

New Laws 2018

Significant new California laws of interest to physicians

The California Legislature had an active year, passing many new laws affecting health care. On the following pages you will find highlights of the most significant health laws of interest to physicians.

ALLIED HEALTH PROFESSIONALS

AB 89 (Levine) – Psychologists: suicide prevention training

Requires, effective January 1, 2020, an applicant for licensure or license renewal as a psychologist to complete a minimum of six hours of coursework or applied experience under supervision in suicide risk assessment and intervention.

AB 1153 (Low) – Podiatry

Authorizes a doctor of podiatric medicine with training or experience in wound care to treat ulcers resulting from local and systemic etiologies on the leg no further proximal than the tibial tubercle.

SB 554 (Stone) – Nurse practitioners: physician assistants: buprenorphine

Prohibits construing the Nursing Practice Act, the Physician Assistant Practice Act, or any provision of state law from prohibiting a nurse practitioner or physician assistant from furnishing or ordering buprenorphine to a patient when done in compliance with the provisions of the federal Comprehensive Addiction Recovery Act.

ANCILLARY SERVICES

SB 512 (Hernandez) – Health care practitioners: stem cell therapy

Requires licensed health care practitioners who perform stem cell therapy that is not approved by the United States Food and Drug Administration (FDA) to communicate to their patients seeking stem cell therapy specified information regarding the provision of stem cell therapies on a specified notice in a prominent display in an area visible to patients in his or her office, posted conspicuously in the entrance of his or her office, and provided in writing to the patient prior to providing the initial stem cell therapy. Does not apply to a health care practitioner who has obtained approval for an investigational new drug or device from the FDA for the use of human cells, tissues, or cellular or tissue-based products.

CONFIDENTIAL INFORMATION

AB 210 (Santiago) – Homeless multidisciplinary personnel team

CMA Position: Support

Authorizes counties to establish a homeless adult and family multidisciplinary personnel team, with the goal of facilitating the expedited identification, assessment, and linkage of homeless individuals to housing and supportive services and to allow provider agencies, including those providing health, mental health, and

substance abuse services to share confidential information, for the purpose of coordinating housing and supportive services to ensure continuity of care.

AB 1119 (Limón) – Developmental and mental health services: confidentiality

CMA Position: Support

Existing law requires all information and records obtained in the course of providing specified developmental and mental services to be confidential and authorizes disclosure only in specified cases. This bill additionally authorizes, during the provision of emergency services and care, the communication of patient information and records between specified individuals, including physicians and surgeons.

SB 241 (Monning) – Medical records: access

CMA Position: Support

Revises provisions of law governing the right of patients to access and copy their medical records by conforming these requirements to federal Health Information Portability and Accountability Act of 1996 (HIPAA) requirements, including conforming state law regarding charges for clerical costs and requiring health care providers to provide the records in an electronic format if they are maintained electronically and if the patient requests the records in an electronic format.

SB 575 (Leyva) – Patient access to health records

Expands a provision of law that entitles a patient to a copy, at no charge, of the relevant portion of the patient's records that are needed to support an appeal regarding eligibility for certain public benefit programs, by including initial applications in addition to appeals, and by expanding the list of public benefit programs to include In-Home Supportive Services, the California Work Opportunity and Responsibility to Kids program, CalFresh, and certain veterans related benefits.

DRUG PRESCRIBING AND DISPENSING

AB 40 (Santiago) – CURES database: health information technology system

CMA Position: Support

Requires the California Department of Justice (DOJ) to make electronic prescription drug records contained in its Controlled Substance Utilization Review and Evaluation System (CURES) accessible through integration with a health information technology system no later than October 1, 2018, if that system meets certain information security and patient privacy requirements.

AB 265 (Wood) – Prescription drugs: prohibition on price discount

CMA Position: Support

Prohibits, with specified exceptions, a person who manufactures a prescription drug from offering in California any discount, repayment, product voucher, or other reduction in an individual's out-of-pocket expenses associated with his or her health insurance, health care service plan, or other health coverage, including, but not limited to, a copayment, coinsurance, or deductible, for any prescription drug if a lower cost generic drug is covered under the individual's health insurance, health care service plan, or other health coverage on a lower cost-sharing tier that is designated as therapeutically equivalent to the prescription drug manufactured by that person or if the active ingredients of the drug are contained in products regulated by the federal Food and Drug Administration, are available without prescription at a lower cost, and are not otherwise contraindicated for the condition for which the prescription drug is approved.

AB 720 (Eggman) – Inmates: psychiatric medication: informed consent

CMA Position: Support

Extends to an inmate confined in a county jail the protection from being administered any psychiatric medication without his or her prior informed consent, with certain exceptions. Imposes additional criteria that must be satisfied before a county department of mental health or other designated county department may administer involuntary medication. Requires any court-ordered psychiatric medication to be administered in consultation with a psychiatrist who is not involved in the treatment of the inmate at the jail, if one is available. Requires a county that administers involuntary psychiatric medication to file a report with prescribed information to certain committees of the Legislature.

AB 1048 (Arambula) – Health care: pain management and Schedule II drug prescriptions

CMA Position: Sponsor

Beginning July 1, 2018, authorizes a pharmacist to dispense a Schedule II controlled substance as a partial fill if requested by the patient or the prescriber. Requires the pharmacy to retain the original prescription, with a notation of how much of the prescription has been filled, the date and amount of each partial fill, and the initials of the pharmacist dispensing each partial fill, until the prescription has been fully dispensed. Authorizes a pharmacist to charge a professional dispensing fee to cover the actual supply and labor costs associated with dispensing each partial fill associated with the original prescription.

SB 17 (Hernandez) – Health care: prescription drug costs.

CMA Position: Support

Requires health plans and insurers that report rate information through the existing large and small group rate review process to also report specified information related to prescription drug pricing to Department of Managed Health Care (DMHC) and California Department of Insurance (CDI). Requires DMHC and CDI to compile specified information into a consumer-friendly report that demonstrates the overall impact of drug costs on health care premiums. Requires drug manufacturers to notify specified purchasers, in writing at least 90 days prior to the planned effective date, if it is increasing the wholesale acquisition cost (WAC) of a prescription drug by specified amounts. Requires drug manufacturers to notify Office of Statewide Health Planning and Development (OSHPD) three days after federal Food and Drug Administration (FDA) approval when introducing a new drug to market at a WAC that exceeds the Medicare Part D specialty drug threshold. Requires drug manufacturers to provide specified information to OSHPD related to the drug's price.

END-OF-LIFE ISSUES

AB 242 (Arambula) – Certificates of death: veterans

CMA Position: Support

Requires a person completing certificate of death to indicate whether the deceased person was ever in the Armed Forces of the United States. Requires the Department of Public Health to access data in the electronic death registration system to compile data on veteran suicides and to provide an annual report to the Legislature and the Department of Veterans Affairs.

HEALTH CARE COVERAGE

SB 133 (Hernandez) – Health care coverage: continuity of care

Requires a health care service plan to include notice of the process to obtain continuity of care in any evidence of coverage issued after January 1, 2018. Requires a health plan to provide a written copy of this information to its contracting providers and provider groups, and a copy to its enrollees upon request. Extends existing continuity of

care protections in the Health & Safety Code and Insurance Code to health plan enrollees and insureds whose prior coverage was terminated because the health plan or insurer withdrew from any portion of a market. Requires a health plan or insurer to include notice of the availability of the right to request completion of covered services as part of, to accompany, or to be sent simultaneously with any termination of coverage notice sent under specified circumstances.

SB 223 (Atkins) – Health care language assistance services

Requires a health care service plan and a health insurer to notify enrollees or insureds upon initial enrollment and in the annual renewal materials of the availability of language assistance services and of certain nondiscrimination protections, and would require this information to be included in the evidence of coverage, on other materials disseminated to enrollees or insureds, and to be posted on the plan or insurer’s website. Requires this written notice to be made available in the top 15 languages spoken by limited-English-proficient (LEP) individuals in California as determined by the State Department of Health Care Services (DHCS). Establishes minimum qualifications for an interpreters providing interpretation services to enrollees and insureds and prohibits the plan or health insurer from requiring an LEP enrollee or insured to provide his or her own interpreter or rely on a staff member who is not a qualified interpreter to communicate directly with the enrollee or insured. Applies to Medi-Cal managed care plans, mental health plans, DHCS in addition to health care service plans and insurers.

HEALTH CARE FACILITIES AND FINANCING

AB 395 (Bocanegra) – Substance use treatment providers

Adds the use of medication-assisted treatment as an authorized service by narcotic treatment programs licensed by the State Department of Health Care Services. Authorizes methadone, LAAM, buprenorphine, or any other medication approved by the FDA for the purpose of medication-assisted treatment to be used by a licensed narcotic treatment program. Authorizes the department to implement, interpret, or make specific this provision by means of plan or provider bulletins, or similar instructions and require the department to adopt regulations no later than January 1, 2021. Authorizes a physician to treat a number of patients specified under the DEA registration instead of a maximum of 20. Specifies that bills for services under Drug Medi-Cal must be submitted within six months.

AB 658 (Waldron) – Clinical laboratories

CMA Position: Support

Directs the California Department of Public Health to temporarily suspend the annual renewal fee for clinical laboratory licenses until January 1, 2020.

AB 1102 (Rodriguez) – Health facilities: whistleblower protections

Increases the maximum criminal fine, from \$20,000 to \$75,000, for violations of whistleblower protection laws that apply to patients, employees, and other health care workers of hospitals.

SB 54 (De León) – Law enforcement: sharing data

CMA Position: Support

Limits the involvement of state and local law enforcement agencies in federal immigration enforcement. States that the Attorney General shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities operated by the state or a political subdivision of the state, courthouses, Division of Labor Standards Enforcement facilities, the Division of Workers Compensation, and shelters, and ensuring that they remain safe and accessible to all California residents, regardless of immigration status. Requires all public schools, health facilities operated by the state or a political subdivision of the state, and courthouses to implement the model policy, or an equivalent policy. Encourages other entities that provide services related to physical or mental health to adopt the model policy.

SB 219 (Wiener) – Long-term care facilities: rights of residents

CMA Position: Neutral

Enacts the Lesbian, Gay, Bisexual and Transgender (LGBT) Long-Term Care Facility Residents' Bill of Rights and makes it unlawful for any long-term care facility to take specified actions on the basis of a person's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus status. Prohibited actions include denying admission to a facility, refusing to make room assignments based on a transgender resident's gender identity, failing to use a resident's preferred name or pronouns, and denying or restricting appropriate medical or nonmedical care. Requires each facility to post a nondiscrimination notice.

MEDI-CAL

AB 205 (Wood) – Medi-Cal: Medi-Cal managed care plans

CMA Position: Support

Requires Medi-Cal managed care plans (MCMC) to maintain a network of providers that meet specified time and distance standards, specific to county and provider type. Requires plans that cannot meet the standards to submit a request for alternative access standards. Permits the use of clinically appropriate telecommunications technology as a means of determining annual compliance with the time and distance standards or in approving alternative access to care. Sunsets these requirements on January 1, 2022. Implements changes required by the federal Medicaid managed care rule related to state fair hearings involving MCMC beneficiaries as well as to beneficiary grievances and appeals to MCMC plans.

AB 340 (Arambula) – Childhood trauma screening

CMA Position: Support

Requires the State Department of Health Care Services (DHCS), in consultation with the State Department of Social Services and others, to convene, by May 1, 2018, an advisory working group to update, amend, or develop tools and protocols for screening children for trauma within the Early and Periodic Screening, Diagnosis, and Treatment Program benefit. Requires this group to report its findings and recommendations, as well as any appropriations necessary for implementation to DHCS and to the Legislature's budget subcommittees on health and human services no later than May 1, 2019. Requires review of the protocols for the screening of trauma in children at least once every 5 years, or upon the request of the department. Authorizes DHCS to implement, interpret, or make specific these provisions by means of all-county letters, plan letters, or plan or provider bulletins.

SB 171 (Hernandez) – Medi-Cal: Medi-Cal managed care plans

CMA Position: Support

Implements federal Medicaid managed care regulations. Commencing July 1, 2019, requires a Medi-Cal managed care plan to comply with a minimum 85 percent Medical Loss Ratio (MLR) and to report the MLR for each MLR reporting year as specified. Requires, effective for contract rating periods commencing on or after July 1, 2023, a Medi-Cal managed care plan to provide a remittance to the state if the MLR does not meet the minimum ratio of 85 percent for that reporting year, and specifies how any remittance will be transferred. Requires the Department of Health Care Services (DHCS) to ensure that call covered mental health and substance use disorder benefits comply with federal regulations. Directs DHCS to require Medi-Cal managed care plans to increase certain payments to designated public hospitals, as specified, and to establish a program under which such hospitals may earn performance-based quality incentive payments.

MEDICAL CANNABIS

AB 133 (Committee on Budget) – Cannabis Regulation

Makes changes to the Medicinal and Adult-Use Cannabis Regulation and Safety Act and repeals prohibition limiting medicinal cannabis manufacturers to only manufactures medicinal cannabis products for sale by a medicinal cannabis retailer. Provides of an exception to the prohibition by an adult use cannabis licensee from allowing persons under 21 years of age on its premises if the licensee holds a medicinal license, as specified. Allows for the sale of medicinal cannabis products to the primary caregiver of a person who possesses a valid recommendation.

SB 94 (Committee on Budget and Fiscal Review) – Cannabis: medicinal and adult use

CMA Position: Support

Establishes a single system of administration for cannabis laws in California. Contains changes to the Budget Act of 2017 that are necessary for state licensing entities to implement a regulatory framework pursuant to the Medical Cannabis Regulation and Safety Act (MCRSA) and the Adult Use of Marijuana Act (AUMA) of 2016 (Proposition 64). Conforms MCRSA and AUMA into a single system that prioritizes consumer safety, public safety and tax compliance. Creates agricultural cooperatives, a method for collecting and remitting taxes, a process for testing and packaging, and a process for collecting data related to driving under the influence.

MENTAL HEALTH

AB 1315 (Mullin) – Mental health: early psychosis and mood disorder detection and intervention

Establishes the Early Psychosis Intervention Competitive Selection Process Plus Program and an advisory committee to the Mental Health Services Oversight and Accountability Commission to expand the provision of high-quality, evidence-based early psychosis and mood disorder detection and intervention. Establishes the Early Psychosis Detection and Intervention Fund and provides that moneys in the fund shall be available, upon appropriation by the Legislature, to the commission for the purposes of the bill.

SB 565 (Portantino) – Mental health: involuntary commitment

Requires mental health facilities, upon a patient's completion of a 14-day period of intensive treatment for mental disorder or impairment by chronic alcoholism, to make reasonable attempts to notify family members or any other person designated by the patient at least 36 hours prior to any certification review hearing for an additional 30 days of treatment.

PROFESSIONAL LICENSING AND DISCIPLINE

AB 508 (Santiago) – Health care practitioners: student loans

CMA Position: Support

Repeals provisions of law authorizing boards to cite and fine, or deny licensure or licensure renewal, to a health care practitioner if he or she is in default on a United States Department of Health and Human Services education loan.

AB 1340 (Maienschein) – Continuing medical education: mental and physical health care integration

Requires the Medical Board of California to consider including in its continuing education requirements a course in integrating mental and physical health care in primary care settings, especially as it pertains to early identification of mental health issues and exposure to trauma in children and young adults and their appropriate care and treatment.

SB 798 (Hill) – Healing arts: boards

Extends the operation of the Medical Board of California until 2022 and makes various changes to the Medical Practice Act. Includes, among other provisions, elimination of the medical board's authority to approve ABMS equivalent boards, establishes a post-graduate training license for physicians, requires additional residency training, makes the Board of Podiatric Medicine independent of the Medical Board of California, changes the adverse event reporting requirements for outpatient surgery settings, changes the requirements for use of an expert witness in disciplinary cases, extends the authorization for the Osteopathic Medical Board of California (OMBC), and makes changes to continuing medical education for OMBC-licensed physicians.

PUBLIC HEALTH

AB 643 (Frazier) – Pupil instruction: abusive relationships

Amends the California Healthy Youth Act to require school districts to include information about the early warning signs of adolescent relationship abuse and intimate partner violence in its comprehensive sexual health education and HIV prevention education for all pupils in grades 7 to 12.

AB 841 (Weber) – Pupil nutrition: food and beverages: advertising

CMA Position: Support

Prohibits, except as provided, a school, school district, or charter school from advertising food or beverages during the school day, and from participating in a corporate incentive program that rewards pupils with free or discounted foods or beverages that do not comply with specified nutritional standards when the pupils reach certain academic goals. Provides that it is the intent of the Legislature that the governing board or body of a school district and a charter school annually review their compliance with these provisions.

AB 1221 (Gonzalez Fletcher) – Responsible Beverage Service Training Program Act of 2017

CMA Position: Sponsor

Establishes the Responsible Beverage Service (RBS) Training Program Act of 2017, and requires the Department of Alcoholic Beverage Control, on or before January 1, 2020, to develop, implement, and administer a curriculum for an RBS training program. Beginning July 1, 2021, requires an alcohol server to successfully complete an RBS training course offered or authorized by the department. Authorizes the department to charge a fee, not to exceed \$15, for any RBS training course provided by the department and require the fee to be deposited in the Alcohol Beverage Control Fund.

SB 239 (Wiener) – HIV and AIDS: criminal penalties

CMA Position: Support

Modifies criminal penalties related specifically to human immunodeficiency virus (HIV) that imposed stricter criminal penalties to individuals infected with HIV in comparison to other communicable diseases. Repeals provisions making the intentional exposure to another person by a person who has tested positive for HIV a

felony. Eliminates criminal penalties specific to HIV-infected individuals and instead makes the intentional transmission of an infectious or communicable disease a misdemeanor if specified circumstances apply.

SB 536 (Pan) – Firearm Violence Research Center: gun violence restraining orders

CMA Position: Support

Requires the state Department of Justice (DOJ) to make information related to gun-violence restraining orders that is maintained in the California Restraining Order and Protective Order System or any similar database maintained by DOJ available to researchers affiliated with the University of California's Firearm Violence Research Center, or, at the discretion of DOJ, any other entity that is concerned with the study and prevention of violence, for academic and research purposes.

WORKERS' COMPENSATION

SB 189 (Bradford) – Workers' compensation: definition of employee

CMA Position: Sponsor

Provides clarification to AB 2883 (Insurance Committee, 2016) which allowed shareholder employees with at least a 15 percent ownership stake in a corporation to exempt themselves from workers' compensation coverage. This bill reduces the ownership threshold for an officer or member of the board of directors who wishes to waive workers' compensation coverage to 10 percent. Expands the grounds for waiving workers' compensation coverage to include owners of a professional corporation if the owner is a practitioner of the professional services for which the professional corporation was created and the owner is covered by a health insurance policy or health care service plan. Expands the grounds for waiving workers' compensation coverage to board members of worker-owned cooperatives and to closely-held family businesses.

SB 489 (Bradford) – Workers' compensation: change of physician

CMA Position: Support

Extends the timeline for submitting claims related to emergency medical treatment to the employer, or its insurer or claims administrator in workers' compensation system 30 days to 180 days from the date the service was provided to the injured worker.

WORKFORCE & OFFICE SAFETY ISSUES

AB 461 (Muratsuchi) – Personal income taxes: exclusion: forgiven student loan debt

CMA Position: Support

Excludes from gross income, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, student loan debt, which may include a medical school loan, that is cancelled under specified repayment plans for public service and other employees administered by the United States Secretary of Education.

SB 63 (Jackson) – Unlawful employment practice: parental leave

CMA Position: Support

Requires specified employers to allow specified employees to take up to 12 weeks of parental leave within one year of a child's birth, adoption, or foster care placement. Prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave. Does not apply to employees subject to both state and federal laws regarding family and medical leave.

SB 179 (Atkins) – Gender identity: female, male, or nonbinary

Provides for a third gender option on the state driver's license, identification card, and birth certificate. Restructures the process for individuals to change their name to conform with their gender identity, and amends procedures for an individual to secure a court-ordered change of gender. The provisions of this bill are effective September 1, 2018.

SB 396 (Lara) – Employment: gender identity, gender expression, and sexual orientation

Requires specified employers to include, as a part of existing required sexual harassment training, training on harassment based on gender identity, gender expression, and sexual orientation. Requires employers to post a poster developed by the Department of Fair Employment and Housing regarding transgender rights in a prominent and accessible location in the workplace.

These are just a sampling of the new laws impacting health care in 2018 and beyond. For a comprehensive list, see "Significant New California Laws of Interest to Physicians for 2018," in the California Medical Association's online resource library at www.cmanet.org/resource-library.

Sidebar: Did you know CMA's online health law library is free to members?

CMA On-Call, the California Medical Association (CMA) online health law library contains nearly 5,000 pages of up-to-date legal information on a variety of subjects of everyday importance to practicing physicians. One of CMA's most valuable member benefits, the searchable online library contains all the information available in the California Physician's Legal Handbook (CPLH), an annual publication from CMA's Center for Legal Affairs.

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