

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1369
AUTHOR: Bauer-Kahan
BILL DATE: August 22, 2023, Amended
SUBJECT: Out-of-State Physicians and Surgeons: Telehealth:
License Exemption
SPONSOR: ALS Foundation
POSITION: Oppose

DESCRIPTION OF CURRENT LEGISLATION

Exempts from licensure requirements certain out-of-state physicians and surgeons (P&S), authorizing them to practice medicine in California via telehealth with a patient who has a disease or condition that is immediately life-threatening, as defined.

The recent amendments to AB 1369 clarify the definitions of the patients and physicians eligible under the proposed licensure exemption and do not address the concerns of the Medical Board of California (Board) reflected in the Oppose position on the bill.

RECENT AMENDMENTS

On August 22, 2023, AB 1369 was amended, as follows:

- Updates the definition of an eligible patient, to also include:
 - Must have an immediately life-threatening disease or condition in which there is a reasonable likelihood that death will occur within a matter of months.
 - Has given written informed consent (or their legally authorized representative, if incapacitated) to use telehealth services from an eligible out-of-state P&S and for the out-of-state P&S to release certified medical records to their primary care P&S.
 - Has documentation from their primary care P&S that they meet the eligibility requirements in the bill and authorizes their primary P&S to withdraw the documentation if there is a substantial change in the patient's mental capacity to make informed decisions on their own, unless their authorized representative has given written informed consent on their behalf.
- Updates the definition of an eligible out-of-state P&S to also include that they are in good standing with their licensing board, has no history of prior discipline, and

whose medical expertise is that of the eligible patient's illness. Deletes the requirement that the other state licensed the eligible physician using criteria substantially similar to the Board.

- Defines primary P&S as a P&S licensed by the Board or the Osteopathic Medical Board of California.

BACKGROUND

[Business and Professions Code \(BPC\) section 2051](#) authorizes the holder of a P&S license to treat patients in this state. [BPC section 2052](#) states that it is a crime to treat the sick or afflicted in this state without a license from the Board or other appropriate state entity.

[BPC section 2060](#) authorizes an out-of-state P&S to consult with a Board-licensed physician provided they do not have ultimate authority over the care or primary diagnosis of a patient located in California. BPC sections [2135](#) and [2135.5](#) provide two pathways for an out-of-state P&S to obtain a license to treat patients in this state.

[Health and Safety Code sections 111548-111548.5](#) authorize a California-licensed P&S to treat an eligible patient with an investigational drug, biological product, or device, as specified.

ANALYSIS

According to the author's fact sheet:

“When an individual is terminally ill, they must be able to utilize every possible option for healthcare that is available. Especially when it comes to being admitted to important clinical trials, an in-state option is often unavailable. California's licensure restrictions are necessary protections for health and wellness for the population at large but fail to protect the small segment of patients who cannot travel but could stand to benefit significantly from participation in out-of-state care.”

The fact sheet continues:

“California has already established a “right to try” medication law for terminally ill people. This allows traditional restrictions on pharmaceuticals to be lifted in order for terminally ill patients to participate in clinical trials and experimental treatments. In the age of telehealth, the “right to try” for terminally ill patients must extend beyond medications and also include the ability to obtain needed treatment through a medical professional via the telehealth method. With such an exemption in place, terminally ill people will have expanded options to much needed health care and the ability to participate in clinical trials across the country, which increases their hopes of recovery.”

AB 1369 would add a section to the Medical Practice Act that would authorize a person licensed as a P&S to treat a patient in California who has a disease or condition that is reasonably expected to cause the death of the patient in a matter of months. In addition, the patient must meet the following criteria:

- Has given written informed consent for, or, if the person lacks the capacity to consent, their legally authorized representative has given written informed consent on their behalf for, both of the following:
 - The use of an eligible out-of-state P&S' telehealth health care services.
 - The release of certified medical records to their primary P&S by the out-of-state P&S.
- Has not been accepted to participate in the clinical trial nearest to their home for the immediately life-threatening disease or condition within one week of completion of the clinical trial application process, or, in the medical judgment of their primary P&S, it is unreasonable for the patient to participate in that clinical trial due to the patient's current condition and stage of disease.
- Has documentation from their primary P&S attesting that they meet the requirements described above.

The primary P&S may withdraw the documentation if there is a substantial change in the patient's mental capacity to make informed decisions for their own care unless their legally authorized representative has given written informed consent on their behalf.

An eligible out-of-state P&S authorized to practice via telehealth in this state without a license is defined as a person who is licensed as a P&S in another state in good standing with no history of prior discipline, and whose medical expertise is that of the eligible patient's illness.

Existing Options for Out-of-State Physicians to Treat Californians

Any eligible P&S may obtain a license by the Board and be authorized to treat patients in this state. Licensure is a vital form of consumer protection and ensures that physicians practicing in California have met the relevant statutory requirements to treat patients in this state.

Without the requirement for licensure, the Board would be unaware of those who are treating patients in this state and would be unable to take disciplinary action against a P&S who fails to treat their patients within the standard of care. Under the language of the bill, it is also unclear whether the home state of the P&S in question would have authority to discipline that P&S when treating Californians.

FISCAL: None identified.

SUPPORT: ATA Action

OPPOSITION: Osteopathic Medical Board of California.

ATTACHMENT: [AB 1369, Bauer-Kahan – Out-of-State Physicians and Surgeons: Telehealth: License Exemption](#)
Version: 8/22/23 – Amended