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**SENATE COMMITTEE ON  
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**  
Senator Richard Roth, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	AB 1102	<b>Hearing Date:</b>	July 12, 2021
<b>Author:</b>	Low		
<b>Version:</b>	February 18, 2021		
<b>Urgency:</b>	No	<b>Fiscal:</b>	No
<b>Consultant:</b>	Sarah Mason		

**Subject:** Telephone medical advice services

**SUMMARY:** Clarifies that a telephone medical advice service is required to ensure that all health care professionals providing telephone medical advice services from an out-of-state location are operating consistent with the laws governing their licenses, in addition to their respective scopes of practice, and clarifies that a telephone medical advice service is required to comply with directions and requests for information made by the respective in-state healing arts licensing boards.

**Existing law:**

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency to house licensing boards, bureaus, committees and a commission for purposes of licensure and regulation to ensure adequate regulation to protect the people of California. (BPC § 100-144.5)
- 2) Regulates telephone medical advice services through the licensing boards responsible for the practice of the licenses providing the advice. (BPC § 4999-4999.7)
- 3) Defines “telephone medical advice” as a telephonic communication between a patient and a health care professional in which the health care professional’s primary function is to provide to the patient a telephonic response to the patient’s questions regarding the patient’s or a family member’s medical care or treatment, including assessment, evaluation, or advice provided to patients or their family members. (BPC § 4999.7(b))
- 4) Defines “telephone medical advice service” as any business entity that employs, or contracts or subcontracts, directly or indirectly, with, the full-time equivalent of five or more persons functioning as health care professionals, whose primary function is to provide telephone medical advice, that provides telephone medical advice services to a patient at a California address. The definition does not include a medical group that operates in multiple locations in California if no more than five full-time equivalent persons at any one location perform telephone medical advice services and those persons limit the telephone medical advice services to patients being treated at that location. (BPC § 4999)
- 5) Defines “health care professional” as an employee or independent contractor who provides medical advice services and is appropriately licensed, certified, or

registered as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions, as a physician and surgeon, as a registered, as a psychologist, as a naturopathic doctor, as an optometrist, as a marriage and family therapist, as a licensed clinical social worker, as a licensed professional clinical counselor, or as a chiropractor, and who is operating consistent with the laws governing the licensee's respective scopes of practice in the state in which the licensee provides telephone medical advice services. (BPC § 4999.7)

- 6) Requires a telephone medical advice service to comply with the following requirements:
  - a) Ensuring that all health care professionals who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon, as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions, as an occupational therapist, as a registered nurse, as a psychologist, as a naturopathic doctor, as a marriage and family therapist, as a licensed clinical social worker, as a licensed professional clinical counselor, as an optometrist, or as a chiropractor, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided. (BPC § 4999.2(a)(1))
  - b) Ensuring that all health care professionals who provide telephone medical advice services from an out-of-state location are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating consistent with the laws governing their respective scopes of practice. (BPC § 4999.2(a)(2))
  - c) Ensuring that the telephone medical advice provided is consistent with good professional practice. (BPC § 4999.2(b))
  - d) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years. (BPC § 4999.2(c))
  - e) Ensuring that no staff member uses a title or designation when speaking to an enrollee, subscriber, or consumer that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered health care professional, unless the staff member is a licensed, certified, or registered professional. (BPC § 4999.2(d))
  - f) Complying with all directions and requests for information made by the DCA. (BPC § 4999.2(e))
  - g) Notifying the DCA within 30 days of any change of name, physical location, mailing address, or telephone number of any business, owner, partner, corporate officer, or agent for service of process in California, together with copies of all resolutions or other written communications that substantiate these changes. (BPC § 4999.2(f))

**This bill:**

- 1) Clarifies that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing their respective licenses, in addition to their scopes of practices.
- 2) Clarifies that a telephone medical advice service is required to comply with all directions and requests for information made by the respective healing arts licensing boards.

**FISCAL EFFECT:** This bill is not keyed fiscal by Legislative Counsel.

**COMMENTS:**

1. **Purpose and Background.** This bill is sponsored by the author. According to the Author, the bill will clarify that a person who resides out of state and provides telephone medical advice in California must comply with the specific licensing requirements, not just the scope of practice requirements, of their own state's license.

*Telephone Medical Advice Services.* The Telephone Medical Advice Services Bureau (TMAS) was created in 1999 (AB 285, Corbett, Chapter 535, Statutes of 1999) in response to a situation in which a Senator's constituent was unable to contact her physician over the phone, received inadequate service at a clinic, and then died after surgery at a hospital. Under that regulatory structure, any business that provided telephone medical advice services to a patient in California, who employs or contracts with five or more health care professionals, was required to register with the Bureau. There were 61 registrants as of 2015. The Bureau was intended to ensure that all registrants file quarterly reports and check to make sure that all the licensees provided on the list by the registrant were properly licensed.

Through the sunset review oversight of DCA in 2015-2016, it was noted that consumers were already protected from unlicensed providers by the other DCA regulatory health boards because telehealth statutes had evolved to authorize and regulate the provision of healthcare remotely via the telephone and other technologies. TMAS was eliminated as of January 1, 2017.

At the time, TMAS was under the direct control of the DCA. When TMAS sunset, there was no DCA unit or division to assume the duties overseeing telephone medical advice companies, so the enforcement duties were transferred to individual boards through their existing authority over the practice of the relevant licensed practitioners.

The law, though, still requires companies to comply with DCA direction and requests for information. The DCA of course only has limited authority over licensing boards and their licensees, as boards make licensing and enforcement decisions. The law may not be as clear as to the authority of boards over telephone medical advice service businesses. This bill would clarify that the enforcement of the regulation of

telephone medical advice services is within the jurisdiction of boards by requiring them to comply with directions and requests from the boards, not just the DCA.

2. **Related Legislation.** AB 1529 (Low, Chapter 830, Statutes of 2019), as introduced, was identical to this bill but was substantially amended to address a different topic.

SB 1039 (Hill, Chapter 799, Statutes of 2016), among other things, sunset the Telephone Medical Advice Services Bureau and shifted the oversight over telephone medical advice services to the respective healing arts licensing boards responsible for enforcing those requirements and any other laws and regulations affecting those health care professionals licensed in California.

SB 800 (Committee on Business, Professions and Economic Development, Chapter 426, Statutes of 2015), among other things, expanded the health care professionals under the telephone medical advice registration program to include naturopathic doctors and licensed professional clinical counselors and required a telephone medical advice service to notify the DCA of certain business changes, and to submit quarterly reports.

3. **Arguments in Support.** The California Association of Orthodontists writes in support and notes, “This bill would address the problem by clarifying that the telephone medical advice companies must also comply with directions and requests for information from not just the DCA, but also any licensing board that has jurisdiction over the type of advice being provided. Further, by virtue of hiring the professionals, the companies themselves may be providing services under state law. As a result, the oversight of these companies should be clarified to also include the licensing boards. It would also clarify that a person who resides out of state and provides telephone medical advice in California must comply with the specific licensing requirements (e.g. not delinquent), not just the scope of practice requirements of their own state’s license.”

The Medical Board of California writes in support and notes, “[This bill] would specify that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing their respective licenses. The bill would also specify that a telephone medical advice service is required to comply with all directions and requests for information made by the respective healing arts licensing boards. By clarifying that these organizations must comply with directions and requests from the Board with regard to the practice of medicine, AB 1102 furthers the Board’s mission of consumer protection.”

## **SUPPORT AND OPPOSITION:**

### Support:

California Association of Orthodontists  
Medical Board of California

Opposition:

None received

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