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# Legislative Update

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# Expansion of Access & Scope of Practice




**OR**




**It all depends on your perspective!**

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# Midwives

- Types of Midwives
- Licensed Nurse Midwife—regulated by the Nursing Board
- Direct-entry Midwife:  Meets practice standards of the N. Am Reg. of Midwives
- Certified midwife: BA and certification from Am. College of Nurse Midwives
- Lay Midwife:  not certified, informal, self-study or apprenticeship

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# Nurse Midwives—Scope

- Scope of Practice (Title 16 section 1463)
- Obtain physician assistance and consultation when indicated
- Provide emergency care until physician assistance can be obtained
- Other practices via procedures and protocols
- Must be supervised by MD (although MD's presence not required)—no longer required
- All complications referred to MD immediately
- Nurse midwifery does not include delivery by any artificial, forcible or mechanical means
- Not authorized to practice medicine and surgery

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# Midwifery--AB 1308

- **MD supervision no longer required so long as midwife is managing a "normal pregnancy" defined as:**
  - *an absence of a pre-existing maternal disease or condition likely to affect the pregnancy or significant disease arising from the pregnancy*
  - *A singleton fetus*
  - *Pregnancy with is cephalic presentation*
  - *Gestational age of greater than 37 weeks and less than 42 weeks*
  - *Labor is spontaneous or induced in an out patient setting*

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# Midwifery AB 1308

- **Must immediately refer or transfer patient to MD if at any point the patient's condition deviates from normal (but may continue to follow patient concurrently with the MD)**
- **However, midwife is not required to identify a specific MD (how is care coordinated?)**
- **Midwife may directly obtain supplies and devices and order drugs and tests**
  - *Business & Professions Code section 2507, 2508, 2510*

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# Midwifery AB 1308

- **Midwife must make many disclosures (B & P 2507 et. seq.)** *Medical Board has updated form*
  - *No supervision*
  - *Current license number & status*
  - *If the midwife has no insurance and physician's probable lack of insurance*
  - *Client's obligation to consult with MD if referred (and failure to do so will affect client's legal rights)*
  - *Consultation with an MD does not alone create a physician-patient relationship*
  - *Other requirements*
  - *Disclosure and consent must be signed by both patient and midwife and placed in medical record*

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# Physical Therapists AB 1000

- **Medical Corporations may now employ PTs and OTs with certain disclosures as to choice and financial interest**
- **Authorizes any person licensed under B & P, Chiropractic Act or Osteopathic Act to be employed by a professional corporation—Listings set forth in Moscone-Knox Act are not limiting**
  - *Business & Professions Code section 2406, 2620.1*

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# Direct Access to Physical Therapy AB 1000

- **Legislature believes that early access to PT may decrease duration of a disability, reduce pain and lead to a quicker recovery, So:**
  - *Patients may access a PT directly so long as treatment is no longer than 45 days or 12 visits (unless approved by MD) B & P section 2620.1*
  - *PT must refer patient to MD or Osteopath if patient has a condition that requires treatment beyond PT's scope of practice or patient is not progressing toward treatment goals*
  - *Financial interest disclosures by PT, MD, Osteopath required*
  - *Notice must be given to patient about limitations of PT—signature required*

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# Medical Assistants (MAs)—overview of scope of practice

- General description: MAs must be at least 18 years of age and meet the minimum hourly training requirement per the applicable regulation
- MAs may do certain activity with specific authorization and supervision of an MD or podiatrist as follows:

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# MA Scope of Practice

- **Basic administrative and clerical functions**
- **Admin of medication by intradermal, subcutaneous or intramuscular injection only**
- **Skin tests**
- **Venipuncture or skin puncture for blood draw**
- **Additional "technical supportive services"**
  - B & P sections 2069, 2070

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# Other Authorized Activity for MAs

- Physical Therapy
- Throat cultures
- Administering Medications with strict limitations (16 CCR 1366 (b) (1))
- Call in routine refills that are exact and have no changes in the dosage level—but there are documentation requirements
- Flu Shot
- Hearing tests
- Blood pressure

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# Activities not authorized

- Telephone triage
- Setting fractures
- Dispensing medications
- Chemotherapy administration or patient monitoring
- Renewing prescriptions
- Start or disconnect IV or administer medication into IVs
- Injecting collagen, Botox or laser or dermabrasion
- Insert urine catheters

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# SB 352: Supervision of MAs

- **NPs, PAs, and CNMs may now supervise MAs without an MD on site, if**
  - *Nurses and PAs are functioning pursuant to standardized procedures with MD approval, but*
  - *They can't authorize the MA to perform clinical lab tests beyond what is authorized by clinical lab laws*
    - *(Business & Professions Code section 2069)*

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# Pharmacists—expansion of practice SB 493

- **Purpose is to expand the scope of practice to make pharmacists part of a primary care team and allow more autonomy in furnishing certain drugs—declares pharmacists as health care providers who can:**
  - *Administer drugs by injection*
  - *Provide training on drug therapy and disease management and prevention*
  - *Furnish contraceptives, nicotine replacement, travel meds*
  - *Order and interpret tests*
  - *Administer vaccines*
    - Business & Professions Code section 4040 et. seq.

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# Pharmacists—expansion of practice SB 493

- **Bill also recognizes "Advance Practice Pharmacists"* who can:**
  - *Perform patient assessments*
  - *Order and interpret drug therapy-related tests*
  - *Participate in evaluation and management of diseases and health in collaboration with other health care providers*
  - *Initiate, adjust, or discontinue drug therapy, but may not interfere with a prescription as written*
- **These activities must be documented and reported to patient's primary care physician or diagnosing prescriber**

**Medical Board to determine how status documented*

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# Performance of Abortions: AB 154

- In 2005, UCSF conducted a pilot program to evaluate the safety, effectiveness and acceptability of NPs, CNMs and PAs providing aspiration abortions
- Rate of complications by this group was 1.8% versus a physician rate of 0.9%; majority of complications were minor
- Prior law stated that only a physician could perform a “surgical abortion” and Legislative Counsel opined that surgical abortion includes abortion by aspiration technique
- Prior law permitted NPs, CNM and PAs to perform pharmacological abortions

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# Performance of Abortions: AB 154

- **New: NPs, CNMs and PAs may perform abortions by aspiration techniques (in addition to medications) in the first trimester, upon completion of specified training and clinical competency validation**
- **Failure to obtain this training and competency is unprofessional conduct**
  - > Business and Professions Code section 2253

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# Performance of Abortions: AB 154

- **Standardized procedures for this group must specify:**
  - *The extent of supervision by an MD with relevant training and supervision*
  - *Procedures for obtaining MD assistance and consultation*
  - *Procedures for providing emergency care in the meantime*
  - *The method of periodic review of these procedures*
    - > Added statute Business and Professions Code section 2725.4, 3502.4
- **Question: What about the new law eliminating the requirement of MD supervision?**

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# Confidentiality




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# Security Breach Disclosure: SB 46

- **Existing law requires entities to disclose any security breaches or unauthorized access to unencrypted personal health information to patients (Civil Code sections, 1798.29. 1798.82**
- **Scope of disclosure has been expanded to include: *"a user name or email address, in combination with a password or security question and answer that would permit access to an online account"***

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# Security Breach Disclosure: SB 46

- **If no other personal information is involved in breach of the user name, etc., notification can be made by e-mail with direction to change the user name, password, security question**
- **If the breach involves the login credentials of a e-mail account provided by the entity, then notification must not be made via the e-mail account, but thru another conspicuous method**

*Civil Code sections 1798.29, 1798.82*

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# Organ Procurement & the Coroner AB 1297

- The bill clarifies when Organ Procurement Organizations can communicate with a Coroner
- Coroners are obligated to investigate unexpected deaths
- Prior law was unclear as to whether this communication is allowed for individuals who are on life support and who have agreed to make an anatomical gift
- Time is of the essence for organ donation—within 4-6 hours for a heart and 12-24 hours for a liver or pancreas.

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# Organ Procurement & the Coroner AB 1297

- **This bill allows sharing of information where death is imminent but death subject to investigation**
- **OPO may notify coroner prior to death in cases that will be under the Corner's jurisdiction and the coroner shall accept that notification when it will facilitate the corner's ability to conduct a postmortem exam or investigation in a manner and within a period compatible with the body's/organ's preservation for the purpose of the gift**
- **As before, medical information is limited to information about the decedent or prospective donor**
  - *Civil Code section 56.10;*
  - *Health & Safety Code section 7151.15*

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# Drug Prescribing



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# Drug prescribing: AB 635

- A pilot program in 7 counties has been expanded to be a permanent state-wide program
- Permits a licensed health care provider who is authorized to prescribe an opioid antagonist (Narcan) to prescribe and dispense or distribute it to a person at risk of an opioid-related overdose or a family member, friend or other person in a position to assist in the event of an overdose
- Standing orders for this are authorized
- Reasonable care required for immunity from liability
  - *(Civil Code section 1714.22)*

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# Funding of CURES program: SB 809

- CURES (Controlled Substance Utilization Review and Evaluation System) is a system maintained by the DOJ to capture the prescribed and dispensed Schedule II, III and IV controlled substances by all practitioners
- Each year CURES responds to more than 800k requests relating to controlled substance use
- This bill creates a funding mechanism of $6 payable at license renewal for all controlled substance prescribers
- This funding will enable real time 24/7 responses from CURES

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# Funding of CURES program: SB 809

- **DOJ must create a process to enable all controlled substance prescribers to apply to access CURES information**
- **Controlled substance prescribers must submit a CURES application before January 1, 2016 or upon receipt of DEA license, whichever is later**
- **Bill requires the Medical Board to develop and disseminate to each licensed prescriber and general acute care hospital information and educational material related to the assessment of a patient's risk of abusing or diverting controlled substances and information related to CURES** *(no time deadline given for this material)*

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# Medical Board Investigations: SB 670

- **This bill involves the Medical Board's rights related to obtaining a deceased patient's records**
- **Prior law required the Board to get consent; new law allows the MBC to inspect a deceased patient's records without authorization or court order:**
  - *Solely to determine whether death was in violation of the Medical Practice Act*
  - *If MBC informs MD in writing that it has been unsuccessful in locating or contacting the patient's representative after "reasonable efforts"*

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# Medical Board Investigations: SB 670

- **If patient representative objects, then MBC must get a court order to inspect the records**
- **Slightly modifies existing law and states that repeated failure by MD who is subject of investigation by MBC, (in the absence of good cause), to attend and participate in a MBC interview is unprofessional conduct.**
  - *Business & Professions Code section 2225, 2234*

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# HIV Testing




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# HIV Testing:  AB 446

- The consent process for HIV has evolved over the last 10 years.
- This bill removes the requirement to obtain a signed written statement of informed consent before administering an HIV test in a non-clinical setting
- Instead, informed consent may be provided orally or in writing, but the tester must maintain documentation of consent in the record (we still haven't arrived at "simple consent")
- Unchanged is the obligation to document refusal of the test

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# HIV Testing: AB 446

- **This bill continues the effort to HIV test the "hard to reach" populations**
- **In addition to the current obligation to provide information before the test, there are new obligations depending on the test results:**
  - *If the patient tests positive, the provider who administered the test must inform the patient of the numerous treatment options and identify follow up care, including contact information for medical and psychological services*
  - *If the patient tests negative and is known to be high risk, the provider must inform patient of the need for periodic testing, offer preventive counseling*

> Health and Safety Code section 120990

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# HIV Testing:  AB 446

- **New rules for Primary Care Clinics:**
  - *Each patient who has blood drawn at a primary care clinic and consented to HIV treatment must be offered an HIV test*
    - does not apply if patient has already been tested or the patient declined within the previous 12 months
    - Primary Care Clinics may charge for the test
  - *Clinic shall attempt to provide test results before the patient leaves the clinic*
  - *Electronic disclosure  of results ok with protections*
    - *Health and Safety Code sections 120990, 123148, 120991*

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# HIV testing of infants:  AB 506

- Per the author, this law is needed to "comply with the American Academy of Pediatrics (AAP) guidelines that all children under the age of one year who are placed into the foster care system to be tested for HIV."
- Allows a social worker to consent to HIV testing of an infant less than 12 months who is in temporary custody or a dependent of the court

IF:…..

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# HIV testing of infants: AB 506

**IF:**

- **The MD determines and documents that HIV is medically appropriate considering parental behavior or possible sexual assault**
- **Social Worker presents risk factor information to the MD**
- **Social Worker has made reasonable efforts to contact the parents (and documented same) and has been unable to reach them**

**If HIV medical care is necessary, it shall be considered emergency care not requiring a court order (authorization by social worker)**

Health & Safety Code 121020

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# Patients' Rights




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# Mental Health: SB 364

- **This bill provides state intent language to provide consistent standards and services to protect the rights of persons involuntarily detained and to provide services in the least restrictive setting appropriate to the needs of the patient**
- **It "encourages" mental health departments to post on their websites ambulatory and other resources for mental health and substance abuse**
  - *Lanterman-Petris-Short Act Statutes—Welfare & Institutions Code*

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# Mental Health: SB 364

- Broadens the types of facilities that can be used for 72 hour holds as designated by the county and permits mental health directors to develop procedures for training and designation of professionals
- Assessment under 5150 hold must be on an ongoing basis and must include a determination as to whether the person can be properly served without being detained. If so, services must be provided on a voluntary basis
- Evaluation of patient may include telehealth
- 5150 advisement to patient has changed

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# Facility and Clinic reporting to the State: AB 1382

- **Reporting to the Office of Statewide Health Planning and Development involves several data elements:**
  - *This bill requires:*
    - Reporting of preferred language (not principal languag)
    - External causes of morbidity and whether present on admission (formerly “injury)
      - *Health & Safety Code section 128735, 128736*

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# Rights of a Conserved person: AB 937

- A guardian or conservator has the responsibility of the "care, custody and control of…the ward or conservatee"
- However, absent a court order, a conservator does not control the patient's right to receive visitors, telephone calls and personal mail
- Consumer advocates sponsored this bill to make it clear that a conservator's power is not absolute and should not result in isolating conserved individuals
- The Public Guardians and Conservators opposed this bill, stating that it should not take a court order to limit visitation to prevent abuse
  - *Probate Code section 2351*

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# Transfer of a patient: AB 974

- **Title 22 creates certain obligations for hospitals to contact appropriate individuals prior to emergency transfer of a patient**
- **This Bill requires the hospital, prior to a transfer for non-medical reasons to:**
  - *ask the patient if there is a preferred contact person to be notified of the transfer*
  - *Make a reasonable effort to contact that person to alert of the transfer*
  - *Make a reasonable effort to identify such person if the patient is incapacitated*
  - *Document these efforts*
    - *Health & Safety Code section 1317.2*

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# A Child can have more than 2 Parents: SB 274

- A court may find that more than 2 people are parents if the court believes that failing to do so would be detrimental to the child
- Any reference to 2 parents would then apply to all the designated parents
- The court is required to allocate custody and visitation among the parents based on best interest of the child
- The court may order that not all parents share legal or physical custody

> Health & Safety Code section 3040

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# Miscellaneous

- Hospitals must adopt one of three breastfeeding policies by 2025 (duplicative of current law) SB 402
- Exemption from informed consent for research related treatment in life-threatening situations: this exemption was to sunset and it is now permanent AB 58

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# Record Requests from the Medical Board: AB304

- **Under prior law, health care facilities had 30 days within which to provide the patient's medical record in response to a Board request with a patient's authorization**
- **This bill requires hospitals with electronic health records to provide these records within 15 days of receiving the request unless the hospital is unable to provide the documents within this time period for "good cause"**
  - *Business & Professions Code section 2225.5*

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# CDPH Administrative Penalties for Licensing Violations

- **California Department of Public Health (CDPH) has issued new regulations re: hospital penalties**
- **Effective April 1, 2014, CDPH has the authority to fine hospitals for violating licensing requirements that do not constitute an immediate jeopardy**
- **Penalties will increase—CDPH has provided a formula**
  - *Title 22 CCR sections 70951 and 71702*

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