

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 562 (Low)  
Version: April 8, 2021  
Hearing Date: July 6, 2021  
Fiscal: Yes  
Urgency: Yes  
AWM

**SUBJECT**

Frontline COVID-19 Provider Mental Health Resiliency Act of 2021: health care providers: mental health services

**DIGEST**

This bill requires the Director of the Department of Consumer Affairs (DCA) to establish a mental health resiliency program, as specified, to provide mental health services to licensed health care providers who provide or have provided consistent in-person healthcare services to COVID-19 patients.

**EXECUTIVE SUMMARY**

Since the start of the COVID-19 pandemic, California's frontline medical providers have been caring for COVID-19 patients through multiple surges, including a record-breaking death toll in December 2020. These frontline providers are suffering from burnout and are at high risk of mental health conditions, including depression, anxiety, post-traumatic stress disorder, and suicidal thoughts. To provide desperately needed mental health services to these frontline workers, this bill establishes the Frontline COVID-19 Provider Mental Health Resiliency Act of 2021, which requires the DCA to establish a mental health resiliency program in consultation with relevant health arts boards. Under the program, the DCA would contract with vendors of mental health services for the duration of the program; the individual boards would then administer the program and determine eligibility. The bill provides that treatment records and other mental-health-related information are not subject to disclosure under the California Public Records Act (CPRA).

This bill is sponsored by United Nurses Associations of California/Union of Health Care Professionals, the California Society of Anesthesiologists, the California Medical Association, and American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO, and supported by a number of medical practitioner groups.

There is no known opposition. This bill passed out of the Senate Business, Professions and Economic Development Committee with a vote of 12-0.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Regulates the healing arts and related professions, including physicians, surgeons, osteopathic physicians and surgeons, nurses, and physician assistants, each of which is governed by a board dedicated to implementation of regulations and requirements concerning the profession. (Bus. & Prof. Code, §§ 2000-2529.6; 2700-2838.4; 3500-3546.)
- 2) Authorizes, whenever it appears that any person holding a healing arts license, certificate, or permit may be unable to practice their profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. (BPC § 820)
- 3) Authorizes the Medical Board to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in their rehabilitation from, their substance use to ensure that the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession. If established, the board must contract for the program's administration with a private third-party independent administering entity pursuant to a request for proposals. (Bus. & Prof. Code, §§ 2340-2340.8.)<sup>1</sup>
- 4) For the professions of osteopathic physicians and surgeons, nurses, and physician assistants, establishes committees established, as a voluntary approach to traditional disciplinary action, to identify members of the profession whose competency may be impaired due to the use of substances and, in the case of nursing, mental illness, so that the practitioner may be rehabilitated and return to practice. (Bus. & Prof. Code, §§ 2360-2370, 2770, 3534-3534.10.)

This bill:

- 1) Establishes the Frontline COVID-19 Provider Mental Health Resiliency Act of 2021.
- 2) Finds and declares that, from the beginning of the COVID-19 pandemic, Nurses, physicians and surgeons, and other frontline health care providers are suffering

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<sup>1</sup> According to the author, this program was never implemented because of its cost.

from burnout and have been experiencing, or are at high risk of, a variety of mental health conditions, including depression, anxiety, post-traumatic stress disorder, and suicidal thoughts, which will likely endure long after the pandemic ends.

- 3) States that it is the intent of the Legislature that the DCA, through the relevant boards, immediately establish a mental health resiliency program for frontline health care providers who have provided direct and in-person care to COVID-19 patients during the pandemic.
- 4) Requires the Director of the DCA (Director), within three months of the effective date of this bill, in consultation with the relevant boards, to establish a mental health resiliency program to provide mental health services to frontline COVID-19 providers; and authorizes the Director to engage and supervise vendors of mental health services to implement the program.
- 5) Requires that all vendor contracts in connection with the program specify that all personal or identifiable program participant data must be kept confidential, and that the confidentiality obligations shall survive the termination of the contract.
- 6) Exempts the program from the requirements of the Administrative Procedure Act.
- 7) Requires the relevant boards to notify licensees and professionals of the program, establishes application requirements – including that the applicant was a frontline COVID-19 worker, and requires that all eligible licensees be granted access to the program. An applicant who knowingly makes a false statement on an application for the program is guilty of a misdemeanor.
- 8) Provides that the program will sunset on January 1, 2025.
- 9) Requires the DCA and relevant boards, no later than June 30, 2025, report to the relevant policy committees of the Legislature specified information about the utilization of the program and the associated costs.
- 10) Exempts records associated with the program from disclosure under the CPRA, and provides that application to or participation in the program shall not be used in connection with disciplinary proceedings and shall be kept confidential.
- 11) Includes an urgency clause.

## COMMENTS

### 1. Author's comment

According to the author:

If the true measure of a society is how it treats its most vulnerable people, we should be equally concerned with how well we support heroes who have been working nonstop during a generational crisis. The pandemic has placed our nurses, physicians, and frontline health care workers under enormous stress, and they have been carrying this unbelievable burden for nearly a year. The trauma they have experienced will not just go away when vaccines become ubiquitous and the pandemic comes to an end. We need urgent action to support these heroes by expanding access to mental and behavioral health services.

### 2. This bill creates a mental health treatment program for frontline COVID-19 healthcare workers that allows their mental health struggles to remain confidential

Frontline medical workers are like firefighters: when most people are fleeing dangerous conditions, frontline medical workers are running towards it. For nearly a year and a half, frontline medical workers have put their lives in danger to treat, comfort, and mourn patients who contracted COVID-19. Even with personal protective equipment – which was not reliably available at the start of the pandemic – frontline medical workers have at least a threefold risk of contracting COVID-19 as compared to the general population.<sup>2</sup> Nonwhite healthcare workers made up a disproportionate number of the deaths;<sup>3</sup> notably, Filipino and Filipina nurses make up 4 percent of the registered nurses in the United States, but accounted for 31.5 percent of the registered nurses who passed away from COVID-19.<sup>4</sup> As of September 2020, California had the highest total number of frontline medical worker COVID-19 cases and the third-highest fatality rate.<sup>5</sup> The staffing shortages caused by healthcare worker illnesses became so overwhelming

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<sup>2</sup> Nguyen, et al., *Risk of COVID-19 among front-line health-care workers and the general community: a prospective cohort study*, *The Lancet*, Vol. 5, Iss. 9 (Sept. 1, 2020), available at [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30164-X/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30164-X/fulltext) [last visited Jul. 2, 2021].

<sup>3</sup> The Guardian & Kaiser Health News, *Lost on the frontline*, *The Guardian* (Apr. 2021), <https://www.theguardian.com/us-news/ng-interactive/2020/aug/11/lost-on-the-frontline-covid-19-coronavirus-us-healthcare-workers-deaths-database> [last visited Jul. 2, 2021].

<sup>4</sup> National Nurses United, *Sins of Omission: How Government Failures to Track Covid-19 Data Have Led to More Than 1,700 Health Care Worker Deaths and Jeopardize Public Health*, (Sept. 2020), at p. 12, available at [https://www.nationalnursesunited.org/sites/default/files/nnu/graphics/documents/0920\\_Covid19\\_SinsOfOmission\\_Data\\_Report.pdf](https://www.nationalnursesunited.org/sites/default/files/nnu/graphics/documents/0920_Covid19_SinsOfOmission_Data_Report.pdf) [last visited Jul. 2, 2021].

<sup>5</sup> *Id.* at pp. 13-14.

that the United States Department of Defense lent combat medics and nurses to assist in hospitals around the state.<sup>6</sup>

The strain on healthcare workers went far beyond the risk of infection. Frontline workers describe experiencing “the unrelenting stress that has become an endemic part of the health care crisis nationwide.”<sup>7</sup> This includes “spikes in anxiety and depressive thoughts, as well as a chronic sense of hopelessness and deepening fatigue, spurred in part by the cavalier attitudes of many Americans who seem to have lost patience with the pandemic.”<sup>8</sup> Blue Shield of California reported in December 2020 that two-thirds of California healthcare workers felt emotionally frustrated, overworked, and burned out.<sup>9</sup> The emotional toll pushed many healthcare professionals to the breaking point. In the words of one nurse:

“To be a nurse, you have to really care about people,” Neville said. But when an ICU is packed with COVID-19 patients, most of whom are likely to die, “to protect yourself, you just shut down. You get to the point where you realize that you’ve become a machine. There’s only so many bags you can zip.”<sup>10</sup>

Everyone agrees that these healthcare workers are heroes. From the beginning of the pandemic, healthcare workers were praised for their strength and resilience in the face of the unimaginable trauma they face on a daily basis. But those glowing words were often empty praise, as people and governments failed to take concrete actions that could ease the burden on those they claimed to admire. One nurse described the “wartime rhetoric” as a way “for things to seem like the deaths of health care workers and the illnesses of health care workers were inevitable, unavoidable, when really we’re being sacrificed by the refusal of the federal government to up its manufacturing of [personal protective equipment].”<sup>11</sup> Doctors and nurses from three California health systems made a video pleading with people not to celebrate the Christmas and New Year holidays indoors, to avoid overwhelming the already-overburdened healthcare

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<sup>6</sup> Karlamangla, *Thousands of L.A. healthcare workers sickened by coronavirus, worsening crisis in hospitals*, Los Angeles Times (Jan. 2, 2021), <https://www.latimes.com/california/story/2021-01-06/covid-19-surge-infecting-la-healthcare-workers-in-huge-numbers> [last visited Jul. 2, 2021].

<sup>7</sup> Wu, *Covid Combat Fatigue: ‘I Would Come Home With Tears in My Eyes’*, New York Times (Nov. 25, 2020; updated Jan. 28, 2021), <https://www.nytimes.com/2020/11/25/health/doctors-nurses-covid-stress.html> [last visited Jul. 2, 2021].

<sup>8</sup> *Ibid.*

<sup>9</sup> Crook, *As COVID-19 Surges in California, Healthcare Workers, ICUs and Providers Struggle to Cope*, Blue Shield California News Center (Dec. 18, 2020), <https://news.blueshieldca.com/2020/12/18/as-covid-19-surges-in-california-healthcare-workers-ic-us-and-providers-struggle-to-cope> [last visited Jul. 2, 2021].

<sup>10</sup> Yong, *No One Is Listening to Us*, The Atlantic (Nov. 13, 2020), <https://www.theatlantic.com/health/archive/2020/11/third-surge-breaking-healthcare-workers/617091/> [last visited Jul. 2, 2021].

<sup>11</sup> Palus, *A Nurse Explains Who Can Call Her a Hero and What She Thinks of All the Applause*, Slate (Apr. 23, 2020), <https://slate.com/technology/2020/04/nurse-hero-protest.html> [last visited Jul. 2, 2021].

system<sup>12</sup> – after a post-Thanksgiving surge when people ignored recommendations not to gather in large groups.<sup>13</sup>

This bill is intended to move past platitudes and provide frontline medical workers access to meaningful mental health assistance. The bill requires the Director of the DCA, within three months of the effective date of the bill, to establish a mental health resiliency program to provide mental health services to frontline COVID-19 providers. The program will include targeted in-person, online, and telehealth psychological services to support mental and behavior health needs arising from the toll of the COVID-19 pandemic. Medical professionals would be eligible for the program if they provide or have provided consistent in-person health care services to patients with COVID-19. The bill includes an urgency clause, to ensure the program is developed as soon as possible, and a sunset clause to end the program on January 1, 2025. At that point, the DCA and relevant medical boards will report to the Legislature disaggregated information relating to utilization of the program.

Relevant to this Committee is this bill's provisions regarding the confidentiality of certain records created in connection with the frontline worker mental health program. Specifically, the bill provides that all personal or identifiable program participant data created in connection with the program shall be confidential, and not subject to disclosure under the CPRA, including applications to the program; the bill provides a narrow exception for deidentified aggregate participant data, in order to provide a report to the relevant policy committees of the Legislature on the utilization rates of the program. The bill further provides that application to, and participation in, the program may not be used in connection with any disciplinary proceedings.

According to the author, the confidentiality provisions are essential to the purpose of the bill, because without them, healthcare professionals would not be willing to participate in the program. There is strong evidence that people often avoid seeking mental health treatment due to the stigma surrounding mental illness;<sup>14</sup> reports suggest that medical professionals are particularly likely to avoid seeking treatment because they fear they could suffer negative professional consequences.<sup>15</sup> Accordingly, for this

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<sup>12</sup> Zitser, *Doctors and nurses in California released a harrowing video begging people not to gather for the holidays, saying it will 'cripple our hospital system'*, Business Insider (Dec. 24, 2020), <https://www.businessinsider.com/video-doctors-nurse-california-beg-people-dont-gather-for-holidays-2020-12> [last visited Jul. 2, 2021].

<sup>13</sup> Fernandez, et al., *As Christmas Nears, Virus Experts Look for Lessons from Thanksgiving*, New York Times (Dec. 20, 2020), <https://www.nytimes.com/interactive/2020/12/20/us/covid-thanksgiving-effect.html> [last visited Jul. 2, 2021].

<sup>14</sup> E.g., American Psychiatric Association, *Stigma, Prejudice and Discrimination Against People with Mental Illness*, <https://www.psychiatry.org/patients-families/stigma-and-discrimination> [last visited Jul. 2, 2021].

<sup>15</sup> Behbahani & Thompson, *Why don't doctors seek mental health treatment? They'll be punished for it.*, Washington Post (May 11, 2020), <https://www.washingtonpost.com/outlook/2020/05/11/mental-health-doctors-covid/> [last visited Jul. 2, 2021].

program to be remotely effective, potential participants must be secure in the knowledge that their mental health struggles will remain private.

The CPRA exemptions created by the bill – for personal mental health information and records – are consistent with existing CPRA exemptions. Medical files “the disclosure of which would constitute an unwarranted invasion of personal privacy” are already exempted,<sup>16</sup> as are communications between a patient and a psychotherapist or psychologist<sup>17</sup> and a range of information relating to persons with mental health disorders.<sup>18</sup> Particularly relevant are the existing diversionary programs available for medical professionals, all of which make board and committee records of proceedings relating to a participating professional confidential and, for the most part, not subject to discovery or subpoena.<sup>19</sup> To the extent an exemption to the CPRA and the constitutional right to inspect government records demands a superior competing interest, health care workers’ right to keep their mental health records private is clearly compelling.<sup>20</sup>

### 3. Arguments in support

According to bill co-sponsor AFSCME, AFL-CIO:

A recent study supported by the Johnson & Johnson Foundation showed that 93 percent of surveyed healthcare workers were experiencing general stress, 86 percent reported anxiety, 77 percent reported overall frustration, 76 percent reported exhaustion and burnout, and 75 percent said they were overwhelmed. Additionally, 76 percent surveyed worried about exposing their children to the virus while approximately half worried about exposure to their spouses and elderly family members. Based on the DSM-5, post-traumatic stress symptoms can follow the witnessing of death, the threat of death to oneself, or the threat of death to loved ones; frontline workers have faced these each day for the past year. After witnessing unfathomable suffering, bearing the brunt of the pandemic, and sacrificing for their families and communities, healthcare workers have been pushed beyond what is reasonable to expect them to endure. COVID-19 frontline workers deserve to have their traumatic experiences acknowledged and the effects mitigated, both for their own well-being and for the sustainability of our healthcare infrastructure.

Mental health among frontline workers is just as imperative to their overall wellness as their physical condition and AB 562 provides immediate support to those who have taken care of our communities throughout the pandemic.

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<sup>16</sup> Gov. Code, § 6254(c).

<sup>17</sup> *Id.*, § 6254(k); Evid. Code, § 1014; Bus. & Prof. Code, § 6276.36.

<sup>18</sup> Gov. Code, § 6276.34.

<sup>19</sup> See Bus. & Prof. Code, §§ 2340.6, 2369, 2770.12, 3534.7.

<sup>20</sup> See Cal. Const., art. I, § 3(b)(1) & (3).

According to bill co-sponsor United Nurses Associations of California/Union of Health Care Professionals:

During the COVID-19 pandemic, nurses and other hospital workers were on the frontline of battling a dangerous, deadly, and highly infectious disease. They experienced record-setting deaths, dangerously overcrowded health facilities, and months of overtime and extra shifts to help care for those infected with the virus. Many nurses had to convey last goodbyes to critically ill patients whose families could not be present for fear of exposure to the disease. The incredible toll under unprecedented conditions has led many nurses and other health care professionals to the brink of burnout. They endured a continuous barrage of high-stress, trauma-inducing events in the workplace, and many are experiencing various forms of PTSD.

AB 562 would ensure that these heroes have access to the mental health [care] they need. Not only will this directly benefit the impacted health care workers, but it will also benefit the public at large by ensuring that our health care workforce can remain strong, resilient, and ready to adapt to the next public health crisis. The bill would require the Director of the Department of Consumer Affairs to establish a mental health resiliency program to provide mental health services to health care workers licensed by the Department. These mental health care services would include individualized and targeted assessments and interventions to improve the mental health of the COVID-19 healthcare workforce...

Nurses and other frontline COVID-19 workers need effective mental health treatment. AB 562 provides a pathway for them to get the services they need and deserve.

### **SUPPORT**

AFSCME, AFL-CIO (co-sponsor)

California Medical Association (co-sponsor)

California Society of Anesthesiologists (co-sponsor)

United Nurses Associations of California/Union of Health Care Professionals (co-sponsor)

American College of Emergency Physicians, California Chapter

California Academy of Family Physicians

California Association of Health Facilities

California Pharmacists Association

California State Association of Psychiatrists

Depression and Bipolar Support Alliance

National Association of Social Workers, California Chapter



**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation:

SB 213 (Cortese, 2021) creates workers' compensation rebuttable presumptions that specified injuries that develop or manifest in a hospital employee who provides direct patient care in an acute care hospital arose out of and in the course of the employment. SB 213 was placed on the Senate inactive file.

AB 650 (Muratsuchi, 2021) establishes the Health Care Workers Recognition and Retention Act, which requires specified medical employers to provide hazard pay for health care employees. AB 650 was placed on the Assembly inactive file.

Prior Legislation:

SB 1177 (Galgiani, Ch. 591, Stats. 2016) authorized the Medical Board of California to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse, as specified.

**PRIOR VOTES:**

Senate Business, Professions and Economic Development Committee (Ayes 12, Noes 0)  
Assembly Floor (Ayes 75, Noes 0)  
Assembly Appropriations Committee (Ayes 16, Noes 0)  
Assembly Business and Professions Committee (Ayes 18, Noes 0)

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