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The bill would make related, conforming changes. This bill contains other existing laws.

Group
2-Year

[AB 184](#)

(Mathis R) Board of Behavioral Sciences: registrants and licensees.

Current Text: Introduced: 1/10/2019 [html](#) [pdf](#)

Introduced: 1/10/2019

Status: 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 1/24/2019)(May be acted upon Jan 2020)

Location: 4/26/2019-A. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law establishes the Board of Behavioral Sciences within the Department of Consumer Affairs, and requires the board to regulate various registrants and licensees under the Licensed Marriage and Family Therapist Act, the Educational Psychologist Practice Act, the Clinical Social Worker Practice Act, and the Licensed Professional Clinical Counselor Act. This bill would require the board to offer every applicant for an initial registration number or license and every applicant for renewal of a registration number or license under the board's jurisdiction the option to elect to have the applicant's home address be kept confidential.

Group
2-Year

[AB 193](#)

(Patterson R) Professions and vocations.

Current Text: Amended: 3/20/2019 [html](#) [pdf](#)

Introduced: 1/10/2019

Last Amend: 3/20/2019

Status: 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 2/4/2019)(May be acted upon Jan 2020)

Location: 4/26/2019-A. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
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1st House	2nd House				
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Summary: (1)Existing law establishes the Department of Consumer Affairs in the Business, Consumer Services, and Housing Agency to, among other things, ensure that certain businesses and professions that have potential impact upon the public health, safety, and welfare are adequately regulated. This bill would require the department, beginning on January 1, 2021, to conduct a comprehensive review of all licensing requirements for each profession regulated by a board within the department and identify unnecessary licensing requirements, as defined by the bill. The bill, beginning February 1, 2021, and every 2 years thereafter, would require each board within the department to submit to the department an assessment on the board's progress in implementing policies to facilitate licensure portability for active duty service members, veterans, and military spouses that includes specified information. The bill would require the department to report to the Legislature on March 1, 2023, and every 2 years thereafter, on the department's progress in conducting its review, and would require the department to issue a final report to the Legislature no later than March 1, 2033. The bill would require the biennial reports to the Legislature to include the assessment information submitted by each board to the department, to identify the professions reviewed by the department, each unnecessary licensing requirement, and the department's recommendations to the Legislature on whether to keep, modify, or eliminate the unnecessary licensing requirement. The bill would require the department to apply for federal funds that have been made available specifically for the purpose of reviewing, updating, and eliminating overly burdensome licensing requirements, as provided. This bill contains other related provisions and other existing laws.

Group
2-Year

AB 312

(Cooley D) State government: administrative regulations: review.

Current Text: Introduced: 1/29/2019 [html](#) [pdf](#)

Introduced: 1/29/2019

Status: 5/17/2019-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 4/3/2019)(May be acted upon Jan 2020)

Location: 5/17/2019-A. 2 YEAR

Desk	Policy	2 year	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations. This bill would require each state agency to, on or before January 1, 2022, review its regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, revise those identified regulations, as provided, and report its findings and actions taken to the Legislature and Governor, as specified. The bill would repeal these provisions on January 1, 2023.

Group
2-Year

AB 396

(Eggman D) School employees: School Social Worker Pilot Program.

Current Text: Amended: 3/20/2019 [html](#) [pdf](#)

Introduced: 2/6/2019

Last Amend: 3/20/2019

Status: 5/17/2019-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 4/3/2019)(May be acted upon Jan 2020)

Location: 5/17/2019-A. 2 YEAR

Desk	Policy	2 year	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law establishes the State Department of Education, under the administration of the Superintendent of Public Instruction, and assigns to the department numerous duties relating to the financing, governance, and guidance of the public elementary and secondary schools in this state. Existing law authorizes a school district to employ and compensate psychologists and social workers who meet specified qualifications. This bill, subject to an appropriation of moneys by the Legislature, would establish the School Social Worker Pilot Program, under the administration of the department, to provide a multiyear grant award to one school district or the governing body of a charter school in each of the Counties of Alameda, Riverside, San Benito, San Joaquin, and Shasta to fund a social worker at each eligible school, as defined, within the school district or charter school, as applicable, for the 2021–22 fiscal year to the 2025–26 fiscal year, inclusive. The bill would require the department to develop an application process and criteria for determining grant recipients on a competitive basis, as provided. The bill would require each governing board of a school district and

governing body of a charter school receiving a grant award to report to the department, and would require the department, on or before January 1, 2027, to report to the Legislature, changes in pupil outcomes at the schools participating in the pilot program, including, among others, changes in chronic absenteeism and changes in rates of suspension and expulsion. The bill would make the pilot program inoperative on July 1, 2027, and would repeal it on January 1, 2028.

Group
2-Year

AB 536

(Frazier D) Developmental services.

Current Text: Introduced: 2/13/2019 [html](#) [pdf](#)

Introduced: 2/13/2019

Status: 6/4/2019-Failed Deadline pursuant to Rule 61(a)(8). (Last location was APPR. SUSPENSE FILE on 5/15/2019)

Location: 6/4/2019-A. 2 YEAR

Desk	Policy	2 year	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities and their families, and requires regional centers to identify and pursue all possible sources of funding for consumers receiving those services. Existing law defines a “developmental disability” as a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for the individual. This bill would modify that definition to mean a disability that originates before an individual attains 22 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for the individual. The bill would make various technical and nonsubstantive changes.

Group
2-Year

AB 544

(Brough R) Professions and vocations: inactive license fees and accrued and unpaid renewal fees.

Current Text: Amended: 3/21/2019 [html](#) [pdf](#)

Introduced: 2/13/2019

Last Amend: 3/21/2019

Status: 5/17/2019-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/1/2019)(May be acted upon Jan 2020)

Location: 5/17/2019-A. 2 YEAR

Desk	Policy	2 year	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law provides for the licensure and regulation of professions and vocations by various boards within the Department of Consumer Affairs. Existing law provides for the payment of a fee for the renewal of certain licenses, certificates, or permits in an inactive status, and, for certain licenses, certificates, and permits that have expired, requires the payment of all accrued fees as a condition of reinstatement of the license, certificate, or permit. This bill would limit the maximum fee for the renewal of a license in an inactive status to no more than 50% of the renewal fee for an active license. The bill would also prohibit a board from requiring payment of accrued and unpaid renewal fees as a condition of reinstating an expired license or registration.

Group
2-Year

AB 768

(Brough R) Professions and vocations.

Current Text: Introduced: 2/19/2019 [html](#) [pdf](#)

Introduced: 2/19/2019

Status: 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 2/28/2019)(May be acted upon Jan 2020)

Location: 4/26/2019-A. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law provides for the licensure and regulation of various professions and vocations by boards, as defined, within the Department of Consumer Affairs. Existing law generally requires the department and each board in

the department to charge a fee of \$2 for the certification of a copy of any record, document, or paper in its custody. Existing law generally requires that the delinquency, penalty, or late fee for any licensee within the department to be 50% of the renewal fee for that license, but not less than \$25 nor more than \$150. This bill would instead authorize the department and each board in the department to charge a fee not to exceed \$2 for the certification of a copy of any record, document, or paper in its custody. The bill would also require that the delinquency, penalty, or late fee for any licensee within the department to be 50% of the renewal fee for that license, but not to exceed \$150.

Group
2-Year

AB 770

(Garcia, Eduardo D) Medi-Cal: federally qualified health clinics: rural health clinics.

Current Text: Amended: 5/2/2019 [html](#) [pdf](#)

Introduced: 2/19/2019

Last Amend: 5/2/2019

Status: 6/4/2019-Failed Deadline pursuant to Rule 61(a)(8). (Last location was APPR. SUSPENSE FILE on 5/15/2019)

Location: 6/4/2019-A. 2 YEAR

Desk	Policy	2 year	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law provides that federally qualified health center (FQHC) services and rural health clinic (RHC) services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, in accordance with Medicare reasonable cost principles, and to the extent that federal financial participation is obtained, to providers on a per-visit basis that is unique to each facility. Existing law prescribes the reimbursement rate methodology for establishing and adjusting the per-visit rate. Under existing law, if an FQHC or RHC is partially reimbursed by a 3rd-party payer, such as a managed care entity, the department is required to reimburse the FQHC or RHC for the difference between its per-visit rate programs on a contract-by-contract basis. Existing law authorizes an FQHC or RHC to apply for an adjustment to its rate based on a change in the scope of service that it provides within 150 days following the beginning of the FQHC's or RHC's fiscal year. Existing law provides that the department's implementation of FQHC and RHC services is subject to federal approval and the availability of federal financial participation. This bill would require the methodology of the adjusted per-visit rate to exclude, among other things, a provider productivity standard. The bill would authorize an FQHC or RHC to apply for a rate adjustment for the adoption, implementation, or upgrade of a certified electronic health record system as a change in the scope of service. The bill would clarify specified terms, including the meaning of "scope of "service," would expand the meaning of "visit" to include FQHC and RHC services rendered outside of the facility location, and would modify how the department reimburses an FQHC or RHC that is partially reimbursed by a 3rd-party payer. The bill would require a health care provider who contracts with an FQHC or RHC to provide services outside of the facility on behalf of the facility, and for which the facility bills for those services, to comply with specified requirements, including actively serving patients in the same county as, or a county adjacent to, the physical location of the billing FQHC or RHC. The bill would repeal the provisions authorizing an FQHC or RHC to apply for an adjustment to its rate based on a change in the scope of service that it provides within 150 days following the beginning of the FQHC's or RHC's fiscal year, and would instead extend the time frame for an FQHC or RHC to file a scope of service rate change to any time during the fiscal year. The bill would require the department to ensure that department staff conducting audits related to FQHC and RHC services receive appropriate training on federal and state laws governing those facilities, and would make various conforming and technical changes.

Group
2-Year

AB 1201

(Boerner Horvath D) Unfair Practices Act.

Current Text: Introduced: 2/21/2019 [html](#) [pdf](#)

Introduced: 2/21/2019

Status: 5/3/2019-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 2/21/2019)(May be acted upon Jan 2020)

Location: 5/3/2019-A. 2 YEAR

2 year	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoe d	Chaptered
1st House				2nd House							

Summary: Existing law defines unfair competition to mean and include an unlawful, unfair, or fraudulent business act or practice, unfair, deceptive, untrue, or misleading advertising, and any false representations to the public and provides that any person who engages, has engaged, or proposes to engage in unfair competition is liable for a civil penalty.

Existing law requires that one-half of a penalty collected as the result of an action brought by the Attorney General be paid to the treasurer of the county in which the judgment was entered and the other half to the General Fund. This bill would make a nonsubstantive change to that provision.

Group
2-Year

[AB 1271](#)

(Diep R) Licensing examinations: report.

Current Text: Introduced: 2/21/2019 [html](#) [pdf](#)

Introduced: 2/21/2019

Status: 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B.&P. on 3/11/2019)(May be acted upon Jan 2020)

Location: 4/26/2019-A. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Existing law provides for the licensure and regulation of professions and vocations by various boards that comprise the Department of Consumer Affairs. This bill would require the department, on or before January 1, 2021, to provide a report to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development that contains specified information relating to licensing examinations for each licensed profession and vocation under the department's jurisdiction.

Group
2-Year

[AB 1601](#)

(Ramos D) Office of Emergency Services: behavioral health response.

Current Text: Introduced: 2/22/2019 [html](#) [pdf](#)

Introduced: 2/22/2019

Status: 5/16/2019-In committee: Held under submission.

Location: 4/24/2019-A. APPR. SUSPENSE FILE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoe d	Chaptered
1st House				2nd House							

Summary: The California Emergency Services Act establishes the Office of Emergency Services within the Governor's office under the supervision of the Director of Emergency Services and makes the office responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies. Existing law authorizes the Governor, or the director when the governor is inaccessible, to proclaim a state of emergency under specified circumstances. This bill would establish a behavioral health deputy director within the Office of Emergency Services to ensure individuals have access to necessary mental and behavioral health services and supports in the aftermath of a natural disaster or declaration of a state of emergency and would require the deputy director to collaborate with the Director of Health Care Services to coordinate the delivery of trauma-related support to individuals affected by a natural disaster or state of emergency. The bill would require the Director of Health Care Services, in collaboration with the Office of Emergency Services, to immediately request necessary federal waivers to ensure the provision of healthcare services, as specified, during a natural disaster or declared state of emergency.

Group
2-Year

[SB 181](#)

(Chang R) Healing arts boards.

Current Text: Introduced: 1/28/2019 [html](#) [pdf](#)

Introduced: 1/28/2019

Status: 2/6/2019-Referred to Com. on RLS.

Location: 1/28/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoe d	Chaptered
1st House				2nd House							

Summary: Existing law creates various regulatory boards within the Department of Consumer Affairs. Existing law authorizes health-related boards to adopt regulations requiring licensees to display their licenses in the locality in which they are treating patients and to make specified disclosures to patients. This bill would make nonsubstantive changes to that license display and disclosure provision.

Group
2-Year

SB 201

(Wiener D) Medical procedures: treatment or intervention: sex characteristics of a minor.

Current Text: Amended: 3/25/2019 [html](#) [pdf](#)

Introduced: 1/31/2019

Last Amend: 3/25/2019

Status: 4/26/2019-Failed Deadline pursuant to Rule 61(a)(2). (Last location was B., P. & E.D. on 2/13/2019)(May be acted upon Jan 2020)

Location: 4/26/2019-S. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary: Under existing law, the Medical Practice Act, it is unprofessional conduct for a physician and surgeon to fail to comply with prescribed informed consent requirements relating to various medical procedures, including sterilization procedures, the removal of sperm or ova from a patient under specified circumstances, and the treatment of breast cancer. Any violation of the law relating to enforcement of the Medical Practice Act is a misdemeanor, as specified. This bill would, absent a medical necessity, prohibit a physician and surgeon from performing any treatment or intervention on the sex characteristics of an intersex minor without the informed consent of the intersex minor, as described. The bill would, among other things, require a physician and surgeon, prior to performing the treatment or intervention, to provide a written and oral disclosure and to obtain the informed consent of the intersex minor to the treatment or intervention, as specified. The bill would authorize a physician and surgeon to perform the medical procedure without the minor’s consent if it is medically necessary and the physician and surgeon provides the written and oral disclosure to the parent or guardian and obtains their informed consent, as specified. The bill would authorize the Medical Board of California to develop and adopt medical guidelines to implement these requirements. Any violation of these provisions would be subject to disciplinary action by the board, but not criminal prosecution.

Group
2-Year

SB 546

(Hueso D) Unlicensed activity.

Current Text: Introduced: 2/22/2019 [html](#) [pdf](#)

Introduced: 2/22/2019

Status: 3/7/2019-Referred to Com. on RLS.

Location: 2/22/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoe d	Chaptered
1st House				2nd House							

Summary: Existing law establishes the Department of Consumer Affairs and requires boards within the department to license and regulate various professions and vocations. Under existing law, the Legislature finds and declares that unlicensed activity in the professions and vocations regulated by the department is a threat to the health, welfare, and safety of the people of the State of California. This bill would make a nonsubstantive change to that provision.

Group
2-Year

SB 700

(Roth D) Business and professions: noncompliance with support orders and tax delinquencies.

Current Text: Introduced: 2/22/2019 [html](#) [pdf](#)

Introduced: 2/22/2019

Status: 3/14/2019-Referred to Com. on RLS.

Location: 2/22/2019-S. RLS.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoe d	Chaptered
1st House				2nd House							

Summary: Under existing law, each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by specified entities, who is not in compliance with a judgment or order for child or family support, is subject to support collection and enforcement proceedings by the local child support agency. Existing law also makes each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies subject to suspension or revocation of the license or renewal by a state governmental licensing entity, as specified. This bill would make nonsubstantive changes to those provisions.

Group
2-Year

Total Measures: 16

Total Tracking Forms: 16

MEMORANDUM

DATE	June 24, 2019
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #7 – 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 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 is in the Initial Review Stage. Staff incorporated the feedback provided by Legal Counsel’s review and resubmitted the package to Board Legal Counsel on January 8, 2019. Upon approval by Board Legal Counsel, the package will be resubmitted to DCA Legal for review, followed by DCA Budgets, DCA’s Division of Legislative and Regulatory Review, and DCA Chief Counsel.

b) **Addition to 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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Staff is currently preparing this regulatory package and will submit it to Board Legal Counsel upon completion.

c) **Update on 16 CCR Section 1396.8 – 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 provided to the Department of Consumer Affairs (DCA) on March 15, 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, 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 is in the Initial Review Stage. Staff received feedback from Legal Counsel on March 8, 2019, and are working to incorporate the recommended changes prior to submitting the package back to legal. Upon approval by Board Legal Counsel, the package will be resubmitted to DCA Legal for review, followed by DCA Budgets, DCA’s Division of Legislative and Regulatory Review, and DCA Chief Counsel.

e) 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 is in the Initial Review Stage. Staff incorporated the feedback provided by Legal Counsel’s review and resubmitted the package to Board Legal Counsel on March 8, 2019. Upon approval by Board Legal Counsel, the package will be resubmitted to DCA Legal for review, followed by DCA Budgets, DCA’s Division of Legislative and Regulatory Review, and DCA Chief Counsel.

f) Update on 16 CCR Sections 1394, 1395, 1395.1, 1392 – Substantial Relationship Criteria, Rehabilitation Criteria for Denials and Reinstatements, Rehabilitation Criteria for Suspensions and Revocations

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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Staff is currently preparing this regulatory package and will submit it to Board Legal Counsel by the end of April 2019.

Action Requested:

These items are for informational purposes only. No action is required at this time.