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AB-2576 Emergencies: health care. (2017-2018)

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Assembly Bill No. 2576

CHAPTER 716

An act to amend Sections 4062, 4064, and 4126.5 of the Business and Professions Code, and to add Section 8628.5 to the Government Code, relating to emergencies.

[Approved by Governor September 23, 2018. Filed with Secretary of State September 23, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2576, Aguiar-Curry. Emergencies: health care.

(1) Existing law, the California Emergency Services Act, authorizes the Governor to proclaim a state of emergency, and local officials and local governments to proclaim a local emergency, when specified conditions of disaster or extreme peril to the safety of persons and property exist, and authorizes the Governor or the appropriate local government to exercise certain powers in response to that emergency. Existing law authorizes the Governor, during a state of emergency, to direct all state agencies to utilize and employ state personnel, equipment, and facilities to perform activities that are designed to prevent or alleviate actual and threatened damage due to that emergency. Existing law authorizes a state agency so directed to expend any of the moneys that have been appropriated to it in order to perform that activity.

This bill would authorize the Governor, during a state of emergency, to direct all state agencies to utilize, employ, and direct state personnel, equipment, and facilities for the performance of any and all activities that are designed to allow community clinics and health centers to provide and receive reimbursement for services provided during or immediately following the emergency. The bill would authorize any agency directed by the Governor to perform those activities to expend any of the moneys that have been appropriated to it in order to perform those activities, irrespective of the particular purpose for which the moneys were originally appropriated.

(2) Existing law, the Pharmacy Law provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy. Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines. Existing law authorizes a pharmacist to, in good faith, furnish a dangerous drug or device in reasonable quantities without a prescription during a federal, state, or local emergency, in order to further the health and safety of the public by complying with certain record-keeping requirements, and authorizes the board to waive any application of the Pharmacy Law during an emergency if the board determines that the waiver will aid in the protection of the public health or the provision of patient care. Existing law requires the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and authorizes the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions.

The Pharmacy Law authorizes certain clinics to purchase drugs at wholesale for administration or dispensing, under the direction of a physician or surgeon, to patients registered for care at the clinic, provided those clinics obtain a license from the board and comply with various requirements.

This bill would expand the emergency provision described above to authorize a clinic licensed by the board to purchase drugs at wholesale for administration or dispensing to patients to furnish dangerous drugs or devices in reasonable quantities without a prescription during a federal, state, or local emergency, subject to the standards that apply to pharmacists as described above. The bill would also require the board, during an emergency, to allow for the employment of a mobile pharmacy clinic in impacted areas under specified conditions that are similar to the conditions that apply to a mobile pharmacy. The bill would authorize the board to continue to waive application of any provision of the Pharmacy Law for up to 90 days following the termination of the emergency if, in the board's opinion, the continued waiver will aid in the protection of public health or the provision of patient care. The bill would also make conforming changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Legislature has previously granted broad authority to the Governor to direct state agencies to take various actions in order to facilitate the immediate provision of emergency necessities and resources to the public throughout disruptions caused by natural disasters and other declared emergencies.

(b) Ensuring that both institutional and individual health care providers can continue to provide care to patients both during and immediately following a declared emergency is essential for protecting the public health and safety.

(c) In the case of a natural disaster or other emergency situations, health care is often provided through innovative or extraordinary means, including providing care telephonically or in temporary shelters. However, given the complexities of health care regulation and reimbursement, often neither the state nor local jurisdictions are able to readily advise and support health care providers who are trying to help patients under these circumstances.

(d) Community clinics and health centers are crucial to emergency response and recovery efforts by doing all of the following: providing patients with necessary resources, such as how to apply for CalFresh, and information on local assistance centers; information on how to apply for assistance from the Federal Emergency Management Agency (FEMA) and other state and federal resources; information on how to obtain emergency refills for prescription drugs; and information on disaster services from the Employment Development Department for patients who have lost their jobs as a result of the fires. Community clinics and health centers are responsible to the most vulnerable in our state; those individuals who have been hit the hardest by these natural disasters.

(e) The purpose of this legislation is to clarify what state and local agencies can currently do under existing law to ensure continuity of care and access to the broadest array of health care services possible during and immediately following a state of emergency, and to require state agencies to seek any necessary federal approvals that may be required in order to provide care to as many people impacted by the emergency as possible.

SEC. 2. Section 4062 of the Business and Professions Code is amended to read:

4062. (a) Notwithstanding Section 4059 or any other law, a pharmacist or a clinic licensed and acting under Section 4180 may, in good faith, furnish a dangerous drug or dangerous device in reasonable quantities without a prescription during a federal, state, or local emergency, to further the health and safety of the public. A record containing the date, name, and address of the person to whom the drug or device is furnished, and the name, strength, and quantity of the drug or device furnished shall be maintained. The pharmacist or clinic shall communicate this information to the patient's attending physician as soon as possible. Notwithstanding Section 4060 or any other law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

(b) During a declared federal, state, or local emergency, the board may waive application of any provisions of this chapter or the 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 patient care.

(c) During a declared federal, state, or local emergency, the board shall allow for the employment of a mobile pharmacy or clinic in impacted areas in order to ensure the continuity of patient care, if all of the following conditions are met:

(1) The mobile pharmacy or clinic shares common ownership with at least one currently licensed pharmacy or clinic in good standing.

(2) The mobile pharmacy or clinic retains records of dispensing, as required by subdivision (a).

(3) A licensed pharmacist, or, in the case of a clinic, a professional director, is on the premises and the mobile pharmacy is under the control and management of a pharmacist, or, in the case of a clinic, a professional director, while the drugs are being

dispensed.

(4) Reasonable security measures are taken to safeguard the drug supply maintained in the mobile pharmacy or clinic.

(5) The mobile pharmacy or clinic is located within the declared emergency area or affected areas.

(6) The mobile pharmacy or clinic ceases the provision of services within 48 hours following the termination of the declared emergency.

(d) Notwithstanding any other law, the board may elect to continue to waive application of any provision of this chapter for up to 90 days following the termination of the declared 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.

SEC. 3. Section 4064 of the Business and Professions Code is amended to read:

4064. (a) A prescription for a dangerous drug or dangerous device may be refilled without the prescriber's authorization if the prescriber is unavailable to authorize the refill and if, in the pharmacist's professional judgment, failure to refill the prescription might interrupt the patient's ongoing care and have a significant adverse effect on the patient's well-being.

(b) The pharmacist shall inform the patient that the prescription was refilled pursuant to this section.

(c) The pharmacist shall inform the prescriber within a reasonable period of time of any refills dispensed pursuant to this section.

(d) Prior to refilling a prescription pursuant to this section, the pharmacist shall make every reasonable effort to contact the prescriber. The pharmacist shall make an appropriate record, including the basis for proceeding under this section.

(e) The prescriber shall not incur any liability as the result of a refilling of a prescription pursuant to this section.

(f) Notwithstanding Section 4060 or any other law, a person may possess a dangerous drug or dangerous device furnished without prescription pursuant to this section.

(g) During a proclaimed state of emergency, nothing in either this section or any other provision of this chapter prohibits a pharmacist, a clinic licensed under Section 4180, or a mobile pharmacy or clinic described in subdivision (c) of Section 4062 from refilling a prescription if the prescriber is unavailable, or if after a reasonable effort has been made, the pharmacist, clinic, or mobile pharmacy is unable to contact the prescriber.

SEC. 4. Section 4126.5 of the Business and Professions Code is amended to read:

4126.5. (a) A pharmacy may furnish dangerous drugs only to the following:

(1) A wholesaler owned or under common control by the wholesaler from whom the dangerous drug was acquired.

(2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

(3) A licensed wholesaler acting as a reverse distributor.

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

(6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

(7) To another pharmacy under common control. During a proclaimed state of emergency, "another pharmacy" as used in this paragraph shall include a mobile pharmacy, as described in subdivision (c) of Section 4062.

(b) Notwithstanding subdivision (a), or any other law, a clinic licensed under Section 4180 may furnish dangerous drugs to any of the following during a proclaimed state of emergency:

(1) Another clinic or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A clinic furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(2) A patient pursuant to a prescription or as otherwise authorized by law.

(3) A health care provider that is not a clinic but that is authorized to purchase dangerous drugs.

(4) To another clinic under common control, including a mobile clinic, as described in subdivision (c) of Section 4062.

(c) Notwithstanding any other law, a violation of this section may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

(d) Amounts due from any person under this section on or after January 1, 2005, shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(e) For purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of another person whether by ownership, by voting rights, by contract, or by other means.

SEC. 5. Section 8628.5 is added to the Government Code, to read:

8628.5. (a) During a state of emergency, the Governor may direct all state agencies to utilize, employ, and direct state personnel, equipment, and facilities for the performance of any and all activities designed to allow community clinics and health centers to provide and receive reimbursement for services provided during or immediately following the emergency, including all of the following:

(1) To issue permits.

(2) To expedite application processing timelines.

(3) To direct, to the extent necessary, the State Department of Health Care Services, or any other state agency, to seek all appropriate federal approvals to allow community clinics and health centers to provide and be reimbursed for Medi-Cal or other services that are provided either telephonically, or to patients at a shelter or other location within the geographical boundaries of the emergency as stated in the proclamation declaring the state of emergency.

(4) To provide guidance, supplemental services, or whatever resources may be necessary to political subdivisions to ensure the provision of services by community clinics and health centers that are necessary to provide for the health and safety of the citizens of the affected area.

(b) Any agency directed by the Governor to perform activities pursuant to subdivision (a) may expend any of the moneys that have been appropriated to it in order to perform those activities, irrespective of the particular purpose for which the moneys were originally appropriated.