Legislative Update for Risk Managers and Privacy Officers

December 2, 2020

CALIFORNIA HOSPITAL ASSOCIATION

Welcome

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CALIFORNIA HOSPITAL ASSOCIATION

Questions

Please note any questions you may have within the Q & A box at the bottom of the Zoom Screen. They will be addressed at the end of the presentation.

Continuing Education

Continuing education credits will be offered for this program for behavioral/social work, compliance (pending approval), health care executives, health information, legal, nursing & risk management.

Full attendance and completion of the online evaluation and attestation of attendance are required to receive CEs for this webinar.

Faculty

Gail Blanchard-Saiger is vice president of labor and employment for the association. Ms. Blanchard-Saiger provides leadership for state legislative and regulatory issues related to hospital human resources and labor relations.

Faculty

Jackie Garman oversees and coordinates the association's legal representation on litigation critical to the hospital industry and assists with evaluating the legal impact of legislation and regulations on hospitals. She also assists in developing legislative and regulatory language, coordinates external counsel on litigation involving CHA and interacts with member hospitals on a variety of issues.

Faculty

Lois Richardson is responsible for evaluating the legal impact of proposed legislation/regulations on California hospitals and providing legal advice to CHA's advocacy staff. In addition, she authors many CHA publications, including the Consent Manual, California Health Information Privacy Manual and California Hospital Survey Manual. Lois has also served as the executive director for the California Society for Healthcare Attorneys since 2000.

2020 Legislative Update

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Introduction

- All laws take effect on January 1, 2021 unless otherwise noted

- To view a copy of any bill and its legislative history:
  - http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml

Laws Currently in Effect

Laws That Went Into Effect Immediately

COVID Supplemental Paid Sick Leave

AB 1867 - Labor Code § 248.1

Summary: Effective September 9, 2020 (although employers had until September 19, 2020 to provide the leave). Creates California's COVID Supplemental Paid Sick Leave. Intended to apply to employers not covered by the federal Families First Coronavirus Response Act. Provides 80 hours for full time employees and a formula to calculate hours for part-time and variable shift employees. Leave must be made available when an employee is:

- Ordered to quarantine/isolate by public health officials;
- Advised to quarantine/isolate by a health care provider; or
- Directed not to report to work by the employer due to concerns about transmission.

Employers who previously provided COVID specific paid leave may take a credit for such time provided.

Sunsets December 31, 2020, unless the Families First Coronavirus Response Act leave laws are extended.

Workers' Compensation Presumption for COVID

SB 1159 - Labor Code § § 3212.87 and 3212.88

Summary: Effective September 17, 2020. Adopts a COVID-19 specific presumption in the workers' compensation system for employees who test positive for COVID-19. The bill is retroactive to July 6, 2020 and expires on January 1, 2023.

- Codifies the Governor's Executive Order that created a presumption in the workers' compensation system, from March 19 – July 5 for employees who were required to leave their home to go to work during the stay-at-home order;
- Creates a presumption in the workers' compensation system for fire, police and hospital employees;
- Creates a presumption in the workers' compensation system for employees working in other workplaces that experience an "outbreak"; and
- Requires the Commission on Health and Safety and Workers' Compensation to evaluate the impact of these presumptions on the workers' compensation system.

Independent Contractor Status

AB 2257 – Labor Code § 2775 et seq.

Summary: Effective September 4, 2020. Re-organizes the statutory structure developed in AB 5. The ABC test is now codified in Labor Code § 2775. Modifies the business-to-business provision, now codified in Labor Code § 2776, including but not limited to a change to the following factor:

- The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. *This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses*.

Laws Effective Jan. 1, 2021

Laws That Go Into Effect On January 1, 2021

COVID Workplace Notice and Cal/OSHA Enforcement

AB 685 - Labor Code § § 6409.6 and 6432

Summary: Requires all employers (including health facilities) to notify employees of potential exposure to COVID-19 in the workplace. Includes special provisions with respect to notifying employees whose job duties necessarily bring them into contact with individuals who are COVID-19 positive or under investigation. In addition, the law allows Cal/OSHA to use an expedited process for citing serious violations related to COVID-19.

Personal Protective Equipment Stockpile

AB 2537 - Labor Code § 6403.3

Summary: Requires general acute care hospitals to create a stockpile of specified personal protective equipment (PPE) beginning April 1, 2021. The stockpile represents 90 days of normal consumption. A Hospital may be exempt as to specific PPE if it can show it placed an order that was not fulfilled or the items were damaged or stolen. Also requires general acute care hospitals to be prepared (by January 15, 2021) to report to the Dept. of Industrial Relations (DIR), under penalty of perjury, their highest seven-day consecutive daily average consumption of PPE during the 2019 calendar year, upon request by DIR.

Personal Protective Equipment Inventory and State Stockpile

SB 275 - Labor Code § 6403.1; Health & Safety Code § 131021

Summary: Creates a Personal Protective Equipment Advisory Committee to make recommendations about the state's PPE stockpile as well as health facility PPE inventory requirements. Requires Cal/OSHA to develop regulations for health facility PPE inventory requirements based on the Advisory Committee recommendations. Health facilities must comply with the inventory requirements by January 1, 2023 or one year after the regulations are final, whichever is later.

Educational Programs and Training Costs

AB 2588 - Labor Code § 2802.1

Summary: Prohibits general acute care hospitals from requiring applicants or employees to pay for employer-provided or employer-required education programs or training such as nurse residency programs. Does not apply where the program or training is required by a license, registration or certification necessary to legally practice in a specific employee classification to provide direct patient care or education or training that is voluntarily undertaken by the employee or applicant solely at their discretion.

Pay Data Report

SB 973 – Government Code § 12999

Summary: Requires private employers with 100 or more employees and that are required to file an annual EEO-1 report under federal law, to submit a pay data report to the Department of Fair Employment and Housing (DFEH) annually, beginning March 31, 2021, including the following information:

- The number of employees by race, ethnicity, and sex in specified job categories
- The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the Bureau of Labor Statistics in the Occupational Employment Statistics survey
- The total number of hours worked by each employee counted in each pay band during the "Reporting Year.

- The information must be provided in a format that allows the DFEH to search and sort the data.
- An employer may submit a copy of the employer's EEO-1 Report, containing the same or substantially similar pay data information as required by this law.
- DFEH may develop, publish on an annual basis, and publicize aggregate reports based on the data obtained, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person.

California Family Rights Act

SB 1383 – Government Code § 12945.2

Summary: Extends California Family Rights Act to employers with 5 or more employees. Expands family care leave to include grandparent, grandchild, adult child, sibling and domestic partner. Unclear whether it applies to “parent-in-law.”

Mandated Reporters: Child Abuse and Neglect

AB 1963 – Penal Code § 11165.7

Summary: Adds the following employees as “mandated reporters”:

- A human resource employee of a business that employs minors.
- An adult person whose duties require direct contact with and supervision of minors in the performance of the minors’ duties in the workplace
- Note: Volunteers whose duties require direct contact with and supervision of children are not mandated reporters -- but are encouraged to obtain training in child abuse detection and reporting.

Employers must train their employees who are mandated reporters -- training requirement may be met by completing the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Department of Social Services.

Settlement/Severance Agreements

AB 2143 - Code of Civil Procedure § 1002.5

Summary: Amends the law adopted last year that prohibits a settlement agreement related to an employment dispute from prohibiting an employee or applicant from working for that employer or a parent company, subsidiary, affiliate, or contractor unless an exception applies. This bill allows such a prohibition if the employer made and documented a good faith determination, before the employee/applicant filed the claim, that the employee/applicant engaged in sexual harassment, sexual assault, or criminal conduct.

Corporate Board Composition

AB 979 – Corporations Code § 301.3

Summary: Requires, by December 31, 2021, a publicly-held corporation whose principal executive offices in California (according to the corporation's SEC 10-K form) to have at least one director from an underrepresented community. Requires by December 31, 2022, such a corporation with 4 to 9 directors to have at least 2 directors from underrepresented communities, and such a corporation with 9 or more directors to have at least 3 directors from underrepresented communities.

Cal/OSHA:

Emergency COVID Temporary Standard

Cal/OSHA Emergency Standard

8 C.C.R. 3205, 3205.1, 3205.2, 3205.3, 3205.4

Summary: Requires employers to take specified action with respect to the risks of COVID in the workplace.

- Scope language is somewhat ambiguous. CHA does not believe it applies to any facility covered by the Aerosol Transmissible Disease Standard
- Requires
  - Development of a COVID-19 Prevention Plan
  - Weekly testing when 3 employees test positive in a 14-day period
  - Bi-weekly testing when 20 employees test positive in a 30-day period

Cal/OSHA Emergency Standard (cont.)

8 C.C.R. 3205, 3205.1, 3205.2, 3205.3, 3205.4

Summary: Requires employers to take specified action with respect to the risks of COVID in the workplace.

- Work exclusion guidelines
- Continuation of wages and benefits when employee is excluded from work
- Provisions for employer provided housing
- Provisions for employer provided transportation

Effective November 30, 2020

AB 713: California Consumer Privacy Act

Amends California Consumer Privacy Act (CCPA) to:

- Exempt de-identified information
- Exempt business associates of covered entities
- Exempt information collected, used, or disclosed for research, including clinical trials
- Require disclosure to consumers of de-identification method (if de-identified patient info is sold/disclosed)
- Prohibit re-identification

AB 1281: California Consumer Privacy Act

- Extends until 1-1-22 the CCPA exemption for information regarding job applicants, employees, owners, directors, officers, medical staff members, and contractors
- Employers covered by the CCPA must continue to provide notice before collecting personal information from these persons – the notice must describe every category of information that will be collected and the purposes for which it will be used.
- However, Prop 24 extended this exemption until January 1, 2023
- Expect legislation in 2021 – likely to apply to more businesses than CCPA

AB 2276: Childhood Lead Poisoning – Screening and Prevention

Current law: At certain well baby/child checkups, the healthcare provider must give parents information and screen for lead poisoning

Title 17, Calif. Code of Regulations, § 37100

AB 2276: Childhood Lead Poisoning – Screening and Prevention

This bill requires Calif. Dept. of Public Health (CDPH) to add additional environmental risk factors to its standard of care for evaluating a child's risk of lead poisoning. Specifically, must consider:

- A child's residency in a high-risk ZIP code
- A child who has a sibling or playmate with lead poisoning
- The likelihood of a child placing nonfood items in the mouth
- A child's proximity to current or former lead-producing facilities
- The likelihood of a child using food, medicine or dishes from other countries

AB 2276: Childhood lead poisoning - screening and prevention (cont.)

Requires Medi-Cal managed care plans to:

- On a quarterly basis, identify every child enrollee without a record of the required blood lead screenings
- Remind the responsible providers to perform screening and educate parents

AB 2276: Childhood Lead Poisoning – Screening and prevention (cont.)

- Requires Dept. of Health Care Services (DHCS) to develop procedures to ensure Medi-Cal managed care plans do this and allows DHCS to impose sanctions for non-compliance.
- Plans must provide records to DHCS annually.
- If the child enrollee's parent refuses screening, the plan must ensure that a statement of voluntary refusal is signed by the parent and documented in the medical record. If parent declines to sign, this must be noted in the medical record.

SB 803: Peer Support Specialists

What are peer support specialists?

- Individuals who self-identify as having experience with recovery from mental illness or substance use (as a consumer, parent or family member)
- Have a dedication to recovery
- Adhere to a code of ethics
- Complete the required training and pass a certification exam
- Sign a biennial affirmation and complete continuing education requirements

SB 803: Peer Support Specialists (cont.)

By July 1, 2022, DHCS must:

- Establish requirements for counties to certify peer support specialists - qualifications, responsibilities, practice guidelines, supervision standards, code of ethics
- Determine curriculum for certification
- Determine process for investigating complaints and taking corrective action
- Counties can develop a peer support specialist program
- If Legislature appropriates funds, state will fund startup costs

SB 803: Peer Support Specialists (cont.)

- Requires DHCS to seek federal approval for a pilot project in counties that agree voluntarily to participate and provide the nonfederal share of funding.
- Requires the pilot project to:
  - Include certified peer support specialists as a Medi-Cal provider type
  - Include peer support specialist services as a distinct service type
  - Develop billing codes, reimbursement rates and claim submission requirements
- Specifies that the pilot project is not a mandate and that state general fund (GF) dollars shall not be used to fund the nonfederal share of any expenditures.

SB 803: Peer Support Specialists (cont.)

Bottom line:

- Mental health peer support specialists will be educated and trained through county certification programs and employed by counties to provide services (if approved by CMS)
- This service will be available only through county mental health plans (MHPs)

SB 855: Mental Health Parity

- Requires health plan contracts issued, amended or renewed on or after January 1, 2021 to cover medically necessary treatment of mental health (MH) and substance use disorders (SUDs) under the same terms and conditions applied to all plan benefits, including:
  - Maximum annual and lifetime limits, if not prohibited by law
  - Copayments and coinsurance
  - Individual and family deductibles, and out-of-pocket maximums
- Prohibits a health plan from limiting benefits or coverage for MH and SUDs to short-term or acute treatment.
- Medi-Cal plans exempt

AB 732: Pregnant Inmates

- Expands protections for pregnant inmates in county jails and state prisons
- Pregnant inmates may have a support person present during labor, childbirth, and during postpartum recovery while hospitalized
- The support person may be an approved visitor or designated prison staff. Approval of the support person is given by prison administrator
- A pregnant inmate must be given the maximum level of privacy possible during labor and delivery. Any guard must be stationed outside the room, absent extraordinary circumstances. If a guard must be in the room, must stand in a place that grants as much privacy as possible. Guard must leave the room if a health care professional responsible for the medical care of the patient determines that removal of the guard is medically necessary.

AB 1710: Pharmacist COVID Vaccination

- Allows a licensed pharmacist to independently initiate and administer COVID-19 vaccines under the same circumstances as vaccines listed on the routine immunization schedule.
- Must comply with existing requirements: complete an immunization training program, be certified in basic life support, and comply with all state and federal recordkeeping and reporting requirements, including
  - Providing documentation to the patient's primary care provider
  - Entering information in the immunization registry

Note: federal PREP Act immunity supersedes state law – pharmacists, interns, and technicians

AB 992 (Mullin): Social Media Exception to Brown Act

Amends Gov. Code § 54952.2

- Clarifies that member of local agency's legislative body may engage in separate conversations/communications on an internet-based social media platform regarding a matter within the subject matter of the legislative body to:
  - Answer questions
  - Provide information
  - Solicit information
- Limitations
  - Majority of body's members cannot use the platform to discuss among themselves business of a specific nature that is within the body's subject matter jurisdiction.
  - Member can't respond directly to any communication regarding a matter within the subject matter jurisdiction of the body that is made, posted or shared by any other member.
- Sunsets 1/1/2026

AB 1544 (Gipson): Community Paramedicine/Alternate Destinations

H & S Code: amends § 1799.2, adds § 1797.259; adds and repeals § 1297.273, and adds and repeals Chapter 13 (commencing with § 1800)

- Permits local emergency medical services agencies (LEMSA), with approval by Emergency Medical Services Authority (EMSA), to develop programs to provide **community paramedicine (CP)** or **triage to alternate destination (TAD)** services
  - CP and TAD services to be provided only per authorization by LEMSA as part of a CP or TAD program approved by EMSA
- To be used only for specified specialty services
  - To be integrated into, not replace, LEMSA's EMS plan

AB 1544: Community Paramedicine/Alternate Destinations (cont.)

- Community paramedic program specialties
  - Providing directly observed tuberculosis therapy in collaboration with public health agency
  - Providing case management services to frequent emergency medical services users in collaboration with/referral to community resources
- Triage paramedic specialties
  - Providing care and comfort services to hospice patients in their homes in response to 911 calls
  - Providing advanced life support triage and assessment and transportation to an alternate destination facility
    - Authorized sobering center
    - Authorized mental health facility
  - For veterans, transport to a local VA emergency department

AB 1544: Community Paramedicine/Alternate Destinations (cont.)

- Additional training, certification, and accreditation requirements for community paramedics, triage paramedics.
- EMSA to develop and adopt regs and minimum standards for each program and minimum standards/curriculum for each program specialty.
- Data collection to ensure patient safety.
- EMSA to submit annual report making program recommendations and assessing aggregate patient outcomes, adverse patient events, impact of program specialties.
- Extends specified existing community paramedicine pilot programs.
- Program sunsets 1/1/2024.

AB 2037 (Wicks): Health Facilities: Notices

Amends H & S Code §§ 1255.1, 1255.25

- Eliminating or reducing level of emergency medical services:
  - **180 days prior notice** to CDPH, local government entity, contracted health care service plans
  - Simultaneous public notice in a manner likely to reach a significant number of residents of the community
- Closing general acute care hospital or acute psychiatric hospital:
  - **120 days** prior notice to CDPH and board of supervisors of the county
  - Public notice to be posted simultaneously at entrance to all affected facilities
- Eliminating or relocating supplemental services
  - **90 days prior notice** to CDPH and board of supervisors of the county
  - Public notice to be posted simultaneously at entrance to all affected facilities

AB 2037: Health Facilities: Notices (cont.)

- Additional requirements for public notice applicable to all actions
  - Written notice to city council in which facility is located
  - Continuous notice in conspicuous location on facility's homepage
  - Notice published in conspicuous location in newspaper of general circulation serving local geographical area continuing for at least 15 publication dates
  - Continuous notice posted in conspicuous location within website of newspaper of general circulation servicing local geographical area in which facility is located
  - Notice posted at entrance of every community clinic within the county in which the facility is located that gives permission for posting

AB 2520 (Chiu): Electronic Signatures; Access to Medical Records

Amends H & S Code §§123105 and 123110; adds H & S Code §123114

- "Notwithstanding any other law, a health care provider may honor a request to disclose a patient record or complete a public benefit form that contains **the written or electronic signature** of the patient or the patient's personal representative."
- Expands ability of patient/representative to obtain a copy, at no charge, of the portion of patient's medical records that are needed to support a claim/appeal regarding eligibility for certain benefit programs.
  - Adds **employee of a nonprofit legal services entity representing the patient** to those entitled to have obtain patient's records at no charge
  - Adds additional benefit programs subject to free records requirement

AB 2520: Electronic Signatures; Access to Medical Records (cont.)

- Requires health care providers to provide information, including medical opinion, to complete forms needed to establish eligibility for public benefit programs
- Prohibits charging a fee for filling out forms
- Adds the following to the health care providers subject to Patient Access to Health Records law:
  - Nurse practitioner
  - Physician assistant
  - Speech-language pathologist
  - Audiologist

AB 2644 (Wood): SNFs: Infection Preventionists; Communicable Disease Reporting

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Adds H & S Code §§ 1255.9 and 1275.41

- **Adds SNF requirements for infection prevention**
  - Requires a full-time dedicated Infection Preventionist
    - Must be RN or LVN
    - Can't be included in calculation of 3.5 hours of direct patient care/day provided to SNF residents
  - Must have a plan for infection prevention quality control
  - Must ensure all health care personnel receive infection prevention and control training annually

AB 2644 (Wood): SNFs: Communicable Disease Reporting (cont.)

- **Communicable disease reporting**
  - **Applies only in event of a declared emergency related to a communicable disease**
  - Must report **info about each disease-related death and suspected disease-related death**
  - Must report within **24 hours**
  - Must **notify** residents/representatives/family members about cases in compliance with privacy laws as instructed by CDPH
  - CDPH to post on its website weekly the total number of deaths and the location at which they occurred

AB 3242 (Irwin): Lanterman-Petris-Short Act: Telehealth

Amends H & S Code §1799.111; amends W & I Code § 5151 and adds §5150.5

Lanterman-Petris-Short (LPS) Act provides for involuntary commitment of persons with mental health disorders for varying lengths of time for purpose of treatment and evaluation, provided specified requirements are met.

- Authorizes use of **telehealth** to conduct an examination, assessment, or evaluation that is specified, required, or authorized by the LPS Act as it relates to the involuntary commitment and treatment of individuals with mental health disorders.
  - "Telehealth" defined in Bus. & Prof. Code § 2290.5: "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. . . . and includes synchronous interactions and asynchronous store and forward transfers."

SB 932 (Wiener): Communicable Diseases: Data Collection: Sexual Orientation and Gender Identity

Adds H & S Code §120255
Urgency legislation

- Requires electronic tool used by local health officers for reporting communicable disease to CDPH to include the capacity to collect and report data relating to sexual orientation and gender identity.
- Requires health care providers in attendance on a case of a reported disease to report the patient's sexual orientation and gender identity, if known.

SB 1196 (Umberg): Price Gouging

Amends Penal Code §339

Expands crime of price gouging

- Adds pandemic or epidemic disease outbreak to circumstances that may lead to declaration of state of emergency/local emergency triggering price gouging protections
- Limits price that can be charged by seller that did not charge a price for goods or services immediately prior to proclamation/declaration of emergency.
- Clarifies that price gouging protections apply whether goods and services are offered or sold in person, in stores, or online.
- Protections may apply to a timeframe prior to a date set in the proclamation/declaration.

SB 1237 (Dodd): Certified Nurse Midwives

Bus. & Prof Code: amends §§ 650.01, 2746.2, 2746.5, 2746.51, and 2746.52. and adds §§2746.54 and 2746.55;
H & S Code: amends §§ 02415, 102426, and 102430

- Redefines scope of practice of midwifery, eliminating requirements for physician supervision/standardized procedures and protocols for specified categories of care.
- Gives certified nurse midwife (CNM) an independent scope of practice that includes:
  - Attending **low-risk pregnancy** and childbirth
  - Providing prenatal, intrapartum, and postpartum care, including interconception care, family planning care
  - Immediate care for the newborn
  - All to be consistent with Core Competencies for Basic Midwifery Practice of ACNM (or successor)

SB 1237: Certified Nurse Midwives (cont.)

- "Low risk pregnancy":
  - Single fetus,
  - Cephalic presentation at onset of labor,
  - Gestational age ≥ 37+0 weeks and ≤ 42+0 weeks at time of delivery,
  - Spontaneous or induced labor, AND
  - No pre-existing disease or condition, whether arising out of pregnancy or otherwise, that adversely affects the pregnancy and that the CNM is not qualified to independently address.
- Prohibits using vacuum or forceps or performing any external cephalic version.

SB 1237: Certified Nurse Midwives (cont.)

- CNM can also practice with a physician under "*mutually agreed-upon policies and protocols that delineate the parameters for consultation, referral, and transfer*"
  - Provide care that falls outside of the independent scope of services
  - Intrapartum and birth care of patients with a previous C-section or myometrial surgery
  - "Mutually agreed-upon policies and protocols" must be signed by both the CNM and "a physician."
- Furnishing, etc.: Allows CNMs to
  - Directly procure supplies and devices
  - Obtain and administer diagnostic tests
  - Directly obtain and administer non-scheduled drugs
  - Order lab and diagnostic testing consistent with providing services within their independent scope
  - Receive reports that are necessary to their practice as a CNM.

SB 1237: Certified Nurse Midwives (cont.)

	SPs Needed	SPs NOT Needed
Furnishing medications for conditions within the independent CNM scope of services		X
Furnishing medications for conditions not included in the independent CNM Scope of services (e.g. during "co-management")	X	
Furnishing narcotics at any time	X	
Episiotomy and Laceration Repair		X

SB 1237: Certified Nurse Midwives (cont.)

- Other
  - Requires certain patient disclosures (orally and in writing) for intended out-of-hospital birth (lack of supervision, malpractice insurance, transfer plan, etc.).
  - Data reporting requirements for out-of-hospital CNMs: maternal or neonatal transfers to a hospital or any maternal, fetal, or neonatal death in the out-of-hospital setting
  - CNMs made subject to the self-referral prohibitions of CA's Physician Ownership & Referral Act (PORA)
  - Establishes Nurse-Midwifery Advisory Committee within the BRN to advise on all matters related to midwifery practice, education, appropriate standard of care, and other matters as specified. Also provides recommendations or guidance on care when the BRN is considering disciplinary action against a CNM.

SB 1237: Certified Nurse Midwives (cont.)

- Compliance Checklist for In-Hospital CNMs
  - ✓ Become familiar with the Core Competencies for Basic Midwifery Practice from the American College of Nurse-Midwives
  - ✓ Review/revise policies and protocols to eliminate physician supervision, etc., requirements to reflect CNM independent scope of practice
    - ✓ Decrease duplication of tasks: no co-signature necessary on orders, H&P, discharge summaries, delivery notes
  - ✓ Develop written policies/protocols signed by all CNMs and a physician that delineate parameters of consultation, collaboration, referral, and transfer of patient's care outside independent CNM scope of services
    - ✓ CNM care of patients attempting TOLAC must be included if facility offers VBAC
  - ✓ Chart all consultations, referrals, and transfers in the patient record
  - ✓ Refer emergencies to a physician immediately, but may provide emergency care until a physician arrives

AB 890 (Wood): Nurse Practitioners

B & P Code: amends §§ 650.01, 805, and 805.5, and adds Article 8.5 (commencing with Section 2837.100)

- Creates two new categories of NPs authorized to function independently within a defined scope of practice: "103 NPs" and "104 NPs"
  - Does not regulate current NPs, those who choose not to become 103s or 104s in the future, or physicians' relationships with either of these.
- The Basics
  - 103 NPs: may practice independently (without SPs) pursuant to a defined scope of practice in six specified settings
  - 104 NPs: may practice independently pursuant to a defined scope of practice outside of those six settings (e.g., have their own practice)
  - Must meet specified educational, training, testing, and other requirements

AB 890 (cont): 103 NPs

- Qualifications
  - NP board certification exam and, if applicable, supplemental exam developed by DCA Office of Professional Examination Services
  - Hold a certification as an NP from a national certifying body accredited as specified and recognized by the BRN
  - Provides documentation that NP's education was consistent with existing BRN regulations
  - Completed a "transition to practice" (TTP) in CA of a minimum of 3 FTE years of practice or 4600 hours
    - May include practice experience obtained before 1/1/2021
    - BRN to define minimum standards for TTP through regulations; to include managing a panel of patients, working within a complex healthcare setting, interpersonal collaboration and team-based care, business management of a practice

AB 890 (cont.): 103 NPs

- 103 NPs can practice independently within defined scope only within six authorized settings that have ≥ 1 physicians
  - Clinic
  - Health facility, except for correctional treatment center or state hospital
  - County medical facilities
  - Medical group practice
  - Home health agency
  - Hospice facility
- These settings/organizations "shall not interfere with, control, or otherwise direct the professional judgment of a nurse practitioner functioning pursuant to this section in a manner prohibited by Section 2400 or any other law."

AB 890 (cont.): 104 NPs

- Qualifications
  - Must meet all of the requirements as the 103 NPs (including TTP) **plus**
  - Valid and active RN license
  - Have a master's degree in nursing or other related clinical field or a doctoral degree in nursing
  - Must have practiced as an NP in good standing for ≥ 3 years, not inclusive of the TTP
    - BRN may (discretionary) lower this requirement for NP holding a DNP degree based on practice experience gained in course of education
  - BRN to issue separate NP certificate upon completion of requirements, application
- Settings in which 104 NPs can practice independently within their defined scope: "outside of the settings or organizations specified" where 103 NPs may practice
  - No requirement that there be a practicing physician

AB 890 (cont.): Scope of Independent Practice for Both 103 NPs and 104 NPs

- Scope of practice: 103 NPs and 104 NPs have the same scope of independent practice. They may perform the following functions without standardized procedures:
  - Conduct an advanced assessment
  - Order, perform, and interpret diagnostic procedures
    - Specified limitations with respect to radiologic and clinical laboratory procedures
  - Establish primary & differential diagnoses
  - Prescribe, order, administer, dispense, procure and furnish therapeutic measures, including therapy or referrals to health care agencies, pharmacological agents, and nonpharmacological interventions, as specified
  - After performing a physical examination, certify disability per Unemployment Insurance Code
  - Delegate tasks to a medical assistant

AB 890 (cont.): Obligations of 103 and 104 NPs

- Verbally inform all new patients that NP is not a physician, as specified
- Post notice, as specified, that the NP is regulated by the BRN, with BRN contact information for complaints
- Practice within their education, training, national certification
- Refer patients to a physician or other health arts provider in specified circumstances or if the patient's condition is beyond the NP's education and training
  - 104 NPs required to "consult and collaborate" with other healing arts providers based on patient's clinical condition; physician consultation must be obtained as specified.
- Have liability insurance "appropriate for the practice setting"
- Comply with self-referral prohibitions under PORA

AB 890 (cont.): Medical Staff

- 103 NPs
  - Required to adhere to all applicable medical staff bylaws
  - Eligible to serve on medical staff and hospital committees
  - Eligible to attend meetings of the department to which they are assigned
  - Voting rights at department/division meetings limited to:
    - NP privileges with the organization
    - Peer review of NP clinical practice
    - "[W]hether a licensee's employment is in the best interest of the communities served by a hospital pursuant to Section 2400 or any other law"
    - When otherwise permitted by the bylaws
- 104 NPs
  - "[S]hall be eligible for membership of an organized medical staff."
  - "[M]ay vote at meetings of the department to which [they] are assigned."

AB 890 (cont.): Other

- Makes B & P §§ 805, 805.5 reporting/querying requirements applicable to 103 NPs and 104 NPs
  - Prior to granting or renewing privileges, medical staff must request a report from the BRN to determine if any 805 report has been made concerning a 103 NP or 104 NP
  - 805 report must be filed with the BRN in the event of the specified disciplinary actions against, or actions taken by, a 103 NP or 104 NP
- Directs BRN to create Nurse Practitioner Advisory Committee to advise and make recommendations on matters including education, appropriate standard of care, and other matters specified by BRN.
  - Committee to provide recommendations/guidance when BRN is considering discipline against an NP
  - Majority of 7-member committee to be NPs

Questions?

Please type your questions in the Q/A section at the bottom of your Zoom screen.

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Thank You and Evaluation

Thank you for participating in today's webinar.
An online evaluation will be sent to you shortly.

For education questions, contact:
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