

Senate Bill No. 1174

CHAPTER 840

An act to amend Section 2220.05 of, and to add and repeal Section 2245 of, the Business and Professions Code, and to add and repeal Section 14028 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 29, 2016. Filed with
Secretary of State September 29, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1174, McGuire. Medi-Cal: children: prescribing patterns: psychotropic medications.

Existing law, the Medical Practice Act, among other things provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the board's responsibilities include enforcement of the disciplinary and criminal provisions of the act.

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, including early and periodic screening, diagnosis, and treatment for any individual under 21 years of age. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes a statewide system of child welfare services, administered by the State Department of Social Services, with the intent that all children are entitled to be safe and free from abuse and neglect.

This bill would, until January 1, 2027, require the State Department of Health Care Services and the State Department of Social Services, pursuant to a specified data-sharing agreement, to provide the Medical Board of California with information regarding Medi-Cal physicians and their prescribing patterns of psychotropic medications and related services for specified children and minors placed in foster care using data provided by the State Department of Health Care Services and the State Department of Social Services, as prescribed. The bill would require that the data concerning psychotropic medications and related services be drawn from existing data sources maintained by the departments and shared pursuant to a data-sharing agreement and would require that, every 5 years, the board, the State Department of Health Care Services, and the State Department of Social Services consult and revise the methodology, if determined to be necessary. The bill would require the board to contract for consulting services from, if available, a psychiatrist who has expertise and specializes in pediatric care for the purpose of reviewing the data provided to the board. Commencing July 1, 2017, the bill would require the board to report annually to the Legislature, the State Department of Health Care Services, and the

State Department of Social Services the results of the analysis of the data. The bill would, until January 1, 2027, require the board to review the data in order to determine if any potential violations of law or excessive prescribing of psychotropic medications inconsistent with the standard of care exist and conduct an investigation, if warranted, and would require the board to take disciplinary action, as specified. The bill would require the board, on or before January 1, 2022, to conduct an internal review of those activities and to revise procedures relating to those activities, if determined to be necessary. The bill would require the State Department of Health Care Services to disseminate treatment guidelines on an annual basis through its existing communications with Medi-Cal providers, as specified. The bill would require the board to handle on a priority basis investigations of repeated acts of excessive prescribing, furnishing, or administering psychotropic medications to a minor, as specified.

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

SECTION 1. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(7) Repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 2. Section 2245 is added to the Business and Professions Code, to read:

2245. (a) The Medical Board of California on a quarterly basis shall review the data provided pursuant to Section 14028 of the Welfare and Institutions Code by the State Department of Health Care Services and the State Department of Social Services in order to determine if any potential violations of law or excessive prescribing of psychotropic medications inconsistent with the standard of care exist and, if warranted, shall conduct an investigation.

(b) The State Department of Health Care Services shall disseminate the treatment guidelines on an annual basis through its existing communications with Medi-Cal providers, such as the department's Internet Web site or provider bulletins.

(c) If, after an investigation, the Medical Board of California concludes that there was a violation of law, the board shall take disciplinary action, as appropriate, as authorized by Section 2227.

(d) If, after an investigation, the Medical Board of California concludes that there was excessive prescribing of psychotropic medications inconsistent with the standard of care, the board shall take action, as appropriate, as authorized by Section 2227.

(e) (1) Notwithstanding Section 10231.5 of the Government Code, commencing July 1, 2017, the Medical Board of California shall report annually to the Legislature, the State Department of Health Care Services, and the State Department of Social Services the results of the analysis of data described in Section 14028 of the Welfare and Institutions Code.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(f) On or before January 1, 2022, and in conjunction with the consultation with the State Department of Social Services and the State Department of Health Care Services required by subdivision (a) of Section 14028 of the Welfare and Institutions Code, the Medical Board of California shall conduct an internal review of its data review, investigative, and disciplinary activities undertaken pursuant to this section for the purpose of determining the

efficacy of those activities and shall revise its procedures relating to those activities, if determined to be necessary.

(g) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

SEC. 3. Section 14028 is added to the Welfare and Institutions Code, to read:

14028. (a) (1) In order to ensure appropriate oversight of psychotropic medications prescribed for children, pursuant to Section 2245 of the Business and Professions Code, the department and the State Department of Social Services, pursuant to a data-sharing agreement that shall meet the requirements of all applicable state and federal laws and regulations, shall provide the Medical Board of California with information regarding Medi-Cal physicians and their prescribing patterns of psychotropic medications and related services for individuals described in subparagraphs (B) and (C) of paragraph (1) of subdivision (c). The data concerning psychotropic medications and related services shall be drawn from existing data sources maintained by the departments. Every five years, the Medical Board of California, the department, and the State Department of Social Services shall consult and revise the methodology, if determined to be necessary.

(2) At minimum, the department, on an annual basis, shall share with the Medical Board of California data, including, but not limited to, pharmacy claims data for all foster children who are or have been on three or more psychotropic medications for 90 days or more. Prior to the release of this data, personal identifiers such as name, date of birth, address, and social security number shall be removed and a unique identifier shall be submitted. For each foster child who falls into these categories, the department shall submit the following information to the board:

(A) A list of the psychotropic medications prescribed.

(B) The start and stop dates, if any, for each psychotropic medication prescribed.

(C) The prescriber's name and contact information.

(D) The child's or adolescent's year of birth.

(E) Any other information that is deidentified and necessary to the Medical Board of California to allow the board to exercise its statutory authority as an oversight entity.

(F) The unit and quantity of the medication and the number of days' supply of the medication.

(b) The Medical Board of California shall contract for consulting services from, if available, a psychiatrist who has expertise and specializes in pediatric care for the purpose of reviewing the data provided to the board pursuant to subdivision (a). The consultant shall consider the treatment guidelines published by the department and the State Department of Social Services when assessing prescribing patterns.

(c) The Medical Board of California, pursuant to subdivision (a), shall analyze prescribing patterns by population for both of the following:

(1) Children adjudged as dependent children under Section 300 and placed in foster care.

(2) A minor adjudged a ward of the court under Section 601 or 602 who has been removed from the physical custody of the parent and placed into foster care.

(d) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

O