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Business, Consumer Services and Housing Agency
Department of Consumer Affairs
Gavin Newsom, Governor



To: Board Members

Subject: Agenda Item VII. Discussion and Consideration of Waiver of Pharmacy Law Provisions Consistent with the Authority in Business and Professions Code Section 4062 in Response to the Federal State of Emergency Related to COVID-19

Relevant Law

Business and Professions Code (BPC) section 4062 establishes authority for the Board, during a declared federal, state or local emergency, to waive provisions of Pharmacy Law or its regulations adopted pursuant to it, if in the Board's opinion, the waiver will aid in the protection of public health or the provision of care. The section further provides that the Board may elect to continue to waive application of any provision for up to 90 days following the termination of the declared emergency.

Background

Throughout the COVID-19, consistent with Governor Newsom's declared state of emergency, the Board has granted waivers to aid in the protection of the public health or the provisions of care. Governor Newsom terminated the declared state of emergency in California effective February 28, 2023. With this action, the Board issued waivers based upon the end of the state emergency that will expire May 28, 2023.

Recently, as part of the February 2023 Board Meeting, the Board voted to sponsor legislation to make permanent provisions for California licensed pharmacists to perform certain work remotely on behalf of a health care facility licensed pursuant to Health and Safety Code section 1250 (Health Care Facility), from a location outside of the facility, including medication chart order reviews, as specified. The provisions are included in Assembly Bill 1557. The measure was recently referred to the Assembly Appropriations Committee and will be amended to include an urgency clause. Incorporation of the urgency clause allows the measure to become effective upon the signature of the Governor.

It is very unlikely that AB 1557 will make it through the legislative process before the expiration date of the current waiver on May 29, 2023.

As provided in BPC section 4062, the Board has the authority to waive a provision of law in a declared federal emergency and continue those waivers for up to 90 days following the termination of the federal emergency if, in the Board's opinion, the continued waiver will aid in the protection of the public health or in the provision of patient care.

During the meeting members will have the opportunity to consider, if it so chooses, to issue a new waiver for remote processing for Health Care Facilities based on the end of the federal emergency that will remain in place until May 11, 2023. Should the Board choose to do so, staff will work with President Oh and counsel to draft a new waiver. As was stated in prior meetings, there is concern that end of the Board's waiver could interrupt patient care in hospitals and other inpatient settings given federal CMS requirements for pharmacists review of non-urgent medication order reviews.

Should members believe a new waiver is appropriate, the following motion could be used:

Consistent with the federal declared emergency issued in response to the COVID-19 public health crisis, the Board waives [insert sections, e.g., BPC 4071.1] for a period of 90 days following the end of the federal declared emergency. [Insert Conditions, e.g., Conditions of the wavier include that the medication chart order review is performed by a California licensed pharmacist, on behalf of a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, from a location outside of the facility, verify medication chart orders consistent with federal requirements, as established in the health care facility's policies and procedures. The health care facility shall maintain a record of the pharmacist's verification on the medication chart order. Records shall be maintained consistent with the requirements in Business and Professions Code Sections 4081 and 4105.]