

AMENDED IN ASSEMBLY APRIL 1, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2115

Introduced by Assembly Member Haney

February 5, 2024

An act to amend Section 4184 of the Business and Professions Code, and to add Section 11839.35 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2115, as amended, Haney. Controlled substances: clinics.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and makes a violation of the act a crime. Under existing law, specified clinics, including surgical clinics, may purchase drugs at wholesale for administration or dispensing to the clinic's patients. Existing law requires these clinics to maintain certain records and to obtain a license from the board. Existing law prohibits specified substances from being dispensed by a nonprofit or free clinic, as defined.

This bill would authorize a nonprofit or free clinic to dispense a narcotic drug for the purpose of relieving acute withdrawal symptoms while arrangements are being made for referral for treatment, as described, and would require the clinic dispensing the narcotic to be subject to specified labeling and recordkeeping requirements. Because the bill would specify additional requirements under the Pharmacy Law, a violation of which would be a crime, it would impose a state-mandated local program.

Existing law requires the State Department of Health Care Services to regulate and license narcotic treatment programs, including in the

use of narcotic replacement therapy and medication-assisted treatment. Existing regulation specifies certain requirements and considerations for a patient to be eligible for treatment at a licensed narcotic treatment program, such as a medical evaluation conducted by the program, laboratory tests for disease, and minimum monthly participation in counseling, among others. Existing regulation also imposes specified criteria to be considered before a patient is eligible for take-home doses of medication, requires revocation of those privileges if a patient tests positive for illicit substances on 2 consecutive monthly samples, and prescribes criteria for the restoration of those privileges, including test results that are negative for illicit substances. Existing regulation requires a patient who is absent from a program for 2 weeks without contacting the program be terminated from the program.

This bill would specify that medical evaluation may be conducted by any health care provider, if it is verified by a narcotic treatment program practitioner, would authorize a program to allow patients to refuse or delay laboratory tests for disease, and would state that a patient receiving maintenance treatment is not precluded from receiving medication by a refusal to participate in counseling. The bill would revise the criteria to be considered prior to providing a patient with take-home medication privileges to include the absence of active substance use disorders and known recent diversion activity and the regularity of attendance for supervised medication administration, among others. The bill would state that a practitioner is not required to restrict a patient's take-home medication privileges if the patient tests positive for an illicit substance as described above and a practitioner is not required to establish a specified number of negative tests to restore those privileges to a patient. The bill would authorize a program to allow a patient to be absent from the program for up to 30 days without contact before requiring that they be terminated from the 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 4184 of the Business and Professions
2 Code is amended to read:

3 4184. (a) Except as described in subdivision (b), a Schedule
4 II controlled substance shall not be dispensed by the clinic. This
5 limitation does not prohibit a physician dispensing a Schedule II
6 drug to the extent permitted by law.

7 (b) A clinic may dispense a Schedule II controlled substance if
8 the substance being dispensed is a narcotic drug for the purpose
9 of relieving acute withdrawal symptoms when necessary while
10 arrangements are being made for referral for treatment consistent
11 with Section 1306.07(b) of Title 21 of the Code of Federal
12 Regulations.

13 (c) A clinic dispensing a Schedule II controlled substance
14 pursuant to subdivision (b) is subject to the labeling requirements
15 imposed upon pharmacists by Section 4076, the recordkeeping
16 requirements of this chapter, and all of the packaging requirements
17 of good pharmaceutical practice, including, but not limited to, the
18 use of childproof containers.

19 *SEC. 2. Section 11839.35 is added to the Health and Safety*
20 *Code, to read:*

21 11839.35. (a) *A medical evaluation of a patient prior to*
22 *admittance to a detoxification or maintenance treatment may be*
23 *conducted by any health care provider, if it is verified by a narcotic*
24 *treatment program practitioner as true and accurate and it is*
25 *transmitted in accordance with all applicable privacy laws.*

26 (b) *A narcotic treatment program may authorize a patient to*
27 *decline laboratory testing for disease or may authorize a patient*
28 *to complete that testing within two weeks of the date of admittance*
29 *to the program.*

30 (c) *A narcotic treatment program shall not deny a patient*
31 *maintenance treatment due to the length of time a person has been*
32 *addicted to opiates.*

33 (d) *A patient receiving maintenance treatment is not precluded*
34 *from receiving medication for opiate use disorder by refusing to*
35 *participate in counseling services.*

36 (e) *A narcotic treatment program practitioner shall update a*
37 *patient's treatment plan annually.*

1 (f) *The initial dose of methadone provided to a patient in a*
2 *narcotic treatment program shall not exceed 50 milligrams unless*
3 *the practitioner finds sufficient medical rationale that a higher*
4 *dose is clinically indicated. The practitioner shall document that*
5 *rationale in the patient's records.*

6 (g) *Notwithstanding subdivision (b) of Section 11839.3, a*
7 *decision to dispense take-home doses of narcotic replacement*
8 *therapy medications shall be determined by a medical practitioner,*
9 *who shall consider, among other pertinent factors, all of the*
10 *following criteria:*

11 (1) *The absence of active substance use disorders, other physical*
12 *or behavioral health conditions that increase the risk of patient*
13 *harm as it relates to the potential for overdose, or the ability to*
14 *function safely.*

15 (2) *The regularity of attendance for supervised medication*
16 *administration.*

17 (3) *The absence of serious behavioral problems that endanger*
18 *the patient, the public, or others.*

19 (4) *The absence of known recent diversion activity.*

20 (5) *Whether take-home medication can be safely transported*
21 *and stored.*

22 (6) *Any other criteria that the medical director or medical*
23 *practitioner considers relevant to the patient's safety and the*
24 *public's health.*

25 (h) *A decision to dispense take-home medication shall not be*
26 *contingent on the length of time a patient has participated in*
27 *treatment. A patient eligible for take-home medication may receive*
28 *up to a seven-day take-home supply of medication. After 15 days*
29 *of treatment, a patient may receive up to a two-week take-home*
30 *supply of medication, and after 31 days in treatment may receive*
31 *a 28-day take-home supply of medication.*

32 (i) *A medical practitioner is not required to restrict a patient's*
33 *take-home medication privileges if that patient's monthly bodily*
34 *specimen has tested positive for illicit drugs in two consecutive*
35 *months.*

36 (j) *In restoring a patient's take-home medication privileges, a*
37 *practitioner is not required to impose any requirement that the*
38 *patient's monthly bodily specimen test negative for illicit drugs*
39 *for any specified period of time.*

1 *(k) A patient may be absent from a maintenance treatment*
2 *program for up to 30 days, without contacting the program.*

3 *(l) The department shall review existing regulations promulgated*
4 *pursuant to this chapter and remove outdated, stigmatizing*
5 *language and obsolete references.*

6 ~~SEC. 2.~~

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

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