

**ASSEMBLY BILL**

**No. 40**

---

---

**Introduced by Assembly Member Bonta**

December 2, 2024

---

---

An act to amend Section 1317.1 of the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as introduced, Bonta. Emergency services and care.

Existing law provides for the licensing and regulation of health facilities by the State Department of Public Health and makes a violation of those provisions a crime. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law requires a health facility to provide emergency services and care upon request or when a person is in danger of loss of life or serious injury or illness, and requires a health care service plan to reimburse providers for emergency services and care. Existing law defines “emergency services and care” for these purposes to mean medical screening, examination, and evaluation by a physician and surgeon, or other appropriate licensed persons under the supervision of a physician and surgeon, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery, if within the scope of that person’s license, necessary to relieve or eliminate the emergency medical condition, within the capability of the facility, among other things.

This bill would additionally define “emergency services and care” for the above-described purposes to mean reproductive health services,

including abortion. By expanding the applicability of a crime with respect to health facilities and health care service plans, the bill would impose a state-mandated local 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that  
2 Californians have the constitutional right that expressly provides  
3 that the state shall not deny or interfere with an individual's  
4 reproductive freedom in their most intimate decisions, which  
5 includes their fundamental right to choose to have an abortion. It  
6 is the intent of the Legislature in enacting this act to clarify that  
7 existing law related to emergency services and care necessary to  
8 relieve or eliminate an emergency medical condition includes  
9 reproductive health services, including abortion.

10 SEC. 2. Section 1317.1 of the Health and Safety Code is  
11 amended to read:

12 1317.1. Unless the context otherwise requires, the following  
13 definitions shall control the construction of this article and Section  
14 1371.4:

15 (a) (1) "Emergency services and care" means medical screening,  
16 examination, and evaluation by a physician and surgeon, or, to the  
17 extent permitted by applicable law, by other appropriate licensed  
18 persons under the supervision of a physician and surgeon, to  
19 determine if an emergency medical condition or active labor exists  
20 and, if it does, the care, treatment, and surgery, if within the scope  
21 of that person's license, necessary to relieve or eliminate the  
22 emergency medical condition, within the capability of the facility.

23 (2) "*Emergency services and care*" also means reproductive  
24 health services, including abortion.

25 (2)

1 (3) (A) “Emergency services and care” also means an additional  
2 screening, examination, and evaluation by a physician, or other  
3 personnel to the extent permitted by applicable law and within the  
4 scope of their licensure and clinical privileges, to determine if a  
5 psychiatric emergency medical condition exists, and the care and  
6 treatment necessary to relieve or eliminate the psychiatric  
7 emergency medical condition, within the capability of the facility.

8 (B) The care and treatment necessary to relieve or eliminate a  
9 psychiatric emergency medical condition may include admission  
10 or transfer to a psychiatric unit within a general acute care hospital,  
11 as defined in subdivision (a) of Section 1250, or to an acute  
12 psychiatric hospital, as defined in subdivision (b) of Section 1250,  
13 pursuant to subdivision (k). This subparagraph does not permit a  
14 transfer that is in conflict with the Lanterman-Petris-Short Act  
15 (Part 1 (commencing with Section 5000) of Division 5 of the  
16 Welfare and Institutions Code), or the federal Emergency Medical  
17 Treatment and Labor Act (Section 1395dd of Title 42 of the United  
18 States Code).

19 (C) For the purposes of Section 1371.4, emergency services and  
20 care as defined in subparagraph (A) shall not apply to Medi-Cal  
21 managed care plan contracts entered into with the State Department  
22 of Health Care Services pursuant to Chapter 7 (commencing with  
23 Section 14000), Chapter 8 (commencing with Section 14200), and  
24 Chapter 8.75 (commencing with Section 14591) of Part 3 of  
25 Division 9 of the Welfare and Institutions Code, to the extent that  
26 those services are excluded from coverage under those contracts.

27 (D) This paragraph does not expand, restrict, or otherwise affect  
28 the scope of licensure or clinical privileges for clinical  
29 psychologists or other medical personnel.

30 (b) “Emergency medical condition” means a medical condition  
31 manifesting itself by acute symptoms of sufficient severity  
32 (including severe pain) such that the absence of immediate medical  
33 attention could reasonably be expected to result in any of the  
34 following:

- 35 (1) Placing the patient’s health in serious jeopardy.
  - 36 (2) Serious impairment to bodily functions.
  - 37 (3) Serious dysfunction of any bodily organ or part.
- 38 (c) “Active labor” means a labor at a time at which either of the  
39 following would occur:

- 1 (1) There is inadequate time to effect safe transfer to another  
2 hospital prior to delivery.
- 3 (2) A transfer may pose a threat to the health and safety of the  
4 patient or the fetus.
- 5 (d) “Hospital” means all hospitals with an emergency department  
6 licensed by the state department.
- 7 (e) “State department” means the State Department of Public  
8 Health.
- 9 (f) “Medical hazard” means a material deterioration in medical  
10 condition in, or jeopardy to, a patient’s medical condition or  
11 expected chances for recovery.
- 12 (g) “Board” means the Medical Board of California.
- 13 (h) “Within the capability of the facility” means those  
14 capabilities that the hospital is required to have as a condition of  
15 its emergency medical services permit and services specified on  
16 Services Inventory Form 7041 filed by the hospital with the  
17 Department of Health Care Access and Information.
- 18 (i) “Consultation” means the rendering of an opinion or advice,  
19 prescribing treatment, or the rendering of a decision regarding  
20 hospitalization or transfer by telephone or other means of  
21 communication. When determined to be medically necessary,  
22 jointly by the treating physician and surgeon, or by other  
23 appropriate licensed persons acting within their scope of licensure,  
24 under the supervision of a physician and surgeon, and the  
25 consulting physician and surgeon, “consultation” includes review  
26 of the patient’s medical record, examination, and treatment of the  
27 patient in person by a consulting physician and surgeon, or by  
28 other appropriate licensed persons acting within their scope of  
29 licensure under the supervision of a consulting physician and  
30 surgeon, who is qualified to give an opinion or render the necessary  
31 treatment in order to stabilize the patient. A request for consultation  
32 shall be made by the treating physician and surgeon, or by other  
33 appropriate licensed persons acting within their scope of licensure  
34 under the supervision of a treating physician and surgeon, provided  
35 the request is made with the contemporaneous approval of the  
36 treating physician and surgeon. The treating physician and surgeon  
37 may request to communicate directly with the consulting physician  
38 and surgeon, and when determined to be medically necessary,  
39 jointly by the treating physician and surgeon and the consulting  
40 physician and surgeon, the consulting physician and surgeon shall

1 examine and treat the patient in person. The consulting physician  
2 and surgeon is ultimately responsible for providing the necessary  
3 consultation to the patient, regardless of who makes the in-person  
4 appearance.

5 (j) A patient is “stabilized” or “stabilization” has occurred when,  
6 in the opinion of the treating physician and surgeon, or other  
7 appropriate licensed persons acting within their scope of licensure  
8 under the supervision of a treating physician and surgeon, the  
9 patient’s medical condition is such that, within reasonable medical  
10 probability, no material deterioration of the patient’s condition is  
11 likely to result from, or occur during, the release or transfer of the  
12 patient as provided for in Section 1317.2, Section 1317.2a, or other  
13 pertinent statute.

14 (k) (1) “Psychiatric emergency medical condition” means a  
15 mental health disorder that manifests itself by acute symptoms of  
16 sufficient severity that it renders the patient as being either of the  
17 following, regardless of whether the patient is voluntary or  
18 involuntarily detained for assessment, evaluation, and crisis  
19 intervention, or placement for evaluation and treatment pursuant  
20 to the Lanterman-Petris-Short Act (Part 1 (commencing with  
21 Section 5000) of Division 5 of the Welfare and Institutions Code):

- 22 (A) An immediate danger to themselves or to others.
- 23 (B) Immediately unable to provide for, or utilize, food, shelter,  
24 or clothing, due to the mental health disorder.

25 (2) This subdivision does not expand, restrict, or otherwise  
26 affect the scope of licensure or clinical privileges for clinical  
27 psychologists or medical personnel.

28 (l) This section does not expand the scope of licensure for  
29 licensed persons providing services pursuant to this section.

30 (m) This section does not require a transfer or admission that  
31 is in conflict with the Lanterman-Petris-Short Act (Part 1  
32 (commencing with Section 5000) of Division 5 of the Welfare and  
33 Institutions Code) or with the requirements of the federal  
34 Emergency Medical Treatment and Labor Act (42 U.S.C. Sec.  
35 1395dd).

36 SEC. 3. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

5 SEC. 4. This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety within  
7 the meaning of Article IV of the California Constitution and shall  
8 go into immediate effect. The facts constituting the necessity are:

9 In order to protect the public from actions that are contrary to  
10 the public policy and laws of this state, including actions that  
11 interfere with a person’s ability to access the emergency medical  
12 reproductive care they need, it is necessary that this act take effect  
13 immediately.