Attachment 10

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AMENDED IN SENATE JUNE 21, 2005

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY APRIL 13, 2005

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 657

Introduced by Assembly Member Karnette
(Coauthor: Assembly Member Mountjoy)

February 17, 2005

An act to amend Section 4076 of, and to add Section 4079 to, the Business and Professions Code, relating to pharmacies.

LEGISLATIVE COUNSEL'S DIGEST

AB 657, as amended, Karnette. Pharmacies: prescription containers: labels.

Existing law, the Pharmacy Law makes the California State Board of Pharmacy responsible for the regulation of the practice of pharmacy. Existing law generally makes it a misdemeanor to knowingly violate the Pharmacy Law.

The Pharmacy Law prohibits a pharmacist from dispensing a prescription except in a container that meets the requirements of state and federal law and is correctly labeled with, among other things, the condition for which the drug was prescribed if requested by the patient and if the condition is indicated on the prescription.

This bill would eliminate the requirement of the labeling requirement pertaining to the condition for which the drug was prescribed, and would instead require the container to be labeled with the intended purpose, as defined, of the drug, as set forth on the

prescription, and would require that the purpose be listed on the prescription.

The bill would, *except for veterinarians,* require a person who is authorized to write or issue a prescription to ask the patient or his or her authorized representative whether to indicate the intended purpose of the prescription on the prescription's label.

Because the bill would specify additional requirements under the Pharmacy Law, the violation of which is a crime, it would impose 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.

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

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

1 SECTION 1. Section 4076 of the Business and Professions
2 Code is amended to read:
3 4076. (a) A pharmacist shall not dispense any prescription
4 except in a container that meets the requirements of state and
5 federal law and is correctly labeled with all of the following:
6 (1) Except where the prescriber or the certified nurse-midwife
7 who functions pursuant to a standardized procedure or protocol
8 described in Section 2746.51, the nurse practitioner who
9 functions pursuant to a standardized procedure described in
10 Section 2836.1, or protocol, the physician assistant who functions
11 pursuant to Section 3502.1, or the pharmacist who functions
12 pursuant to a policy, procedure, or protocol pursuant to either
13 subparagraph (D) of paragraph (4) of, or clause (iv) of
14 subparagraph (A) of paragraph (5) of, subdivision (a) of Section
15 4052 orders otherwise, either the manufacturer's trade name of
16 the drug or the generic name and the name of the manufacturer.
17 Commonly used abbreviations may be used. Preparations
18 containing two or more active ingredients may be identified by
19 the manufacturer's trade name or the commonly used name or
20 the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The intended purpose of the drug or drugs, if indicated on the prescription. As used in this section, "purpose" means a concise description of the symptom or symptoms that the drug is, or drugs are, intended to treat.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 2. Section 4079 is added to the Business and Professions Code, to read:

4079. A person described in paragraph (2) of subdivision (a) of Section 4040 shall ask the patient or the patient's authorized representative, if the patient is either incapacitated or a minor who can not provide informed consent, whether to indicate the intended purpose of the prescription on the prescription's label. *This section does not apply to prescriptions dispensed by veterinarians.*

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

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CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS

BILL NUMBER: AB 657 **VERSION: AMENDED MAY 9, 2005**

AUTHOR: KARNETTE **SPONSOR: SENIOR LEGISLATORS**

RECOMMENDED POSITION: SUPPORT

SUBJECT: PHARMACIES: PRESCRIPTION CONTAINERS: LABELS

Existing Law:

Prohibits a pharmacist from dispensing a prescription except in a container that meets the requirements of state and federal law and is correctly labeled. (B&P 4076(a))

If requested by the patient, a label may list the condition for which the drug was prescribed. (B&P 4076(a)(10))

This Bill:

Revises the prescription labeling requirement to require a container to be labeled with, among other things, the "intended purpose" for which the drug was prescribed, if the intended purpose is listed on the prescription. (B&P 4076(a)(10) Amended)

Comment:

1) Author's Intent. The author intends to increase patient compliance and reduce confusion with prescribed drug therapy.

2) Confusion. Many prescription drugs have more than one use or purpose. A number of people, particularly seniors, have unexpired prescription drugs in their medicine cabinets, and do not know the intended use for the drug because it is omitted from the label. Many patients are unaware of their right to request that the prescription label contain information about the drug's purpose.

Including the purpose for the prescription drug on the prescription label may 1) reduce the number of telephone calls to doctors and pharmacists requesting information about the purpose of a prescription; 2) provide a check system between the doctor writing the prescription and the pharmacist filling the prescription; and 3) reduce medication error.

3) Other Legislation. A version of AB 288 (AB 2125 Levine 2004) was introduced last year. The author pulled the bill before its first committee hearing.

AB 288 (Mountjoy 2005) Pharmacies Prescription Containers Labels, a bill very similar to AB 657 has been introduced this session. AB 288 would require prescription labels to contain the "condition" for which a drug is prescribed unless the patient receiving the drug request the information be omitted. Assemblyman Mounthjoy pulled AB 288 before it could be heard in its first committee hearing.

4) History.

2005

June 27	In committee: Hearing postponed by committee.
June 21	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B., P. & E.D.
June 14	In committee: Hearing postponed by committee.
June 2	Referred to Com. on B., P. & E.D.
May 19	In Senate. Read first time. To Com. on RLS. for assignment.
May 19	Read third time, passed, and to Senate. (Ayes 42. Noes 30. Page 1608.)
May 10	Read second time. To third reading.
May 9	Read second time and amended. Ordered returned to second reading.
May 5	From committee: Amend, and do pass as amended. (Ayes 12. Noes 5.) (May 4).
Apr. 27	In committee: Hearing postponed by committee.
Apr. 20	From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 8. Noes 4.) (April 19).
Apr. 5	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Mar. 7	Referred to Coms. on HEALTH and B. & P.
Feb. 18	From printer. May be heard in committee March 20.
Feb. 17	Read first time. To print.

Attachment 11

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AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 225

Introduced by Assembly Member Negrete McLeod

February 3, 2005

An act to amend Section 650 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 225, as amended, Negrete McLeod. Electronic prescription information.

Existing law relative to insurance fraud makes it a crime for healing arts practitioners to receive money or other consideration for, or to engage in various related activities with respect to, the referral of patients, clients, or customers to any person, with certain exceptions.

This bill would, *upon the effective date of specified regulations adopted by the Secretary of the United States Department of Health and Human Services pursuant to the Medicare Prescription Drug, Improvement and Modernization Act of 2003,* exempt from these provisions ~~a licensed health care facility or licensed health care professional prescribing or dispensing medication~~ *specified entities* that ~~receives~~ *receive* nonmonetary remuneration necessary and used solely to receive and transmit electronic prescription information, *under certain conditions.*

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

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

1 SECTION 1. Section 650 of the Business and Professions
2 Code is amended to read:
3 650. *(a)* Except as provided in Chapter 2.3 (commencing
4 with Section 1400) of Division 2 of the Health and Safety Code,
5 the offer, delivery, receipt, or acceptance by any person licensed
6 under this division or the Chiropractic Initiative Act of any
7 rebate, refund, commission, preference, patronage dividend,
8 discount, or other consideration, whether in the form of money or
9 otherwise, as compensation or inducement for referring patients,
10 clients, or customers to any person, irrespective of any
11 membership, proprietary interest or coownership in or with any
12 person to whom these patients, clients, or customers are referred
13 is unlawful.
14 ~~The~~
15 *(b) The* payment or receipt of consideration for services other
16 than the referral of patients which is based on a percentage of
17 gross revenue or similar type of contractual arrangement shall not
18 be unlawful if the consideration is commensurate with the value
19 of the services furnished or with the fair rental value of any
20 premises or equipment leased or provided by the recipient to the
21 payer.
22 ~~Except~~
23 *(c) Except* as provided in Chapter 2.3 (commencing with
24 Section 1400) of Division 2 of the Health and Safety Code and in
25 Sections 654.1 and 654.2, it shall not be unlawful for any person
26 licensed under this division to refer a person to any laboratory,
27 pharmacy, clinic (including entities exempt from licensure
28 pursuant to Section 1206 of the Health and Safety Code), or
29 health care facility solely because the licensee has a proprietary
30 interest or coownership in the laboratory, pharmacy, clinic, or
31 health care facility; provided, however, that the licensee's return
32 on investment for that proprietary interest or coownership shall
33 be based upon the amount of the capital investment or
34 proportional ownership of the licensee which ownership interest
35 is not based on the number or value of any patients referred. Any
36 referral excepted under this section shall be unlawful if the
37 prosecutor proves that there was no valid medical need for the
38 referral.

~~Except~~

(d) (1) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful ~~for a licensed health care facility, or a licensed health care professional prescribing or dispensing medication, to receive nonmonetary remuneration necessary and used solely to receive and transmit electronic prescription information, as provided in Section 11164 of the Health and Safety Code. Nonmonetary remuneration includes hardware, software, information technology, and training services for purposes of facilitating the electronic transmission of prescription information.~~ *to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, necessary and used solely to receive and transmit electronic prescription information in accordance with the standards set forth in Section 1860D-4(e) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) in the following situations:*

(A) In the case of a hospital, by the hospital to members of its medical staff.

(B) In the case of a group medical practice, by the practice to prescribing health care professionals that are members of the practice.

(C) In the case of Medicare prescription drug plan sponsors or Medicare Advantage organizations, by the sponsor or organization to pharmacists and pharmacies participating in the network of the sponsor or organization and to prescribing health care professionals.

(2) The exceptions set forth in this subdivision are adopted to conform state law with the provisions of Section 1860D-4(e)(6) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) and are limited to drugs covered under Part D of the federal Medicare Program that are prescribed to Part D eligible individuals (42 U.S.C. Sec. 1395w-101).

(3) The exceptions set forth in this subdivision shall not be operative until the regulations required to be adopted by the Secretary of the United States Department of Health and Human Services, pursuant to Section 1860D-4(e) of the Medicare

Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395W-104) are effective.

~~"Health~~

(e) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

~~A~~

(f) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

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CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS

BILL NUMBER: AB 225 **VERSION: AMENDED APRIL 7, 2005**

AUTHOR: NEGRETE MCLEOD **SPONSOR: L.A. CARE HEALTH PLAN**

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUBJECT: ELECTRONIC PRESCRIPTION INFORMATION.

Existing Law:

1) The Federal Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("DIMA") establishing a "safe harbor" for certain health care providers and administrators to exchange "nonmonetary remuneration" under certain limitations to stimulate the use of e-prescribing.

2) State law relative to insurance fraud makes it a crime for healing arts practitioners to receive money or other consideration for, or to engage in various related activities with respect to, the referral of patients, clients, or customers to any person, with certain exceptions (B&P 650)

This Bill:

1) Allows health care professionals to receive nonmonetary remuneration, in the form of hardware, software, or information technology and training services, necessary and used solely to receive and transmit electronic prescription information in accordance with the standards set forth in Section 1860D-4(e) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104), in the following circumstances:

a. In the case of a hospital, by the hospital to members of its medical staff;

b. In the case of a group medical practice, by the practice to prescribing health care professionals that are members of the practice; and,

c. In the case of Medicare prescription drug plan sponsors or Medicare Advantage organizations, by the sponsor or organization to pharmacists and pharmacies participating in the network of the sponsor or organization and to prescribing health care professionals.

2) Limits the application of this bill to drugs covered under Part D of the federal Medicare Program that are prescribed to Part D eligible individuals.

3) Makes this bill operative only when the regulations adopted by the Secretary of the U.S. Department of Health and Human Services become effective.

Comment:

1) Author's Intent. The author's intent is to conform state law to applicable federal provisions so the advances in e-prescribing can take place in California without violating existing state laws. The author believes AB 225 is an initial step towards expanded e-health, and improvements in the quality and efficiency of health care in California, in a fashion consistent with national policies and goals.

2) Consumer Gain? An argument can be made that getting hardware and software for e-prescriptions writing into the hands of prescribers will benefit consumers. Generally e-prescriptions have been thought of as a way to reduce prescription errors, but recent studies have shown that that while e-prescriptions have reduced errors, they are not error free. Consequently, increasing the number of health care professionals and pharmacies capable of writing and processing e-prescriptions should be in the consumers' interests.

AB 225 may have the unintended consequence of restricting consumer choice. Business and Professions Code section 4170 gives patients the option of obtaining a prescription for a pharmacy of their choice. If prescribers and pharmacies are given hardware and software to facilitate e-prescriptions, a health care professional that has the option of writing e-prescriptions may direct patients to specific pharmacies that have the ability to process these prescriptions with preprogrammed connections to specific pharmacies. These pharmacies may not be the ones a consumer would choose in the absence of the prescriber influence. Additionally, software compatibility (prescribers' and pharmacys') may restrict choice to specific pharmacies again limiting a patient's freedom of choice. Pharmacies that are equipped to process e-prescriptions are likely to see a financial gain if this measure is enacted.

Who stands to gain the most if AB 225 is enacted? Prescribers, consumers, or pharmacies?

3) Federal Legislation. U.S. Senators Frist and Clinton have introduced the "Health Technology to Enhance Quality Act of 2005." The Act would implement health information technology standards that would guide the design and operation of interoperable health information systems. The legislation would codify the Office of National Coordinator for Information Technology and establishs standards for the electronic exchange of health information. The measure would also establish a narrow statutory safe harbor from the federal "Stark" self-referral and Antikickback laws for standard compliant hardware, software and support services. The safe harbor would apply to physicians and other health care providers as long as these tools are used to exchange health information as part of a system designed to improve health care quality and safety, reduce medical errors, reduce health care costs, improve care coordination, simplify administrative processes, and promote transparency and competition. Lastly the measure would direct the Secretary of Health and Human Services to conduct a study of privacy laws and practices to determine how the variation among such state laws and practices may impact the electronic exchange of health information among states, between states and the federal government, and among private entities.

4) Amendment. The prescriber, prior to the electronic transmitting of a prescription, offers to transmit the prescription to a pharmacy of the patient's choice.

5) Support & Opposition.

Support:
L.A. Care Health Plan (sponsor)
AARP California
California Association of Health Plans
California Association of Physician Groups
California Medical Association
First 5 LA
Healthcare Information and Management Systems Society, So. Cal
Health-e-LA Coalition
Local Health Plans of California
Los Angeles County Medical Association
Rite-Aid
San Francisco Health Plan

Opposition: None on file.

6) History.

2005

June 14	In committee: Set, first hearing. Hearing canceled at the request of author.
June 7	In committee: Hearing postponed by committee.
May 5	Referred to Com. on B., P. & E.D.
Apr. 18	In Senate. Read first time. To Com. on RLS. for assignment.
Apr. 18	Read third time, passed, and to Senate. (Ayes 75. Noes 0. Page 980.)
Apr. 14	Read second time. To third reading.
Apr. 13	From committee: Do pass. (Ayes 14. Noes 0.) (April 12).
Apr. 11	Re-referred to Com. on HEALTH.
Apr. 7	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Apr. 5	In committee: Set, first hearing. Hearing canceled at the request of author.
Feb. 15	Referred to Com. on HEALTH.
Feb. 4	From printer. May be heard in committee March 6.
Feb. 3	Read first time. To print.

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AB 225

As Amended: April 7, 2005

ASSEMBLY COMMITTEE ON HEALTH
Wilma Chan, Chair

SUBJECT : Electronic prescription information.

SUMMARY : Allows the provision of nonmonetary remuneration, in the form of hardware, software, or information technology and training services, necessary and used solely to receive and transmit electronic prescription information in accordance with the standards set forth in Section 1860D-4(e) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104), as specified. Specifically, this bill.

1)Allows the provision of nonmonetary remuneration, as specified, in the following circumstances:

a) In the case of a hospital, by the hospital to members of its medical staff;

b) In the case of a group medical practice, by the practice to prescribing health care professionals that are members of the practice; and,

c) In the case of Medicare prescription drug plan sponsors or Medicare Advantage organizations, by the sponsor or organization to pharmacists and pharmacies participating in the network of the sponsor or organization and to prescribing health care professionals.

2)Limits the application of this bill to drugs covered under Part D of the federal Medicare Program that are prescribed to Part D eligible individuals.

3)Makes this bill operative only when the regulations adopted by the Secretary of the U.S. Department of Health and Human Services, as specified, become effective.

EXISTING LAW :

1)Makes it unlawful to offer, deliver, receive, or accept, by physicians and other specified licensed health care providers, any rebate, refund, commission, preference, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom these patients, clients or customers are referred.

2)Provides that a violation of # 1) above is a public offense where the first conviction is punishable by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding $50,000, or both by imprisonment and fine. Specifies that a second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of $50,000.

3)Includes as a health care facility, a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and others, as specified.

FISCAL EFFECT : None

COMMENTS :

1)PURPOSE OF THIS BILL . According to L.A. Care Health Plan, the sponsor of this bill, this measure would conform state law to federal law, encourage the use of E-health technology, and clarify that entities responsible for the administration of health care services can equip providers with hardware and software to promote electronic prescribing. The sponsor points out that in the 2003 Medicare Modernization Act (Medicare Act), Congress incorporated language mandating a safe harbor for certain E-health hardware used in conjunction with electronic prescribing. According to background information provided by the sponsor, the intent of the safe harbor was for electronic prescribing to serve as a vehicle to reduce medical errors and improve efficiencies in the health care system. However, the sponsor points out that California's anti-kickback statutes present a barrier because these statutes prohibit the giving and acceptance of any form of consideration by physicians.

2)BACKGROUND . According to the sponsor, studies by the Institute of Medicine and others have found that fragmented and inaccessible clinical information adversely affects the quality of health care and compromises patient safety. Recognizing this, health care providers are increasingly using health information technology, often referred to as E-health, to collect, store, retrieve, and transfer clinical, administrative and financial health information electronically. E-health services include the use of electronic medical records to ensure physicians' timely access to laboratory results, improved health data collection, and fewer potentially dangerous drug interactions resulting from electronic prescribing. However, information technology also has its weaknesses. A study by Eclipsys Corporation of Boca

Raton, Florida, of a computerized physician order entry (CPOE) system, which requires doctors to enter medication orders into computers installed throughout the Hospital of the University of Pennsylvania, revealed various problems. The potential or actual mistakes researchers found included incorrect doses prescribed for patients, patients failed to get medication in a timely manner because of computer-related problems and difficulty determining which patient was supposed to get a drug that had been prescribed.

3)PROMULGATION OF E-HEALTH SAFE HARBOR . The Medicare Act required the Secretary of the U.S. Department of Health and Human Services (HHS), in consultation with the U.S. Attorney General to promulgate regulations that provide for a safe harbor from criminal sanctions under both Section 1128 (B)(b)(1) and (2) of the Social Security Act (Act) and the anti-referral prohibition under Section 1877 of the Act with respect to the provision of nonmonetary remuneration necessary and used solely to receive and transmit electronic prescription standards, as specified. Nonmonetary remuneration is defined to include hardware, software, or information technology and training services necessary and used solely to receive and transmit electronic prescription information in accordance with the standards promulgated under this section and in the following cases:

a) In the case of a hospital, by the hospital to members of its medical staff;

b) In the case of a group practice, as defined, by the practice to prescribing health care professionals who are members of such practice; and,

c) In the case of a prescription drug plan sponsor or

Medical Advantage organization, by the sponsor or organization to pharmacists and pharmacies participating in the network of such sponsor or organization, and to prescribing health care professionals.

4)FEDERAL ANTI-KICKBACK & ANTI-REFERRAL STATUTES . Section 1128(B)(b) of the Act, commonly referred to as the anti-kickback statute, makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce referrals of items or services reimbursable by federal health care programs. The statute imposes liability to parties on both sides of an impermissible "kickback" transaction. Remuneration under the Act includes the transfer of anything of value, in cash or in-kind, directly or indirectly, covertly or overtly. Violation of this statute constitutes a felony punishable by a maximum fine

of $25,000, imprisonment of up to five years, or both. Conviction will also lead to automatic exclusion from federal health care programs, including Medicare and Medicaid.

The Stark amendments to the Medicare Act are contained in Section 1877. These amendments prohibit physicians from referring Medicare and Medicaid patients for certain designated health services to any facility or entity with whom the referring physician or an immediate family member has any financial relationship, unless an exception set forth in statute or regulation is satisfied. Section 1877 is violated by the mere fact that a financial relationship exists. The intent of the referring physician is irrelevant.

5)CALIFORNIA ANTI-KICKBACK & ANTI-REFERRAL STATUTES . Business & Professions Code Section 650 prohibits the offer, delivery, receipt or acceptance of compensation to induce the referral of patients. A first conviction under this section is punishable by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding $50,000 or both imprisonment and fine.

Welfare and Institutions Code Section 14107.2 prohibits the solicitation or receipt of any remuneration, including kickbacks, in return for the referral of any individual to a person for furnishing any service or merchandise which is paid for by Medi-Cal. A first conviction of this law is punishable by imprisonment in the county jail for no longer than one year, or state prison, or by a fine not exceeding $10,000, or by both imprisonment and fine.

Federal and California anti-kickback and anti-referral statutes reflect the recognition that payments made or accepted in return for the referral of patients could result in actual or threatened patient harm, over utilization and increased health care costs.

6)POLICY CONCERN . The Medicare Act instructs the Secretary of HHS Agency, in consultation with the Attorney General, to promulgate regulations that would provide a safe harbor for federal anti-kickback and anti-referral statutes, as outlines in the Medicare Act. These regulations are not currently in place. The problem this bill seeks to address may be premature since the federal regulations are unknown.

7)SUPPORT . Supporters, including AARP, the California Association of Health Plans, and Health-e-LA Coalition, believe this bill is an important measure that would improve the quality and efficiency of the health care system.

8)RELATED LEGISLATION . AB 1672 (Nation & Richman) would require

health care facilities, health insurers and health care service plans to record all health care information, as defined, they obtain in an electronic record keeping system. This bill will be heard in the Assembly Health Committee on April 26, 2005.

REGISTERED SUPPORT / OPPOSITION :

Support

L.A. Care Health Plan (sponsor)
AARP California
California Association of Health Plans
California Association of Physician Groups
California Medical Association
First 5 LA
Healthcare Information and Management Systems Society, Southern California
Health-e-LA Coalition
Local Health Plans of California
Los Angeles County Medical Association
Rite-Aid
San Francisco Health Plan

Opposition

None on file

Analysis Prepared by : Rosielyn Pulmano / HEALTH / (916) 319-2097

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Attachment 12

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AMENDED IN SENATE JUNE 23, 2005

AMENDED IN SENATE JUNE 6, 2005

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 522

Introduced by Assembly Members Plescia and Bogh
(Coauthors: Assembly Members Spitzer and Vargas)

February 16, 2005

An act to amend Section 1261.6 of the Health and Safety Code, ~~to amend Sections 290 and 290.46 of, and~~ to add Section 290.02 to~~,~~ the Penal Code, and to add Section 14133.225 to the Welfare and Institutions Code, relating to prescription drugs and other therapies, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 522, as amended, Plescia. Automated drug delivery system: Medi-Cal coverage: drugs or other therapies: registered sex offenders.

Existing law provides for skilled nursing and intermediate care facilities to use an automated drug delivery system to store and distribute drugs, and to track the movement of drugs into and out of the system. Existing law regulates the manner in which a pharmacist stocks and oversees the removal of drugs from an automated drug delivery system.

This bill would clarify existing law to define pharmacy services and to require a pharmacist reviewing an order for a drug to check for contraindications and adverse drug reactions. This bill would further clarify existing law to prevent licensed personnel from accessing a different drug or dose of a drug than that approved by a pharmacist.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons receive health care services, pursuant to a schedule of health care benefits. The Med-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing law requires a person who has committed one or more designated sex crimes to register with the law enforcement agency of the city, county, city and county, or campus in which the person resides. Existing law provides that the Department of Justice shall make available information concerning specified registered sex offenders to the public via an Internet Web site.

This bill would provide that the State Department of Health Services shall not provide or pay for any prescription drug or therapy to treat erectile dysfunction for any Medi-Cal recipient required to register pursuant to these provisions, except to the extent it is required under federal law.

This bill would require the Department of Justice to ~~make available sex offender identification information concerning~~ *provide, upon written request, the names and relevant information pertaining to* persons required to register under these provisions to any state governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction of these persons.

This bill would authorize the Department of Justice to establish a fee for the above requests.

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

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1261.6 of the Health and Safety Code is
2 amended to read:
3 1261.6. (a) (1) For purposes of this section and Section
4 1261.5, an "automated drug delivery system" means a
5 mechanical system that performs operations or activities, other
6 than compounding or administration, relative to the storage,
7 dispensing, or distribution of drugs. An automated drug delivery
8 system shall collect, control, and maintain all transaction

information to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability.

(2) For purposes of this section, "facility" means a health facility licensed pursuant to subdivision (c), (d), or both, of Section 1250 that has an automated drug delivery system provided by a pharmacy.

(3) For purposes of this section, "pharmacy services" means the provision of both routine and emergency drugs and biologicals to meet the needs of the patient as prescribed by a physician.

(b) Transaction information shall be made readily available in a written format for review and inspection by individuals authorized by law. These records shall be maintained in the facility for a minimum of three years.

(c) Individualized and specific access to automated drug delivery systems shall be limited to facility and contract personnel authorized by law to administer drugs.

(d) (1) The facility and the pharmacy shall develop and implement written policies and procedures to ensure safety, accuracy, accountability, security, patient confidentiality, and maintenance of the quality, potency, and purity of stored drugs. Policies and procedures shall define access to the automated drug delivery system and limits to access to equipment and drugs.

(2) All policies and procedures shall be maintained at the pharmacy operating the automated drug delivery system and the location where the automated drug delivery system is being used.

(e) When used as an emergency pharmaceutical supplies container, drugs removed from the automated drug delivery system shall be limited to the following:

(1) A new drug order given by a prescriber for a patient of the facility for administration prior to the next scheduled delivery from the pharmacy, or 72 hours, whichever is less. The drugs shall be retrieved only upon authorization by a pharmacist and after the pharmacist has reviewed the prescriber's order and the patient's profile for potential contraindications and adverse drug reactions.

(2) Drugs that a prescriber has ordered for a patient on an as-needed basis, if the utilization and retrieval of those drugs are subject to ongoing review by a pharmacist.

(3) Drugs designed by the patient care policy committee or pharmaceutical service committee of the facility as emergency drugs or acute onset drugs. These drugs may be retrieved from an automated drug delivery system pursuant to the order of a prescriber for emergency or immediate administration to a patient of the facility. Within 48 hours after retrieval under this paragraph, the case shall be reviewed by a pharmacist.

(f) When used to provide pharmacy services pursuant to Section 4119.1 of the Business and Professions Code, the automated drug delivery system shall be subject to all of the following requirements:

(1) Drugs removed from the automated drug delivery system for administration to a patient shall be in properly labeled units of administration containers or packages.

(2) A pharmacist shall review and approve all orders prior to a drug being removed from the automated drug delivery system for administration to a patient. The pharmacist shall review the prescriber's order and the patient's profile for potential contraindications and adverse drug reactions.

(3) The pharmacy providing services to the facility pursuant to Section 4119.1 of the Business and Professions Code shall control access to the drugs stored in the automated drug delivery system.

(4) Access to the automated drug delivery system shall be controlled and tracked using an identification or password system or biosensor.

(5) The automated drug delivery system shall make a complete and accurate record of all transactions which will include all users accessing the system and all drugs added to or removed from the system.

(6) After the pharmacist reviews the prescriber's order, access by licensed personnel to the automated drug delivery system shall be limited only to the drug as ordered by the prescriber and reviewed by the pharmacist and that is specific to the patient. When the prescriber's order requires a dosage variation of the same drug, licensed personnel shall only have access to the drug ordered for that scheduled time of administration.

(g) The stocking of an automated drug delivery system shall be performed by a pharmacist. If the automated drug delivery system utilizes removable pockets or drawers, or similar

technology, the stocking system may be done outside of the facility and be delivered to the facility if all of the following conditions are met:

(1) The task of placing drugs into the removable pockets or drawers is performed by a pharmacist or by an intern pharmacist or a pharmacy technician working under the direct supervision of a pharmacist.

(2) The removable pockets or drawers are transported between the pharmacy and the facility in a secure tamper-evident container.

(3) The facility, in conjunction with the pharmacy, has developed policies and procedures to ensure that the pockets or drawers are properly placed into the automated drug delivery system.

(h) Review of the drugs contained within, and the operation and maintenance of, the automated drug delivery system shall be done in accordance with law and shall be the responsibility of the pharmacy. The review shall be conducted on a monthly basis by a pharmacist and shall include a physical inspection of the drugs in the automated drug delivery system, an inspection of the automated drug delivery system machine for cleanliness, and a review of all transaction records in order to verify the security and accountability of the system.

(i) Drugs dispensed from an automated drug delivery system that meets the requirements of this section shall not be subject to the labeling requirements of Section 4076 of the Business and Professions Code or Section 111480 of this code if the drugs to be placed into the automated drug delivery system are in unit dose packaging or unit of use and if the information required by Section 4076 of the Business and Professions Code and Section 111480 of this code is readily available at the time of drug administration.

~~SEC. 2. Section 290 of the Penal Code is amended to read:~~

~~290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing is located, in an unincorporated area or city that has no police department, and, additionally, with~~

~~the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.~~

~~(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides, regardless of the number of nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.~~

~~(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:~~

~~(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered at a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the~~

~~length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.~~

~~(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).~~

~~(iii) Beginning or his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (c), and the information specified in clause (iv).~~

~~(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.~~

~~(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).~~

~~(vi) A transient who moves out of state shall inform, in person or in writing, the chief of police in the city in which he or she is physically present, or the sheriff of the county, if he or she~~

~~physically present in an unincorporated area or city that has no police department, within five working days of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.~~

~~(vii) For purposes of this section, "transient" means a person who has no residence. "Residence" means a place where a person is living or temporarily staying for more than five days, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.~~

~~(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.~~

~~(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).~~

~~(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.~~

~~(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual~~

~~updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).~~

~~(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.~~

~~(2) The following persons shall be required to register pursuant to paragraph (1):~~

~~(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense**

~~involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.~~

~~(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).~~

~~(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.~~

~~(D) (i) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).~~

~~(ii) Any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.~~

~~(iii) Except as provided in clause (iv), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.~~

~~(iv) Clause (iii) shall not apply to a person required to register in the state of conviction if the conviction was for the equivalent of one of the following offenses, and the person is not subject to clause (i):~~

~~(I) Indecent exposure, pursuant to Section 314.~~

~~(II) Unlawful sexual intercourse, pursuant to Section 261.5.~~

~~(III) Incest, pursuant to Section 285.~~

~~(IV) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (F) of paragraph (2) of subdivision (a), and the department is able, upon the exercise of reasonable diligence, to verify that fact.~~

~~(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.~~

~~(F) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:~~

~~(I) The person submits to the Department of Justice official documentary evidence, including court records or police reports, that demonstrate that the person's conviction pursuant to either of those sections was for conduct between consenting adults that was decriminalized; or~~

~~(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.~~

~~(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual~~

~~conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.~~

~~(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.~~

~~(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of~~

~~his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.~~

~~(2) The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement or hospital shall retain one copy.~~

~~(c) (1) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under this section by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement~~

~~agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.~~

~~(2) Any person who is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.~~

~~(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section.~~

~~(2) Any person who is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section.~~

~~(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:~~

~~(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.~~

~~(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.~~

~~(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.~~

~~(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.~~

~~(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.~~

~~(c) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of all of the following:~~

~~(A) A preregistration statement in writing, signed by the person, giving information that shall be required by the Department of Justice.~~

~~(B) The fingerprints and a current photograph of the person.~~

~~(C) Any person who is preregistered pursuant to this subdivision is required to be preregistered only once.~~

~~(2) A person described in paragraph (2) of subdivision (a) shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to paragraph (1) of subdivision (a). The registration shall consist of all of the following:~~

~~(A) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.~~

~~(B) The fingerprints and a current photograph of the person taken by the registering official.~~

~~(C) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.~~

~~(D) Notice to the person that, in addition to the requirements of paragraph (4), he or she may have a duty to register in any other state where he or she may relocate.~~

~~(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.~~

~~(3) Within three days thereafter, the preregistering official or the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.~~

~~(f) (1) If any person who is required to register pursuant to this section and who has a residence address changes his or her residence address, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or transient location and any plans he or she has to return to California, if known. If the person does not know the new residence address or location, the registrant shall inform the last registering agency or agencies that he or she is moving within five working days of the move, and shall later notify the agency or agencies of the new address or location within five working days of moving into the new residence address or location, whether temporary or permanent. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address information to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.~~

~~(2) If the person's new address is in a Department of the Youth Authority facility or a state prison or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a Department of the Youth Authority facility or a state prison or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.~~

~~(3) If any person who is required to register pursuant to this section changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this~~

~~information to the Department of Justice within three working days of its receipt.~~

~~(g) (1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.~~

~~(2) Except as provided in paragraphs (5), (7), and (9), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.~~

~~If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.~~

~~(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.~~

~~(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed~~

~~under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.~~

~~(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.~~

~~(6) Except as otherwise provided in paragraph (5), any person who is required to register or reregister pursuant to clause of (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) of (2) of this subdivision.~~

~~(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (c), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.~~

~~(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense as to each requirement he or she violated.~~

~~(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice,~~

~~or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.~~

~~(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.~~

~~(i) Except as provided in Sections 290.01, 290.02, 290.4, and 290.45, and Section 14133.225 of the Welfare and Institutions Code, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.~~

~~(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.~~

~~(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(*l*) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to 5 working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.~~

~~(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).~~

~~(m) The registration provisions of this section are applicable to every person described in this section, without regard to when his or her crime or crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in this section, regardless of when it was committed.~~

~~SEC. 3.—~~

SEC. 2. Section 290.02 is added to the Penal Code, to read:

290.02. *(a)* Notwithstanding any other law, the Department of Justice shall ~~make available sex offender identification information concerning~~ *provide, upon written request, the names and relevant information pertaining to* persons who are required to register pursuant to Section 290 to any state governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction of those persons. State governmental entities shall use information received pursuant to this section to protect public safety by preventing the use of prescription drugs or other therapies to treat erectile dysfunction by convicted sex offenders.

(b) Use or disclosure of the information disclosed pursuant to this section is prohibited for any purpose other than that authorized by this section or Section 14133.225 of the Welfare and Institutions Code. The Department of Justice may establish a fee for requests, including all actual and reasonable costs associated with the service.

(c) Notwithstanding any other provision of law, any state governmental entity that is responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction may use the sex offender database authorized by Section 290.46 to protect public safety by preventing the use of those drugs or therapies for convicted sex offenders.

~~SEC. 4. Section 290.46 of the Penal Code is amended to read:~~

~~290.46. (a) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Web site. The Web site shall be translated into languages other than English as determined by the department.~~

~~(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).~~

~~(2) This subdivision shall apply to the following offenses:~~

~~(A) Subdivision (b) of Section 207.~~

~~(B) Subdivision (b) of Section 209, except kidnapping to commit robbery.~~

~~(C) Paragraph (2) or (6) of subdivision (a) of Section 261.~~

~~(D) Section 264.1.~~

~~(E) Section 269.~~

~~(F) Subdivision (c) or (d) of Section 286.~~

~~(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.~~

~~(H) Subdivision (c) or (d) of Section 288a.~~

~~(I) Section 288.5.~~

~~(J) Subdivision (a) or (j) of Section 289.~~

~~(3) This subdivision shall also apply to any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.~~

~~(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2) or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision. On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides.~~

~~(2) This subdivision shall apply to the following offenses, provided that the person has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290:~~

~~(A) Section 220, except assault to commit mayhem.~~

~~(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.~~

~~(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.~~

~~(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.~~

~~(E) Subdivision (b), (d), (e), or (i) of Section 289.~~

~~(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.~~

~~(2) This subdivision shall apply to the following offenses:~~

~~(A) Section 220, except assault to commit mayhem, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.~~

~~(B) Subdivision (a) of Section 243.4, provided that the offense is a felony.~~

~~(C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.~~

~~(D) Section 266, provided that the offense is a felony.~~

~~(E) Section 266c, provided that the offense is a felony.~~

~~(F) Section 266j.~~

~~(G) Section 267.~~

~~(H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.~~

~~(I) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.~~

~~(J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.~~

~~(K) Subdivision (b), (d), (e), or (i) of Section 289, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.~~

~~(L) Section 647.6.~~

~~(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application for exclusion from the Internet Web site with the Department of Justice. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning him or her shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.~~

~~(2) This subdivision shall apply to the following offenses:~~

~~(A) A felony violation of subdivision (a) of Section 243.4.~~

~~(B) Section 647.6, provided the offense is a misdemeanor.~~

~~(C) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.~~

~~(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available pursuant to subdivision (e).~~

~~(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does~~

~~not affect other statutory restrictions on disclosure in other situations.~~

~~(h) (1) Any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).~~

~~(2) Any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.~~

~~(i) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.~~

~~(j) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.~~

~~(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:~~

~~(A) Health insurance.~~

~~(B) Insurance.~~

~~(C) Loans.~~

~~(D) Credit.~~

~~(E) Employment.~~

~~(F) Education, scholarships, or fellowships.~~

~~(G) Housing or accommodations.~~

~~(H) Benefits, privileges, or services provided by any business establishment.~~

~~(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, Section 432.7 of the Labor Code, Section 290.02 of the Penal Code, and Section 14133.225 of the Welfare and Institutions Code.~~

~~(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1)~~

~~or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).~~

~~(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via the Internet Web site in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.~~

~~(k) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.~~

~~(*l*) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section.~~

~~SEC. 5.—~~

SEC. 3. Section 14133.225 is added to the Welfare and Institutions Code, to read:

14133.225. Notwithstanding any other law, the department shall not provide or pay for any prescription drug or other therapy to treat erectile dysfunction for any person who is required to register pursuant to Section 290 of the Penal Code, except to the extent required under federal law. The department may require from the Department of Justice the information necessary to implement this section.

~~SEC. 6.—~~

SEC. 4. 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:

1 In order to prevent funding of drugs or other therapies
2 prescribed for erectile dysfunction for use by high-risk sex
3 offenders and to make statutory changes related to automated
4 drug delivery systems, as soon as possible, it is necessary that
5 this act take effect immediately.

O

CALIFORNIA STATE BOARD OF PHARMACY
BILL ANALYSIS

BILL NUMBER: AB 522 **VERSION: AMENDED JUNE 23, 2005**

AUTHOR: PLESCIA & BOGH **SPONSOR: CARDINAL HEALTH**

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUBJECT: AUTOMATED DRUG DELIVERY SYSTEM: MEDI-CAL COVERAGE: DRUGS OR OTHER THERAPIES: REGISTERED SEX OFFENDERS

Existing Law:

1) Provides for skilled nursing and intermediate care facilities to use an automated drug delivery system to store and distribute drugs, and to track the movement of drugs into and out of the system. (H&S 1261.6)

2) Regulates the manner in which a pharmacist stocks and oversees the removal of drugs from an automated drug delivery system. (H&S 1261.6)

This Bill:

1. Clarifies existing law by:

   a. Defining "pharmacy services" as the provision of both routine and emergency drugs and biologicals to meet the needs of the patient.

   b. Requiring a pharmacist reviewing an order for a drug to check for contraindications and adverse drug reactions when an automated drug delivery system is used.

   c. Limiting access by licensed personnel to an automated drug delivery system to the prescribed drug authorized by the pharmacist and specific to the patient.

   (H&S 1261.6 Amended)

2. Prohibits the State Department of Health Services (DHS) from providing or pay for any prescription drug or therapy to treat erectile dysfunction for any Medi-Cal recipient required to register pursuant to these provisions, except to the extent it is required under federal law. (Penal Code 290.02 Added)

3. Requires the Department of Justice (DOJ) to make available sex offender identification information concerning persons required to register under these provisions to any state governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction of these persons. (Welfare and Institutions Code14133.225 Added)

Comment:

1) Author's Intent. The author's intent is to provide clean-up language for AB 2184 (Chapter 342, Statutes of 2004), Automated Dispensing Devises. This language was requested by the Department of Health Services.

2) Legislative History. AB 2184 (Chapter 342, Statutes of 2004), Automated Dispensing Devises, expanded the use of automated drug delivery system in skilled nursing facilities. The board supported AB 2184.

3) Proposed Amendment.

Add the words "and dosage" to H&S Section 1261.6 on page 4, line 33 to read:

> "After the pharmacist reviews the prescriber's order, access by licensed personnel to the automated drug delivery system shall be limited only to the drug <u>and dosage</u> as ordered by the prescriber and reviewed by the pharmacist and that is specific to the patient."

4) Substantive Amendments since the April 27th Board Meeting. Two provisions were added that would prohibit the state from providing erectile dysfunction medication to sex offender. These amendments are in response to recent directives (May 2005) from the federal government and Governor Schwarzenegger to immediately stop the state from providing known sex offenders with taxpayer-funded medications to treat erectile dysfunction.

5) Support & Opposition.

Support: Health and Human Services Agency
AmerisourceBergen
California Department of Mental Health
California Medical Association
Cardinal Health
Crestwood Behavioral Health, Inc.

Opposition: None on file.

6) History.

2005

July 12	From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
July 1	Read second time, amended, and re-referred to Com. on APPR.
June 30	From committee: Amend, do pass as amended, and re-refer to Com. On APPR. (Ayes 7. Noes 0.).
June 23	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.
June 21	Withdrawn from committee. Re-referred to Com. on RLS.
June 15	From committee: Do pass, and re-refer to Com. on B., P. & E.D. with recommendation: To Consent Calendar. Re-referred. (Ayes 10. Noes 0.).
June 6	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on HEALTH.
June 6	In committee: Hearing postponed by committee.
May 26	Referred to Coms. on HEALTH and B., P. & E.D.
May 5	In Senate. Read first time. To Com. on RLS. for assignment.
May 5	Read third time, passed, and to Senate. (Ayes 73. Noes 0. Page 1405.)
Apr. 28	Read second time. To Consent Calendar.
Apr. 27	From committee: Do pass. To Consent Calendar. (April 26).
Apr. 6	From committee: Do pass, and re-refer to Com. on B. & P. with recommendation: To Consent Calendar. Re-referred. (Ayes 11. Noes 0.) (April 5).
Mar. 30	Re-referred to Com. on HEALTH.
Mar. 29	From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Feb. 28	Referred to Coms. on HEALTH and B. & P.

Feb. 17	From printer. May be heard in committee March 19.
Feb. 16	Read first time. To print.

AB 522

As Amended June 23, 2005

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Elaine K. Alquist, Chair A
2005-2006 Regular Session B
Penal, Welfare and Institutions Codes (URGENCY)

REGISTERED SEX OFFENDERS :
MEDI-CAL COVERAGE FOR SPECIFIED CONDITIONS
HISTORY

Source: Health and Human Services Agency; Department of Health Services
Prior Legislation: None
Support: California Department of Corrections
Opposition:None known
Assembly Floor Vote: N/A

KEY ISSUES

SHOULD THE Department of Health Services ("DHS") BE PROHIBITED from paying for any prescription drug or other therapy to treat erectile dysfunction for registered sex offenders, as specified?

SHOULD THE Department of Justice BE AUTHORIZED TO share information with DHS concerning registered sex offenders for this purpose, as specified?

PURPOSE

The purpose of this bill is to 1) prohibit the Department of Health Services ("DHS") from paying for any prescription drug or other therapy to treat erectile dysfunction for registered sex offenders, as specified; 2) authorize the Department of Justice to share information with DHS concerning registered sex offenders for this purpose, as specified; and 3) make unrelated substantive changes to the law concerning pharmacy services.

Current law generally requires people who have been convicted of specified sex offenses to register at least annually with the chief of police of the city in which he or she is residing, or the sheriff of the county if where he or she is residing is located in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, for the rest of his or her life while

residing in California, or while attending school or working in California, as specified. (Penal Code 290.)

Current law expressly provides that except as specifically allowed, the statements, photographs, and fingerprints required by this provision shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer. (Penal Code 290(i).)

Under current law , the Department of Justice ("DOJ") is required to make information about registered sex offenders available to the public via an Internet Web site, as specified. (Penal Code 290.46.)

Current law specifically provides that except as authorized, use of any information that is disclosed pursuant to these provisions for purposes relating to any of the following is prohibited:

Health insurance;
Insurance;
Loans;
Credit;
Employment;
Education, scholarships, or fellowships;
Housing or accommodations; and
Benefits, privileges, or services provided by any business establishment. (Penal Code 290.469j)(2).)

Current law provides that the Medi-Cal Benefits Program comprises a department-administered uniform schedule of health care benefits. (Welfare and Institutions Code ("WIC") 14131; see 14132.) Current law provides that the "purchase of prescribed drugs is covered subject to the Medi-Cal List of Contract Drugs and utilization controls." (WIC 14132(d).)

This bill would provide that, notwithstanding any other law, DHS "shall not provide or pay for any prescription drug or other therapy to treat erectile dysfunction for any person who is required to register pursuant to Section 290 of the Penal Code, except to the extent required under federal law."

This bill would provide that DHS "may require from the Department of Justice the information necessary to implement this section."

This bill would provide that, "notwithstanding any other law, DOJ would be required to provide, upon written request, the names and relevant information pertaining to persons who are required to register pursuant to Section 290 to any state

governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction of those persons. State governmental entities shall use information received pursuant to this section to protect public safety by preventing the use of prescription drugs or other therapies to treat erectile dysfunction by convicted sex offenders."

This bill would provide that the use "or disclosure of the information obtained pursuant to this section is prohibited for any purpose other than authorized," as specified in this bill.

This bill would authorize DOJ to establish a fee for requests including all actual and reasonable costs associated with the service.

This bill additionally would provide that "(n)otwithstanding any other law, any state governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction may use the sex offender data base authorized by Section 290.46 (the Megan's Law Web site) to protect public safety by preventing the use of such drugs or therapies to convicted sex offenders."

This bill is an urgency measure.

COMMENTS

1. Stated Need for This Bill

The author states:

> AB 522 would give state agencies access to the information necessary to ensure that taxpayers do not finance erectile dysfunction treatments for known sex offenders. Federal guidelines prohibit state Medicaid programs (Medi-Cal in California) from covering erectile dysfunction treatments for convicted sex offenders, and California could be subject to financial penalties if Medi-Cal does not comply with these guidelines. Without access to the registered sex offender database, state agencies will have no way of knowing if a beneficiary should be denied access to such treatments.
>
> As Governor Schwarzenegger correctly noted in his executive order on May 26, 2005, this is also a public safety issue. We have an obligation to exercise an abundance of caution and ensure that state agencies have access to the criminal databases necessary to prevent the use of these treatments by

known sex offenders.

2. What This Bill Would Do

As explained in detail above, this bill would prohibit DHS from providing or paying for any prescription drug or therapy to treat erectile dysfunction for a registered sex offender. The bill would provide a mechanism for DHS to access, either by using the Megan's Law Web site or obtaining information from DOJ, information from DOJ identifying persons who are registered sex offenders. This bill also would authorize DOJ to establish a fee for its costs associated with providing this information.

3. Background - Medicaid, Erectile Dysfunction Drugs and Registered Sex Offenders

Numerous press accounts this Spring reported that registered sex offenders in at least 14 states got Medicaid-paid prescriptions for Viagra and other prescription drugs used to treat erectile dysfunction. In response to these and other reports, on May 23 of this year the Center for Medicaid and State Operations issued a "guidance to remind states there are a number of options to prevent the inappropriate use of such drugs and to inform states that we believe they should restrict the coverage of such drugs in the case of individuals convicted of a sex offense. . . . We believe that, . . . the use of these drugs in the case of a sex offender is not appropriate and Medicaid should not pay for the cost of such drugs in such circumstances.

> Effective immediately, states should use their drug use review program and procedures . . . and work with physicians and pharmacists to prevent inappropriate Medicaid payment for such drugs in the case of a sex offender. Failure to perform such a review and implement appropriate controls may result in sanctions.<1>

On May 26, 2005, Governor Schwarzenegger announced that he had issued a directive to all applicable state agencies in California to immediately stop providing known sex offenders with taxpayer-funded medications such as Viagra, Levitra or Cialis, to treat erectile dysfunction ("ED").

It is estimated that 137 registered sex offenders in California may have been prescribed ED drugs under Medi-Cal in the last year.

4. Background: ED Treatment

The following information, compiled by the Senate Office of Research, explains the purpose and effect of Viagra, which is a

commonly-used prescription drug for ED.

From the FDA's Center for Drug Evaluation and Research :

Viagra is used to treat impotence in men. Viagra increases the body's ability to achieve and maintain an erection during sexual stimulation. How does Viagra work? An erection is the result of an increase in blood flow into certain internal areas of the penis. Viagra works by enhancing the

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<1> Letter dated May 23, 2005 from Dennis G. Smith, Director of the Center for Medicaid and State Operations, Department of Health & Human Services, addressed to "Dear State Medicaid Director."

effects of one of the chemicals the body normally releases into the penis during sexual arousal. This allows an increase of blood flow into the penis.

Patient Summary Information about Viagra from Pfizer :

VIAGRA is a pill used to treat erectile dysfunction (impotence) in men. It can help many men who have erectile dysfunction get and keep an erection when they become sexually excited (stimulated). You will not get an erection just by taking this medicine. VIAGRA helps a man with erectile dysfunction get an erection only when he is sexually excited. VIAGRA does not cure erectile dysfunction. It is a treatment for erectile dysfunction. VIAGRA is not a hormone or an aphrodisiac.

From Aetna InteliHealth :

In most men, erectile dysfunction is caused by inadequate flow of blood into the penis. PDE5 drugs (Viagra) work by helping the blood vessels relax, which increases blood flow. They do not cause an erection without sexual stimulation, and the penis will return to its normal size and flaccid state after ejaculation. They also have no effect on sexual desire (libido) and do not change sensation in the penis. PDE5 drugs are not habit forming or addictive. They do not increase sexual desire or sexual enjoyment, other than by helping a man to achieve and maintain an erection.

5. Background: Sex Offending; ED Drugs and Sex Offense Behavior

Medical treatment for ED, many assert, helps sex offenders commit sex offenses. "The federal government is inadvertently facilitating the sexual assault of children," Laura Ahearn, executive director of Parents for Megan's Law, told the Associated Press earlier this year.<2> In his May 26 press release, Governor Schwarzenegger stated:

> Our first responsibility is to keep our citizens safe, and providing these drugs to known sex offenders is a policy that only threatens more innocent people.

Others, however, contend that drugs treating ED are unrelated to sexual offending:

> Viagra is often misunderstood to be an aphrodisiac - actually it does nothing to enhance sexual motivation, said Dr. Fred Berlin, a psychiatrist at Johns Hopkins University and an expert on the treatment of sex offenders. . . .
>
> Berlin said he's never heard of a sex offender using Viagra to reoffend.<3>

According to a 2004 law review article on sex offender management written by authors from the Center for Effective Public Policy and the Center for Sex Offender Management, the generally accepted treatment approach for sex offenders addresses a broad range of factors, none of which necessarily appear to center on physical performance:

> While historical efforts to treat sex offenders were widely varied, sex offender treatment has been refined significantly over the past few decades, and has a generally accepted approach. At present,

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<2> USA Today, May 23, 2005.
<3> Associated Press, June 22, 2005 (State Helped Pay for Viagra for 137 Sex Offenders.)

> most sex offender treatment programs throughout the country employ cognitive-behavioral methods that include relapse prevention components. Contemporary etiological theories suggest that sex offending behaviors are the result of a complex interaction of sociocultural, biological, and psychological processes . As such, sex offender

> treatment is designed to be relatively comprehensive and holistic, with goals that generally include accepting responsibility for sex offending and other harmful behaviors; modifying cognitive distortions that support offending behaviors; managing negative mood or affect; developing positive relationship skills; managing deviant sexual arousal or interest; maintaining control over unhealthy impulses; enhancing empathy for victims; understanding the sequence of events and risk factors associated with offending; and developing effective coping skills to manage identified risk factors.<4>

Sexual assault has come to be generally understood as a crime of power and control. As explained by the federal Office on Violence Against Women on its Web site:

<4> Carter, Bumby and Talbot, SYMPOSIUM: Promoting Offender Accountability and Community Safety through the Comprehensive Approach to Sex Offender Management (34 Seton Hall L. Rev. 1273 (2004) (citations omitted) (emphasis added).)

> The belief that only young, pretty women are sexually assaulted stems from the myth that sexual assault is based on sex and physical attraction. Sexual assault is a crime of power and control and offenders often choose people whom they perceive as most vulnerable to attack or over whom they believe they can assert power.<5>

Similarly, in its Megan's Law Web site, the California Attorney General's Office includes the following fact about sex offenders:

> While some offenders do seek sexual gratification from the act, sexual gratification is often not a primary motivation for a rape offender. Power, control, and anger are more likely to be the primary motivators.<6>

Members of the Committee may wish to explore further the causes of sexual offending, and how the relationship between ED treatments and sexual offending may impact these causes and public safety.

6. Constitutional Considerations

"An ex post facto law is a retrospective criminal statute applying to crimes committed before its enactment, and substantially injuring the accused, by punishing an act innocent when done, or increasing the punishment , or taking away a

defense related to an element of the crime or an excuse or justification for the conduct, or altering the rules of evidence so that a conviction may be obtained on less or different testimony than was required when the crime was committed."<7> In upholding California's sex offender registration laws against an ex post facto challenge, the California Supreme Court reasoned:

<5> http://www.ojp.usdoj.gov/vawo/SexAssaultInfo.htm.
<6> http://www.meganslaw.ca.gov/facts.htm.
<7> 1 Witkin Cal. Crim. Law Intro. Crimes 10.

> The sex offender registration requirement serves an important and proper remedial purpose, and it does not appear that the Legislature intended the registration requirement to constitute punishment. Nor is the sex offender registration requirement so punitive in fact that it must be regarded as punishment, despite the Legislature's contrary intent. Although registration imposes a substantial burden on the convicted offender, this burden is no more onerous than necessary to achieve the purpose of the statute.<8>

Members may wish to discuss whether the provisions of this bill, notwithstanding the stated purposes of public safety contained in its provisions, would be so punitive in fact as to constitute punishment and violate the ex post facto clauses of the California (Art. I 9) and U.S. (Art. I 10) Constitutions.

7. Similar Bill

This bill is similar to AB 240 (Berm?dez), which was amended on June 20, 2005; that measure appears to reflect an earlier version of this bill. Both of these bills are before the Committee on June 28. With respect to limiting ED drugs and treatment for registered sex offenders, these bills appear to be identical in intent. The bills differ in the following respects:

AB 240 is silent on who would pay to identify Medi-Cal ED claims deriving from registered sex offenders; this bill would authorize DOJ to establish a fee for their actual and reasonable costs;

<8> People v. Castellanos, 21 Cal. 4th 785 (1999) (citations omitted).

statute (Penal Code 290) to authorize DOJ to provide the identifying information about registrants to other

state entities, as specified; this bill instead enacts a new section of law to establish this authority;

This bill authorizes limited access to the Megan's Law Web site by state entities performing functions necessary to identify registrants on the Medi-Cal ED drug claim tape; AB 240 does not provide that authority; and

Additional technical drafting differences exist between these bills; AB 522 is generally drafted with more specificity than AB 240.

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