

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1174(McGuire) – As Amended June 22, 2016

SENATE VOTE: 36-3

NOTE: This bill is double-referred, having been previously heard by the Assembly Committee on Health on June 21, 2016 and approved on a 13-0 vote.

SUBJECT: Medi-Cal: children: prescribing patterns: psychotropic medications

SUMMARY: Requires the Medical Board of California (MBC) to conduct an analysis of data regarding Medi-Cal physicians and their prescribing patterns of psychotropic medications for foster youth using data provided by the Department of Health Care Services (DHCS) and the Department of Social Services (DSS), as specified. Requires that the data be shared pursuant to a data-sharing agreement and would require that, every 3 years, the MBC, DHCS, and the DSS consult and revise the methodology, if determined to be necessary. Requires the DHCS to disseminate guidelines on an annual basis via email to any prescriber, as specified. Requires the MBC to handle on a priority basis investigations of repeated acts of excessive prescribing, furnishing, or administering psychotropic medications to a minor, as specified.

EXISTING LAW:

- 1) Establishes the MBC within the Department of Consumer Affairs (DCA) to license and regulate physician and surgeons and the Medical Practice Act (Act). (Business and Profession Code (BPC) § 2000 *et seq.*)
- 2) Requires the MBC to take action against a physician and surgeon who is charged with unprofessional conduct, as specified. (BPC § 2234)
- 3) Requires MBC to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Requires cases involving excessive prescribing, furnishing or administering of controlled substances, or repeated acts of prescribing, dispensing or furnishing of controlled substance without a good faith prior examination of the patient and medical reason to be handled as a high priority. Prohibits physicians and surgeons from being prosecuted for excessive prescribing when prescribing, furnishing or administering controlled substances for intractable pain as authorized under current law. (BPC § 2220.05(a)(3))
- 4) Requires the MBC to indicate in its annual report the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category, including those in 3) above. (BPC § 2220.05(c))
- 5) Authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. Provides that a physician and surgeon shall not be subject to disciplinary

action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances according to certain requirements. Authorizes the MBC to take any action against a physician and surgeon who violates laws related to inappropriate prescribing. Provides that a physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. (BPC § 2241.5)

- 6) Provides that only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for a minor is a dependent of the court and removed from the physical custody of his or her parent. Requires the Judicial Council to adopt rules of court and develop appropriate forms. (Welfare and Institutions Code (WIC) § 369.5)
- 7) Establishes a program of public health nursing in the child welfare services (CWS) program that provides health-related case management services from a foster care public health nurse to coordinate with CWS workers to provide health care services to children in foster care. Includes among the duties of public health nurses the monitoring and oversight of psychotropic medications. (WIC § 16501.3)
- 8) Requires DSS, in consultation with DHCS, and other specified stakeholders to develop county-specific monthly reports that describe each child for whom one or more psychotropic medications have been paid for under Medi-Cal, including paid claims and managed care encounters. Requires DSS to develop training, in consultation DHCS and various other agencies that may be provided to county child welfare social workers and others that addresses the use of psychotropic medications. (WIC § 16501.4)

THIS BILL:

- 1) Adds repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination and medical reason therefor to the list of cases that MBC must prioritize for investigation and prosecution.
- 2) Requires MBC to conduct on a quarterly basis an analysis of Medi-Cal physicians and their prescribing patterns of psychotropic medications and related services using data provided quarterly by the DHCS in collaboration with the DSS.
- 3) Requires that analysis to include, but not be limited to, the child welfare psychotropic medication measures and the Healthcare Effectiveness Data and Information Set measures related to psychotropic medications.
- 4) Requires the data concerning psychotropic medications and related services to be shared pursuant to a data sharing agreement meeting the requirements of all applicable state and federal laws and regulations.
- 5) Requires MBC, DHCS, and DSS to consult and revise the methodology every three years, if determined to be necessary.
- 6) Requires the data provided to the MBC pursuant to 4) and 5) above include a breakdown by population of all of the following:

- a) Children prescribed psychotropic medications in managed care and fee-for-service settings;
 - b) Children adjudged as dependent children, as specified, and placed in foster care; and,
 - c) A minor adjudged a ward of the court who has been removed from the physical custody of the parent and placed into foster care.
- 7) Specifies that the data provided to the MBC must include total rate and age stratifications that include the following:
- a) Birth to five years of age, inclusive;
 - b) Six to 11 years of age, inclusive; and,
 - c) Twelve to 17 years of age, inclusive.
- 8) Requires the data provided to the MBC to include the information in 7) above for each prescriber with a pattern of prescribing that includes one or more of the following:
- a) Prescriptions for any class of psychotropic medication for a child who is five years of age or younger;
 - b) Prescriptions for concurrent administration of two or more antipsychotic medications that exceed 60 days;
 - c) Prescriptions for concurrent administration of three or more psychotropic medications exceeding 60 days; and,
 - d) Prescriptions for a dosage that exceeds the amount recommended for children.
- 9) Requires that the data provided to MBC pursuant to 2) above include the following information on each identified prescriber:
- a) Prescriber name, specialty, location, and contact information;
 - b) The child's gender and year of birth;
 - c) List of the psychotropic medications prescribed, diagnosis, and the medication start and end date;
 - d) Unit of the medication(s), quantity of the medication(s), the days supply, and prescription fill date: and,
 - e) The child's weight.
- 10) Requires the MBC on a quarterly basis to review the data provided pursuant to 1) through 5) above 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, to conduct an investigation.

- 11) Requires the DHCS to disseminate guidelines on an annual basis via email to any prescriber who meets the data requirement threshold for prescribing of psychotropic medications to children and adolescents, as specified.
- 12) Requires the MBC to take disciplinary action if after an investigation, the MBC concludes that there was a violation of law, as specified.
- 13) Requires the MBC to take action, as appropriate, if after an investigation the MBC concludes that there was excessive prescribing of psychotropic medications inconsistent with the standard of care, as specified.
- 14) Requires, beginning July 1, 2017, the MBC to report annually to the DHCS, DSS, and the Legislature the results of the analysis of data.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill will result in:

- 1) Ongoing costs up to \$280,000 per year for the DHCS to analyze prescription drug claims data and compile required information for the Medical Board. The DHCS's information technology systems contain prescription drug claims data (when combined with information from the DSS on foster care placements) to provide the data required to fulfill the requirements in the bill. The DHCS indicates that it will need two additional staff positions to compile the required data, stratify it into the required data categories, and report to the Medical Board.

However, as part of recent efforts to reduce overprescribing of psychotropic medications to foster youth, the DHCS has been working with the DSS and counties to identify foster youth being prescribed such medications. The Governor's budget proposal includes an additional permanent position to continue this work. If approved by the Legislature, that new position may be able to also perform some or all of the requirements of this bill as well.

- 2) Uncertain costs for the MBC to review the information provided by the DHCS and investigate instances where excessive prescribing may be occurring. According to the MBC, its staff is already reviewing data provided by the DHCS to look for cases of excessing prescribing. However, to the extent that such data analysis does uncover instances of excessing prescribing, this would lead to increased costs for investigations and potential disciplinary action by the MBC. While those instances of excessing prescribing may already be actionable by the MBC under current law and regulation, the data analysis required in the bill makes such investigations more likely to occur.

Unknown potential cost savings in the Medi-Cal program due to reduced inappropriate utilization of psychotropic medications by foster youth. To the extent that this bill contributes to ongoing efforts to reduce inappropriate use of those drugs by Medi-Cal beneficiaries, the bill is likely to reduce spending. Ongoing efforts in other states to reduce inappropriate prescribing have substantially reduced the use of these frequently expensive medications. The amount of any decrease in spending that could be attributed to this bill is uncertain, in part because there are several efforts underway by the state and the counties to reduce inappropriate prescribing of psychotropic drugs to foster youth.

COMMENTS:

Purpose. This bill is sponsored by the National Center for Youth Law. According to the author, “Over the past fifteen years, the rate of foster youth prescribed psychotropic medication has increased 1,400 percent. Nearly 1 in 4 California foster teens are prescribed psychotropic drugs; of those nearly 60 percent were prescribed an anti-psychotic – the powerful drug class most susceptible to debilitating side effects. While the Child and Family Services Improvement and Innovation Act of 2011 requires each state to oversee and monitor the use of psychotropic medications with children in care, there are currently no requirements to identify those who are over prescribing medication to foster youth. The State of California has not been monitoring over prescribing because the data collection and data sharing system is not in place. Given the State has a responsibility to monitor the administration of these drugs and to ensure the health and well-being of foster children, we should implement a process that provides the appropriate oversight for these powerful medications. SB 1174 will establish a formal process for the [MBC] to responsively review and confidentially investigate psychotropic medication prescription patterns among California children.”

Background. *Psychotropic Medications Prescribed to Foster Youth.* According to information obtained from the Child Welfare Indicator Project, over the past fifteen years, the rate of foster youth prescribed psychotropic medication has increased 1,400 percent. Nearly 1 in 4 California foster teens are prescribed psychotropic drugs; of those nearly 60 percent were prescribed an anti-psychotic – the powerful drug class most susceptible to debilitating side effects.

A number of factors contribute to the potential for inappropriate psychotropic prescribing practices including:

- A lack of access to effective non-pharmacological interventions and a reliance on medications to quickly control difficult behaviors;
- An inadequate supply of child behavioral health specialists with training in evidence-based, trauma-informed practices;
- Limited clinical knowledge among child welfare case workers about appropriate psychotropic medication use;
- A lack of coordination across providers and child-serving agencies; and,
- Aggressive, effective pharmaceutical marketing and financial incentives that drive prescribing.

In November of 2011, the Centers for Medicare and Medicaid Services (CMS), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the Administration for Children and Families (ACF), wrote a joint letter encouraging states to strengthen oversight of psychotropic medication use among the foster youth population.

The MBC and the DHCS Data Use Agreement. In 2014, Senator Ted Lieu, then chair of the Senate Committee on Business, Professions, and Economic Development, sent a letter to the MBC in response to several newspaper articles which asserted that some doctors were prescribing drugs that have not been approved for children, and without reviewing the children's medical records or drug history (*San Jose Mercury News*, “Drugging Our Kids”, 2014). Senator

Lieu requested that the MBC investigate these medical professionals and develop recommendations to minimize dangerous prescribing practices. In response, the MBC and the DHCS adopted a one year trial Data Use Agreement that allows for the sharing of prescriber data in order to identify prescribing patterns of licensees.

This bill would codify the Data Use Agreement allowing the MBC and DHCS to continue identifying licensees who appear to be incorrectly prescribing medication to foster youth and flag them for investigation.

State Auditor Report. The California State Auditor (CSA) is currently engaged in an audit of foster youth and psychotropic medication. It is expected to be released in July or August of 2016. According to information obtained from the CSA website, the audit will select and review four county CWS agencies—two counties identified as having a high prevalence of the use of psychotropic medications for foster children and two counties with a correspondingly low prevalence. The audit will provide independently developed and verified information related to the DSS, DHCS, and a selection of county CWS agencies’ oversight and monitoring of foster children who have been prescribed psychotropic medications, as well as a review of the availability and adequacy of other supportive services, such as mental health and substance abuse counseling. The audit will also determine whether any other states have implemented innovations or oversight systems that have successfully reduced the use of psychotropic medications in foster children or improved their access to non-pharmacological supports, and evaluate whether California could benefit from similar policies or practices.

Other States. Alabama provides a focused mailing to prescribers of any antipsychotics to children under 18, as well as telephone outreach by child psychiatrists to prescribers of antipsychotics to children under age five.

Colorado sends educational alerts and letters to prescribers detailing information about the psychiatric medication utilization of their patients. If post-intervention changes are not observed, follow-up letters and face-to-face meetings with peer consultants are conducted.

Illinois maintains a watch-list of high-risk prescribers, utilizing this data to assess the impact of changes in consent policies on prescriber behaviors.

Michigan created a system whereby child psychiatrists follow-up with prescribing physicians when indicated based on established triggers to review the case and provide consultation.

Missouri uses the Behavioral Pharmacy Management System to analyze prescribing patterns for children and adolescents and send letters to prescribers offering consultation on best prescribing practices. An analysis of this intervention showed a significant reduction in the percentage of outlier prescriptions.

ARGUMENTS IN SUPPORT:

The National Center for Youth Law (sponsor), Children Now, John Burton Foundation, and the Bay Area Youth Center similarly write in their letters of support, “Last year, the [DHCS] and the [MBC] adopted a one-year trial Data Use Agreement that allows for the sharing of prescriber data in order to identify outlying prescribers. Such data sharing practices should not be on a one-time basis, but rather an ongoing process for improving the quality of prescribing for our children.”

Advokids writes in their letter of support, “We demand high quality, accessible mental health services for foster children and the careful collection of data surrounding psychotropic medications to ensure the physical and emotional safety of our foster youth.”

The Children’s Partnership writes, “TCP strongly supports SB 1174, which will establish a formal process for the MBC to responsively review and confidentially investigate psychotropic medication prescription patterns among California children.”

Consumer Watchdog writes in support, “Over the last year, the legislature has taken important steps to protect the health and safety of foster youth. SB 1174 provides the [MBC] with the information it needs to ensure that physicians’ prescribing patterns are shifting in response to those reforms.”

The Medical Board of California supports the bill if amended and writes, “This bill will further the [MBC’s] mission of consumer protection for a very vulnerable population. The [MBC] is actively working with the author’s office and the sponsors on amendments, as the [MBC] would like a sunset date included in this bill so the [MBC] can determine if the data provided is useful to the [MBC].”

The Pacific Juvenile Defender Center writes in support, “This bill enables the MBC to confidentially collect and analyze data, and, when warranted, conduct investigations of physicians who frequently prescribe over the recognized safety parameters for children.”

ARGUMENTS IN OPPOSITION:

The Child Academy of Child and Adolescent Psychiatry has an opposed unless amended position and writes, “We would like for this bill to require the MBC to contract with a Board Certified Child and Adolescent Psychiatrist for the purposes of reviewing the data that is proposed; We believe that a more refined data set will help further the goals for this legislation... the LA County Parameters... are a more appropriate starting point for the MBC to review prescribing practices... If the investigation [of a licensee] should not result in disciplinary action, questions regarding whether or not a physician has ever been investigated by the MBC come up often... [W]e believe the envisioned process will have a negative impact on the ability of the Medi-Cal system to recruit and retain high quality providers.”

REGISTERED SUPPORT:

National Center for Youth Law (sponsor)
Advokids
Bay Area Youth Center
Children Now
The Children’s Partnership
Consumer Watchdog
John Burton Foundation
Medical Board of California (support if amended)
Pacific Juvenile Defender Center

REGISTERED OPPOSITION:

Child Academy of Child and Adolescent Psychiatry

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