

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 377
AUTHOR: McGuire
BILL DATE: June 27, 2019, Amended
SUBJECT: Juveniles: Psychotropic Medications: Medical Information
SPONSOR: Author
POSITION: Support

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require judicial council forms to be revised, by July 1, 2020, to create a process to enable foster youth to authorize the Medical Board of California (Board) to obtain their medical records, in order to determine whether there is excessive prescribing of psychotropic medications.

BACKGROUND:

In August 2014, the Board received a letter from Senator Lieu, who was at the time the Chair of the Senate Business, Professions and Economic Development Committee. The letter asked the Board to look into the issue of inappropriate prescribing of psychotropic medication to foster children. The Board receives very few complaints regarding foster children being prescribed psychotropic medications, so the Board researched other avenues to identify physicians who may be inappropriately prescribing. The Board met with the Department of Health Care Services (DHCS) and the Department of Social Services (DSS) regarding what data was available, what could be provided to the Board, and what data would assist in the identification of inappropriately prescribing physicians. After many meetings, a Data Use Agreement (DUA) was finalized in April 2015 requesting a listing of all physicians who had prescribed three or more psychotropic medications for 90 days or more. For each child that fit into this category, the Board requested a list of the medications prescribed, the start and stop date for each medication, the prescriber's name and contact information, the child's birth date, and any other information that DHCS and DSS thought might be relevant to assist in this process.

Upon receipt of the information requested in the DUA in 2015, the Board secured an expert pediatric psychiatrist to review the information and determine any physician who may be potentially prescribing inappropriately. It is important to note that once a physician is identified, the Board's normal complaint process was followed, including obtaining medical records, conducting a physician interview and having an expert physician review the case. The complaint and investigation process is confidential, and nothing is public until an accusation is filed. Upon review by the Board's expert, it was

determined that 86 children were identified as potentially being prescribed to inappropriately. The Board then requested assistance from DSS, since the data provided to the Board did not include the names of the foster children receiving the prescriptions. Per the data use agreement, DSS will facilitate contact with county child welfare agencies, the juvenile courts, county counsel, children's attorneys and other relevant entities, to assist the Board in obtaining child-specific information, including relevant medical records. The Board and DSS worked with the relevant entities to create an authorization letter to send to current and former foster children and their guardians, as appropriate, to receive authorization to obtain the medical records of the foster children. DSS staff sent out 33 letters to last known addresses of foster children who had transitioned out of foster care. Unfortunately, some of those letters came back as undeliverable/returned. DSS staff also reached out to the counties on 14 children to see if there was a medical rights holder who could authorize the release of information. Of those children, two had a legal guardian with medical rights who was sent the letter and authorization form. The remaining 12 children in those counties require court orders to obtain the release and the medical records. DSS has stated that at least one county counsel is willing to assist with obtaining the court orders and the Board will work with DSS on the process to move forward on seeking court orders. DSS staff are also preparing the letters and authorization forms for the children in the remaining counties to be sent out. The Board only received releases from 4 individuals. It is important to note, that without the authorization for the medical records, the Board cannot move forward with investigating these matters. Although the Board continues to work with DSS, the Board is not receiving the authorizations necessary in order for the Board to obtain the patient records to it can investigate these cases.

SB 1174 (McGuire, Chapter 840, Statutes of 2016) added to the Board's priorities, repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to children without a good faith prior exam and a medical reason. SB 1174 codified the Board's DUA with DHCS and DSS and required the Board to confidentially collect and analyze data submitted by DHCS and DSS, related to physicians prescribing psychotropic medications to children.

ANALYSIS:

This bill would require the Judicial Council, by July 1, 2020, to revise its forms to include a request for authorization by the foster youth or the youth's attorney to release the youth's medical information to the Board in order to ascertain whether there is excessive prescribing of psychotropic medication that is inconsistent with the standard of care. This bill would specify that the authorization is limited to medical information relevant to the prescription of the psychotropic medication and the information may only be used for the purposes set forth in existing law.

In order to address confidentiality concerns, this bill was amended to require the Board or its representative to request the medical information obtained to be sealed if that information is admitted as an exhibit in an administrative hearing.

Amendments were also taken at the request of the Assembly Judiciary Committee to require the Judicial Council, when updating the forms, to consult with the California Department of Social Services (CDSS), the Board, the County Welfare Directors Association of California, the Chief Probation Officers of California, and groups representing foster children, dependency counsel, and children's advocates to help ensure that the foster youth and the youth's attorney are provided with sufficient information to understand the request for authorization to obtain the child's medical information and the reasons for the request. This bill would allow the Judicial Council to include in the form a requirement that the person completing the form affirm that the child or child's attorney has been asked about the authorization.

Amendments were also taken in Assembly Judiciary Committee to require CDSS, by January 1, 2020, to convene a working group consisting of the Judicial Council, the Board, the County Welfare Directors Association of California, the Chief Probation Officers of California, and groups representing foster children, dependency counsel, and children's advocates to consider various options for seeking authorization from a dependent child, a ward, or their attorney, for release of the dependent child's or ward's medical information regarding psychotropic medication prescribed between January 1, 2017, and July 1, 2020, and CDSS must report to the Legislature by April 15, 2020, on those options and on any recommendations to best reach those children and their attorneys to seek authorization.

According to the author, this bill will give the Board "the information they need in order to carry out their requirements pursuant to investigating potential overprescribing patterns of psychotropic drugs to foster youth. Following the passage of SB 1174 (McGuire, Chapter 840, Statutes of 2016), the Board is required to contract with an expert consultant who reviews prescribing data from DHCS and DSS for foster youth who have been on three or more psychotropic medications for 90 days or more. The Board has been unable to conduct internal confidential investigations into potential overprescribing because they do not have access to the related medical records for the foster youth who fit the requirements under SB 1174. Currently, the Board must work with DSS to get letters out to the identified youth to request authorization for the Board to contact the individuals. If the Board receives authorization to contact the individual, they must next then obtain an authorization for release of medical records." The author further states that "SB 377 will cut through this red tape and allow the Board to carry out their oversight authority. When the juvenile court judicial officer authorizes the administration of a psychotropic medication through the JV 220 form, the judicial officer shall also authorize the Board to review limited patient medical record information of the child authorized to receive psychotropic medication."

The Board needs authorization to receive medical records for foster youths that the Board expert has identified as victims of potential inappropriate prescribing in order to look into these cases. The Board's position changed from support if amended to support because the bill was amended to allow the Board to have access to all of the information in the foster youth's medical records. However, amendments were taken at the request of the Assembly Judiciary Committee to specify that the authorization is

limited to medical information relevant to the prescription of the psychotropic medication. Board staff requested that the author change this language to specify that the authorization is limited to medical information that is relevant to the investigation of the prescription of psychotropic medication, as the Board would be the one to determine what is relevant to the investigation. The author's office has committed to taking these amendments; as such, the Board continues to be supportive of this bill.

FISCAL: None

SUPPORT: Medical Board of California

OPPOSITION: None on File