STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
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TELECONFERENCE LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE MEETING NOTICE & AGENDA

Department of Consumer Affairs
Camanche Room
2005 Evergreen Street
Sacramento, CA 95815
Directions only: (916) 263-2294

Eisenhower Medical Center
Hand Therapy Clinic
39000 Bob Hope Drive
Rancho Mirage, CA 92270
Directions only: (760) 773-1630

39 La Crosse Drive
Morgan Hill, CA 95037
Directions only: (408) 612-5067

Scripps Memorial Hospital Encinitas
Rehabilitation Center Conference Room
354 Santa Fe Drive
Encinitas, CA 92024
Directions only: (760) 633-6507

Tuesday, January 24, 2012

3:00 pm – Legislation and Regulatory Affairs Committee Meeting

The public may provide comment on any issue before the committee at the time the matter is discussed.

1. Call to order, roll call, establishment of a quorum

2. Discussion and consideration of recommending a position to the Board on the following bills:
   a) Assembly Bill (AB) 171(Beall), Autism.
   b) AB 374 (Hayashi), Provides for licensure of Athletic Trainers.
   c) AB 386 (Galgiani), Prisons: telehealth systems.
   d) AB 439 (Skinner), Health care information.
   e) AB 518 (Wagner), Elder and dependent adult abuse: mandated reporters.
   f) AB 608 (Pan), Telemedicine.
   g) AB 783 (Hayashi), Professional Corporations.
   h) AB 800 (Huber), Boards and Commissions: Time Reporting.
   i) AB 958 (Berryhill) – Statute of limitations for disciplinary actions.
   j) AB 1003 (Smyth) Professional and vocational licenses.
   k) Senate Bill (SB) 399 (Huff), Healing Arts: Advertising.
   l) SB 462 (Blakeslee), Provides for certification of special education advocates.
   m) SB 544 (Price), Professions and Vocations: Amendments to the Business and Professions Code; general provisions and the Occupational Therapy Practice Act.
   n) SB 924 (Walters), Direct patient access to physical therapy.

3. Report on bills previously reviewed by the Committee and signed into law:
   a) AB 415 (Logue), Telehealth.
   b) Senate Bill (SB) 24 (Simitian), Personal Information: Privacy.
   c) SB 541 (Price), Exemptions for boards from the Public Contract Code requirements (for use of Expert Consultants).
   d) SB 850 (Leno), Medical records: confidential information.
   e) SB 946 (Committee on Health), Telemedicine.

4. Selection of future meeting dates.

5. Public comment on items not on agenda.

6. Adjournment

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE
ACTION MAY BE TAKEN ON ANY ITEM ON THE AGENDA;
ITEMS MAY BE TAKEN OUT OF ORDER

Questions regarding this agenda should be directed to Heather Martin, Executive Officer, at the Board's office in Sacramento. Meetings of the California Board of Occupational Therapy are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. A quorum of the board may be present at the committee meeting. Board members who are not members of the committee may observe but not participate or vote. Public comment is appropriate on any issue before the workshop at the time the issue is heard, but the chairperson may, at his or her discretion, apportion available time among those who wish to speak. The meeting is accessible to individuals with disabilities. A person who needs disability related accommodations or modifications in order to participate in the meeting shall make a request to Jeff Hanson at (916) 263-2294 or 2005 Evergreen Street, Suite 2050, Sacramento, California, 95815. Providing at least five working days notice before the meeting will help ensure the availability of accommodations or modifications.

DISCUSSION AND CONSIDERATION OF RECOMMENDING A POSITION TO THE BOARD ON THE FOLLOWING BILLS:

a) Assembly Bill (AB) 171(Beall), Autism.
b) AB 374 (Hayashi), Provides for licensure of Athletic Trainers.
c) AB 386 (Galgiani), Prisons: telehealth systems.
d) AB 439 (Skinner), Health care information.
e) AB 518 (Wagner), Elder and dependent adult abuse: mandated reporters.
f) AB 608 (Pan), Telemedicine.
g) AB 783 (Hayashi), Professional Corporations.
h) AB 800 (Huber), Boards and Commissions: Time Reporting.
i) AB 958 (Berryhill) – Statute of limitations for disciplinary actions.
j) AB 1003 (Smyth) Professional and vocational licenses.
k) Senate Bill (SB) 399 (Huff), Healing Arts: Advertising.
l) SB 462 (Blakeslee), Provides for certification of special education advocates.
m) SB 544 (Price), Professions and Vocations: Amendments to the Business and Professions Code; general provisions and the Occupational Therapy Practice Act.
n) SB 924 (Walters), Direct patient access to physical therapy.

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 171

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Eng, Huffman, Mitchell, Swanson, *Wieckowski,* Williams, and Yamada)

January 20, 2011

An act to add Section 1374.73 to the Health and Safety Code, and to add Section 10144.51 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 171, as amended, Beall. Autism spectrum disorder.

(1) Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for licensing and regulation of health insurers by the Insurance Commissioner. Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions.

This bill would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. The bill would, however, provide that no benefits are required to be provided by a health benefit plan offered through the California Health Benefit Exchange that exceed the essential health benefits required under federal law. The bill would

prohibit coverage from being denied for specified reasons. Because the bill would change the definition of a crime with respect to health care service plans, it would thereby impose a state-mandated local program.

(2) 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1374.73 is added to the Health and Safety Code, to read:

1374.73. (a) Every health care service plan contract issued, amended, or renewed on or after January 1, 2012, that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

(b) A health care service plan shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an enrollee solely because the individual is diagnosed with, or has received treatment for, an autism spectrum disorder.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an enrollee than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the plan contract.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this chapter. Coverage shall not be denied on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health care service plan may request, no more than once annually, a review of treatment provided to an enrollee for autism

spectrum disorders. The cost of obtaining the review shall be borne by the plan. This subdivision does not apply to inpatient services.

(f) A health care service plan shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders to ensure that enrollees have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 1367 and 1367.03 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an enrollee under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting benefits that are otherwise available to an enrollee under a health care service plan.

(3) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health care service plan contract through the Exchange. However, those specific benefits are required to be provided if offered by a health care service plan contract outside of the Exchange.

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

(1) "Autism spectrum disorder" means a neurobiological condition that includes autistic disorder, Asperger's disorder, Rett's disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

(2) "Behavioral health treatment" means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.

(3) "Behavioral intervention therapy" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

(4) "Diagnosis of autism spectrum disorders" means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders.

(5) "Evidence-based research" means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

(6) "Pharmacy care" means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(7) "Psychiatric care" means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider.

(8) "Psychological care" means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider.

(9) "Qualified autism service provider" shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or certified person, entity, or group. "Qualified autism service provider" shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section

4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).

~~(9)~~

(10) "Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists or any other appropriately licensed or certified provider.

~~(10)~~

(11) "Treatment for autism spectrum disorders" means all of the following care, including necessary equipment, prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.

(B) Pharmacy care.

(C) Psychiatric care.

(D) Psychological care.

(E) Therapeutic care.

(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health care service plan contracts.

SEC. 2. Section 10144.51 is added to the Insurance Code, to read:

10144.51. (a) Every health insurance policy issued, amended, or renewed on or after January 1, 2012, that provides hospital,

medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

(b) A health insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an insured solely because the individual is diagnosed with, or has received treatment for, an autism spectrum disorder.

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an insured than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the policy.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this part. Coverage shall not be denied on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health insurer may request, no more than once annually, a review of treatment provided to an insured for autism spectrum disorders. The cost of obtaining the review shall be borne by the insurer. This subdivision does not apply to inpatient services.

(f) A health insurer shall establish and maintain an adequate network of qualified autism service providers with appropriate training and experience in autism spectrum disorders to ensure that insureds have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 10133.5 and 10133.55 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an insured under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting benefits that are otherwise available to an enrollee under a health insurance policy.

(3) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health insurance policy through the Exchange. However, those specific benefits are required to be provided if offered by a health insurance policy outside of the Exchange.

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

(1) "Autism spectrum disorder" means a neurobiological condition that includes autistic disorder, Asperger's disorder, Rett's disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.

(2) "Behavioral health treatment" means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.

(3) "Behavioral intervention therapy" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.

(4) "Diagnosis of autism spectrum disorders" means medically necessary assessment, evaluations, or tests to diagnose whether an individual has one of the autism spectrum disorders.

(5) "Evidence-based research" means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.

(6) "Pharmacy care" means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(7) "Psychiatric care" means direct or consultative psychiatric services provided by a psychiatrist or any other appropriately licensed or certified provider.

(8) "Psychological care" means direct or consultative psychological services provided by a psychologist or any other appropriately licensed or certified provider.

(9) "Qualified autism service provider" shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or certified person, entity, or group. "Qualified autism service provider" shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).

~~(9)~~

(10) "Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists or any other appropriately licensed or certified provider.

~~(10)~~

(11) "Treatment for autism spectrum disorders" means all of the following care, including necessary equipment, prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician and surgeon or a licensed psychologist or any other appropriately licensed or certified provider who determines the care to be medically necessary:

(A) Behavioral health treatment.

(B) Pharmacy care.

(C) Psychiatric care.

(D) Psychological care.

(E) Therapeutic care.

(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health insurance policies.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MAY 2, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 374

Introduced by Assembly Member Hayashi

February 14, 2011

~~An act to add Chapter 5.8 (commencing with Section 2697.2) to Division 2 of, and to repeal Section 2697.8 of, the Business and Professions Code, relating to athletic trainers.~~ *An act to add Chapter 2.7 (commencing with Section 18898) to Division 8 of the Business and Professions Code, relating to athletic trainers.*

LEGISLATIVE COUNSEL'S DIGEST

AB 374, as amended, Hayashi. ~~Athletic trainers.~~ *Athletic.*

Existing law provides for the regulation of various professions and vocations, including those of an athlete agent.

This bill would make it unlawful for any person to hold himself or herself out as a certified athletic trainer unless he or she has been certified by the Board of Certification, Inc., and has either graduated from a college or university, after completing an accredited athletic training education program, as specified, or completed requirements for certification by the Board of Certification, Inc., prior to January 1, 2004. The bill would make it an unfair business practice to violate these provisions.

~~Existing law provides for the regulation of various professions and vocations, including those of an athlete agent.~~

~~This bill would, commencing January 1, 2013, provide for the licensure and regulation of athletic trainers, as defined, by an Athletic Trainer Licensing Committee, to be established by the bill within the Medical Board of California. Under the bill, the committee would be comprised of 7 members, as specified, appointed by the Governor, subject to Senate confirmation, the Senate Committee on Rules, and the Speaker of the Assembly. The bill would, except as specified, prohibit a person from practicing as an athletic trainer or using certain titles without a license issued by the committee. The bill would require an applicant for licensure to meet certain educational requirements, pass a specified examination, hold specified athletic trainer certification, possess emergency cardiac care certification, and submit an application and pay an application and processing fee established by the committee. The bill would require the committee to issue a license to an applicant who qualifies for licensure and pays a specified license fee. The bill would also specify that a license shall be valid for 2 years and is subject to renewal upon the completion of specified requirements including the payment of a renewal fee. The bill would define the practice of athletic training and prescribe supervision and other requirements on athletic trainers. The bill would create the Athletic Trainers Account, within the Contingent Fund of the Medical Board of California, would direct the deposit of the application and renewal fees into this account, and would make those fees available to the committee subject to appropriation by the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.7 (commencing with Section 18898) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 2.7. ATHLETIC TRAINERS

18898. (a) No person shall hold himself or herself out to be a certified athletic trainer unless he or she meets the following requirements:

(1) He or she has done either of the following:

(A) Graduated from a college or university after completing an athletic training education program accredited by the Commission on Accreditation of Athletic Training Education, or its predecessors or successors.

(B) Completed requirements for certification by the Board of Certification, Inc., prior to January 1, 2004.

(2) He or she has been certified by the Board of Certification, Inc.

(b) It is an unfair business practice within the meaning of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 for any person to use the title of "certified athletic trainer" or any other term, such as "licensed," "registered," or "ATC," that implies or suggests that the person is certified as an athletic trainer, if the person does not meet the requirements of subdivision (a).

~~SECTION 1. The Legislature finds and declares the following:~~

~~(a) California is one of only three states that does not currently regulate the practice of athletic training. This continued lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will come to California to practice, thereby putting the public in danger and degrading the standards of the profession as a whole.~~

~~(b) There is a pressing and immediate need to regulate the profession of athletic training in order to protect the public health, safety, and welfare. This need is particularly important because athletic trainers often work with schoolage children.~~

~~SEC. 2. Chapter 5.8 (commencing with Section 2697.2) is added to Division 2 of the Business and Professions Code, to read:~~

~~CHAPTER 5.8. ATHLETIC TRAINERS~~

~~2697.2. This chapter shall be known and may be cited as the Athletic Trainers Practice Act.~~

~~2697.4. For the purposes of this chapter, the following definitions shall apply:~~

~~(a) "Athletic trainer" means a person who meets the requirements of this chapter and is licensed by the committee.~~

~~(b) "Board" means the Medical Board of California.~~

~~(c) "Committee" means the Athletic Trainer Licensing Committee.~~

~~2697.6. (a) No person shall engage in the practice of athletic training unless licensed pursuant to this chapter.~~

~~(b) No person shall use the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," "a.t.," "a.t.l.," "c.a.t.," "a.t.c.," or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer unless that person is licensed pursuant to this chapter.~~

~~(c) Notwithstanding subdivisions (a) and (b), a person who practiced athletic training in California for a period of seven consecutive years prior to January 1, 2013, may use the title "athletic trainer" without being licensed by the committee. However, on and after January 1, 2016, no person may use the title "athletic trainer" unless he or she is licensed by the committee pursuant to the provisions of this chapter.~~

~~2697.8. (a) There is established an Athletic Trainer Licensing Committee within the Medical Board of California. The committee shall consist of seven members.~~

~~(b) The seven committee members shall include the following:~~

~~(1) Four licensed athletic trainers. Initially, the committee shall include four athletic trainers who have satisfied the requirements of subdivision (a) of Section 2697.12 and who will satisfy the remainder of the licensure requirements described in Section 2697.12 as soon as it is practically possible.~~

~~(2) One public member.~~

~~(3) Two licensees, in any combination, chosen from the following: physicians and surgeons licensed by the board, osteopathic physicians and surgeons licensed by the Osteopathic Medical Board of California, or doctors of chiropractic licensed by the State Board of Chiropractic Examiners.~~

~~(c) Subject to confirmation by the Senate, the Governor shall appoint two of the licensed athletic trainers and the public member. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a licensed athletic trainer and a physician and surgeon, an osteopathic physician and surgeon, or a doctor of chiropractic as described in paragraph (3) of subdivision (b).~~

~~(d) (1) All appointments shall be for a term of four years and shall expire on June 30 of the year in which the term expires. Vacancies shall be filled for any unexpired term.~~

~~(2) Notwithstanding paragraph (1), for initial appointments made on or after January 1, 2013, the public member appointed by the Governor shall serve a term of one year. Two of the athletic trainers appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve terms of three years, and the remaining members shall serve terms of four years.~~

~~(e) Each member of the committee shall receive per diem and expenses as provided in Section 103.~~

~~(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. The repeal of this section renders the committee subject to the review required by Article 7.5 (commencing with Section 9147.7) of the Government Code.~~

~~2697.10. (a) The committee shall adopt, repeal, and amend regulations as may be necessary to enable it to carry into effect the provisions of this chapter. All regulations shall be in accordance with the provisions of this chapter.~~

~~(b) In promulgating regulations, the committee may consult the professional standards issued by the National Athletic Trainers' Association, the Board of Certification, Inc., or any other nationally recognized professional association.~~

~~(c) The committee shall approve programs for the education and training of athletic trainers.~~

~~(d) Protection of the public shall be the highest priority for the committee in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.~~

~~2697.12. In order to qualify for a license, an applicant shall meet all of the following requirements:~~

~~(a) Has submitted an application developed by the committee that includes evidence that the applicant has completed athletic trainer certification eligibility requirements from a nationally accredited athletic training education program at a four-year college or university approved by the committee.~~

~~(b) Has passed an athletic training certification examination offered by a nationally accredited athletic trainer certification agency approved by the committee.~~

~~(c) Holds current athletic training certification from a nationally accredited athletic trainer certification agency approved by the committee.~~

~~(d) Possesses an emergency cardiac care certification from a certification body, approved by the committee, that adheres to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.~~

~~(e) Has paid the application and processing fee established by the committee, as described in Section 2697.16.~~

~~2697.13. The committee shall issue a license to an applicant who satisfies the requirements described in Section 2697.12 and pays a license fee, as described in Section 2697.16.~~

~~2697.14. A license issued by the committee pursuant to Section 2697.12 shall be valid for two years and thereafter shall be subject to the renewal requirements described in Sections 2697.16 and 2697.18.~~

~~2697.16. (a) Each applicant for licensure shall pay a nonrefundable application and processing fee, to be fixed as described in subdivision (b), at the time the application is filed.~~

~~(b) The application and processing fee shall be fixed by the committee by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed in an amount necessary to cover the reasonable regulatory costs of processing applications pursuant to this chapter as projected for the fiscal year commencing on the date the fees become effective.~~

~~(c) Each applicant who qualifies for licensure, as a condition precedent to the issuance of a license shall pay an initial license fee in an amount fixed by the committee consistent with this section in an amount sufficient to cover the reasonable regulatory costs of carrying out the provisions of this chapter.~~

~~(d) The biennial renewal fee shall be fixed by the committee consistent with this section and shall be sufficient to cover the reasonable regulatory costs of carrying out the provisions of this chapter.~~

~~2697.18. The committee shall renew a license if an applicant meets all of the following requirements:~~

~~(a) Pays the renewal fee as established by the committee.~~

~~(b) Submits proof of satisfactory completion of continuing education, as determined by the committee.~~

~~(c) Submits proof of current emergency cardiac care certification meeting the requirements of subdivision (c) of Section 2697.12.~~

~~(d) Demonstrates that his or her license is otherwise in good standing, including, that the applicant for renewal possesses a current, unencumbered certification from a nationally accredited athletic trainer certification agency approved by the committee.~~

~~2697.20. (a) The practice of athletic training is the professional treatment of a patient for risk management and injury and illness prevention; the clinical evaluation and assessment of a patient for an injury or illness sustained or exacerbated while participating in physical activity, or both; the immediate care and treatment of a patient for an injury or illness sustained or exacerbated while participating in physical activity, or both; and the rehabilitation and reconditioning of a patient's injury or illness, or both. An athletic trainer shall refer a patient to an appropriate licensed health care provider when the treatment or management of the injury, illness, or condition is not within the scope of practice of an athletic trainer.~~

~~(b) No licensee shall provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not qualified to perform by his or her education, training, or experience, or that he or she is otherwise prohibited by law from performing.~~

~~(c) Nothing in this chapter shall authorize an athletic trainer to perform grade 5 joint mobilizations.~~

~~(d) An athletic trainer shall render treatment under the direction of a physician and surgeon licensed by the board, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, or a doctor of chiropractic licensed by the State Board of Chiropractic Examiners who shall order and oversee the athletic trainer and shall be responsible for the athletic training activities performed by the athletic trainer. This direction shall be provided by verbal order when the directing physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic is present and by written order or by athletic training treatment plans or protocols, to be established by the physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic, when the directing physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic is not present.~~

~~(c) Notwithstanding any other provisions of law and consistent with the provisions of this chapter, the committee may establish other alternative mechanisms for the adequate supervision of an athletic trainer.~~

~~2697.22. The requirements of this chapter do not apply to the following:~~

~~(a) An athletic trainer licensed, certified, or registered in another state who is in California temporarily to engage in the practice of athletic training for, among other things, an athletic or sporting event.~~

~~(b) An athletic trainer licensed, certified, or registered in another state who is invited by a sponsoring organization, such as the United States Olympic Training Center, to temporarily provide athletic training services under his or her state's scope of practice.~~

~~(c) A student enrolled in an athletic training education program, while participating in educational activities under the supervision and guidance of an athletic trainer licensed under this chapter.~~

~~(d) A member of the United States Armed Forces, licensed, certified, or registered in another state, as part of his or her federal employment in California for a limited time.~~

~~2697.24. Nothing in this chapter shall be construed to limit, impair, or otherwise apply to the practice of any person licensed and regulated under any other chapter of Division 2 (commencing with Section 500).~~

~~2697.26. The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon an athletic trainer's license after a hearing for unprofessional conduct that includes, but is not limited to, a violation of this chapter or the regulations adopted by the committee pursuant to this chapter.~~

~~2697.28. There is established in the Contingent Fund of the Medical Board of California the Athletic Trainers Account. All fees collected pursuant to this chapter shall be paid into the account. These fees shall be available to the committee, upon appropriation by the Legislature, for the regulatory purpose of carrying out the provisions of this chapter.~~

~~2697.30. This chapter shall become operative on January 1, 2013.~~

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AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 386

Introduced by Assembly Member Galgiani

February 14, 2011

An act to add Section 5023.3 to the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as amended, Galgiani. Prisons: telehealth systems.

Existing law, the Telemedicine Development Act of 1996, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications, by a health care practitioner, as defined. Existing law establishes that it is the intent of the Legislature that the Department of Corrections and Rehabilitation operate in the most cost-effective and efficient manner possible when purchasing health care services for inmates.

This bill would state the Legislature's findings and declarations on the use of telehealth in the state's prisons. This bill would require the department, by January 1, 2013, to include protocols within its existing guidelines for determining when telehealth services are appropriate, and would require the department to require an operational telehealth services program at all adult institutions by January 1, 2016. The bill would require the department to schedule a patient for an evaluation with a distant physician when it is determined to be medically necessary, and would allow the department to use telehealth only when it is in the

best interest of the health and safety of the inmate patient. The bill would require the department to ensure that telehealth not be used to supplant civil service physicians and dentists.

The bill would require the department to report to the Legislature, as provided, by March 1, 2013, and every year thereafter, regarding the department's implementation of statewide telehealth services. This bill would render this reporting requirement inoperative on March 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to require the Department of Corrections and Rehabilitation to implement and maintain the use of telehealth in state prisons.

(b) Telehealth improves inmates' access to health care by enabling correctional systems to expand their provider network to include physicians located outside the immediate vicinity of prisons, particularly for inmates housed in remote areas of the state with shortages of health care.

(c) The department's prison telehealth program began in 1997 as a pilot project for mental health inmates at Pelican Bay State Prison and was successful at improving inmates' access to mental health care. Accordingly, the department decided to expand the program to provide mental health as well as medical specialty services at other prisons. Currently, all of the state prisons are equipped to provide basic telehealth services.

SEC. 2. Section 5023.3 is added to the Penal Code, to read:

5023.3. (a) In order to maximize the benefits that come with the use of telehealth in the state's prisons, the department shall do all of the following:

(1) By January 1, 2013, include within the department's existing guidelines, protocols for determining when telehealth services are medically appropriate and in the best interest of the health and safety of the inmate patient.

(2) Require, by January 1, 2016, an operational telehealth services program at all adult institutions within the department. The program shall include all of the following:

(A) Specific goals and objectives for maintaining and expanding services and encounters provided by the telehealth services program, including store and forward telehealth technology.

(B) An information technology support infrastructure that will allow telehealth to be used at each adult prison.

(C) Specific guidelines for determining when and where telehealth would be the preferred delivery method for health care.

(D) Guidelines and protocols for appropriate use and expansion of store and forward telehealth technology in state prisons. For purposes of this section, "store and forward telehealth" means the transmission of medical information to be reviewed at a later time and at a distant site by a physician without the patient being present.

(3) Schedule a patient for evaluation with a distant physician via telehealth if and when it is determined that it is medically necessary.

(4) Utilize telehealth only when it is in the best interest of the health and safety of the inmate patient.

(5) Ensure that telehealth shall not be used to supplant civil service physician and dental positions.

(b) (1) On March 1, 2013, and each March 1 thereafter, the department shall report all of the following to the Joint Legislative Budget Committee, the Assembly Committee on Appropriations, the Assembly Committee on Budget, the Assembly Committee on Health, the Assembly Committee on Public Safety, the Senate Committee on Appropriations, the Senate Committee on Budget and Fiscal Review, the Senate Committee on Health, and the Senate Committee on Public Safety:

(A) The extent to which the department achieved the objectives developed pursuant to this section, as well as the most significant reasons for achieving or not achieving those objectives.

(B) The extent to which the department is operating a statewide telehealth services program, as set forth in this section, that provides telehealth services to every adult prison within the department, as well as the most significant reasons for achieving or not achieving that objective.

(C) A description of planned and implemented initiatives necessary to accomplish the next 12 months' objectives for achieving the goals developed pursuant to this section.

(2) The requirement for submitting a report imposed under this subdivision is inoperative on March 1, 2018, pursuant to Section 10231.5 of the Government Code.

(c) As used in this section, "telehealth" is defined as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

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AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY MAY 18, 2011

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 439

Introduced by Assembly Member Skinner

February 14, 2011

An act to amend Section 56.36 of the Civil Code, relating to health care information.

LEGISLATIVE COUNSEL'S DIGEST

AB 439, as amended, Skinner. Health care information.

Existing law, the Confidentiality of Medical Information Act (CMIA), prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. In addition to other remedies available, existing law authorizes an individual to bring an action against any person or entity who has negligently released his or her confidential records in violation of those provisions for nominal damages of $1,000.

This bill would specify that, in an action brought on or after January 1, 2012, a court may not award nominal damages if the defendant establishes specified factors as an affirmative defense, including, but not limited to, that it is a covered entity, as defined, and has complied with any obligations to notify persons entitled to receive notice regarding the release of the information. The bill would also make a technical, nonsubstantive change.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 56.36 of the Civil Code is amended to read:

56.36. (a) Any violation of the provisions of this part that results in economic loss or personal injury to a patient is punishable as a misdemeanor.

(b) In addition to any other remedies available at law, any individual may bring an action against any person or entity who has negligently released confidential information or records concerning him or her in violation of this part, for either or both of the following:

(1) Except as provided in subdivision (e), nominal damages of one thousand dollars ($1,000). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the patient.

(c) (1) In addition, any person or entity that negligently discloses medical information in violation of the provisions of this part shall also be liable, irrespective of the amount of damages suffered by the patient as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation.

(2) (A) Any person or entity, other than a licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable on a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation, or on a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars ($10,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed

twenty-five thousand dollars ($25,000) per violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(3) (A) Any person or entity, other than a licensed health care professional, who knowingly or willfully obtains or uses medical information in violation of this part for the purpose of financial gain shall be liable for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part for financial gain shall be liable on a first violation, for an administrative fine or civil penalty not to exceed five thousand dollars ($5,000) per violation, or on a second violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars ($25,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(4) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.

(5) Any person or entity who is not permitted to receive medical information pursuant to this part and who knowingly and willfully obtains, discloses, or uses medical information without written authorization from the patient shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) per violation.

(d) In assessing the amount of an administrative fine or civil penalty pursuant to subdivision (c), the Office of Health Information Integrity, licensing agency, or certifying board or court shall consider any one or more of the relevant circumstances

presented by any of the parties to the case including, but not limited to, the following:

(1) Whether the defendant has made a reasonable, good faith attempt to comply with this part.

(2) The nature and seriousness of the misconduct.

(3) The harm to the patient, enrollee, or subscriber.

(4) The number of violations.

(5) The persistence of the misconduct.

(6) The length of time over which the misconduct occurred.

(7) The willfulness of the defendant's misconduct.

(8) The defendant's assets, liabilities, and net worth.

(e) (1) In an action brought by an individual pursuant to subdivision (b) on or after January 1, 2012, the court shall award any actual damages and reasonable attorney's fees and costs, but may not award nominal damages, for a violation of this part if the defendant establishes all of the following as an affirmative defense:

(A) The defendant is a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

(B) The defendant has complied with any obligations to notify all persons entitled to receive notice regarding the release of the information or records.

(C) The release of confidential information or records was solely to another covered entity.

(D) The defendant took appropriate preventive actions to protect the confidential information or records against release, retention, or use by any person or entity other than the covered entity that received the information or records, including, but not limited to:

(i) Developing and implementing security policies and procedures.

(ii) Designating a security official who is responsible for developing and implementing its security policies and procedures, including educating and training the workforce.

(iii) Encrypting the information or records, and protecting against the release or use of the encryption key and passwords, *or transmitting the information or records in a manner designed to provide similar protections against improper disclosures.*

(E) The defendant took appropriate corrective action after the release of the confidential records or information, and the covered entity that received the information or records immediately destroyed or returned the information or records.

(F) The covered entity that received the confidential information or records did not retain, use, or release the information or records.

(G) The defendant has not ~~previously violated this part, or, in the court's discretion, despite the prior violation,~~ *been found liable for a violation of this part within the three years preceding the alleged violation, or the court determines that* application of the affirmative defense is found to be compelling and consistent with the purposes of this section to promote reasonable conduct in light of all the facts.

(2) In an action under this subdivision, a plaintiff shall be entitled to recover reasonable attorney's fees and costs without regard to an award of actual or nominal damages.

(3) A defendant shall not be liable for more than one judgment on the merits for a violation of this subdivision.

(f) (1) The civil penalty pursuant to subdivision (c) shall be assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(A) The Attorney General.

(B) Any district attorney.

(C) Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.

(D) Any city attorney of a city.

(E) Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.

(F) A city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county.

(G) The Director of the Office of Health Information Integrity may recommend that any person described in subparagraphs (A) to (F), inclusive, bring a civil action under this section.

(2) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in paragraph (3), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the

treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered.

(3) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered.

(4) Nothing in this section shall be construed as authorizing both an administrative fine and civil penalty for the same violation.

(5) Imposition of a fine or penalty provided for in this section shall not preclude imposition of any other sanctions or remedies authorized by law.

(6) Administrative fines or penalties issued pursuant to Section 1280.15 of the Health and Safety Code shall offset any other administrative fine or civil penalty imposed under this section for the same violation.

(g) For purposes of this section, "knowing" and "willful" shall have the same meanings as in Section 7 of the Penal Code.

(h) No person who discloses protected medical information in accordance with the provisions of this part shall be subject to the penalty provisions of this part.

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AMENDED IN ASSEMBLY MARCH 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 518

Introduced by Assembly Member Wagner

February 15, 2011

~~An act to amend Section 15630.1 of the Welfare and Institutions Code, relating to elder abuse.~~ *An act to repeal Section 7480 of the Government Code, and to amend Section 15630.1 of, and to amend and repeal Sections 15633, 15634, 15640, and 15655.5 of, the Welfare and Institutions Code, relating to elder and dependent adult abuse.*

LEGISLATIVE COUNSEL'S DIGEST

AB 518, as amended, Wagner. Elder and dependent adult abuse: mandated reporters.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse, including, but not limited to financial abuse, as defined. These procedures require persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. A violation of the reporting requirements by a mandated reporter is a misdemeanor. Existing law, which will be repealed on January 1, 2013, defines who is a mandated reporter of suspected financial abuse of an elder or dependent adult. A violation of the financial abuse reporting requirements is subject to civil penalties.

This bill would delete the January 1, 2013, repeal date *and make conforming changes*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7480 of the Government Code, as amended by Section 2 of Chapter 234 of the Statutes of 2008, is repealed.

~~7480. Nothing in this chapter prohibits any of the following:~~

~~(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.~~

~~(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:~~

~~(1) The number of items dishonored.~~

~~(2) The number of items paid that created overdrafts.~~

~~(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.~~

~~(4) The dates and amounts of deposits and debits and the account balance on these dates.~~

~~(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.~~

~~(6) The date the account opened and, if applicable, the date the account closed.~~

~~(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account~~

~~statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).~~

~~(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:~~

~~(1) The number of items dishonored.~~

~~(2) The number of items paid that created overdrafts.~~

~~(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.~~

~~(4) The dates and amounts of deposits and debits and the account balance on these dates.~~

~~(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.~~

~~(6) The date the account opened and, if applicable, the date the account closed.~~

~~(7) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).~~

~~(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:~~

~~(1) Authorization of the disclosure for the period specified in subdivision (c).~~

~~(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.~~

~~(3) A description of the financial records that are authorized to be disclosed.~~

~~(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.~~

~~(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.~~

~~(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.~~

~~(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant~~

~~authority to examine, audit, or require reports of financial records or financial institutions as follows:~~

~~(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.~~

~~(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.~~

~~(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.~~

~~(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.~~

~~(h) The disclosure to the State Board of Equalization of any of the following:~~

~~(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.~~

~~(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.~~

~~(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.~~

~~(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.~~

~~(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.~~

~~(k) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.~~

~~(*l*) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:~~

~~(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.~~

~~(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.~~

~~(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.~~

~~(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.~~

~~(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.~~

~~(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:~~

~~(A) Any of the following, dated within the last three years:~~

~~(i) Form 599.~~

~~(ii) Form 1099.~~

~~(iii) A bank statement.~~

~~(iv) A check.~~

~~(v) A bank passbook.~~

~~(vi) A deposit slip.~~

~~(vii) A copy of a federal or state income tax return.~~

~~(viii) A debit or credit advice.~~

~~(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.~~

~~(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.~~

~~(xi) An asset identification report from a federal agency.~~

~~(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.~~

~~(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.~~

~~(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the~~

~~federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.~~

~~(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.~~

~~(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.~~

~~(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.~~

~~(n) The dissemination of financial information and records pursuant to any of the following:~~

~~(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.~~

~~(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.~~

~~(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.~~

~~(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.~~

~~(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.~~

~~(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.~~

~~(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.~~

~~(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.~~

~~(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:~~

~~(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.~~

~~(B) Disclosing information in response to a court order pursuant to paragraph (3).~~

~~(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.~~

~~(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:~~

~~(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied~~

~~with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.~~

~~(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.~~

~~(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.~~

~~(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.~~

~~(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.~~

~~(r) When the Franchise Tax Board certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by~~

~~the taxpayer; (2) the direct deposit refund was not returned to the Franchise Tax Board; and (3) the refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund, then the financial institution shall furnish to the Franchise Tax Board the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account.~~

~~(s) This section shall become operative on January 1, 2013.~~

~~SECTION 1.~~

SEC. 2. Section 15630.1 of the Welfare and Institutions Code is amended to read:

15630.1. (a) As used in this section, "mandated reporter of suspected financial abuse of an elder or dependent adult" means all officers and employees of financial institutions.

(b) As used in this section, the term "financial institution" means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) As used in this section, "financial abuse" has the same meaning as in Section 15610.30.

(d) (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information

before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall, thereafter, make that report.

(3) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

(e) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(f) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars ($1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars ($5,000), which shall be paid by the financial institution that is the employer of the mandated

reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(h) As used in this section, "suspected financial abuse of an elder or dependent adult" occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

SEC. 3. Section 15633 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 140 of the Statutes of 2005, is amended to read:

15633. (a) The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution by otherwise applicable state or federal law or court order.

~~(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 4. Section 15633 of the Welfare and Institutions Code, as added by Section 6 of Chapter 140 of the Statutes of 2005, is repealed.

~~15633. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.~~

~~(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:~~

~~(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.~~

~~(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.~~

~~(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.~~

~~(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.~~

~~(d) This section shall become operative on January 1, 2013.~~

SEC. 5. Section 15634 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 140 of the Statutes of 2005, is amended to read:

15634. (a) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present to the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* a claim for reasonable ~~attorneys'~~ *attorney's* fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. ~~Attorneys'~~ *Attorney's* fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

~~(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 6. Section 15634 of the Welfare and Institutions Code, as amended by Section 711 of Chapter 538 of the Statutes of 2006, is repealed.

~~15634. (a) No care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of the suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.~~

~~(b) No care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected elder or dependent adult abuse, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall incur civil or criminal liability as a result of providing that access.~~

~~(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law~~

~~enforcement agency may present to the California Victim Compensation and Government Claims Board a claim for reasonable attorney's fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.~~

~~(d) This section shall become operative on January 1, 2013.~~

SEC. 7. Section 15640 of the Welfare and Institutions Code, as amended by Section 9 of Chapter 140 of the Statutes of 2005, is amended to read:

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 or 15630.1 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law

enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of ~~Health Services~~ *Public Health* shall immediately report by telephone and in writing

within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

~~(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 8. Section 15640 of the Welfare and Institutions Code, as added by Section 10 of Chapter 140 of the Statutes of 2005, is repealed.

~~15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations~~

~~of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.~~

~~(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.~~

~~(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.~~

~~(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information~~

~~concerning the incident to any agency to which it is required to make a telephone report under this subdivision.~~

~~(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.~~

~~(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.~~

~~(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.~~

~~(g) This section shall become operative on January 1, 2013.~~

SEC. 9. Section 15655.5 of the Welfare and Institutions Code, as amended by Section 11 of Chapter 140 of the Statutes of 2005, is amended to read:

15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17, and mandated reporters of suspected financial abuse of an elder or dependent adult pursuant to Section 15630.1, with instructional materials regarding abuse and neglect of an elder

or dependent adult and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:

(a) An explanation of abuse and neglect of an elder or dependent adult, as defined in this chapter.

(b) Information on how to recognize potential abuse and neglect of an elder or dependent adult.

(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.

(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.

~~(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 10. Section 15655.5 of the Welfare and Institutions Code, as amended by Section 712 of Chapter 538 of the Statutes of 2006, is repealed.

~~15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17 with instructional materials regarding elder and dependent adult abuse and neglect and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:~~

~~(a) An explanation of elder and dependent adult abuse and neglect, as defined in this chapter.~~

~~(b) Information on how to recognize potential elder and dependent adult abuse and neglect.~~

~~(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.~~

~~(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.~~

~~(e) This section shall become operative on January 1, 2013.~~

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ASSEMBLY BILL No. 608

Introduced by Assembly Member Pan

February 16, 2011

An act relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 608, as introduced, Pan. Health care coverage: telemedicine.

Existing law provides that it is the intent of the Legislature to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider. Existing law defines telemedicine as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law sets forth procedures a health care practitioner must follow prior to providing health care through telemedicine.

This bill would declare the intent of the Legislature to enact legislation related to telemedicine.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to enact legislation related to telemedicine.

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AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 783

Introduced by Assembly Member Hayashi

February 17, 2011

An act to amend Section 2406 of the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to ~~professional corporations, and declaring the urgency thereof, to take effect immediately.~~ *professional corporations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 783, as amended, Hayashi. Professional corporations: licensed physical *therapists and occupational* therapists.

Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation ~~or a~~, podiatric medical corporation, *or a chiropractic corporation,* subject to certain limitations.

This bill would add licensed physical therapists *and licensed occupational therapists* to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also make conforming changes to a related provision.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~ *majority*. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2406 of the Business and Professions Code is amended to read:

2406. A medical corporation or podiatry corporation is a corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, podiatrists, chiropractors, acupuncturists, naturopathic doctors, physical therapists, or, in the case of a medical corporation only, physician assistants, marriage and family therapists, or clinical social workers are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board.

SEC. 2. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed physical therapists.
(12) Licensed occupational therapists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.

(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.

(10) Licensed physical therapists.
(11) Licensed occupational therapists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to authorize licensed physical therapists to be shareholders, officers, directors, or professional employees of~~

~~medical corporations and podiatric medical corporations as soon as possible, it is necessary that this act take effect immediately.~~

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AMENDED IN SENATE AUGUST 23, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 784

Introduced by Assembly ~~Members~~ *Member* Yamada ~~and Knight~~

February 17, 2011

~~An act to add Section 14589.6 to the Welfare and Institutions Code, relating to care facilities.~~ *An act to amend Sections 1570.2, 1570.7, 1578, and 1585.5 of, and to add Sections 1584.5, 1587, and 1587.5 to, the Health and Safety Code, relating to care facilities, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 784, as amended, Yamada. Adult day health care.

Existing law, the California Adult Day Health Care Act, provides for the licensure and regulation of adult day health care centers, with administrative responsibility for the adult day health care program shared among the State Department of Public Health, the State Department of Health Care Services, and the California Department of Aging pursuant to an interagency agreement. *Existing law provides that a negligent, repeated, or willful violation of a provision of the California Adult Day Health Care Act is a misdemeanor.*

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, the Adult Day Health Medi-Cal Law, establishes adult day health care services as a Medi-Cal*

benefit and requires adult day health centers to offer, and provide directly on the premises, specified services. Existing law, *with prescribed implementation,* to the extent permitted by federal law, excludes adult day health care from coverage under the Medi-Cal program ~~and provides that it is the intent of the Legislature to adopt legislation during the 2011–12 Regular Session creating a new program to provide a well-defined scope of services, as specified, to eligible beneficiaries in the absence of such community-based services~~.

~~This bill would, to the extent that funds are available, require that equivalent services provided at 2 specified veterans homes of California be considered for inclusion in the new program. This bill would require that this provision be implemented in a manner that is equitable with regard to other enrollees of the new program.~~

This bill would require an adult day health care center to have a prescribed program plan, as defined. This bill would provide the minimum staffing requirements for an adult day health care center.

Existing law requires an adult day health care center to provide services to each participant pursuant to an individual plan of care, as defined, designed to maintain or restore each participant's optimal capacity for self-care.

This bill would require this plan to be designed by the multidisciplinary team, composed, at a minimum, as prescribed. This bill would require an adult day health care center to provide certain services, as needed, to implement participants' individual plans of care in accordance with the program plan.

By changing the definition of a crime, this bill would create 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 would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ *2/3*. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Section 1570.2 of the Health and Safety Code is amended to read:

1570.2. The Legislature hereby finds and declares that there exists a pattern of overutilization of ~~long-term~~ institutional care for elderly ~~persons or~~ *persons,* adults with disabilities, *and acutely or chronically ill adults* and that there is an urgent need to establish and to continue a community-based system of quality adult day health care which will enable elderly ~~persons or~~ *persons,* adults with disabilities, *and acutely or chronically ill adults* to maintain maximum independence. While recognizing that there continues to be a substantial need for facilities providing *24-hour* custodial care, overreliance on this type of care has proven to be a costly panacea in both financial and human terms, often traumatic, and destructive of continuing family relationships and the capacity for independent living.

It is, therefore, the intent of the Legislature in enacting this chapter and related provisions to provide for the development of policies and programs that will accomplish the following:

(a) Ensure that elderly ~~persons and~~ *persons,* adults with disabilities, *and acutely or chronically ill adults* are not institutionalized inappropriately or prematurely.

(b) Provide a viable alternative to ~~institutionalization~~ *the utilization of institutional services* for those elderly ~~persons and~~ *persons,* adults with disabilities, *and acutely or chronically ill adults* who are capable of living at home with the aid of appropriate health care or rehabilitative and social services.

(c) Establish adult day health centers in the community for this purpose, that will be easily accessible to all participants, including economically disadvantaged elderly ~~persons and~~ *persons,* adults with disabilities, *and acutely or chronically ill adults* and that will provide *person-centered* outpatient health, rehabilitative, and social services necessary to permit the participants to *gain or* maintain personal independence and lead meaningful lives.

(d) Include the services of adult day health centers as a benefit under the Medi-Cal Act, that shall be an initial and integral part in the development of an overall plan for a coordinated, comprehensive continuum of optional long-term care services based upon appropriate need.

(e) Establish a rural alternative adult day health care program designed to meet the special needs and requirements of rural areas to enable the implementation of subdivisions (a) through (d), inclusive, for all Californians in need of those services.

(f) Ensure that all laws, regulations, and procedures governing adult day health care be enforced equitably regardless of organizational sponsorship and that all program flexibility provisions be administered equitably.

SEC. 2. Section 1570.7 of the Health and Safety Code, as amended by Chapter 119 of the Statutes of 2011, is amended to read:

1570.7. As used in this chapter and in any regulations promulgated thereunder:

(a) "Adult day health care" means an organized ~~day program of therapeutic, social, and skilled nursing health activities and services provided pursuant to this chapter to elderly persons or adults with disabilities with functional impairments, either physical or mental,~~ *outpatient program utilizing a patient-centered multidisciplinary team approach to manage physical, cognitive, and behavioral health conditions* for the purpose of restoring or maintaining *an individual's* optimal ~~capacity for self-care~~ *health and functioning*. Provided on a short-term basis, adult day health care serves as a ~~transition~~ *site for transitioning* from a health facility ~~or home health program to personal independence~~ *to the community with the goal of preventing avoidable emergency department visits and inpatient readmissions and restoring optimal health*. Provided ~~on a long-term basis~~ *over a longer term*, it serves ~~as an alternative~~ to *deter* institutionalization ~~in a long-term health care facility when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family~~ *and overuse of more costly medical resources*.

(b) "Adult day health center" or "adult day health care center" means a licensed facility that provides adult day health care.

(c) "Average daily attendance" means the average number of participants attending the adult day health care center daily, calculated over the past month.

~~(c)~~

(d) "Core staff" includes the positions of program director, registered nurse, social worker, activity director, and program aide.

~~(d)~~

(e) "Department" or "state department" means the State Department of Public Health.

~~(e)~~

(f) "Director" means the State Public Health Officer.

~~(f)~~

(g) "Elderly" or "older person" means a person 55 years of age or older~~, but also includes other adults who are acutely or chronically ill or impaired disabled and who would benefit from adult day health care~~.

~~(g)~~

(h) "Extended hours" means those hours of operation prior to or following the adult day health care program hours of service, as designated by the adult day health care center in its plan of operation, during which the adult day health care center may operate an adult day program, or an Alzheimer's day care resource center, or both.

(i) "Full-time" means the total program hours of service per week.

(j) "Half-time" means 50 percent of full-time.

(k) "Hours of operation" means the regular hours during which the adult day health care center is open and any staff are on the premises, including, but not limited to, hours during which no participants are scheduled to attend but the doors are open to conduct business operations.

~~(h)~~

(l) "Hours of service" means the program hours defined and posted by the adult day health care center *during which core staff and participants are present* for the provision of adult day health care services~~, pursuant to Section 14550 of the Welfare and Institutions Code, which shall be no less than four hours, excluding transportation~~.

~~(i)~~

(m) "Individual plan of care" means a plan designed to provide recipients of adult day health care with appropriate treatment in accordance with the assessed needs of each individual *participant within the facility's scope of services, as defined in the program plan.*

(n) "Institutional services" includes any 24-hour health facility and a hospital emergency department.

~~(j)~~

(o) "License" means a basic permit to operate an adult day health care center. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), "license" means a special permit, as defined by Section 1251.5, empowering the health facility to provide adult day health care services.

~~(k)~~

(p) "Long-term absence" or "long-term vacancy" means ~~an~~ *a staff* absence or vacancy lasting, or ~~likely~~ *expected* to last, ~~more~~ *longer* than one month. ~~An adult day health care center's policies and procedures shall be specific regarding coverage in the situation for long-term absences or vacancies.~~

~~(l)~~

(q) "Maintenance program" means procedures and exercises that are ~~provided to a participant, pursuant to Section 1580, in order to generally maintain existing function~~ *performed repetitively to maintain a level of functioning when a patient's restoration potential is insignificant in relation to the therapy required to achieve that potential, when it has been determined that the treatment goals will not materialize, or when the therapy performed is considered to be a general exercise program.* These procedures and exercises are planned by a licensed or certified therapist and are provided by a person who has been trained by a licensed or certified therapist and who is directly supervised by a nurse ~~or by a licensed or certified therapist~~.

(r) "Personal health care provider" means the participant's personal physician, physician's assistant, or nurse practitioner, operating within his or her scope of practice.

(s) "Program aide" means a person, supervised by the program director or other members of the multidisciplinary team, whose job duties include, but are not limited to, provision of personal care, assistance with activities, transportation, or other services, as assigned.

~~(m)~~

(t) "Program director" shall be a person with both of the following:

(1) One of the following backgrounds:

(A) A person with a bachelor's degree and a minimum of two years of experience in a management, supervisory, or administrative position.

(B) A person with a master's degree and a minimum of one year of experience in a management, supervisory, or administrative position.

(C) A registered nurse with a minimum of two years experience in a management, supervisory, or administrative position.

(2) Appropriate skills, knowledge, and abilities related to the health, and mental, cognitive, and social needs of the participant group being served by the adult day health center.

(u) "Program plan" means a written description of the adult day health care center's philosophy, objectives, and processes for providing required services to the participant populations.

~~(n)~~

(v) "Restorative therapy" means physical, occupational, and speech therapy, and psychiatric and psychological services that are planned and provided by a licensed or certified therapist. The therapy and services may also be provided by an assistant or aide under the appropriate supervision of a licensed therapist, as determined by the licensed therapist. The therapy and services are provided to restore function, when there is an expectation that the condition will improve significantly ~~in~~ *within* a reasonable period of time, as determined by the multidisciplinary assessment team.

~~(o)~~

(w) "Short-term absence" or "short-term vacancy" means ~~an~~ *a staff* absence or vacancy lasting, *or expected to last,* one month or less, and includes sick leave and ~~vacations. An adult day health care center shall ensure that appropriate staff is designated to serve in these positions during the short-term absence or vacancy and that the center's policies and procedures are specific regarding coverage of short-term absences or vacancies~~ *vacations, but does not include periods during which staff are absent from the facility performing program-related duties.*

~~(p)~~

(x) "Social worker" shall be a person who meets one of the following:

(1) The person holds a master's degree in social work from an accredited school of social work.

(2) The person holds a master's degree in psychology, gerontology, or counseling from an accredited school and has one year of experience providing social services in one or more of the fields of aging, health, or long-term care services.

(3) The person is licensed by the California Board of Behavioral Sciences.

(4) The person holds a bachelor's degree in social work from an accredited school with two years of experience providing social services in one or more of the fields of aging, health, or long-term care services.

SEC. 3. Section 1578 of the Health and Safety Code is amended to read:

1578. *(a)* A provider may share space with another licensed health facility, community care facility, senior center, or other appropriate structure, upon the approval of the department, based upon a determination of all of the following:

~~(a)~~

(1) The use of the shared space does not jeopardize the welfare of the participant or other clients.

~~(b)~~

(2) The shared use does not exceed occupancy capacity established for fire safety.

~~(c)~~

(3) The space used by the adult day health care center is not essential to meet the other program's licensing requirements.

~~(d)~~

(4) Each entity schedules services and activities at separate times. This subdivision shall not apply to space used for meals or for space used by another licensed adult day services program.

~~For~~

(b) For purposes of this section, "shared space" means the mutual use of exits and entrances, offices, hallways, bathrooms, treatment rooms, and dining rooms by an adult day health care center and another program *pursuant to Section 1578.1.*

SEC. 4. Section 1584.5 is added to the Health and Safety Code, to read:

1584.5. An adult day health care center shall have a program plan that shall contain all of the following:

(a) The total number of participants the center proposes to serve, or currently serves, daily.

(b) A profile of the participant population the center proposes to serve, or currently serves, that includes a description of the specific medical, social, and other needs of each population.

(c) A description of the specific services provided to address the medical, social, and other needs of each participant population that the center proposes to serve, or currently serves, as specified in subdivision (b).

(d) A description of the specialized professional and program staff that will provide, or currently provides, the adult day health care center's program services, as specified in subdivision (c), and that staff's responsibilities. The plan shall demonstrate that the adult day health care center is organized and staffed to carry out the requirements as specified in the regulations adopted pursuant to Section 1580.

(e) An in-service training plan for each center staff member to commence within the first six months of employment. The training plan shall address, at a minimum, the specific medical, social, and other needs of each participant population the center proposes to serve, as specified in subdivision (b).

(f) An example of a one-week schedule of daily program services.

(g) A plan for a behavior modification program if such a program will be used as a basic intervention for meeting the needs of a special population, such as persons with developmental disabilities or persons with mental disabilities. The plan, as applied to persons with developmental disabilities, shall be consistent with Section 4503 of the Welfare and Institutions Code.

SEC. 5. Section 1585.5 of the Health and Safety Code is amended to read:

1585.5. *(a)* Adult day health care centers shall provide services to each participant pursuant to an individual plan of care designed *by the multidisciplinary team* to maintain or restore each participant's optimal capacity for self-care.

(b) The multidisciplinary team shall be composed of, at a minimum, the staff physician or the participant's personal health care provider, the registered nurse, the social worker, the program director, and, as needed, an occupational therapist, physical therapist, or speech and language pathologist. The multidisciplinary team shall assess the needs of the participant and develop the participant's individual plan of care.

SEC. 6. Section 1587 is added to the Health and Safety Code, to read:

1587. (a) The minimum staffing requirements for an adult day health care center shall be as follows:

(1) A full-time program director shall be employed to implement the program plan, and supervise and coordinate staff.

(2) Program aides shall be employed in a sufficient number to meet the personal care and supervision needs of the participants during program hours of service or extended program hours, but in no event shall the program aides employed be fewer than a ratio of one-half aide for every increment of eight participants being cared for during program hours of service. Program aides shall be qualified by education, training, and experience to perform the duties assigned and meet the needs of the program.

(3) A full-time registered nurse shall be employed to oversee the provision of nursing services. A half-time vocational nurse shall be provided for each increment of 10 in average daily attendance exceeding 40, calculated monthly, and which has been sustained over each of the prior three calendar months.

(4) A full-time social worker shall be employed to provide direct skilled social work services and to oversee the provision of social services. A half-time social work assistant shall be provided for each increment of 10 in average daily attendance exceeding 40, calculated monthly, and which has been sustained over each of the prior three calendar months.

(5) A full-time activity director shall be employed to direct the activity program. The activity director may be counted in the ratio for calculating the necessary direct care staff defined in subdivision (b).

(6) A licensed nurse shall be on duty during the defined program hours of service.

(b) The adult day health care center's policies and procedures shall be specific regarding the provision of adequate staffing for coverage with qualified personnel for long-term and short-term absences or vacancies. Regardless of the reason for the staff absence or vacancy, the adult day health care center shall provide sufficient staffing to ensure participant safety and shall designate appropriate substitute staff as needed.

SEC. 7. Section 1587.5 is added to the Health and Safety Code, to read:

1587.5. The minimum services that shall be provided by an adult day health care center, as needed, to implement participants'

individual plans of care, in accordance with the program plan, are as follows:

(a) Occupational therapy services.

(b) Pharmacist consulting services to assist with implementation of the center's medication policies and procedures and to consult on individual participant drug regimens.

(c) Physical therapy services.

(d) Psychiatric or psychological consulting services provided by a qualified licensed practitioner.

(e) Skilled dietary consulting services.

(f) Speech and language pathology services.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 9. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that adult day health care centers may remain open, providing services to elderly persons, adults with disabilities, and acutely or chronically ill adults with the elimination of adult day health care as a Medi-Cal benefit, it is necessary that this act take effect immediately.

~~SECTION 1. Section 14589.6 is added to the Welfare and Institutions Code, to read:~~

~~14589.6. (a) If exclusion of adult day health care from coverage under the Medi-Cal program is implemented pursuant to Section 14589.5, and a new program is enacted to provide a well-defined scope of services to eligible beneficiaries who meet a high medical acuity standard and are at a significant risk of institutionalization in the absence of such community-based services, then equivalent services provided at the William J. "Pete" Knight Veterans Home of California, Lancaster, and the Veterans Home of California, Ventura, shall be considered for inclusion in the new program.~~

~~(b) This section shall be implemented only to the extent that funds are available and in a manner that is equitable with regard to other potential enrollees of the new program.~~

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ASSEMBLY BILL No. 800

Introduced by Assembly Member Huber

February 17, 2011

An act to add Section 11564.10 to the Government Code, relating to boards and commissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 800, as introduced, Huber. Boards and commissions: time reporting.

Existing law establishes various boards and commissions within state government. Existing law sets forth various standards and procedures that govern the amount of salary or per diem expenses that a member of a board or commission may earn or claim.

This bill would require that a member of a board or commission that meets specified requirements submit a quarterly report to the chair of the board or commission that details the time worked by the member fulfilling the duties of his or her position. This bill would also require that the chair of the board or commission submit a quarterly report to specified committees of the Legislature that contains copies of all of the time reports received by the chair.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11564.10 is added to the Government Code, to read:

11564.10. (a) Notwithstanding any other law, a member of a board or commission that meets the requirements set out in subdivision (c) shall submit a quarterly report to the chair of that board or commission that details the time worked by the member fulfilling the duties of his or her position. The time worked shall be reported in increments of hours and tenths of hours.

(b) Notwithstanding Section 10231.5, the chair of the board or commission shall submit a quarterly report to the Senate Committee on Rules, the Assembly Committee on Rules, and any policy committee of the Legislature that has jurisdiction over the board or commission that contains copies of the reports received by the chair pursuant to subdivision (c) for the past quarter.

(c) This section shall apply to a member of a board or commission that meets all of the following requirements:

(1) The member was appointed to the position.

(2) The member receives a salary that is greater than the per diem expenses claimed by the member in furtherance of his or her duties.

(3) The member's salary is set by statute.

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SENATE BILL No. 399

Introduced by Senator Huff

February 16, 2011

An act to amend Section 651 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as introduced, Huff. Healing arts: advertising.

Existing law provides for the licensure and regulation of the practice of various healing arts practitioners by boards under the Department of Consumer Affairs. Existing law makes it unlawful for those practitioners to disseminate a false, fraudulent, misleading, or deceptive statement and defines those terms for its purposes.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed.

A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended, or is likely, to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a

university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board

certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or

association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use

of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

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AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL No. 462

Introduced by Senator Blakeslee
(Coauthor: Senator Runner)

February 16, 2011

An act to amend Section 56502 of, and to add Chapter 4.2 (commencing with Section 56395) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Blakeslee. Special education: special education advocates: certification.

Existing law requires local educational agencies to initiate, and individualized education program teams to conduct, meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs, as specified. Existing law also provides that it is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation in a nonadversarial atmosphere, which may not be attended by attorneys or other independent contractors used to provide legal advocacy services, prior to filing a request for a due process hearing. Existing law provides, however, that this does not preclude the parent or public agency from being accompanied and advised by nonattorney representatives in mediation conferences.

This bill would ~~require~~ *authorize a* special education local plan ~~areas~~ *area*, ~~collectively, and~~ in collaboration with the State Department of Education, to develop a voluntary special education advocate certification program for persons who would participate, upon the invitation of a parent, as a member of a pupil's individualized education program team, or, upon the invitation of a parent, in a mediation conference, as specified. The bill would authorize *a* special education local plan ~~areas~~ *area* to provide alternative dispute resolution training, and require the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* to administer a test, to persons seeking certification, as specified. The bill would also require the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* to certify~~, and maintain a registry of,~~ persons who have successfully passed the test and completed the training. The bill would require a certified special education advocate to disclose his or her relationship to the pupil or his or her parents, as specified. ~~Because the bill would require local educational agencies to perform additional duties, the bill would impose a state-mandated local program.~~

Existing law provides that upon receipt by the Superintendent of Public Instruction of a written request for a due process hearing regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child with exceptional needs, the provision of a free appropriate public education to the child, or the availability of a program appropriate for the child, including the question of financial responsibility, from the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties and provide them with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. Existing law provides that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

This bill would require the Superintendent or his or her designee to certify that the listed persons, including *certified* special education advocates, or organizations provide services for free or at a reduced cost.

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.2 (commencing with Section 56395) is added to Part 30 of Division 4 of Title 2 of the Education Code, to read:

CHAPTER 4.2. SPECIAL EDUCATION ADVOCATES

56395. It is the intent of the Legislature to protect families of individuals with exceptional needs and to improve the relationship between special education advocates and school districts by providing a voluntary special education advocate certification program.

56395.1. For the purpose of this chapter:

(a) "Alternative dispute resolution" means nonadversarial techniques used to reduce conflict and to come to a mutually beneficial agreement.

(b) "Certified special education advocate" means any nonattorney person, paid or unpaid, who speaks, writes, or works on behalf of a pupil who qualifies as an individual with exceptional needs, as defined in Section 56026, and who has been certified pursuant to the provisions of this chapter.

56395.2. (a) ~~Special~~ *A special* education local plan ~~areas~~ *area*, in collaboration with the department, ~~shall~~ *may* do all of the following:

~~(1) Collectively, and in consultation with the Office of Administrative Hearings, develop a voluntary special education~~*(1) Develop a voluntary special education* advocate certification program that includes a test, which shall be administered by the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences*, to certify that the person has sufficient knowledge and understanding of the process for resolving special education disputes.

(2) Determine the yearly fee to be charged ~~by a special education local plan area~~ to a person seeking certification as a special education advocate that shall not exceed the reasonable costs of providing training pursuant to subdivision (b).

(3) Notify the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* whether a person seeking certification has completed alternative dispute resolution training.

(b) ~~Special education local plan areas are authorized to~~ *A special education local plan area may* provide alternative dispute resolution training at least twice per year for persons seeking certification as a special education advocate. This training also may be offered by an entity pursuant to a contract with a special education local plan area. The training may consist of all of the following:

(1) At least four hours of alternative dispute resolution training.

(2) Relevant ethics training.

(3) Review of relevant special education laws.

56395.3. The ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* shall do all of the following:

(a) Administer a test, either online or in person, to a person seeking certification as a special education advocate. The test shall be offered in the native language of the person seeking certification as a special education advocate.

(b) Certify a person who has successfully passed the test described in subdivision (a) and who has fulfilled the training requirements listed in subdivision (b) of Section 56395.2. Certification may be granted for a period not to exceed five years.

~~(c) Post a registry of certified special education advocates on its Internet Web site.~~

~~(d)~~

(c) Charge a fee to a person seeking certification as a special education advocate that shall not exceed the reasonable costs of administering the test pursuant to subdivision (a) ~~and maintaining the registry pursuant to subdivision (c)~~.

56395.4. (a) A certified special education advocate shall do all of the following:

(1) Upon the invitation of a parent, speak, write, or work on behalf of a pupil who qualifies as an individual with exceptional needs pursuant to paragraph (1) of subdivision (b) of Section 56341, or subdivision (b) of Section 56500.3.

(2) Register with the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* and renew their certification every five years by successfully passing the test described in subdivision (a) of Section 56395.3. Additional training shall not be required in order to renew certification. ~~Registrants shall indicate whether they are a paid or an unpaid advocate. If a person registers as a paid advocate, and he or she is referred by an attorney, he or she shall be required to report the identity of the person who employs him or her.~~

(3) Have a report, available upon request by parents, special education local plan area staff, a school district, or the department, regarding the frequency of their advocacy activities, the subject matter of the issues upon which he or she has worked, the fees, if any, he or she has received for his or her advocacy, and the length of time he or she took to resolve each case.

(4) Disclose at the beginning of an individualized education program team meeting and at the beginning of a mediation session, in writing, his or her relationship to the pupil or his or her parents and indicate whether he or she is receiving payment of any kind for his or her services.

(b) A certified special education advocate shall not be reimbursed by a parent, organization, advocacy group, or school district for the certification fee imposed pursuant to paragraph (2) of subdivision (a) of Section 56395.2 or subdivision ~~(d)~~*(c)* of Section 56395.3.

(c) Nothing in this section shall be construed to allow fees or costs awarded to a prevailing party pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to be awarded to a special education advocate.

56395.5. (a) A parent, as defined in Section 56028, is not required to be certified pursuant to the provisions of this chapter in order to represent his or her child.

(b) A mediator, as described in subdivision (d) of Section 56500.3, shall require nonparent participants in a mediation session to disclose their relationship to the pupil and their status as an advocate.

SEC. 2. Section 56502 of the Education Code is amended to read:

56502. (a) All requests for a due process hearing shall be filed with the Superintendent in accordance with Section 300.508(a) and (b) of Title 34 of the Code of Federal Regulations.

(b) The Superintendent shall develop a model form to assist parents in filing a request for due process that is in accordance with Section 300.509 of Title 34 of the Code of Federal Regulations.

(c) (1) The party, or the attorney representing the party, initiating a due process hearing by filing a written request with the Superintendent shall provide the other party to the hearing with a copy of the request at the same time as the request is filed with the Superintendent. The due process hearing request notice shall remain confidential. In accordance with Section 1415(b)(7)(A) of Title 20 of the United States Code, the request shall include the following:

(A) The name of the child, the address of the residence of the child, or available contact information in the case of a homeless child, and the name of the school the child is attending.

(B) In the case of a homeless child or youth within the meaning of paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available contact information for the child and the name of the school the child is attending.

(C) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem.

(D) A proposed resolution of the problem to the extent known and available to the party at the time.

(2) A party may not have a due process hearing until the party, or the attorney representing the party, files a request that meets the requirements listed in this subdivision.

(d) (1) The due process hearing request notice required by Section 1415(b)(7)(A) of Title 20 of the United States Code shall be deemed to be sufficient unless the party receiving the notice notifies the due process hearing officer and the other party in writing that the receiving party believes the due process hearing request notice has not met the notice requirements. The party providing a hearing officer notification shall provide the notification within 15 days of receiving the due process hearing request notice. Within five days of receipt of the notification, the

hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of Section 1415(b)(7)(A) of Title 20 of the United States Code, and shall immediately notify the parties in writing of the determination.

(2) (A) The response to the due process hearing request notice shall be made within 10 days of receiving the request notice in accordance with Section 1415(c)(2)(B) of Title 20 of the United States Code.

(B) In accordance with Section 300.508(e)(1) of Title 34 of the Code of Federal Regulations, if the local educational agency has not sent a prior written notice under Section 56500.4 and Section 300.503 of Title 34 of the Code of Federal Regulations to the parent regarding the subject matter contained in the due process hearing request of the parent, the response from the local educational agency to the parent shall include all of the following:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request.

(ii) A description of other options that the individualized education program team considered and the reasons why those options were rejected.

(iii) A description of each assessment procedure, assessment, record, or report the agency used as the basis for the proposed or refused action.

(iv) A description of other factors that are relevant to the proposed or refused action of the agency.

(C) A response by a local educational agency under subparagraph (B) shall not be construed to preclude the local educational agency from asserting that the due process request of the parent was insufficient, where appropriate.

(D) Except as provided under subparagraph (B), the party receiving a due process hearing request notice, within 10 days of receiving the notice, shall send to the other party, in accordance with Section 300.508(f) of Title 34 of the Code of Federal Regulations, a response that specifically addresses the issues raised in the due process hearing request notice.

(e) A party may amend a due process hearing request notice only if the other party consents in writing to the amendment and is given the opportunity to resolve the hearing issue through a meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the United States Code, or the due process hearing officer grants

permission, except that the hearing officer may only grant permission at any time not later than five days before a due process hearing occurs. The applicable timeline for a due process hearing under this chapter shall recommence at the time the party files an amended notice, including the timeline under Section 1415(f)(1)(B) of Title 20 of the United States Code.

(f) The Superintendent shall take steps to ensure that within 45 days after receipt of the written hearing request the hearing is immediately commenced and completed, including, any mediation requested at any point during the hearing process pursuant to paragraph (2) of subdivision (b) of Section 56501, and a final administrative decision is rendered, unless a continuance has been granted pursuant to Section 56505.

(g) Notwithstanding any procedure set forth in this chapter, a public agency and a parent, if the party initiating the hearing so chooses, may meet informally to resolve an issue or issues relating to the identification, assessment, or education and placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of both parties prior to the hearing. The informal meeting shall be conducted by the district superintendent, county superintendent, or director of the public agency or his or her designee. A designee appointed pursuant to this subdivision shall have the authority to resolve the issue or issues.

(h) Upon receipt by the Superintendent of a written request by the parent or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties of the request for the hearing and the scheduled date for the hearing. The notice shall advise all parties of all their rights relating to procedural safeguards. The Superintendent or his or her designee shall provide both parties with a list of persons, including *certified* special education advocates, and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The Superintendent or his or her designee shall certify that the listed persons or organizations provide services for free or at a reduced cost, but shall otherwise have complete discretion in determining which individuals or groups shall be included on the list.

(i) In accordance with Section 1415(f)(3)(B) of Title 20 of the United States Code, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under this section, unless the other party agrees otherwise.

~~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.~~

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AGENDA ITEM 3

REPORT ON BILLS SIGNED INTO LAW.

Report on bills previously reviewed by the Committee and signed into law:

a) AB 415 (Logue), Telehealth.

This bill, among other things:

- Deletes the provisions of state law regarding telemedicine, and instead sets forth provisions relating to telehealth, as defined. This bill requires a health care provider, as defined, prior to the delivery of health care via telehealth, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient.
- Provides that failure to comply with this provision constitutes unprofessional conduct. This bill, subject to contract terms and conditions, also precludes health care service plans and health insurers from imposing prior to payment, certain requirements regarding the manner of service delivery.
- Establishes procedures for granting privileges to, and verifying and approving credentials for, providers of telehealth services. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.
- Prohibits a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is appropriately provided by telehealth, as defined, and would make related changes.

b) Senate Bill (SB) 24 (Simitian), Personal Information: Privacy.

This bill:

- Requires any agency, person, or business that is required to issue a security breach notification pursuant to existing law to fulfill certain additional requirements pertaining to the security breach notification, as specified.
- Requires any agency, person, or business that is required to issue a security breach notification to more than 500 California residents pursuant to existing law to electronically submit a single sample copy of that security breach notification to the Attorney General, as specified.
- Provides that a covered entity under the federal Health Insurance Portability and Accountability Act of 1996 is deemed to have complied with these provisions, if it has complied with existing federal law, as specified.

c) SB 541 (Price), Exemptions for boards from the Public Contract Code requirements (for use of Expert Consultants).

This bill:

- Authorizes specified boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill requires each board to establish policies and procedures for the selection and use of these consultants.

d) SB 850 (Leno), Medical records: confidential information.

- Existing law requires every provider of health care, health care service plan, pharmaceutical company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall do so in a manner that preserves the confidentiality of the information contained therein.
- This bill requires an electronic health or medical record system to automatically record and preserve any change or deletion of electronically stored medical information, and would require the record to include, among other things, the identity of the person who accessed and changed the medical information and the change that was made to the medical information.

e) SB 946 (Committee on Health), Telemedicine.

- Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions.

  This bill, among other things:

- Effective July 1, 2012, requires those health care service plan contracts and health insurance policies, except as specified, to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism. The bill provides, however, that no benefits are required to be provided that exceed the essential health benefits that will be required under specified federal law. Because a violation of these provisions with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.
- Requires the Department of Managed Health Care, in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012, to provide assistance to the department on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the state.
- Requires the department to submit a report of the Task Force to the Governor and specified members of the Legislature by December 31, 2012.

AGENDA ITEM 4

SELECTION OF 2012 MEETING DATES.

CALIFORNIA DEPARTMENT OF

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CONSUMER AFFAI

2012 CALENDAR

YEAR AT A GLANCE: Paydates, Direct Deposits, and Holidays

JANUARY

SUN	MON	TUE	WED	THU	FRI	SAT
1 New Year's Day	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16 Martin Luther King's Birthday	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

FEBRUARY

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20 President's Day	21	22	23	24	25
26	27	28	29			

MARCH

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22 B	23	24
25	26	27	28	29	30	31 Cesar Chavez's Day

APRIL

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY

SUN	MON	TUE	WED	THU	FRI	SAT
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28 Memorial Day	29	30	31		

JUNE

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27 B	28	29	30

JULY

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4 Independence Day	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3 Labor Day	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23 30	24	25	26	27	28	29

OCTOBER

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8 B	9	10
11 Veteran's Day	12	13	14	15	16	17
18	19	20	21	22 Thanksgiving Day	23 Holiday	24
25	26	27	28	29	30	

DECEMBER

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23 30	24 31	25 Christmas Day	26	27	28	29

DIRECT DEPOSIT HOLIDAY HOLIDAY CREDIT

DIRECT DEPOSIT FOR DECMEBER IS 01/02/13