

AMENDMENTS TO ASSEMBLY BILL NO. 1102

Amendment 1

In the heading, in line 1, strike out “Member Low” and insert:

Members Low, Akilah Weber, and Wicks

Amendment 2

In the heading, below line 1, insert:

(Principal coauthors: Senators Min, Newman, Pan, and Wiener)

Amendment 3

In the title, in line 1, strike out “amend Section 4999.2 of the Business and Professions”, strike out line 2 and insert:

amend, repeal, and add Section 12940 of the Government Code, relating to employment discrimination, and declaring the urgency thereof, to take effect immediately.

Amendment 4

On page 2, before line 1, insert:

SECTION 1. The Legislature finds and declares the following:

(a) On March 4, 2020, Governor Gavin Newsom declared a state of emergency in California due to the threat posed by the novel coronavirus (COVID-19) pandemic.

(b) On December 11, 2020, the United States Food and Drug Administration (FDA) issued the first emergency use authorization for the Pfizer-BioNTech COVID-19 vaccine, allowing the vaccine to be distributed in the United States. Since then, the FDA has authorized two additional vaccines for emergency use, the Moderna vaccine and the Janssen (Johnson & Johnson) vaccine.

(c) The Pfizer-BioNTech, Moderna, and Janssen vaccines against COVID-19 have been proven highly effective in preventing severe illness, hospitalization, and death.

(d) Federal Centers for Disease Control and Prevention (CDC) Director Dr. Rochelle Walensky and other public health experts have warned that the current surge in coronavirus infections and deaths is becoming “a pandemic of the unvaccinated.” Dr. Anthony Fauci has stated that more than 99 percent of recent deaths due to COVID-19 were among the unvaccinated.

(e) There is a need for people who have been previously infected with COVID-19 to get vaccinated, as researchers have found that getting “vaccinated after infection boosted by 50-fold the activity of neutralizing antibodies needed to repel the virus and prevented infection with variants.”



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(f) Children under 12 years of age are not yet eligible to be vaccinated, which puts them at risk of contracting the highly contagious COVID-19 Delta variant.

(g) An internal memo by the CDC noted that the Delta variant of the coronavirus may cause more severe illness than earlier variants and spreads as easily as the chickenpox.

(h) In order to avoid further shutdowns and prevent the health care system from becoming overwhelmed, it is critical that all eligible Californians get vaccinated against COVID-19.

(i) On March 4, 2021, the Department of Fair Employment and Housing published guidance entitled "Employment Information on COVID-19" and noted that, under the California Fair Employment and Housing Act (FEHA), an employer may require employees to receive a vaccination against COVID-19.

(j) In May 2021, the United States Equal Employment Opportunity Commission published guidance that federal law permits private employers to require that workers be vaccinated, so long as employers comply with reasonable accommodation provisions of the Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964.

(k) On July 6, 2021, the United States Department of Justice issued an opinion that the Federal Food, Drug, and Cosmetic Act does not prohibit private entities from imposing vaccination requirements for emergency use authorization of COVID-19 vaccines.

(l) The United States Supreme Court in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) upheld the authority of states to enforce compulsory vaccination laws, noting that "the rights of the individual... may at times, under the pressure of great dangers, be subject to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." (Id. at p. 29).

SEC. 2. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

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(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training

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program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation

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against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

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(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer

or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

(q) (1) Nothing in this section or any other provision of law shall prevent an employer or other entity covered by this part from requiring as a condition of employment or a training program leading to employment for an employee or applicant to be fully vaccinated against COVID-19 by a vaccine authorized, including pursuant to emergency use authorization, by the United States Food and Drug Administration or the World Health Organization.

(2) From the date an employer or other entity covered by this part requires as a condition of employment or a training program leading to employment for an employee to be fully vaccinated against COVID-19 by a vaccine authorized by the United States Food and Drug Administration, an employer shall offer an existing employee a reasonable amount of time, in consideration of vaccine protocols and availability, to come into compliance.

(3) An employer or other entity covered by this part may require an employee or applicant to show proof of vaccination through physical or electronic records that reasonably appear genuine and relate to the employee or applicant, including, but not limited to, any of the following:

(A) A COVID-19 Vaccination Record Card issued by the federal Centers for Disease Control and Prevention.

(B) An International Certificate of Vaccination or Prophylaxis, also known as a Yellow Card, created by the World Health Organization.

(C) Documentation of vaccination from a health care provider consistent with their scope of practice.

(D) A photo of documentation of vaccination, including, but not limited to, those specified in subparagraphs (A) to (C), inclusive.

(E) A digital record that includes a quick response code that would display to the reader the employee's or applicant's name, date of birth, vaccine dates, and vaccine type if scanned by a SMART Health Card reader.

(4) Nothing in this subdivision limits or alters an employer's duties or defenses under subdivisions (l), (m), and (n). An employer or other entity covered by this part

may require an employee or applicant who is not vaccinated to submit to regular testing to confirm COVID-19-negative status.

(5) This subdivision also applies to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(6) A person is considered fully vaccinated against COVID-19 two weeks or more after they have received the second dose in a two-dose series authorized, including pursuant to emergency use authorization, by the United States Food and Drug Administration or the World Health Organization or two weeks or more after they have received an authorized single-dose vaccine. This does not preclude employers from requiring one or more additional doses of COVID-19 vaccines if the doses are recommended by the federal Centers for Disease Control and Prevention or by the World Health Organization and available to individuals as recommended.

(7) This subdivision is declaratory of existing law.

(r) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3. Section 12940 is added to the Government Code, to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to

race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

(q) This section shall become operative on January 1, 2024.

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

In order to avoid further shutdowns and prevent the health care system from becoming overwhelmed due to the novel coronavirus (COVID-19) pandemic as soon as possible, it is critical that employers be able to impose reasonable requirements that their eligible employees get vaccinated against COVID-19.

Amendment 5

On page 2, strike out lines 1 to 32, inclusive, and strike out page 3

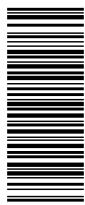
LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as amended, Low. ~~Telephone medical advice services.~~ Employment discrimination: COVID-19 vaccination and testing requirements.

Under existing law, the California Fair Employment and Housing Act (FEHA), it is an unlawful employment practice for an employer, unless based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California, to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment, or to bar or discharge a person from employment or a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person, as specified.

Under existing law, it is also an unlawful employment practice for an employer or any entity covered by FEHA to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or entity demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including, among others, the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined, on the conduct of the business of the employer or entity, as specified. It is also an unlawful employment practice for an employer or an entity covered by FEHA to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.

This bill would declare that the above-described provisions of FEHA or any other law do not prevent an employer or an entity covered by FEHA from requiring as a condition of employment or a training program leading to employment for an employee or applicant to be fully vaccinated, as described, against COVID-19 by a vaccine authorized, including pursuant to emergency use authorization, by the United States Food and Drug Administration or the World Health Organization. The bill would authorize the employer or entity to require an employee or applicant to show proof of vaccination, as specified. The bill would provide that its provisions do not limit or alter an employer's duties or defenses with regard to reasonable accommodation. The bill would authorize the employer or entity to require the employee or applicant who is not vaccinated to submit to regular testing to confirm COVID-19-negative status. The bill would declare these provisions to apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person



in the workplace or industry. The bill would declare these provisions to be declaratory of existing law. The bill would make related findings and declarations. The bill would repeal its provisions on January 1, 2024.

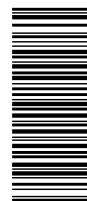
This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law requires a telephone medical advice service, as defined, to be responsible for, among other requirements, ensuring that all health care professionals who provide medical advice services are appropriately licensed, certified, or registered, as specified. Existing law requires the respective healing arts licensing board to be responsible for enforcing specified provisions related to telephone medical advice services.~~

~~Existing law requires a telephone medical advice service to ensure 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. Existing law further requires a telephone medical advice service to comply with all directions and requests for information made by the Department of Consumer Affairs.~~

~~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 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.~~

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



[AMENDED IN...]

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1102

Introduced by Assembly Member Low *Members Low, Akilah Weber, and Wicks*

(Principal coauthors: Senators Min, Newman, Pan, and Wiener)

[Date introduced]

[Title will go here]

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as introduced, Low. ~~Telephone medical advice services. Employment discrimination: COVID-19 vaccination and testing requirements.~~

[Text of Legislative Counsel's Digest will go here]

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

THIS PAGE IS A MOCKUP OF THE MEASURE AS IT WILL BE PUBLISHED

PROPOSED AMENDMENTS

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 1102

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1102

Introduced by Assembly Member **Low** Members **Low, Akilah Weber, and Wicks**

(Principal coauthors: Senators **Min, Newman, Pan, and Wiener**)

February 18, 2021

An act to amend Section 4999.2 of the Business and Professions Code, relating to healing arts, amend, repeal, and add Section 12940 of the Government Code, relating to employment discrimination, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as introduced, Low. Telephone medical advice services. Employment discrimination: COVID-19 vaccination and testing requirements.

Under existing law, the California Fair Employment and Housing Act (FEHA), it is an unlawful employment practice for an employer, unless based upon a bona fide occupational qualification or applicable security regulations established by the United States or the State of California, to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment, or to bar or discharge a person from employment or a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person, as specified.

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Amendment 2

Amendment 3

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Under existing law, it is also an unlawful employment practice for an employer or any entity covered by FEHA to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or entity demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including, among others, the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined, on the conduct of the business of the employer or entity, as specified. It is also an unlawful employment practice for an employer or an entity covered by FEHA to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.

This bill would declare that the above-described provisions of FEHA or any other law do not prevent an employer or an entity covered by FEHA from requiring as a condition of employment or a training program leading to employment for an employee or applicant to be fully vaccinated, as described, against COVID-19 by a vaccine authorized, including pursuant to emergency use authorization, by the United States Food and Drug Administration or the World Health Organization. The bill would authorize the employer or entity to require an employee or applicant to show proof of vaccination, as specified. The bill would provide that its provisions do not limit or alter an employer's duties or defenses with regard to reasonable accommodation. The bill would authorize the employer or entity to require the employee or applicant who is not vaccinated to submit to regular testing to confirm COVID-19-negative status. The bill would declare these provisions to apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry. The bill would declare these provisions to be declaratory of existing law. The bill would make related findings and declarations. The bill would repeal its provisions on January 1, 2024.

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

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Existing law requires a telephone medical advice service, as defined, to be responsible for, among other requirements, ensuring that all health care professionals who provide medical advice services are appropriately licensed, certified, or registered, as specified. Existing law requires the respective healing arts licensing board to be responsible for enforcing specified provisions related to telephone medical advice services.

Existing law requires a telephone medical advice service to ensure 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. Existing law further requires a telephone medical advice service to comply with all directions and requests for information made by the Department of Consumer Affairs.

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 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.

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

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

- + *SECTION 1. The Legislature finds and declares the following:*
- + (a) *On March 4, 2020, Governor Gavin Newsom declared a state of emergency in California due to the threat posed by the novel coronavirus (COVID-19) pandemic.*
- + (b) *On December 11, 2020, the United States Food and Drug Administration (FDA) issued the first emergency use authorization for the Pfizer-BioNTech COVID-19 vaccine, allowing the vaccine to be distributed in the United States. Since then, the FDA has authorized two additional vaccines for emergency use, the Moderna vaccine and the Janssen (Johnson & Johnson) vaccine.*
- + (c) *The Pfizer-BioNTech, Moderna, and Janssen vaccines against COVID-19 have been proven highly effective in preventing severe illness, hospitalization, and death.*

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- + (d) *Federal Centers for Disease Control and Prevention (CDC) Director Dr. Rochelle Walensky and other public health experts have warned that the current surge in coronavirus infections and deaths is becoming “a pandemic of the unvaccinated.” Dr. Anthony Fauci has stated that more than 99 percent of recent deaths due to COVID-19 were among the unvaccinated.*
- + (e) *There is a need for people who have been previously infected with COVID-19 to get vaccinated, as researchers have found that getting “vaccinated after infection boosted by 50-fold the activity of neutralizing antibodies needed to repel the virus and prevented infection with variants.”*
- + (f) *Children under 12 years of age are not yet eligible to be vaccinated, which puts them at risk of contracting the highly contagious COVID-19 Delta variant.*
- + (g) *An internal memo by the CDC noted that the Delta variant of the coronavirus may cause more severe illness than earlier variants and spreads as easily as the chickenpox.*
- + (h) *In order to avoid further shutdowns and prevent the health care system from becoming overwhelmed, it is critical that all eligible Californians get vaccinated against COVID-19.*
- + (i) *On March 4, 2021, the Department of Fair Employment and Housing published guidance entitled “Employment Information on COVID-19” and noted that, under the California Fair Employment and Housing Act (FEHA), an employer may require employees to receive a vaccination against COVID-19.*
- + (j) *In May 2021, the United States Equal Employment Opportunity Commission published guidance that federal law permits private employers to require that workers be vaccinated, so long as employers comply with reasonable accommodation provisions of the Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964.*
- + (k) *On July 6, 2021, the United States Department of Justice issued an opinion that the Federal Food, Drug, and Cosmetic Act does not prohibit private entities from imposing vaccination requirements for emergency use authorization of COVID-19 vaccines.*
- + (l) *The United States Supreme Court in Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11 (1905) upheld the authority of states to enforce compulsory vaccination laws, noting that “the rights of the individual... may at times, under the pressure*

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+ *of great dangers, be subject to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” (Id. at p. 29).*

+ SEC. 2. Section 12940 of the Government Code is amended to read:

+ 12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

+ (a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

+ (1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee’s essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee’s health or safety or the health or safety of others even with reasonable accommodations.

+ (2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee’s medical condition, is unable to perform the employee’s essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee’s health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee’s medical condition, is unable to perform the employee’s essential duties, or cannot perform those duties in a manner that would not

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- + endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.
- + (3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:
 - + (A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.
 - + (B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.
- + (4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.
- + (5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.
- + (B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.
- + (b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability,

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- + medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.
- + (c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person discriminated against.
- + (d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.
- + (e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
- + (2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform

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- + job-related functions and may respond to an applicant's request for reasonable accommodation.
- + (3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.
- + (f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.
- + (2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.
- + (g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.
- + (h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.
- + (i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.
- + (j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading

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+ to employment, or any other person, because of race, religious
+ creed, color, national origin, ancestry, physical disability, mental
+ disability, medical condition, genetic information, marital status,
+ sex, gender, gender identity, gender expression, age, sexual
+ orientation, or veteran or military status, to harass an employee,
+ an applicant, an unpaid intern or volunteer, or a person providing
+ services pursuant to a contract. Harassment of an employee, an
+ applicant, an unpaid intern or volunteer, or a person providing
+ services pursuant to a contract by an employee, other than an agent
+ or supervisor, shall be unlawful if the entity, or its agents or
+ supervisors, knows or should have known of this conduct and fails
+ to take immediate and appropriate corrective action. An employer
+ may also be responsible for the acts of nonemployees, with respect
+ to harassment of employees, applicants, unpaid interns or
+ volunteers, or persons providing services pursuant to a contract in
+ the workplace, if the employer, or its agents or supervisors, knows
+ or should have known of the conduct and fails to take immediate
+ and appropriate corrective action. In reviewing cases involving
+ the acts of nonemployees, the extent of the employer's control and
+ any other legal responsibility that the employer may have with
+ respect to the conduct of those nonemployees shall be considered.
+ An entity shall take all reasonable steps to prevent harassment
+ from occurring. Loss of tangible job benefits shall not be necessary
+ in order to establish harassment.
+ (2) The provisions of this subdivision are declaratory of existing
+ law, except for the new duties imposed on employers with regard
+ to harassment.
+ (3) An employee of an entity subject to this subdivision is
+ personally liable for any harassment prohibited by this section that
+ is perpetrated by the employee, regardless of whether the employer
+ or covered entity knows or should have known of the conduct and
+ fails to take immediate and appropriate corrective action.
+ (4) (A) For purposes of this subdivision only, "employer" means
+ any person regularly employing one or more persons or regularly
+ receiving the services of one or more persons providing services
+ pursuant to a contract, or any person acting as an agent of an
+ employer, directly or indirectly, the state, or any political or civil
+ subdivision of the state, and cities. The definition of "employer"
+ in subdivision (d) of Section 12926 applies to all provisions of this
+ section other than this subdivision.

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- + (B) Notwithstanding subparagraph (A), for purposes of this subdivision, “employer” does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.
- + (C) For purposes of this subdivision, “harassment” because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.
- + (5) For purposes of this subdivision, “a person providing services pursuant to a contract” means a person who meets all of the following criteria:
 - + (A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.
 - + (B) The person is customarily engaged in an independently established business.
 - + (C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer’s work.
 - + (k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.
 - + (l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person’s religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person’s religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section

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- + 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.
- + (2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.
- + (3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.
- + (4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.
- + (m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.
- + (2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.
- + (n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable

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- + accommodation by an employee or applicant with a known physical or mental disability or known medical condition.
- + (o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.
- + (p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.
- + *(q) (1) Nothing in this section or any other provision of law shall prevent an employer or other entity covered by this part from requiring as a condition of employment or a training program leading to employment for an employee or applicant to be fully vaccinated against COVID-19 by a vaccine authorized, including pursuant to emergency use authorization, by the United States Food and Drug Administration or the World Health Organization.*
- + *(2) From the date an employer or other entity covered by this part requires as a condition of employment or a training program leading to employment for an employee to be fully vaccinated against COVID-19 by a vaccine authorized by the United States Food and Drug Administration, an employer shall offer an existing employee a reasonable amount of time, in consideration of vaccine protocols and availability, to come into compliance.*
- + *(3) An employer or other entity covered by this part may require an employee or applicant to show proof of vaccination through physical or electronic records that reasonably appear genuine and relate to the employee or applicant, including, but not limited to, any of the following:*
- + *(A) A COVID-19 Vaccination Record Card issued by the federal Centers for Disease Control and Prevention.*
- + *(B) An International Certificate of Vaccination or Prophylaxis, also known as a Yellow Card, created by the World Health Organization.*
- + *(C) Documentation of vaccination from a health care provider consistent with their scope of practice.*
- + *(D) A photo of documentation of vaccination, including, but not limited to, those specified in subparagraphs (A) to (C), inclusive.*
- + *(E) A digital record that includes a quick response code that would display to the reader the employee's or applicant's name,*

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- + date of birth, vaccine dates, and vaccine type if scanned by a SMART Health Card reader.
 - + (4) Nothing in this subdivision limits or alters an employer's duties or defenses under subdivisions (l), (m), and (n). An employer or other entity covered by this part may require an employee or applicant who is not vaccinated to submit to regular testing to confirm COVID-19-negative status.
 - + (5) This subdivision also applies to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.
 - + (6) A person is considered fully vaccinated against COVID-19 two weeks or more after they have received the second dose in a two-dose series authorized, including pursuant to emergency use authorization, by the United States Food and Drug Administration or the World Health Organization or two weeks or more after they have received an authorized single-dose vaccine. This does not preclude employers from requiring one or more additional doses of COVID-19 vaccines if the doses are recommended by the federal Centers for Disease Control and Prevention or by the World Health Organization and available to individuals as recommended.
 - + (7) This subdivision is declaratory of existing law.
 - + (r) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.
- + SEC. 3. Section 12940 is added to the Government Code, to read:
- + 12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:
 - + (a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

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- + (1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.
- + (2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.
- + (3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:
 - + (A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.
 - + (B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.
- + (4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.
- + (5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training,

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- + *rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.*
- + *(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.*
- + *(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.*
- + *(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person discriminated against.*
- + *(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make*

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+ any nonjob-related inquiry of an employee or applicant, either
+ verbal or through use of an application form, that expresses,
+ directly or indirectly, any limitation, specification, or
+ discrimination as to race, religious creed, color, national origin,
+ ancestry, physical disability, mental disability, medical condition,
+ genetic information, marital status, sex, gender, gender identity,
+ gender expression, age, sexual orientation, or veteran or military
+ status, or any intent to make any such limitation, specification, or
+ discrimination. This part does not prohibit an employer or
+ employment agency from inquiring into the age of an applicant,
+ or from specifying age limitations, if the law compels or provides
+ for that action.

+ (e) (1) Except as provided in paragraph (2) or (3), for any
+ employer or employment agency to require any medical or
+ psychological examination of an applicant, to make any medical
+ or psychological inquiry of an applicant, to make any inquiry
+ whether an applicant has a mental disability or physical disability
+ or medical condition, or to make any inquiry regarding the nature
+ or severity of a physical disability, mental disability, or medical
+ condition.

+ (2) Notwithstanding paragraph (1), an employer or employment
+ agency may inquire into the ability of an applicant to perform
+ job-related functions and may respond to an applicant's request
+ for reasonable accommodation.

+ (3) Notwithstanding paragraph (1), an employer or employment
+ agency may require a medical or psychological examination or
+ make a medical or psychological inquiry of a job applicant after
+ an employment offer has been made but prior to the commencement
+ of employment duties, provided that the examination or inquiry is
+ job related and consistent with business necessity and that all
+ entering employees in the same job classification are subject to
+ the same examination or inquiry.

+ (f) (1) Except as provided in paragraph (2), for any employer
+ or employment agency to require any medical or psychological
+ examination of an employee, to make any medical or psychological
+ inquiry of an employee, to make any inquiry whether an employee
+ has a mental disability, physical disability, or medical condition,
+ or to make any inquiry regarding the nature or severity of a
+ physical disability, mental disability, or medical condition.

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+ (2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

+ (g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

+ (h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

+ (i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

+ (j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take

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- + *immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.*
- + *(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.*
- + *(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.*
- + *(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.*
- + *(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.*
- + *(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.*
- + *(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:*
 - + *(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.*

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- + (B) The person is customarily engaged in an independently established business.
- + (C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.
- + (k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.
- + (l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.
(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

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+ (3) An accommodation is not required under this subdivision if
+ it would result in a violation of this part or any other law
+ prohibiting discrimination or protecting civil rights, including
+ subdivision (b) of Section 51 of the Civil Code and Section 11135
+ of this code.

+ (4) For an employer or other entity covered by this part to, in
+ addition to the employee protections provided pursuant to
+ subdivision (h), retaliate or otherwise discriminate against a
+ person for requesting accommodation under this subdivision,
+ regardless of whether the request was granted.

+ (m) (1) For an employer or other entity covered by this part to
+ fail to make reasonable accommodation for the known physical
+ or mental disability of an applicant or employee. Nothing in this
+ subdivision or in paragraph (1) or (2) of subdivision (a) shall be
+ construed to require an accommodation that is demonstrated by
+ the employer or other covered entity to produce undue hardship,
+ as defined in subdivision (u) of Section 12926, to its operation.

+ (2) For an employer or other entity covered by this part to, in
+ addition to the employee protections provided pursuant to
+ subdivision (h), retaliate or otherwise discriminate against a
+ person for requesting accommodation under this subdivision,
+ regardless of whether the request was granted.

+ (n) For an employer or other entity covered by this part to fail
+ to engage in a timely, good faith, interactive process with the
+ employee or applicant to determine effective reasonable
+ accommodations, if any, in response to a request for reasonable
+ accommodation by an employee or applicant with a known physical
+ or mental disability or known medical condition.

+ (o) For an employer or other entity covered by this part, to
+ subject, directly or indirectly, any employee, applicant, or other
+ person to a test for the presence of a genetic characteristic.

+ (p) Nothing in this section shall be interpreted as preventing
+ the ability of employers to identify members of the military or
+ veterans for purposes of awarding a veteran's preference as
+ permitted by law.

+ (q) This section shall become operative on January 1, 2024.

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

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+ *In order to avoid further shutdowns and prevent the health care
+ system from becoming overwhelmed due to the novel coronavirus
+ (COVID-19) pandemic as soon as possible, it is critical that
+ employers be able to impose reasonable requirements that their
+ eligible employees get vaccinated against COVID-19.*

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1 SECTION 1. Section 4999.2 of the Business and Professions

2 Code is amended to read:

3 4999.2. A telephone medical advice service shall be responsible
4 for complying with the following requirements:

5 (a) (1) Ensuring that all health care professionals who provide
6 medical advice services are appropriately licensed, certified, or
7 registered as a physician and surgeon pursuant to Chapter 5
8 (commencing with Section 2000) or the Osteopathic Initiative Act,
9 as a dentist, dental hygienist, dental hygienist in alternative
10 practice, or dental hygienist in extended functions pursuant to
11 Chapter 4 (commencing with Section 1600), as an occupational
12 therapist pursuant to Chapter 5.6 (commencing with Section 2570),
13 as a registered nurse pursuant to Chapter 6 (commencing with
14 Section 2700), as a psychologist pursuant to Chapter 6.6
15 (commencing with Section 2900), as a naturopathic doctor pursuant
16 to Chapter 8.2 (commencing with Section 3610), as a marriage
17 and family therapist pursuant to Chapter 13 (commencing with
18 Section 4980), as a licensed clinical social worker pursuant to
19 Chapter 14 (commencing with Section 4991), as a licensed
20 professional clinical counselor pursuant to Chapter 16
21 (commencing with Section 4999.10), as an optometrist pursuant
22 to Chapter 7 (commencing with Section 3000), or as a chiropractor
23 pursuant to the Chiropractic Initiative Act, and operating consistent
24 with the laws governing their respective scopes of practice in the
25 state within which they provide telephone medical advice services,
26 except as provided in subdivision (b).

27 (2) Ensuring that all health care professionals who provide
28 telephone medical advice services from an out-of-state location,
29 as identified in paragraph (1), are licensed, registered, or certified
30 in the state within which they are providing the telephone medical
31 advice services and are operating consistent with the laws
32 governing their respective licenses and scopes of practice.

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1 (b) Ensuring that the telephone medical advice provided is
2 consistent with good professional practice.

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- 3 (e) Maintaining records of telephone medical advice services,
4 including records of complaints, provided to patients in California
5 for a period of at least five years.
- 6 (d) Ensuring that no staff member uses a title or designation
7 when speaking to an enrollee, subscriber, or consumer that may
8 cause a reasonable person to believe that the staff member is a
9 licensed, certified, or registered health care professional described
10 in paragraph (1) of subdivision (a), unless the staff member is a
11 licensed, certified, or registered professional.
- 12 (e) Complying with all directions and requests for information
13 made by the department and respective healing arts licensing
14 boards.
- 15 (f) Notifying the department within 30 days of any change of
16 name, physical location, mailing address, or telephone number of
17 any business, owner, partner, corporate officer, or agent for service
18 of process in California, together with copies of all resolutions or
19 other written communications that substantiate these changes.

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