

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1541

Introduced by Assembly Member Chavez

February 22, 2005

~~An act to amend Section 654.1 of the Business and Professions Code, relating to healing arts. An act to amend Section 123285 of, and to add Sections 123311, 123312, and 123336 to, the Health and Safety Code, relating to nutrition programs.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1541, as amended, Chavez. ~~Referral to clinical laboratory. WIC nutrition vendors.~~

~~Existing law provides for the licensing and regulation of various healing arts professionals, including dentists, physician and surgeons, and osteopaths. Existing law requires a licensed dentist, physician and surgeon, or osteopath referring a patient, client, or customer to a clinical laboratory in which the licensee has a membership, proprietary interest, coownership, or profit-sharing arrangement to provide the patient, client, or customer with a written disclosure. Existing law requires the disclosure to indicate that the patient may choose any clinical laboratory.~~

~~This bill would instead require the written disclosure to indicate that the patient may choose any state licensed or registered clinical laboratory.~~

~~Existing law, the California Special Supplemental Food Program for Women, Infants, and Children (WIC), authorizes establishment of a statewide program, administered by the State Department of Health Services, for providing nutritional food supplements to low-income pregnant women, low-income postpartum and lactating women, and~~

low-income infants and children under 5 years of age, who have been determined to be at nutritional risk. The program, which implements a program authorized under existing federal law, provides for the redemption of nutrition coupons by recipients at any authorized retail food vendor.

Existing law requires the department to establish criteria to limit the number of participating retail food vendors, which are divided into “peer groups” of vendors with similar characteristics. Existing law sets forth the suggested characteristics for establishing vendor peer groups, and defines various other terms for purposes of the WIC program.

This bill would require the department to establish 5 peer group vendor register groupings, based upon the number of registers, as defined, possessed by a vendor. The bill would establish the category of a “50 percent vendor,” which means a food vendor for which more than 50% of the vendor’s annual revenue from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments. The bill would limit the maximum allowable reimbursement by the department for a food item redeemed by a 50% vendor, based on the redemption price for the same item by all commercial retail vendors within the same register grouping. This bill would also prohibit a 50% vendor from providing incentive items to WIC program participants, except as provided by the bill.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The California Supplemental Food Program for Women,
- 4 Infants, and Children (WIC) is a vital program for meeting the
- 5 health needs of pregnant, postpartum, and lactating women,
- 6 infants, and young children at nutritional risk.
- 7 (2) The federal government recently enacted the “Child
- 8 Nutrition and WIC Reauthorization Act of 2004.”
- 9 (3) The federal act requires states to establish vendor peer
- 10 groups, competitive price criteria, and maximum allowable
- 11 reimbursement levels for 50 percent vendors.

1 (4) *The federal act also prohibits the competitive price criteria*
2 *and the allowable reimbursement levels established by the states*
3 *from resulting in average payments per voucher to 50 percent*
4 *vendors that are higher than the average payments per voucher*
5 *to comparable vendors that are not 50 percent vendors.*

6 (5) *In analyzing the provisions of the federal act, Senate*
7 *Report 108-279 states that the act, “provides to states broad*
8 *latitude in determining the appropriate peer groups, competitive*
9 *price criteria, and maximum reimbursement levels.”*

10 (6) *The Senate Report, in describing what constitutes a*
11 *comparable vendor, states “There are many factors that states*
12 *could reasonably consider in establishing peer groups, including*
13 *geography, operating and overhead costs, and store sales*
14 *volume, among others.”*

15 (7) *Section 123310 of the Health and Safety Code requires the*
16 *State Department of Health Services to establish criteria to limit*
17 *the number of retail vendors with which it enters into agreements*
18 *for participation in the WIC program, including the*
19 *establishment of prices the vendor charges for foods in relation*
20 *to other vendors in the same peer group. Section 123310 of the*
21 *Health and Safety Code defines the term “peer group” as a*
22 *group of vendors with similar characteristics that may include,*
23 *but is not limited to, any or all of the following:*

24 (A) *Geographic location of the store.*

25 (B) *Store size.*

26 (C) *Type of store.*

27 (D) *Number of cash registers.*

28 (E) *Sales volume relating to any program established pursuant*
29 *to this article.*

30 (F) *Gross sales volume.*

31 (G) *Inventory.*

32 (H) *Other vendor characteristics established by the*
33 *department.*

34 (b) *It is the intent of the Legislature in enacting this act to*
35 *establish vendor peer groups, competitive price criteria, and*
36 *maximum allowable reimbursement levels for 50 percent*
37 *vendors, that comply with the provisions of the “Child Nutrition*
38 *and WIC Reauthorization Act of 2004” as well as with Section*
39 *123310 of the Health and Safety Code.*

1 *SEC. 2. Section 123285 of the Health and Safety Code is*
2 *amended to read:*

3 123285. As used in this article, the following definitions shall
4 apply:

5 (a) *“Commercial retail vendor” means a food store that is not*
6 *a 50 percent vendor.*

7 (b) *“Health professional” means a physician and surgeon,*
8 *registered nurse, nutritionist, dietitian, or state or local medically*
9 *trained health official, who is competent to professionally*
10 *evaluate nutritional need and to authorize supplemental foods, as*
11 *determined by the state department.*

12 ~~(b)~~
13 (c) *“Low income” means an income of not more than 185*
14 *percent of the poverty level as determined by the federal poverty*
15 *income guidelines promulgated by the United States Department*
16 *of Health and Human Services.*

17 (d) *“Maximum allowable department reimbursement” or*
18 *“MADR” means the highest price the department will reimburse*
19 *the food vendor as payment in full for the sale of the maximum*
20 *allowable quantity of supplemental food identified by the food*
21 *instrument.*

22 (e) *“Peer group” means a group of food vendors that are*
23 *within the same register grouping, as established pursuant to*
24 *Section 123311.*

25 ~~(e)~~
26 (f) *“Recipient” means low-income pregnant women,*
27 *low-income postpartum and lactating women, and low-income*
28 *infants and children under five years of age, who are determined*
29 *to be at nutritional risk by a health professional, based on criteria*
30 *established by the state department.*

31 (g) *“Register” means a mechanical, scanning, or*
32 *computerized device used in a store to record sales in exchange*
33 *for money or other negotiable instruments, including food*
34 *instruments.*

35 ~~(d)~~
36 (h) *“Nutrition coupon” means a check that is limited as to*
37 *value, food type, and food quantity and that has a limited period*
38 *of validity.*

39 (i) *A “50 percent vendor” means a food vendor for which*
40 *more than 50 percent of the vendor’s annual revenue from the*

1 *sale of food items consists of revenue from the sale of*
2 *supplemental foods that are obtained with food instruments. A*
3 *“50 percent vendor” does not include either a pharmacy vendor*
4 *that supplies only exempt infant formula or medical foods that*
5 *are eligible under the WIC program, or a nonprofit vendor.*

6 *SEC. 3. Section 123311 is added to the Health and Safety*
7 *Code, to read:*

8 *123311. The department shall establish five peer group*
9 *register groupings for all vendors as follows:*

- 10 *(a) Register Group 1, for vendors with one to two registers.*
- 11 *(b) Register Group 2, for vendors with three to four registers.*
- 12 *(c) Register Group 3, for vendors with five to six registers.*
- 13 *(d) Register Group 4, for vendors with seven to nine registers.*
- 14 *(e) Register Group 5, for vendors with 10 or more registers.*

15 *SEC. 4. Section 123312 is added to the Health and Safety*
16 *Code, to read:*

17 *123312. (a) The maximum allowable department*
18 *reimbursement for a food item redeemed by a 50 percent vendor*
19 *shall be the mean value redemption price for the same food item*
20 *redeemed by all commercial retail vendors within the same*
21 *register grouping. The department shall base the maximum*
22 *allowable department reimbursement on those food items that*
23 *have been redeemed by the commercial retail vendors within the*
24 *prior 12-week period.*

25 *(b) A 50 percent vendor price shall not exceed the maximum*
26 *allowable department reimbursement for that food instrument*
27 *type established pursuant to subdivision (a).*

28 *SEC. 5. Section 123336 is added to the Health and Safety*
29 *Code, to read:*

30 *123336. (a) A 50 percent vendor shall not provide incentive*
31 *items to participants unless the incentive item is either of the*
32 *following:*

- 33 *(1) Food.*
- 34 *(2) Merchandise of nominal value, as established by the*
35 *United States Department of Agriculture by regulation.*

36 *(b) The incentive item prohibitions contained in this section do*
37 *not apply to services provided to participants, including, but not*
38 *limited, to the following:*

- 39 *(1) Transportation.*
- 40 *(2) Play areas for children.*

1 (3) *Aid in the selection of food items.*

2 SECTION 1. ~~Section 654.1 of the Business and Professions~~
3 ~~Code is amended to read:~~

4 ~~654.1. Persons licensed under Chapter 4 (commencing with~~
5 ~~Section 1600) of this division or licensed under Chapter 5~~
6 ~~(commencing with Section 2000) of this division or licensed~~
7 ~~under any initiative act referred to in this division relating to~~
8 ~~osteopaths may not refer patients, clients, or customers to any~~
9 ~~clinical laboratory licensed under Section 1265 in which the~~
10 ~~licensee has any membership, proprietary interest, or~~
11 ~~coownership in any form, or has any profit-sharing arrangement,~~
12 ~~unless the licensee at the time of making such referral discloses~~
13 ~~in writing such interest to the patient, client, or customer. The~~
14 ~~written disclosure shall indicate that the patient may choose any~~
15 ~~state licensed or registered clinical laboratory for purposes of~~
16 ~~having any laboratory work or assignment performed.~~

17 ~~This section shall not apply to persons who are members of a~~
18 ~~medical group which contracts to provide medical care to~~
19 ~~members of a group practice prepayment plan registered under~~
20 ~~the Knox-Keene Health Care Service Act of 1975, Chapter 2.2~~
21 ~~(commencing with Section 1340) of Division 2 of the Health and~~
22 ~~Safety Code.~~

23 ~~This section shall not apply to any referral to a clinical~~
24 ~~laboratory which is owned and operated by a health facility~~
25 ~~licensed pursuant to Chapter 2 (commencing with Section 1250)~~
26 ~~of Division 2 of the Health and Safety Code.~~

27 ~~This section does not prohibit the acceptance of evaluation~~
28 ~~specimens for proficiency testing or referral of specimens or such~~
29 ~~assignment from one clinical laboratory to another clinical~~
30 ~~laboratory, either licensed or exempt under this chapter,~~
31 ~~providing the report indicates clearly the laboratory performing~~
32 ~~the test.~~

33 ~~“Proprietary interest” does not include ownership of a building~~
34 ~~where space is leased to a clinical laboratory at the prevailing~~
35 ~~rate under a straight lease arrangement.~~

36 ~~A violation of this section is a public offense and is punishable~~
37 ~~upon a first conviction by imprisonment in the county jail for not~~
38 ~~more than one year, or by imprisonment in the state prison, or by~~
39 ~~a fine not exceeding ten thousand dollars (\$10,000), or by both~~

- 1 ~~such imprisonment and fine. A second or subsequent conviction~~
- 2 ~~shall be punishable by imprisonment in the state prison.~~

O