

PHYSICIAN ASSISTANT COMMITTEE INITIAL STATEMENT OF REASONS

Hearing Date: 29 October 2012

Subject Matter of Proposed Regulations:

(1) Sections Affected: 1399.620, 1399.621, 1399.622, and 1399.623

Introduction

On September 23, 2010, Governor Arnold Schwarzenegger signed AB 2699 (Bass, Chapter 270, Statutes of 2010), enacting Business and Professions Code Section 901, which took effect January 1, 2011. This statute provides a regulatory framework for certain health care events at which free care is offered to uninsured or under-insured individuals by volunteer health care practitioners where those practitioners may include individuals who may be licensed in one or more states but are not licensed in California.

Prior to this enactment, licensing laws and regulations precluded the participation of volunteers licensed outside of California. Business and Professions Code Section 901 defines "sponsoring entities," "sponsored events," and "health care practitioners," and sets forth requirements for registration of sponsoring entities and authorization for participation by practitioners licensed in other states by the various boards responsible for licensure and regulation of healing arts.

These proposed regulations would implement, interpret, and make specific the provisions of Business and Professions Code Section 901 by specifying procedures and forms to be used by sponsoring entities and out-of-state practitioners who desire to participate in sponsored events.

The Physician Assistant Committee's highest priority is the protection of the public and these proposed regulations are intended to implement Business and Professions Code Section 901 in a manner that will provide the greatest protection for the people of California.

Specific Purpose of each adoption, amendment, or repeal:

1) Adopt Section 1399.620, Definitions.

Problem being addressed:

This section is needed to clarify the language of the statute. Specifically, the definition of "community-based organization" is necessary because there is no statutory definition. The definition of "out-of-state practitioner" is needed to clarify which practitioners the proposed regulations are intended to affect.

Anticipated benefits from this regulatory action:

“Community-based organization” is listed in the statute as one type of sponsoring entity. There is no definition of such an entity in state statute. The proposed definition of this term therefore is derived from a federal law (Title 20 USCA Section 7801 related to education law) that does contain a definition of “community-based organization.” This definition provides clarity to the term.

The statute defines “health care practitioner” as any person who engages in acts subject to licensure under Division 2 of the Business and Professions Code. The proposed regulations, along with the operative provisions of Business and Professions Code Section 901, however, concern specifically health care practitioners licensed to practice medicine in other states and territories. Therefore, in order to provide clarity for purposes of the text of the regulations, the definition of “out-of-state practitioner” is proposed. The definition is based upon the criteria set forth in Business and Professions Code Section 901(b).

2) Adopt Section 1399.621, Sponsoring Entity Registration and Recordkeeping Requirements.

Problem Addressed: 1399.621(a):

This section establishes a timeframe for submission of a sponsoring entity’s registration form and prescribes a registration form to be used.

Anticipated benefits from this regulatory action: 1399.621(a)

Sponsoring entities are required under Business and Professions Code Section 901(d) to register with the Committee if they will have out-of-state practitioners participating in their sponsored event. Therefore, the proposed regulation implements the statute by providing a form that a sponsoring entity can use to meet this requirement (Form 901-A (DCA/2011)). The form includes space for all of the information required to be submitted under the statute. Also, the proposed regulation requires that sponsoring entities submit their registration forms no later than 90 days prior to the sponsored events. This is proposed in order to allow for sufficient time for review of the registration information and to have the registration in place prior to receipt of participation authorization requests from out-of-state practitioners.

Problem being addressed: 1399.621(b):

This section provides a mechanism for the Committee to delegate the receipt and review of the sponsoring entity registration form along with criteria for accepting or rejecting the registration.

Anticipated benefits from this regulatory action: 1399.621(b)

Because sponsoring entities may be required to register with multiple boards under Business and Professions Code Section 901(d), the proposed regulation allows the Committee to delegate the authority to receive and process the registration form to the Department of Consumer Affairs. Assuming that all applicable boards make this delegation, the sponsoring entity need only file one registration form and the Department will notify the boards that the sponsoring entity submitted a complete form.

This proposed regulation also specifies that the registration form need be complete in order to be accepted and that all deficiencies must be corrected at least 30 days prior to the commencement of the sponsored event. This requirement is needed in order to ensure the Committee that the entity has provided all required information including the correct contact information for the sponsoring entity when the event commences.

Problem being addressed: 1399.621(c):

This section implements and makes specific the recordkeeping requirements of sponsoring entities set forth in Business and Professions Code Section 901(g).

Anticipated benefits from this regulatory action: 1399.621(c)

Business and Professions Code Section 901(g) specifies certain records that sponsoring entities must maintain and requires entities to furnish these records upon request to the Committee. In order to implement these requirements, the proposed regulation specifies that these records must be kept both at the physical premises of the sponsoring event and at a location in California for the statutorily required five-year period.

Having these records available at the event and, thereafter, at a location in California is necessary in order to provide the Committee with access to the records. Further, the proposed regulation specifies that the records may be kept in either paper or electronic form and that the sponsoring entity shall notify the Committee upon registration of the form of its records. This provision clarifies that either form of records is acceptable to the Committee.

Problem being addressed: 1399.621(d):

This section requires the sponsoring agency to post a notice regarding the out-of-state license status of the physician assistant and Physician Assistant Committee contact information.

Anticipated benefits from this regulatory action: 1399.621(d)

The Physician Assistant Committee's mandate is to protect the health, safety, and welfare of California consumers. Public protection is enhanced when patients are aware

of the Committee's existence at the time care is rendered.

This proposal will further enhance the Committee's mandate of consumer protection. Many consumers are unaware of what agency to contact when they are having concerns or complaints about the care provided by physician assistants.

This proposal is an additional consumer protection tool and will empower consumers by providing written contact information concerning the state agency responsible for licensing physician assistants.

Problem being addressed: 1399.621(e):

This section clarifies that authorization must be provided by the Committee before a sponsoring entity may allow an out-of-state practitioner to participate in a sponsored event.

Anticipated benefits from this regulatory action: 1399.621(e)

Business and Professions Code Section 901 provides for authorization requirements for out-of-state practitioners and for registration requirements of sponsoring entities. This proposed regulation connects the two requirements by clarifying that a sponsoring entity may not permit an out-of-state practitioner to participate in its event unless and until it receives authorization from the Committee.

Problem being addressed: 1399.621(f):

This section specifies the information to be provided in the report required under Business and Professions Code Section 901(f)

Anticipated benefits from this regulatory action: 1399.621(f)

Business and Professions Code Section 901(f) requires a report to be filed with the Committee by a sponsoring entity within 15 days after a sponsored event and sets forth the minimum information to be included. The statute, however, does not provide any information as to the form of the report. The proposed regulation makes clear the Committee will accept a report in whichever form the sponsoring entity chooses. Also, the proposed regulation includes a requirement of each participating out-of-state practitioner that the license number be included in the report. This information is necessary for the Committee to identify the participants involved.

3) Adopt Section 1399.622, Out-of-State Practitioner Authorization to Participate in Sponsored Event.

Problem being addressed 1399.622(a):

This section provides the mechanism by which an out-of-state practitioner may request

authorization to participate in a sponsored event.

Anticipated benefits from this regulatory action: 1399.622(a):

Out-of-state practitioners who desire to participate in a sponsored event must request authorization from the Committee in accordance with Business and Professions Code Section 901(b). The statute specifically requires the Committee to prescribe a form and set a processing fee for this purpose. The proposed regulation implements Business and Professions Code Section 901(b) by incorporating proposed FORM 901-B (PAC/2012) to be submitted by the out-of-state practitioner to the Committee to request authorization to participate. The form provides space for the applicant to include all of the information required by the statute.

The processing fee of \$25 shall cover the cost of developing the authorization process and processing the request of the health care practitioner.

Additionally, the regulation requires the applicant to submit additional material not specifically listed in the statute. First, the applicant must submit personal identifying information including contact information, the individual's social security number, employer's contact information and either a full set of fingerprints or a Live Scan inquiry. These requirements are reasonably necessary in order for the Committee to verify the requirement of Business and Professions Code Section 901(b)(1)(B)(i) that the applicant has, "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Business and Professions Code Section 480." Section 480 authorizes a Committee to deny licensure based on an applicant's conviction of a crime. A criminal background check is more easily effective if the Committee has the appropriate personal identifying information. Further, the Committee is authorized to require applicants to furnish fingerprints for criminal background checks under Business and Professions Code section 144.

Business and Professions Code Section 901(b) also provides that applicants seeking authorization to participate must meet the educational and experience requirements determined by the Committee. The Committee has determined that the applicant must have attended a physician assistant training program approved or recognized by the Committee and passed the Physician Assistant National Certification Examination administered by the National Commission on Certification of Physician Assistants. Additionally, the applicant is required to submit a completed Delegation of Services Agreement signed and dated by the applicant and each supervising physician. It is the opinion of the Committee that these are the minimum requirements necessary to protect the public from inexperienced or unqualified practitioners who have not met the Committee's requirements for licensure.

Problem being addressed 1399.622(b):

This section also sets forth the standard timeframe in which the Committee shall grant or deny the authorization request.

Anticipated benefits from this regulatory action: 1399.622(b):

Business and Professions Code Section 901(b)(1)(A) provides that the Committee shall notify the sponsoring entity within 20 days of receiving a request for authorization to participate whether that request is approved or denied. The proposed regulation sets forth this statutory requirement and is necessary in order to restate the standard timeframe for response by the Committee within the context of the regulations.

Problem being addressed 1399.622(c):

This section sets forth the criteria under which the Committee must or may deny a request for authorization to participate.

Anticipated benefits from this regulatory action: 1399.622(c):

The statute provides that the Committee must authorize the participation of out-of-state practitioners in sponsored events, but it does not list specific criteria for denial of authorization other than if a practitioner “fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.” Therefore, it is necessary to provide at least some specific detail as to the criteria the Committee will use beyond the general authorization to deny an application.

The Committee has determined that the failure of an applicant to respond within seven days to a request for additional information will result in an automatic denial of a request. Because the Committee only has 20 days in which to grant or deny a request, timing is critical and the Committee’s opinion is that failure of an applicant to respond within seven calendar days will sufficiently jeopardize the Committee’s ability to effectively review a complete application within the allotted time.

Further, a failure to meet any of the specified educational and experience requirements determined by the Committee and discussed under section 1399.622(a) of these proposed regulations will constitute an automatic denial of the application. The Committee has determined that these criteria are necessary to protect the public from inexperienced or unqualified practitioners who have not met the Committee’s full requirements for licensure.

The proposed regulation also sets forth discretionary reasons for denying a request. The first of these is that the application is not received within 20 days prior to the event. Business and Professions Code Section 901(b)(1)(A) provides that the Committee shall use reasonable efforts to notify the sponsoring entity within this time. The proposed regulation, however, provides needed clarity to the statute that, in the event that the statutorily required reasonable efforts are insufficient to review the application in advance of the event, the Committee may then deny the request. It would be counter to the Committee’s consumer protection mandate to require it to grant authorization to an

individual whose request is submitted in so short a time before the scheduled event that it cannot adequately be reviewed.

The other discretionary reasons for denial are based upon the past actions of the Committee with respect to that particular individual. The Committee is of the opinion that if an applicant has previously had a request denied or an authorization terminated, this alone may be cause for a subsequent denial. Because the time for review of the authorization is only 20 days, the Committee may not have time to revisit the case of an individual who has already been determined by the Committee as unfit to participate. The Committee feels that it is reasonable, however, to consider this a discretionary decision so that, on a case-by-case basis, the Committee can reevaluate a particular individual's circumstances as appropriate if sufficient time exists to do so without compromising public protection.

Finally, the Committee believes that it is reasonable and necessary to including discretionary denial authority in the event that an applicant has participated in six or more events within the 12-month period immediately preceding the reviewing application. The Committee feels that, in an effort to maintain the integrity of the state's licensing laws and, thus, protect the public, it should have discretion to deny permission to applicants when the Committee recognizes that a particular applicant practices in California without a license on multiple occasions within the span of one year. Such a situation would frustrate the purpose of the "temporary" nature of the exemption from licensure permitted under Business and Professions Code Section 901.

Problem being addressed 1399.622(d):

This section provides an appeal procedure for an applicant who has had a request for authorization to participate denied by the Committee.

Anticipated benefits from this regulatory action: 1399.622(d):

An applicant requesting authorization to participate in a sponsored event may appeal the denial by following procedures as established by Section 1399.623(d).

Business and Professions Code Section 901 allows for the denial of a request for authorization to participate, but it does not provide any appeal procedure for the denied individual. In order to ensure some measure of due process, the Committee feels that applicants should have access to the same appeal procedure available for an out-of-state practitioner who has had his or her authorization terminated. Therefore, the proposed regulation references the appeal procedure in section 1399.623(d) of these proposed regulations, discussed below. This will provide consistency in the two appeal processes.

Problem being addressed 1399.622(e):

This section requires the out-of-state practitioners who receive authorization to practice

as a physician assistant to post a notice visible to patients.

Anticipated benefits from this regulatory action: 1399.622(e):

The Physician Assistant Committee's mandate is to protect the health, safety, and welfare of California consumers. Public protection is enhanced when patients are aware of the Committee's existence at the time care is rendered.

This proposal will further enhance the Committee's mandate of consumer protection. It has been suggested that many California consumers are not aware of the existence and consumer protection role of the Physician Assistant Committee and the services the Committee provides, such as licensing information, licensee disciplinary data, the complaint process, and medical services provided by physician assistants. Many consumers are also unaware of what agency to contact when they are having concerns or complaints about the care provided by physician assistants.

This proposal is an additional consumer protection tool and will empower consumers by providing written contact information concerning the state agency responsible for licensing physician assistants.

3) Adopt Section 1399.623, Termination of Authorization and Appeal.

Problem being addressed 1399.623(a):

This section provides the grounds upon which the Committee may terminate the authorization to participate previously granted to an out-of-state practitioner.

Anticipated benefits from this regulatory action 1399.623(a):

The first two grounds for termination listed in the proposed regulation are consistent with Business and Professions Code Section 901(j)(1). As an additional ground for termination, this proposed regulation adds the receipt of a credible complaint indicating that the practitioner is unfit to practice or is endangering the public. This provision is necessary in order for the Committee to act consistently with its mandate that protection of the public is its highest priority. Because of the permissive and temporary nature of the licensure exemption granted under Business and Professions Code Section 901, and the limited time which the Committee has to review and verify the qualifications of the out-of-state practitioner, the Committee feels that it is essential that it may act immediately to terminate the authorization to participate granted to the non-California licensed individual when a credible complaint of endangerment is received.

Problem being addressed 1399.623(b):

This section specifies written notice of a termination may be given during a sponsored event.

Anticipated benefits from this regulatory action 1399.623(b):

The statute provides that written notice of a termination shall be given to both the sponsoring entity as well as the individual practitioner. This proposed regulation is necessary to clarify that in the event a termination is issued during the course of a sponsored event, the Committee may provide the written termination notice to any representative of the sponsoring entity on the premises of the event. The most expeditious way to notify the entity is at the event itself so that the practitioner will be instructed to cease practice immediately.

Problem being addressed 1399.623(c):

This section sets forth the consequences of a termination of an authorization to participate and how the Committee will report the fact of the termination.

Anticipated benefits from this regulatory action 1399.623(c):

Business and Professions Code Section 901(j)(3) provides that out-of-state practitioners shall not provide services under this statute following a termination of authorization. The proposed regulation specifies that the practitioner shall “immediately” cease their participation in the event. The Committee feels that this clarification is necessary in the event that a termination is issued during the course of an event. In case there is any confusion as to when the termination becomes effective, this proposed provision would be necessary to remove any doubt that the practitioner must immediately desist from participation as soon as the termination notice is received.

The proposed regulation also provides that the Committee will consider a termination of authorization a disciplinary measure that is reportable to the national practitioner data banks and the individual’s out-of-state licensing authorities. The Committee views these provisions as reasonably necessary and logical in order to protect the public. The grounds for termination are those that the Committee itself would consider as disciplinary measures for its own licensees – Business and Professions Code Sections 480 and 3527, and violations of the Physician Assistant Practice Act. Therefore, because the Committee does not have licensing authority over the out-of-state practitioner, its only disciplinary remedy is to report the conduct to the individual’s home jurisdiction and applicable national practitioner data banks. If the conduct is such that it would lead to action against the practitioner’s out-of-state license, then the Committee would have that information available to it in the event that the individual applied for either a subsequent authorization to participate in a future sponsored event or a license to practice in California.

Problem being addressed 1399.623(d):

This section provides the procedure for appealing denials of authorization and

terminations of authorizations to participate.

Anticipated benefits from this regulatory action 1399.623(d):

The statute allows for an out-of-state practitioner who has had his or her authorization to participate terminated by the Committee to file a written appeal to the Committee within 30 days of receipt of the termination notice. The proposed regulation specifies that this request for appeal shall be considered a request for an informal hearing under the Administrative Procedure Act (APA). This is potentially a less costly method than the formal hearing procedure and is warranted for removal of this type of authorization.

Problem being addressed 1399.623(e):

This section provides an alternative to a hearing under the APA for appeals submitted by out-of-state practitioners.

Anticipated benefits from this regulatory action 1399.623(e):

Business and Professions Code Section 901(j) allows for the filing of an appeal by an out-of-state practitioner. In addition to the APA procedure set forth in proposed section 1399.623(d) above, this proposed regulation also offers the appealing out-of-state practitioner the option of an informal conference with the Committee's executive officer to try and resolve the appeal. This proposed regulation is consistent with the Committee's practice for its own licensees who have been issued a citation (Business and Professions Code Sections 125.9, 148, and California Code of Regulations Section 1399.570) and provides an inexpensive option to ensure the efficient resolution of appeals when possible. The informal conference option proposed does not affect the practitioner's right to a hearing under the APA.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon: None.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The regulation only impacts nonprofit organizations sponsoring free health care events and practitioners from other states volunteering in California. There is some impact to the out-of-state volunteers in that they will be required to submit the processing fee to receive authorization to participate. This fee will have to be factored into the cost of that individual's volunteerism. The fee may be covered by sponsoring entities, who will also incur minor costs with respect to maintaining records of their volunteers, reporting to

boards after events and filing a registration as appropriate. Those costs are imposed by the statute and not by these regulations

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it only allows out-of-state practitioners to temporarily practice at health care events in California.
- It will not create new business or eliminate existing businesses within the State of California because it only allows out-of-state practitioners to temporarily practice at health care events in California.
- It will not affect the expansion of businesses currently doing business within the State of California because it only allows out-of-state practitioners to temporarily practice at health care events in California.
- This regulatory proposal benefits the health and welfare of California residents because it allows uninsured and underinsured access to health care provided by out-of-state practitioners at free health care events.
- This regulatory proposal does not affect worker safety because it only allows out-of-state practitioners to temporarily practice at health care events in California.
- This regulatory proposal does not affect the state's environment because it only allows out-of-state practitioners to temporarily practice at health care events in California.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1) Not adopt regulation. This alternative was rejected because the Committee is directed by statute to adopt regulations and there is, thus, no other method of developing the forms and procedure for registering sponsoring entities and granting authorization for requests by out-of-state practitioners to participate in sponsored events.

2) Adopt regulation. The Committee determined that the second alternative was the most feasible because Business and Professions Code Section 901 mandates adoption of regulations.