BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
1300 National Drive, Suite 150, Sacramento, CA 95834
P (916) 928-8390 | F (916) 928-8392 | www.ombc.ca.gov

MEMORANDUM

DATE	August 17, 2023
TO	OMBC Board Members
FROM	Terri Thorfinnson, Administrative Services Manager
RE:	Agenda Item 16 Handout 1 -2023 OMBC Bill List with Bill Descriptions

Bills with Board Positions

SB 544 (Laird) Open Meetings

Summary: This bill amends the Bagley-Keene Open Meetings Act to allow for a hybrid meeting approach that allows for virtual meetings with at least one in person location open to the public. The bill provides:

- Allow boards and bureaus to continue conducting single-site physical meetings without providing electronic public access.
- Allow boards and bureaus to conduct virtual meetings by either telephone or online platform under the following conditions:
  - Require one physical meeting location and the meeting must at least be audible at that location;
  - Require at least one board member or staff member to be present at the physical meeting location;
  - Require boards and bureaus to provide a way for the public to hear or observe the meeting remotely via a telephonic or online method that is equivalent to the method provided to board members;
  - Require the telephone number or online information, plus the physical site address, to be included in the meeting notice; and
  - No longer require agendas to: (1) identify separately all teleconference locations in the meeting notice, (2) post agendas at teleconference locations, and (3) provide public access to all teleconference locations, except for the one physical location.

This bill does not have a sunset date so unlike the current law, it will become permanent.

Analysis: This bill allows for boards to conduct meetings virtually with only one in person public meeting location. Among the benefits of this bill is that is removes the requirement of all in person meetings; the requirement that board members must post their virtual location and make it open to the public, which facilitates greater board member attendance if they have a choice of in person attendance or virtual. It is a significant savings in travel and meeting expenses attributed to hosting in person board meetings around the state. The board estimates that each meeting costs the Board between $10,000 -$15,000 in meeting location expenses, travel, food, per diem that are not otherwise incurred for hosting hybrid meetings that only has one in person location. With an average of 3 to 4 board meetings per year in rotating locations around the state, the Board estimates that this new law will save between $30,000 to $50,000 depending on the number of board meetings held each year. That is a significant savings for the board. The author specifically acknowledged the fiscal savings that this bill would provide.

The Board has observed that having meetings virtual and available to the public through web ex has had a significant increase in the number of public members attending and commenting at Board meetings virtually. Having to attend in person meetings tends to be too costly for members of the public and stakeholders to attend as well. The author specifically acknowledged that virtual meetings facilitate more public input and participation. It was expensive and inconvenient for member of the public to travel to attend in person board meetings.

Board Position: Support

AB 1707 (Pacheco) Reproductive Health Adverse Actions Out of State

Summary: This bill would prohibit a healing arts board under the Department of Consumer Affairs from denying an application for a license or imposing discipline upon a licensee on the basis of a civil judgment, criminal conviction, or disciplinary action in another state that is based on the application of another state's law that interferes with a person's right to receive sensitive services, as defined, that would be lawful in this state. The bill would similarly prohibit a health facility from denying staff privileges to, removing from medical staff, or restricting the staff privileges of a licensed health professional on the basis of such a civil judgment, criminal conviction, or disciplinary action imposed by another state. The bill also would also prohibit the denial, suspension, revocation, or limitation of a clinic or health facility license on the basis of those types of civil judgments, criminal convictions, or disciplinary actions imposed by another state. The bill would exempt from the above-specified provisions a civil judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state.

Analysis: This bill is a response to other states banning reproductive and "sensitive services" and then prosecuting physicians for providing these services that are legal in California. "Sensitive services" defined in Civil Code section 56.05 "means all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section." This bill shields physicians from being denied licensure, employment, or other negative consequences as a result of out of state actions for laws that are otherwise legal in California.

Board Position: Support

SB 345 (Skinner) Reproductive Services Legal Protection for Boards and Physicians

Summary: This bill prohibits a state or local government employee or a person acting on behalf of the local or state government, among others, from providing information or expending resources in furtherance of an investigation that seeks to impose civil or criminal liability or professional sanctions on an individual for a legally protected health care activity that occurred in this state or that would be legal if it occurred in this state. The bill would require any out-of-state subpoena to include an affidavit or declaration under penalty of perjury that the discovery request is not in connection with an out-of-state proceeding relating to a legally protected health care activity, except as specified. By requiring an individual seeking to discovery under these provisions to declare certain conditions are present under penalty of perjury, this bill would expand the crime of perjury and impose a state-mandated local program.
This bill would, except as required by federal law, prohibit the Governor from recognizing a demand for the extradition of a person charged with legally protected health care activity, as defined, unless the demanding state alleges that the person was physically present in the demanding state at the time of the commission of the alleged crime and then fled.

Analysis: This bill provides protections for health providers who perform abortions in California. It enhances the prohibition against disciplining doctors who provide reproductive health care services. This bill provides legal protection for physicians being prosecuted out of the state for providing reproductive services that would otherwise be legal in California from any discipline. It also provides protection through authorizing non-cooperation with out of state litigations against physicians for services that are legal in California but not legal in another state. This bill is needed to shield boards and their executive directors from being forced to cooperate or disclose any licensee or enforcement information that is part of a legal action against of physician for providing reproductive services. There was a fear that boards and their executive directors would be involuntarily pulled into out of state lawsuits against physicians providing reproductive health care services. This bill solves this problem.

Board Position: Support

AB 1369 (Bauer-Kahan) Telemedicine Out of State License Exemption

Summary: This bill proposes to allow out of state physicians through telemedicine to provide care to California patients without applying or needing to obtain a California license to practice medicine.

Analysis: The foundation of telemedicine in California was based on two main prerequisites:

1. Physicians providing care to California based patients must be licensed in California.

2. The conditions that were allowed to be provided through telemedicine were for conditions that the standard of care would not require the physician to see a patient in person to diagnose and treat or recommend treatment.

This bill violates both of the current foundations of telemedicine allowable in California. These two requirements were put in place to protect public safety of patients being treated through telemedicine. Both requirements are at the heart of protecting patient 's safety.
Technically, the bill amends BPC section 2052 by adding a new subsection 2052.5. BPC section 2052 is the section of law that defines the scope of practice of medicine and requires a medical license to do so. By adding the proposed subsection 2052.5 it essentially adds a both a scope exemption and an exemption from the requirement that to practice medicine in California, one must be licensed to practice medicine from their respective regulatory boards. It exempts them from being criminally charged for unlicensed practice and fined up to $10,000 and imprisonment not to exceed a year.

One of the scope changes this bill proposes is to allow these out of state unlicensed telemedicine physicians to provide care for life threatening conditions, which is currently prohibited and beyond the scope approved for telemedicine to provide. This dramatic scope expansion is not only a red flag, but also a significant threat to patient safety. Life threatening conditions require in person treatment not video chats level care. Life threatening conditions are when patients are most at risk of harm and would open them up to being victims of negligence precisely because the telemedicine physician is unable to provide the immediate level of care for a life-threatening condition.

As mentioned above, this bill amends BPC 2052 not the telemedicine law BPC section 2290.5. BPC section 2290.5 sets the standards for telemedicine, which should have been the logical choice to amend. Instead, the author is choosing to amend the bill that defines the scope of practice for physicians and surgeons in California. The choice of amending the BPC section 2052

has more sweeping impact on creating a blanket exemption to licensure and expanding the scope of what care is allowed to be provided through telemedicine than would be if it was amending the current telemedicine law BPC section 2290.5.

The sweeping scope change and the facts alleged as the justification for this bill are suspicious. The sponsors claim it is for California based patients with life threatening conditions, too sick to travel, not enrolled in a local clinical trial and that have the patient's physician's consent to get care from an out of state physician through telemedicine. If they are being cared for by a California license physician locally, why does the patient need to connect with telemedicine physician from out of state? Why does the patient need telemedicine if they have a local physician(s) who is caring for their condition? Why does the bill make a sweeping scope change in required licensure and telemedicine for a limited population of patients? There is no requirement that the telemedicine physician have the expertise of the condition being treated nor if the patient needs to be enrolled in an out of state clinical trial. If the patient were enrolled in an out of state clinical trial, the bill doesn't even require that the telemedicine doctor providing the care work actually work for the clinical trial or even be in the same state as the clinical trial. The facts are neither compelling nor make sense for not otherwise requiring telemedicine physicians to be licensed in California when caring for California patients.

The fact that this bill would allow telemedicine doctors to provide care without being licensed in California would mean that they are not regulated by the Board; the board would not have enforcement jurisdiction over them for purposes of pursuing disciplinary actions to protect public safety. This exemption would prevent OMBC and MBC from protecting patient safety. Patients harmed by these unlicensed out of state telemedicine physicians would have no recourse against them civilly or criminally or otherwise because the harm occurred in California and no entity in California has jurisdiction over these unlicensed out of state physicians. This would open a huge loophole in protecting patient safety and regulating physicians who provide care to patients in California.

It is worth emphasizing that licensure is not simply an administrative hassle for physicians to practice medicine in California. Licensure requirements are set by the Legislature to protect public safety and ensure competency and avoid fraudulent licensure so that every patient can feel confident that they are being cared for by a competent physician. Licensure also is the mechanism that provides the Board with enforcement jurisdiction to investigate and bring disciplinary actions against physicians who violate the law. Without licensure, there is no regulation of physicians who are allowed to practice in California without a license and there is no recourse for patient harm against the out of state unlicensed physician. Patients are left unprotected by this bill.

The lack of requirements and restrictions in this bill are out of step with the way California typically handles out of state business. All out of state businesses are required to consent

provide legal jurisdiction through registering with the Secretary of the State so in the event of lawsuit out of state businesses can be sued for business conducted in the state. To protect public safety in health care, the law must provide a legal connection to the state and that is licensure.

Board Position: Oppose

AB 765 (Wood) Physicians and Surgeons Title

Summary: This bill prohibits anyone who is not otherwise licensed as a physician and surgeon to use the title "M.D." or "D.O." or abbreviations to indicate specialty. This bill would apply to anyone who is unlicensed, not licensed, suspended, or revoked license from using any physician or specialty title. Violation of this statutory section would be a misdemeanor.

Analysis: The author's intention with this bill is to clear up consumer confusion over physician titles. Among the amendments is to add a list of specialties that cannot be used unless the person is licensed. This bill was a benign bill with good intentions until the word "Osteopath" was removed from the list of titles that otherwise require licensure to use the title. The positive amendments include the addition of D.O, Doctor of Osteopathy, Osteopathic Physician. The concerning amendment was to remove "osteopath" from the list of title that can only be used if one is licensed. The removal of the title "osteopath" would be confusing to consumers who are already confused by the "osteopath or osteopathic."

The removal of the title osteopath was to potentially facilitate a conversation about whether its ok to refer to unlicensed, foreign trained osteopaths as osteopaths. We are in conversation with the author's office and part of this facilitated conversation. What is unknown to the author is that in the U.S., osteopathic training includes allopathic clinical training equivalent to the training received by M.D.s. Elsewhere in the world, osteopathic training does not include allopathic training and is limited to the patient centered philosophy and the use of osteopathic manipulation as a treatment modality. All osteopaths trained in the U.S. have allopathic and osteopathic training which prepares them to be licensed to practice as physicians and surgeons. All of the unlicensed osteopaths are foreign trained and lack the specific allopathic training of U.S. trained osteopaths and osteopathic physicians.

Foreign trained osteopaths vary substantially in their training and often lack any regulatory infrastructure and lack of allopathic training as part of their osteopathic training. The U.S. is the only country in which osteopathic training includes osteopathic principles and allopathic training. All other countries lack such extensive training and thus are ineligible in the U.S. to practice osteopathy. Additionally, to even entertain that it would be harmless to allow foreign trained osteopaths to practice unlicensed, ignores the fact that there are no national or state

exams to test competency for unlicensed foreign educated osteopaths. As such, they pose a public health risk because they are unlicensed and unregulated.

The law is clear that only U.S. trained osteopaths are eligible to become licensed osteopathic physician and surgeons. Additionally, the law is clear about the scope of licensed osteopathic medical services as defined in BPC section 2459.6.

(a) For the purposes of Section 2459.5 and this section:

(1) "Osteopathic physician and surgeon" means a person defined in the Osteopathic Initiative Act.

(2) "Osteopathic manipulative treatment" means the therapeutic application of manually guided forces by an osteopathic physician and surgeon to alleviate somatic dysfunction.

(3) "Somatic dysfunction" means an impaired or altered function of related components of the somatic system.

(4) An "osteopathic aide" means an unlicensed person who assists an osteopathic physician and surgeon in the provision of osteopathic manipulative treatment provided that assistance is rendered under the supervision of an osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act. An aide is not authorized to perform osteopathic manipulative procedures.

(5) "Under the orders, direction and immediate supervision" means the evaluation of the patient by the osteopathic physician prior to the performing of an osteopathic manipulative treatment patient-related task by the aide, the formulation and recording in the patient's record by the osteopathic physician and surgeon of an osteopathic manipulative treatment program based upon the evaluation, and any other information available to the osteopathic physician and surgeon prior to any delegation of a task to an aide. The osteopathic physician and surgeon shall assign only those patient-related tasks that can be safely and effectively performed by the aide. The supervising osteopathic physician and surgeon shall be responsible at all times for the conduct of the aide while he or she is on duty and shall provide continuous and immediate supervision of the aide. The osteopathic physician and surgeon shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks and shall be readily available at all times to provide advice or instructions to the aide.

(6) A "patient-related task" is restricted to assisting the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment.

(b) Osteopathic aides may not use roentgen rays and radioactive materials.

(c) The board shall require the supervising osteopathic physician and surgeon to conduct orientation of the aide regarding patient-related tasks.

(d) No osteopathic physician and surgeon shall supervise more than two osteopathic aides at any one time.

This section defines the scope of osteopathic physician and surgeon practice. It specifies that "osteopathic manipulative treatment" is a therapeutic application by an osteopathic physician and surgeon to alleviate somatic dysfunction. Why this section is relevant to this discussion is that unlicensed, foreign trained osteopaths are likely providing osteopathic manipulative treatment, which this section specifies can only be performed by osteopathic physicians and surgeons. Furthermore, the section goes not to restrict even those entitled an "osteopathic aide" are "not authorized to perform osteopathic manipulation procedures. The section further specifies that only under orders, direct and immediate supervision by an osteopathic physician and surgeon who has already conducted the diagnostic and treatment evaluation, can the aide assist. The section goes on to further explain that "patient related task" is restricted to assisting the osteopathic physician and surgeon in rendering osteopathic manipulative treatment. These restrictions are current law created by the legislature to protect patient harm and public safety. The law is clear that non one that is unlicensed can perform osteopathic manipulative procedures. Therefore, unlicensed, foreign trained osteopaths should not be allowed to use the title osteopath and practice osteopathy or osteopathic manipulation without being a licensed osteopathic physician and surgeon.

Is there are risk to allowing foreign trained osteopaths to use that title and continue to offer their services without regulation? The answer is yes. All health professions need regulatory oversight to protect consumer and the public from risk of harm and misrepresentation of their skills, competence, and health care services.

There is a group of unlicensed, foreign trained osteopaths lobbying the author to allow them to use the title osteopath and remove it from the list of titles that otherwise require licensure. These unlicensed osteopaths claim that BPC sections 2053.5 and 2053.6 authorize them to practice and use the title osteopath. If the bill is not amended to include the title osteopath among the list of titles that require licensure, then they will be allowed to use the title if they comply with the requirements specified in BPC 2053.5 and 2053.6 reference above.

Board Position: Oppose

Informational Bill Watch List

AB 242 (Wood) Critical Access Hospitals Physicians

Summary: Existing law, the Medical Practice Act, authorizes the Medical Board of California to grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics if no charge for professional services is made, in accordance with specified requirements. Existing law provides an exception to the prohibition on charging

for professional services for a federally certified critical access hospital that employs licensees and charges for professional services rendered by those licensees to patients under specified conditions, including that the medical staff concur by an affirmative vote that the licensee's employment is in the best interest of the communities served by the hospital. Existing law makes that exception operative only until January 1, 2024.

This bill would permanently extend authorization for federally certified critical access hospitals to directly employ medical professionals, and charge for professional services rendered by those medical professionals.

Analysis: The proposed amendment to extend the authorization to employ medical professionals and charge for services rendered does not directly impact OMBC. While the Board is referenced as having the authority to grant approval of employment, this is not a transaction that occurs much beyond licensing of physicians and surgeons in general. The Board does not receive requests for approval of such employment. Additionally, the board would not enforce this bill because it does not have jurisdiction over hospitals and, in particular, Critical Assess Hospitals. As a result, this would not impact either the Board's licensing or enforcement workloads nor have any fiscal impact as amended in this January 13, 2023, version.

AB 834 (Irwin) Physician and Surgeon Partnerships

Summary: This bill so far makes minor changes to Business and Professions Code section 2416 related to professional partnerships for physicians. Specifically, the bill adds doctors of podiatric medicine and prohibit non-podiatrists and non-physicians from practicing in the partnership or voting on partnership matters outside the partner's scope of practice.

Analysis: This bill is doing some technical clean-up in adding doctors of podiatric medicine to this professional partnership BPC section. It does however create some restrictions related to non-physician and non-podiatric medical doctors' role and voting authority within the partnership. Existing law allows for non-physicians to be in partnership with physicians and requires the physician ownership is 51%. In any case, it does not impact the board or physicians and surgeons, but does modify their partnership with non physicians.

AB 1028 (McKinnor) Mandatory Reporting for Abuse

Summary: This bill attempts to remove the requirement that physicians report injuries to their patients that may constitute domestic violence, sexual-abuse or elder abuse. And eliminates the criminal liability for failing to report such patient harm.

Analysis: This is the second attempt at amending the reporting requirement for Physicians and Surgeons when their patients have harm or injury whose cause may be criminal. The "warm

hand-off" wording is included in this version. The pattern of these amendments is to repeal the section and put in place a nearly identical worded provision with minor changes. Overall, the basic requirement for Physician and Surgeon reporting remains as do the forms. What has changed is to eliminate the Physician and Surgeon criminal liability for non-reporting. However, a surprising change made to section 11160 is to eliminate the detailed list of crimes that are defined in P.C section 11160 as constituting" assaultive or abusive conduct" as referenced in the addendum below. Removing that definition of what would trigger mandatory reporting could make the requirement more vague and subject to interpretation.

This bill does not reflect the policy of a warm hand-off and elimination of mandatory reporting for physicians that the board supported last session. There may be behind the scenes pressure to not eliminate mandatory reporting, which produced this version of the bill. For this reason, it is recommended to be a watch bill.

AB 1130 (Berman) Substance Abuse

Summary: This bill deletes the reference to an "addict" and instead replace it with the term "a person with substance use disorder," among other technical non-substantive changes.

Analysis: This bill appears to revise the wording and reference to "addict" in BPC section 2241 to be replaced with "person with substance use disorder." Although the bill seems to make technical changes to this section, it still is a topic that warrants the board to have it on its watch list

AB 1646 (Nguyen) Guest Rotation Abortion Training

Summary: This bill would allow residents in ACGME accredited residency programs out of state to participate in guest rotations for up to 90 days without being required to go through the official channels of "enrolling" into a postgraduate training program or need to apply or obtain a postgraduate training license.
Analysis: The intent of the bill is to facilitate out of state residents enrolled in ACGME training programs in states that ban abortions and would ban the teaching of abortion to come to California and receive abortion training at Planned Parenthood clinics affiliated with ACGME training programs. This bill would apply to OMBC. Since it exempts the eligible out of state residents from applying for a postgraduate training license, there is no tracking, oversight, workload or enforcement jurisdiction for the Board over these residents training under this guest rotation provision.

AB 1741 (Waldron) Clinical Lab Personnel

Summary: This bill would revise the activities that may be performed by an unlicensed person to specify those activities that may be performed under direct and constant supervision of a

physician and surgeon or licensed person, those activities that may be performed under supervision and control, as defined, and those activities that may not be performed by an unlicensed person.

The bill would provide an exception to this prohibition if the unlicensed person is assisting a licensed physician and surgeon or a licensed person, other than a trainee, in a licensed clinical laboratory. The bill would also prohibit unlicensed laboratory personnel from releasing waived, moderate, or high-complexity testing.

Analysis: This bill changes requirements for clinical lab personnel, in particular unlicensed clinical lab personnel. It adds the requirement that unlicensed clinical lab personnel must be directly supervised by a physician and surgeon or other specified personnel. This bill does not generate any workload or fiscal impact for the Board since the board does not have jurisdiction over clinical laboratories and their personnel. While physicians and surgeons are added to this amendment, the bill does not create a violation that the OMBC has jurisdiction to enforce against a licensee. It is included on the watch list to be aware of this physician supervision requirement.

SB 357 (Portantino) DMV: Physician Reporting Impairment

Summary: This bill modifies an existing physician reporting requirement to exempt physicians and other health entities from various legal liability. This bill still requires physicians to report to the Department of Motor Vehicles (DMV) minor patients that have an impairment that causes them to lose conscientiousness that could cause an accident if they were issued a license to drive.

Analysis: This bill makes minor modifications related to physician reporting and DMV authority to deny licenses based on patient impairment. The relevant statutory section that applies to OMBC is the Health and Safety Code Section 13030 is added. In this newly added section (e) specifically prohibits a health care provider being subject to discipline or other penalty. The bill does require the Department of Motor Vehicles to collect data and report back to the Legislature the number of physician reports before and after this bill until 2029 with the purpose of evaluating the impact of the change to discretionary reporting.

SB 524 (Caballero) Pharmacist Furnishing Tests and Medications

Summary:
Authorizes a pharmacist to furnish medications to treat various diseases and conditions based on the results of a federal Food and Drug Administration (FDA) test the pharmacist ordered, performed, or reported. Specifically, authorizes until January 1, 2034, a pharmacist to furnish

medications to treat SARS-CoV-2, influenza, streptococcal pharyngitis, sexually transmitted infection, and conjunctivitis.

Analysis:
Clarifies that instead of performing a FDA-approved CLIA waived test for specified diseases and conditions, a pharmacist may order, perform, and report any test for those specific diseases and conditions. Permits a pharmacist to furnish prescriptions for SARS-CoV-2, influenza, streptococcal pharyngitis, sexually transmitted infection, and conjunctivitis after receiving appropriate test results.

SB 598 (Skinner) Health Care Service Plan Prior Authorization

Summary: This bill amends the Knox-Keene Act to create a prior authorization system that requires health plans to create an electronic prior authorization process, allows physicians with three years of experience with prescribing specific treatments to be exempt from prior authorization if 90% of their prior authorizations were approved. It requires health plans to monitor prior authorization approvals and denials to base this exemption on. This prior authorization also applies to contracted pharmacy benefits managers as well. This bill addresses the abuse of health plans using prior authorization as means to deny access to physician recommended treatment and creates the framework for assuring prior authorization is not abused by insurance providers.

Analysis: According to the author, California patients are too often denied life-saving care or are forced to endure excruciating pain because of unnecessary bureaucratic red tape in the health care industry. Insurance companies routinely use a tool known as "prior authorization" to control costs, often at the expense of patients who need essential care. This barrier to care also results in unnecessary denials and delay, forcing providers and clinicians to waste their valuable time on advocating for patients rather than treating their health care issues. Often, by the time the treatment is finally approved, the patient is in significantly worse condition, sometimes rendering the treatment ineffective. Prior authorization also can cause serious adverse medical events, and even life-threatening or permanently impairing damage. This bill will bar insurance companies from harming California patients solely for the purpose of protecting their bottom line. This bill creates a prior authorization exemption program for providers with a proven record of prescribing medically appropriate treatments.

Prior authorization is a form of utilization review or utilization management. Utilization review can occur prospectively, retrospectively, or concurrently and a plan or insurer can approve, modify, delay or deny in whole or in part a request based on its medical necessity. California law requires written policies and procedures that are consistent with criteria or guidelines that are supported by clinical principles and processes. These policies and procedures must be filed with regulators, and disclosed, upon request, to providers, plans and enrollees or insureds.

There are timelines in the law for plans and insurers to respond to requests once any requested medical information that is reasonably necessary to make the determination is provided. California also has a standardized form for prior authorization submissions. If a health plan or insurer fails to respond to the prior authorization request within 72 hours for nonurgent requests, and within 24 hours if exigent circumstances exist, upon the receipt of a completed form, the request is deemed granted.

SB 784 (Becker) Corporate Practice of Medicine Exemption

Summary: This bill creates an exemption to the Corporate Practice of Medicine prohibition that allows health care districts and non-profit corporations with a health care district as its sole corporate member that owns or controls a general acute care hospital to employ physicians and surgeons and charge for professional services.

Analysis: While this bill creates an exemption to the corporate practice of medicine prohibition statute, it specifically prohibits the health care district from interfering with, controlling, or otherwise directing the professional judgment of a physician or surgeon it hires. Any exemption to the corporate practice of medicine prohibition is a concern because the statute was initially created to prevent corporate, profit-making employers from interfering or dictating to physicians and surgeons how they practice medicine or otherwise substitute their judgment for the clinical based expertise and judgment of physicians and surgeons employed. There are some narrow exemptions that exist already, so this is added to those exemptions.

Healing Arts Watch List

AB 1751 (Gipson) Opioid Prescriptions Discussion and Alternatives

Summary: This bill makes clarifying changes to Health and Safety Code sections 11158.1. It expands the required patient discussion to all patients of all ages considering opioid treatment for pain. It repeals the exemption of not having to discuss with patients being treated for a diagnosis of chronic intractable pain and instead add the exemption for hospice care.
Existing law requires a prescriber, with certain exceptions, before directly dispensing or issuing for a minor the first prescription for a controlled substance containing an opioid in a single course of treatment, to discuss specified information with the minor, the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment.

This bill would extend that requirement for the prescriber by applying it to any patient, not only a minor, under those circumstances. The bill would also require the prescriber to discuss the availability of nonpharmacological treatments for pain, as defined.

Existing law makes an exception to the requirement for the prescriber in the case of a patient who is being treated for a diagnosis of chronic intractable pain, as specified. This bill would remove that exception and would instead make an exception in the case of a patient who is currently receiving hospice care.

The bill would require the prescriber, after discussing the information, to offer, as deemed appropriate by the prescriber, a referral for a provider of nonpharmacological treatments for pain, and to obtain consent from the patient, a minor patient's parent or guardian, or another authorized adult, as specified.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), requires a health benefit plan issuer that offers coverage in the small group or individual market to ensure that the coverage includes the essential health benefits package, as defined.

This bill would make legislative findings and declarations relating to addiction associated with overreliance on prescription medication for pain management, and providing that nonpharmacological treatments for pain should be considered during the next update to the state's essential health benefits benchmark plan.

Analysis: This intent of this bill is to broaden the requirement that physicians prescribing opioids for treatment of pain to all patients except those under hospice care. It requires physicians discuss non-opioid treatment options. The intention of the bill is to expand this required discussion with patients and to add in the discussion of alternatives to opioid treatment, which the author believes are not utilized enough.

AB 1731 (Santiago) CURES database: buprenorphine Reporting Exemption ER

Summary: This bill adds an exemption to the requirement that prescribers otherwise consult the CURES database. This bill exempts a health care practitioner from the duty to consult the CURES database when the health care practitioner prescribes, orders, administers, or furnishes buprenorphine or other controlled substance containing buprenorphine in the emergency department of a general acute care hospital.

Analysis: This bill creates a narrow exemption to CURES reporting for prescribers working in the Emergency room of a hospital. Since this bill exempts physicians from the requirement to consult the CURES data base before prescribing buprenorphine or other drugs containing buprenorphine, it does not create a violation. This bill follows the legislative pattern of exempting physicians in the emergency room from otherwise specific requirements or reporting.

AB 1094 (Wicks) Drug Testing Pregnant Women: Consent

Summary: This bill adds a new section 123601 to the Health and Safety Code. The bill prohibits any health practitioner from performing a drug test on a pregnant woman without her prior written or verbal consent unless the physician determines the test is needed to because of the life- threatening condition.

Analysis: This bill would prohibit medical personnel from performing a drug or alcohol test or screen on a pregnant person, perinatal person, or newborn without the prior written and verbal informed consent of the pregnant person, perinatal person, or person authorized to consent for a newborn, and would require the test or screen to be medically necessary to provide care. The bill would authorize performing a drug or alcohol test or screen on a pregnant person, perinatal person, or newborn without consent if, in the physician's judgment, an emergency exists, the person is in immediate need of medical attention, and an attempt to secure consent would result in a delay of treatment that would increase the risk to the person's life or health. If a test or screen is performed without consent, the bill would require that the pregnant person, perinatal person, or person authorized to consent for a newborn receive verbal and written notification, as specified. The bill would prohibit medical personnel from refusing to treat a pregnant person, perinatal person, or newborn due to the refusal to consent to a drug or alcohol test or screen.

This bill may be correcting some abuse when it comes to testing for drug or alcohol pregnant women without their consent.

AB 1021 (Wicks) Controlled Substances Change in Federal Law: Rescheduling

Summary: This bill tried to bring more legal certainty and speed to any federal drug schedule change by amending the statute to allow for automatic authorization for all state prescribers as soon as federal changes are made to scheduled drugs. Among the amendments is to state that this new section of the BPC 26001 does not apply to cannabis or cannabis product because cannabis is regulated in BPC section 11150.2

Analysis: The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a DEA registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Schedule I drugs may not be prescribed by any health practitioner in the United States. Examples of Schedule I drugs include cannabis, LSD, peyote, heroin, and ecstasy.

The intention of this bill is to streamline legal authorization in state statute of any changes to drugs classified as schedule 1 controlled substance that are reclassified to be otherwise legal. The advocates for this bill claim that some of these schedule 1 substances do have medical use and would like to remove any delay in making them legal in California in the event that there are changes to the Federal Controlled Substance Act.

AB 816 (Haney) Minor's Consent to buprenorphine Treatment

Summary: Existing law authorizes a minor who is 12 years of age or older to consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem. Existing law exempts replacement narcotic abuse treatment, as specified, from these provisions.

Analysis: This bill would authorize a minor who is 16 years of age or older to consent to replacement narcotic abuse treatment that uses buprenorphine. This change in law is amending Family Code section 6929. This bill is on our list to make you aware of this potential change in law regarding prescribing buprenorphine to minors.

AB 269 (Berman) COVID Testing and Dispensing Sites

Summary: Existing law, the California Emergency Services Act, authorizes the Governor to declare a state of emergency during conditions of disaster or extreme peril to persons or property, including epidemics. Pursuant to this authority, on March 4, 2020, the Governor declared a state of emergency relating to the novel coronavirus 2019 (COVID-19) pandemic, and ordered, among other things, that the certification and licensure requirements as specified in statute and regulation be suspended to all persons who meet the requirements under the Clinical Laboratory Improvement Amendments (CLIA) for high complexity testing and who are performing analysis of samples to test for SARS-CoV-2, the virus that causes COVID-19, in any certified public health laboratory or licensed clinical laboratory, and that the California Health and Human Services Agency is required to identify and make available medical facilities and other facilities that are suitable for use as medical facilities as necessary for treating individuals who test positive for COVID-19. This bill would declare that it is to take effect immediately as an urgency statute.

Analysis: This bill would authorize a person to perform an analysis of samples to test for SARS-CoV-2 in a clinical laboratory or a city, county, or city and county public health laboratory if they meet the requirements under CLIA for high complexity testing. The bill would, until January 1, 2024, authorize an entity contracted with and approved by the State Department of Public Health to operate a designated COVID-19 testing and dispensing site to acquire, dispense, and store COVID-19 oral therapeutics, as defined, at or from a designated site. This bill is on our list for awareness of the extension of testing authority.

AB 883 (Mathis) Expedite Military License Application: Defense SkillBridge program

Summary: Existing law requires a board to expedite, and authorizes a board to assist, in the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active-duty member of the Armed Forces of the United States and was honorably discharged. Existing law authorizes a board to adopt regulations necessary to administer those provisions. This would create an additional military group eligible for expedited processing of applications.

Analysis: This bill would require the board to expedite, and authorize a board to assist, in the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant is an active duty member of a regular component of the Armed Forces of the United States enrolled in the United States Department of Defense SkillBridge program, as specified, and would provide that regulations to administer those provisions be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act.

AB 1055 (Bains) Creation of License Alcohol and Drug Counselor License and Allied Behavioral Health Board

Summary: This bill would create, upon appropriation by the Legislature, the Allied Behavioral Health Board within the Department of Consumer Affairs. The bill would require the board to establish regulations and standards for the licensure of alcohol drug counselors, as specified. The bill would authorize the board to collaborate with the Department of Health Care Access and Information regarding behavioral health professions, review sunrise review applications for emerging behavioral health license and certification programs, and refer complaints regarding behavioral health workers to appropriate agencies, as specified. The bill would require an applicant to satisfy certain requirements, including, among other things, possession of a master's degree in alcohol and drug counseling or a related counseling master's degree, as specified.

The bill would, commencing 18 months after the board commences approving licenses, impose additional requirements on an applicant, including completion of a supervised practicum from an approved educational institution, and documentation that either the applicant is certified by a certifying organization or the applicant has completed 2,000 hours of postgraduate supervised work experience. The bill would impose requirements related to continuing education and discipline of licensees. The bill would prohibit a person from using the title of "Licensed Alcohol Drug Counselor" unless the person has applied for and obtained a license from the board, and would make a violation of that provision punishable by an administrative penalty not to exceed $10,000.

Analysis: This bill creates a new board within the Department of Consumer Affairs (DCA) to create a new licensed type and regulate them. The new license type is Licensed Alcohol Drug Counselor. While there is no committee analysis about the bill, it appears that there is a need to regulate alcohol and drug counselors and creating a new regulatory board to regulate them. The bill does specify that no program is required to utilize a licensed alcohol drug counselor, it may be that future changes may needs such a license type with specific high level of education. This bill is on the list to be aware of this proposed change.

SB 372 (Menjivar) Former Names and Gender Removal

Summary: This bill requires licensing agencies such as OMBC to remove the prior name of a licensee from the license search when a name change has occurred with required documentation. This bill also requires that the board change the name of the person on their license certificate or pocket card without charging a higher fee. This bill also requires the board to keep track of the prior name so that it can be provide if needed pursuant to an enforcement complaint. The prior name shall for all other purposes be deemed confidential.

Analysis: The Board already changes the name once the required documents are received from the license file and the license search. However, there would need to be changes to breeze to automate the requirements of this bill. Without such automation, tracking this would be done manually which is time consuming.