

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY MARCH 28, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 543

**Introduced by Assembly Member Plescia
(Coauthor: Assembly Member Jones)**

February 21, 2007

An act to amend Sections 2472 and 4190 of the Business and Professions Code, to amend Sections 1204, 1206, 1214.1, 1226, 1226.5, 1233, 1242, and 1248.1 of, and to add Section 1212.5 to, the Health and Safety Code, and to amend Section 139.3 of the Labor Code, relating to health clinics.

LEGISLATIVE COUNSEL'S DIGEST

AB 543, as amended, Plescia. Ambulatory surgical centers: licensure.

Existing law, with certain exceptions, provides for the licensure and regulation of health facilities and clinics, including specialty clinics, by the State Department of Health Services. Existing law defines a specialty clinic to include a surgical clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A violation of these provisions is a crime. Effective July 1, 2007, these duties will be transferred to the State Department of Public Health.

This bill would redesignate a surgical clinic as an ambulatory surgical center for purposes of these licensure and regulatory requirements and would make various conforming changes.

This bill would require, on or after January 1, 2008, any person, firm, association, partnership, or corporation desiring a license for an

ambulatory surgical center, in addition to other prescribed licensing requirements, to meet prescribed operational, staffing, and procedural standards. The bill would require the department to perform initial inspections of an ambulatory surgical center within 45 calendar days of the date of an application, and to perform periodic inspections at least once every 3 years thereafter. The bill would specify that, on and after January 1, 2008, surgical clinics that have licenses issued prior to that date, shall not be subject to those additional requirements for ambulatory surgical centers until January 1, 2013. The bill would prohibit the department from issuing any new surgical clinic licenses on or after January 1, 2008.

The bill would require the department, until January 1, 2015, contingent upon an appropriation in the annual Budget Act, to establish a program for the training of ambulatory surgical center inspection personnel, and to prepare a comprehensive report on the training program, as provided. By imposing new licensure requirements on ambulatory surgical centers, a violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 2472 of the Business and Professions
- 2 Code is amended to read:
- 3 2472. (a) The certificate to practice podiatric medicine
- 4 authorizes the holder to practice podiatric medicine.
- 5 (b) As used in this chapter, “podiatric medicine” means the
- 6 diagnosis, medical, surgical, mechanical, manipulative, and
- 7 electrical treatment of the human foot, including the ankle and
- 8 tendons that insert into the foot and the nonsurgical treatment of
- 9 the muscles and tendons of the leg governing the functions of the
- 10 foot.
- 11 (c) A doctor of podiatric medicine may not administer an
- 12 anesthetic other than local. If an anesthetic other than local is

1 required for any procedure, the anesthetic shall be administered
2 by another licensed health care practitioner who is authorized to
3 administer the required anesthetic within the scope of his or her
4 practice.

5 (d) (1) A doctor of podiatric medicine who is ankle certified
6 by the board on and after January 1, 1984, may do the following:

7 (A) Perform surgical treatment of the ankle and tendons at the
8 level of the ankle pursuant to subdivision (e).

9 (B) Perform services under the direct supervision of a physician
10 and surgeon, as an assistant at surgery, in surgical procedures that
11 are otherwise beyond the scope of practice of a doctor of podiatric
12 medicine.

13 (C) Perform a partial amputation of the foot no further proximal
14 than the Chopart's joint.

15 (2) Nothing in this subdivision shall be construed to permit a
16 doctor of podiatric medicine to function as a primary surgeon for
17 any procedure beyond his or her scope of practice.

18 (e) A doctor of podiatric medicine may perform surgical
19 treatment of the ankle and tendons at the level of the ankle only
20 in the following locations:

21 (1) A licensed general acute care hospital, as defined in Section
22 1250 of the Health and Safety Code.

23 (2) A licensed ambulatory surgical center, as defined in Section
24 1204 of the Health and Safety Code, if the doctor of podiatric
25 medicine has surgical privileges, including the privilege to perform
26 surgery on the ankle, in a general acute care hospital described in
27 paragraph (1) and meets all the protocols of the ambulatory surgical
28 center.

29 (3) An ambulatory surgical center that is certified to participate
30 in the Medicare Program under Title XVIII (42 U.S.C. Sec. 1395
31 et seq.) of the federal Social Security Act, if the doctor of podiatric
32 medicine has surgical privileges, including the privilege to perform
33 surgery on the ankle, in a general acute care hospital described in
34 paragraph (1) and meets all the protocols of the ambulatory surgical
35 center.

36 (4) A freestanding physical plant housing outpatient services
37 of a licensed general acute care hospital, as defined in Section
38 1250 of the Health and Safety Code, if the doctor of podiatric
39 medicine has surgical privileges, including the privilege to perform
40 surgery on the ankle, in a general acute care hospital described in

1 paragraph (1). For purposes of this section, a “freestanding physical
2 plant” means any building that is not physically attached to a
3 building where inpatient services are provided.

4 (5) An outpatient setting accredited pursuant to subdivision (g)
5 of Section 1248.1 of the Health and Safety Code.

6 (f) A doctor of podiatric medicine shall not perform an admitting
7 history and physical examination of a patient in an acute care
8 hospital where doing so would violate the regulations governing
9 the Medicare Program.

10 (g) A doctor of podiatric medicine licensed under this chapter
11 is a licentiate for purposes of paragraph (2) of subdivision (a) of
12 Section 805, and thus is a health care practitioner subject to the
13 provisions of Section 2290.5 pursuant to subdivision (b) of that
14 section.

15 SEC. 2. Section 4190 of the Business and Professions Code is
16 amended to read:

17 4190. (a) Notwithstanding any provision of this chapter, an
18 ambulatory surgical center, licensed pursuant to Section 1212.5
19 of the Health and Safety Code, accredited by an accreditation
20 agency as defined in Section 1248 of the Health and Safety Code,
21 or certified to participate in the Medicare Program under Title
22 XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security
23 Act, may purchase drugs at wholesale for administration or
24 dispensing, under the direction of a physician, to patients registered
25 for care at the center, as provided in subdivision (b). The center
26 shall keep records of the kind and amounts of drugs purchased,
27 administered, and dispensed, and the records shall be available
28 and maintained for a minimum of three years for inspection by all
29 properly authorized personnel.

30 (b) The drug distribution service of an ambulatory surgical
31 center shall be limited to the use of drugs for administration to the
32 patients of the ambulatory surgical center and to the dispensing of
33 drugs for the control of pain and nausea for patients of the center.
34 Drugs shall not be dispensed in an amount greater than that
35 required to meet the patient’s needs for 72 hours. Drugs for
36 administration shall be those drugs directly applied, whether by
37 injection, inhalation, ingestion, or any other means, to the body of
38 a patient for his or her immediate needs.

39 (c) No ambulatory surgical center shall operate without a license
40 issued by the board nor shall it be entitled to the benefits of this

1 section until it has obtained a license from the board. A separate
2 license shall be required for each center location. A center shall
3 notify the board of any change in the center's address on a form
4 furnished by the board.

5 (d) Any proposed change in ownership or beneficial interest in
6 the licensee shall be reported to the board, on a form to be furnished
7 by the board, at least 30 days prior to the execution of any
8 agreement to purchase, sell, exchange, gift, or otherwise transfer
9 any ownership or beneficial interest or prior to any transfer of
10 ownership or beneficial interest, whichever occurs earlier.

11 SEC. 3. Section 1204 of the Health and Safety Code is amended
12 to read:

13 1204. Clinics eligible for licensure pursuant to this chapter are
14 primary care clinics and specialty clinics.

15 (a) (1) Only the following defined classes of primary care
16 clinics shall be eligible for licensure:

17 (A) A "community clinic" means a clinic operated by a
18 tax-exempt nonprofit corporation that is supported and maintained
19 in whole or in part by donations, bequests, gifts, grants, government
20 funds or contributions, that may be in the form of money, goods,
21 or services. In a community clinic, any charges to the patient shall
22 be based on the patient's ability to pay, utilizing a sliding fee scale.
23 No corporation other than a nonprofit corporation, exempt from
24 federal income taxation under paragraph (3) of subsection (c) of
25 Section 501 of the Internal Revenue Code of 1954 as amended, or
26 a statutory successor thereof, shall operate a community clinic;
27 provided, that the licensee of any community clinic so licensed on
28 the effective date of this section shall not be required to obtain
29 tax-exempt status under either federal or state law in order to be
30 eligible for, or as a condition of, renewal of its license. No natural
31 person or persons shall operate a community clinic.

32 (B) A "free clinic" means a clinic operated by a tax-exempt,
33 nonprofit corporation supported in whole or in part by voluntary
34 donations, bequests, gifts, grants, government funds or
35 contributions, that may be in the form of money, goods, or services.
36 In a free clinic there shall be no charges directly to the patient for
37 services rendered or for drugs, medicines, appliances, or
38 apparatuses furnished. No corporation other than a nonprofit
39 corporation exempt from federal income taxation under paragraph
40 (3) of subsection (c) of Section 501 of the Internal Revenue Code

1 of 1954 as amended, or a statutory successor thereof, shall operate
2 a free clinic; provided, that the licensee of any free clinic so
3 licensed on the effective date of this section shall not be required
4 to obtain tax-exempt status under either federal or state law in
5 order to be eligible for, or as a condition of, renewal of its license.
6 No natural person or persons shall operate a free clinic.

7 (2) Nothing in this subdivision shall prohibit a community clinic
8 or a free clinic from providing services to patients whose services
9 are reimbursed by third-party payers, or from entering into
10 managed care contracts for services provided to private or public
11 health plan subscribers, as long as the clinic meets the requirements
12 identified in subparagraphs (A) and (B). For purposes of this
13 subdivision, any payments made to a community clinic by a
14 third-party payer, including, but not limited to, a health care service
15 plan, shall not constitute a charge to the patient. This paragraph is
16 a clarification of existing law.

17 (b) The following types of specialty clinics shall be eligible for
18 licensure as specialty clinics pursuant to this chapter:

19 (1) An “ambulatory surgical center” means a clinic that is not
20 part of a hospital and that provides ambulatory surgical care for
21 patients who remain less than 24 hours. An ambulatory surgical
22 center does not include any place or establishment owned or leased
23 and operated as a clinic or office by one or more physicians or
24 dentists in individual or group practice, regardless of the name
25 used publicly to identify the place or establishment, provided,
26 however, that physicians or dentists may, at their option, apply for
27 licensure.

28 (2) A “chronic dialysis clinic” means a clinic that provides less
29 than 24-hour care for the treatment of patients with end-stage renal
30 disease, including renal dialysis services.

31 (3) A “rehabilitation clinic” means a clinic that, in addition to
32 providing medical services directly, also provides physical
33 rehabilitation services for patients who remain less than 24 hours.
34 Rehabilitation clinics shall provide at least two of the following
35 rehabilitation services: physical therapy, occupational therapy,
36 social, speech pathology, and audiology services. A rehabilitation
37 clinic does not include the offices of a private physician in
38 individual or group practice.

39 (4) An “alternative birth center” means a clinic that is not part
40 of a hospital and that provides comprehensive perinatal services

1 and delivery care to pregnant women who remain less than 24
2 hours at the facility.

3 SEC. 4. Section 1206 of the Health and Safety Code is amended
4 to read:

5 1206. This chapter does not apply to the following:

6 (a) Except with respect to the option provided with regard to
7 ambulatory surgical centers described in paragraph (1) of
8 subdivision (b) of Section 1204 and further, with respect to chronic
9 dialysis clinics described in paragraph (2) of subdivision (b) of
10 Section 1204, any place or establishment owned or leased and
11 operated as a clinic or office by one or more licensed health care
12 practitioners and used as an office for the practice of their
13 profession, within the scope of their license, regardless of the name
14 used publicly to identify the place or establishment.

15 (b) Any clinic directly conducted, maintained, or operated by
16 the United States or by any of its departments, officers, or agencies,
17 and any primary care clinic specified in subdivision (a) of Section
18 1204 that is directly conducted, maintained, or operated by this
19 state or by any of its political subdivisions or districts, or by any
20 city. Nothing in this subdivision precludes the department from
21 adopting regulations that utilize clinic licensing standards as
22 eligibility criteria for participation in programs funded wholly or
23 partially under Title XVIII or XIX of the federal Social Security
24 Act.

25 (c) Any clinic conducted, maintained, or operated by a federally
26 recognized Indian tribe or tribal organization, as defined in Section
27 450b or 1603 of Title 25 of the United States Code, that is located
28 on land recognized as tribal land by the federal government.

29 (d) Clinics conducted, operated, or maintained as outpatient
30 departments of hospitals.

31 (e) Any facility licensed as a health facility under Chapter 2
32 (commencing with Section 1250).

33 (f) Any freestanding clinical or pathological laboratory licensed
34 under Chapter 3 (commencing with Section 1200) of Division 2
35 of the Business and Professions Code.

36 (g) A clinic operated by, or affiliated with, any institution of
37 learning that teaches a recognized healing art and is approved by
38 the state board or commission vested with responsibility for
39 regulation of the practice of that healing art.

1 (h) A clinic that is operated by a primary care community or
2 free clinic and that is operated on separate premises from the
3 licensed clinic and is only open for limited services of no more
4 than 20 hours a week. An intermittent clinic as described in this
5 subdivision shall, however, meet all other requirements of law,
6 including administrative regulations and requirements, pertaining
7 to fire and life safety.

8 (i) The offices of physicians in group practice who provide a
9 preponderance of their services to members of a comprehensive
10 group practice prepayment health care service plan subject to
11 Chapter 2.2 (commencing with Section 1340).

12 (j) Student health centers operated by public institutions of
13 higher education.

14 (k) Nonprofit speech and hearing centers, as defined in Section
15 1201.5. Any nonprofit speech and hearing clinic desiring an
16 exemption under this subdivision shall make application therefor
17 to the director, who shall grant the exemption to any facility
18 meeting the criteria of Section 1201.5. Notwithstanding the
19 licensure exemption contained in this subdivision, a nonprofit
20 speech and hearing center shall be deemed to be an organized
21 outpatient clinic for purposes of qualifying for reimbursement as
22 a rehabilitation center under the Medi-Cal Act (Chapter 7
23 (commencing with Section 14000) of Part 3 of Division 9 of the
24 Welfare and Institutions Code).

25 (l) A clinic operated by a nonprofit corporation exempt from
26 federal income taxation under paragraph (3) of subsection (c) of
27 Section 501 of the Internal Revenue Code of 1954, as amended,
28 or a statutory successor thereof, that conducts medical research
29 and health education and provides health care to its patients through
30 a group of 40 or more physicians and surgeons, who are
31 independent contractors representing not less than 10
32 board-certified specialties, and not less than two-thirds of whom
33 practice on a full-time basis at the clinic.

34 (m) Any clinic, limited to in vivo diagnostic services by
35 magnetic resonance imaging functions or radiological services
36 under the direct and immediate supervision of a physician and
37 surgeon who is licensed to practice in California. This shall not
38 be construed to permit cardiac catheterization or any treatment
39 modality in these clinics.

1 (n) A clinic operated by an employer or jointly by two or more
2 employers for their employees only, or by a group of employees,
3 or jointly by employees and employers, without profit to the
4 operators thereof or to any other person, for the prevention and
5 treatment of accidental injuries to, and the care of the health of,
6 the employees comprising the group.

7 (o) A community mental health center, as defined in Section
8 5667 of the Welfare and Institutions Code.

9 (p) (1) A clinic operated by a nonprofit corporation exempt
10 from federal income taxation under paragraph (3) of subsection
11 (c) of Section 501 of the Internal Revenue Code of 1954, as
12 amended, or a statutory successor thereof, as an entity organized
13 and operated exclusively for scientific and charitable purposes and
14 that satisfied all of the following requirements on or before January
15 1, 2005:

16 (A) Commenced conducting medical research on or before
17 January 1, 1982, and continues to conduct medical research.

18 (B) Conducted research in, among other areas, prostatic cancer,
19 cardiovascular disease, electronic neural prosthetic devices,
20 biological effects and medical uses of lasers, and human magnetic
21 resonance imaging and spectroscopy.

22 (C) Sponsored publication of at least 200 medical research
23 articles in peer-reviewed publications.

24 (D) Received grants and contracts from the National Institutes
25 of Health.

26 (E) Held and licensed patents on medical technology.

27 (F) Received charitable contributions and bequests totaling at
28 least five million dollars (\$5,000,000).

29 (G) Provides health care services to patients only:

30 (i) In conjunction with research being conducted on procedures
31 or applications not approved or only partially approved for payment
32 (I) under the Medicare Program pursuant to Section 1395y(a)(1)(A)
33 of Title 42 of the United States Code, or (II) by a health care service
34 plan registered under Chapter 2.2 (commencing with Section 1340),
35 or a disability insurer regulated under Chapter 1 (commencing
36 with Section 10110) of Part 2 of Division 2 of the Insurance Code;
37 provided that services may be provided by the clinic for an
38 additional period of up to three years following the approvals, but
39 only to the extent necessary to maintain clinical expertise in the
40 procedure or application for purposes of actively providing training

1 in the procedure or application for physicians and surgeons
2 unrelated to the clinic.

3 (ii) Through physicians and surgeons who, in the aggregate,
4 devote no more than 30 percent of their professional time for the
5 entity operating the clinic, on an annual basis, to direct patient care
6 activities for which charges for professional services are paid.

7 (H) Makes available to the public the general results of its
8 research activities on at least an annual basis, subject to good faith
9 protection of proprietary rights in its intellectual property.

10 (I) Is a freestanding clinic, whose operations under this
11 subdivision are not conducted in conjunction with any affiliated
12 or associated health clinic or facility defined under this division,
13 except a clinic exempt from licensure under subdivision (m). For
14 purposes of this subparagraph, a freestanding clinic is defined as
15 “affiliated” only if it directly, or indirectly through one or more
16 intermediaries, controls, or is controlled by, or is under common
17 control with, a clinic or health facility defined under this division,
18 except a clinic exempt from licensure under subdivision (m). For
19 purposes of this subparagraph, a freestanding clinic is defined as
20 “associated” only if more than 20 percent of the directors or trustees
21 of the clinic are also the directors or trustees of any individual
22 clinic or health facility defined under this division, except a clinic
23 exempt from licensure under subdivision (m). Any activity by a
24 clinic under this subdivision in connection with an affiliated or
25 associated entity shall fully comply with the requirements of this
26 subdivision. This subparagraph shall not apply to agreements
27 between a clinic and any entity for purposes of coordinating
28 medical research.

29 (2) By January 1, 2007, and every five years thereafter, the
30 Legislature shall receive a report from each clinic meeting the
31 criteria of this subdivision and any other interested party
32 concerning the operation of the clinic’s activities. The report shall
33 include, but not be limited to, an evaluation of how the clinic
34 impacted competition in the relevant health care market, and a
35 detailed description of the clinic’s research results and the level
36 of acceptance by the payer community of the procedures performed
37 at the clinic. The report shall also include a description of
38 procedures performed both in clinics governed by this subdivision
39 and those performed in other settings. The cost of preparing the

1 reports shall be borne by the clinics that are required to submit
2 them to the Legislature pursuant to this paragraph.

3 SEC. 5. Section 1212.5 is added to the Health and Safety Code,
4 to read:

5 1212.5. (a) On or after January 1, 2008, in addition to other
6 licensing requirements of this chapter, any person, firm,
7 association, partnership, or corporation desiring a license for an
8 ambulatory surgical center shall meet the following standards:

9 (1) Comply with the Medicare conditions of coverage for
10 ambulatory surgical centers, as set forth in Subpart C of Part 416
11 of Title 42 of the Code of Federal Regulations, as those regulations
12 existed on January 1, 2007.

13 (2) Limit surgical procedures to those that:

14 (A) Do not generally exceed an average of four hours of total
15 operating time.

16 (B) Do not result in extensive blood loss.

17 (C) Do not require major or prolonged invasion of body cavities.

18 (D) Do not directly involve major blood vessels.

19 ~~(F)~~

20 (E) Are not emergency or life threatening in nature.

21 (3) Establish and implement policies and procedures consistent
22 with the Medicare conditions of coverage set forth in Subpart C
23 of Part 416 of Title 42 of the Code of Federal Regulations, as those
24 regulations existed on January 1, 2007, including, but not limited
25 to:

26 (A) Physician services policies and procedures, including
27 surgical and anesthesia services.

28 (B) Nursing services policies and procedures.

29 (C) Infection control policies and procedures.

30 (D) Pharmaceutical services policies and procedures.

31 (E) Housekeeping services policies and procedures which
32 include provisions for maintenance of a safe and clean
33 environment.

34 (F) Laboratory and radiology services.

35 (G) Patient health records policies and procedures, which shall
36 be developed with the assistance of a person skilled in record
37 maintenance and preservations.

38 (H) Personnel policies and procedures.

39 (b) ~~The~~ *Notwithstanding subdivision (c) of Section 1228, the*
40 department shall perform initial inspections of an ambulatory

1 surgical center within 45 calendar days of the date of an
2 application, and periodic inspections shall occur at least once every
3 three years thereafter.

4 ~~(e) The department may contract for outside personnel to
5 perform inspections of ambulatory surgical centers for compliance
6 with state licensing standards, as necessary, in a manner consistent
7 with the inspections conducted by the department pursuant to
8 Section 1228.~~

9 ~~(d)~~

10 (c) Surgical clinic licenses issued by the department pursuant
11 to paragraph (1) of subdivision (b) of Section 1204 prior to January
12 1, 2008, shall on or after January 1, 2008, not be subject to the
13 requirements set forth in paragraph (1) of subdivision (a) until
14 January 1, 2013, and an applicant to which this subdivision applies
15 shall be issued an ambulatory surgical center license upon
16 ~~submission of documentation to a determination by the department~~
17 that the applicant has met the requirements set ~~for in paragraph~~
18 ~~(1) of forth in~~ subdivision (a) and surrenders the license issued by
19 the department as a surgical clinic.

20 ~~(e)~~

21 (d) On or after January 1, 2008, the department shall not issue
22 any new surgical clinic licenses.

23 ~~(f)~~

24 (e) Contingent upon an appropriation in the annual Budget Act,
25 the department shall until January 1, 2015, establish a program for
26 training of ambulatory surgical center inspection personnel. The
27 goal of this program shall be to provide a sufficient number of
28 qualified persons to facilitate the timely performance of the
29 department’s duties and responsibilities relating to initial and
30 periodic licensing inspections of ambulatory surgical centers, in
31 order to ensure compliance with this chapter.

32 ~~(g)~~

33 (f) (1) The department shall prepare a comprehensive report
34 on the training program setting forth its goals, objectives, and
35 structure. The report shall assess processing time for initial and
36 periodic licensing inspections of ambulatory surgical centers and
37 include information on all of the following:

38 (A) The number of ambulatory surgical center inspection
39 personnel to be trained annually.

40 (B) A timeline for completion of training.

1 (C) A process for gathering information to evaluate the training
2 programs efficiency that includes dropout and retention rates.

3 (D) A mechanism to annually assess the need for the training
4 program to continue.

5 (2) The report required by paragraph (1) shall be submitted to
6 the Joint Legislative Budget Committee no later than February 1,
7 2008, and no later than February 1 of each year thereafter, through
8 February 1, 2014.

9 *(g) For purposes of this section, a surgical clinic means a health*
10 *clinic that is not part of a hospital and that provides ambulatory*
11 *surgical care for patients who remain less than 24 hours. A*
12 *surgical clinic does not include any place or establishment owned*
13 *or leased and operated as a clinic or office by one or more*
14 *physicians and surgeons or dentists in individual or group practice,*
15 *regardless of the name used publicly to identify the place or*
16 *establishment. However, these physicians and surgeons or dentists*
17 *may apply for licensure as an ambulatory surgical center.*

18 SEC. 6. Section 1214.1 of the Health and Safety Code is
19 amended to read:

20 1214.1. Notwithstanding the provisions of Section 1214, each
21 application for an ambulatory surgical center or a chronic dialysis
22 clinic under this chapter for an initial license, renewal license,
23 license upon change of ownership, or special permit shall be
24 accompanied by an annual Licensing and Certification Program
25 fee set in accordance with Section 1266.

26 SEC. 7. Section 1226 of the Health and Safety Code is amended
27 to read:

28 1226. (a) The regulations shall prescribe the kinds of services
29 which may be provided by clinics in each category of licensure
30 and shall prescribe minimum standards of adequacy, safety, and
31 sanitation of the physical plant and equipment, minimum standards
32 for staffing with duly qualified personnel, and minimum standards
33 for providing the services offered. These minimum standards shall
34 be based on the type of facility, the needs of the patients served,
35 and the types and levels of services provided.

36 (b) The Office of Statewide Health Planning and Development,
37 in consultation with the Community Clinics Advisory Committee,
38 shall prescribe minimum construction standards of adequacy and
39 safety for the physical plant of clinics as found in the California
40 Building Standards Code.

1 (c) A city or county, as applicable, shall have plan review and
2 building inspection responsibilities for the construction or alteration
3 of buildings described in paragraph (1) and paragraph (2) of
4 subdivision (b) of Section 1204 and shall apply the provisions of
5 the latest edition of the California Building Standards Code in
6 conducting these plan review responsibilities. For these buildings,
7 construction and alteration shall include conversion of a building
8 to a purpose specified in paragraphs (1) and (2) of subdivision (b)
9 of Section 1204.

10 Upon the initial submittal to a city or county by the governing
11 authority or owner of these clinics for plan review and building
12 inspection services, the city or county shall reply in writing to the
13 clinic whether or not the plan review by the city or county will
14 include a certification as to whether or not the clinic project
15 submitted for plan review meets the standards as propounded by
16 the office in the California Building Standards Code.

17 If the city or county indicates that its review will include this
18 certification it shall do all of the following:

19 (1) Apply the applicable clinic provisions of the latest edition
20 of the California Building Standards Code.

21 (2) Certify in writing, to the applicant within 30 days of
22 completion of construction whether or not these standards have
23 been met.

24 (d) If upon initial submittal, the city or county indicates that its
25 plan review will not include this certification, the governing
26 authority or owner of the clinic shall submit the plans to the Office
27 of Statewide Health Planning and Development which shall review
28 the plans for certification whether or not the clinic project meets
29 the standards, as propounded by the office in *the* California
30 Building Standards Code.

31 (e) When the office performs review for certification, the office
32 shall charge a fee in an amount that does not exceed its actual
33 costs.

34 (f) The office of the State Fire Marshal shall prescribe minimum
35 safety standards for fire and life safety in ambulatory surgical
36 centers.

37 (g) Notwithstanding subdivision (c), the governing authority or
38 owner of a clinic may request the office to perform plan review
39 services for buildings described in subdivision (c). If the office
40 agrees to perform these services, after consultation with the local

1 building official, the office shall charge an amount not to exceed
2 its actual costs. The construction or alteration of these buildings
3 shall conform to the applicable provisions of the latest edition of
4 the California Building Standards Code for purposes of the plan
5 review by the office pursuant to this subdivision.

6 (h) Regulations adopted pursuant to this chapter establishing
7 standards for laboratory services shall not be applicable to any
8 clinic that operates a clinical laboratory licensed pursuant to
9 Section 1265 of the Business and Professions Code.

10 SEC. 8. Section 1226.5 of the Health and Safety Code is
11 amended to read:

12 1226.5. (a) It is the intent of the Legislature to establish seismic
13 safety standards for facilities licensed as ambulatory surgical
14 centers pursuant to this chapter, and for facilities certified for
15 participation in the federal Medicare Program as ambulatory
16 surgical centers, which accommodate surgical patients under
17 general anesthesia, but are not required to remain open and usable
18 after an earthquake to accommodate emergency patients.

19 (b) A facility described in subdivision (a) which, after January
20 1, 1991, anchors fixed medical equipment to the floor or roof of
21 the facility with a gross operating weight of more than 400 pounds
22 or anchors fixed medical equipment to the walls or ceiling with a
23 gross operating weight of more than 20 pounds shall retain the
24 services of an architect licensed in California, a structural engineer
25 licensed in California, or a civil engineer registered in California
26 to assure that the equipment is anchored in such a manner to meet
27 the requirements of an occupancy importance factor of 1.00, as
28 set forth in Title 24 of the California Code of Regulations.

29 (c) A facility described in subdivision (a) which retains the
30 services of an architect or engineer for the anchorage of fixed
31 medical equipment shall keep available for inspection by the
32 department for a period of five years following the installation, a
33 current written certification from the architect or engineer that the
34 equipment is mounted in accordance with the applicable
35 requirements.

36 SEC. 9. Section 1233 of the Health and Safety Code is amended
37 to read:

38 1233. An ambulatory surgical center may restrict use of its
39 facilities to members of the medical staff of the ambulatory surgical

1 center and other physicians and surgeons approved by the medical
2 staff to practice at the center.

3 SEC. 10. Section 1242 of the Health and Safety Code is
4 amended to read:

5 1242. The director may temporarily suspend any license issued
6 to a specialty clinic or special permit prior to any hearing, when
7 in his or her opinion this action is necessary to protect the public
8 welfare. The director shall notify the licensee or holder of a special
9 permit of the temporary suspension and the effective date thereof,
10 and at the same time shall serve such provider with an accusation.
11 Upon receipt of a notice of defense by the licensee or holder of a
12 special permit, the director shall set the matter for hearing within
13 30 days after receipt of such notice. The temporary suspension
14 shall remain in effect until the time when the hearing is completed
15 and the director has made a final determination on the merits;
16 provided, however, that the temporary suspension shall be deemed
17 vacated if the director fails to make a final determination on the
18 merits within 60 days after the original hearing has been completed.

19 If the provisions of this chapter or the rules or regulations
20 promulgated by the director are violated by a licensed ambulatory
21 surgical center or chronic dialysis clinic or holder of a special
22 permit which is a group, corporation, or other association, the
23 director may suspend the license or special permit of the
24 organization or may suspend the license or special permit as to
25 any individual person within the organization who is responsible
26 for the violation.

27 SEC. 11. Section 1248.1 of the Health and Safety Code is
28 amended to read:

29 1248.1. No association, corporation, firm, partnership, or person
30 shall operate, manage, conduct, or maintain an outpatient setting
31 in this state, unless the setting is one of the following:

32 (a) An ambulatory surgical center that is certified to participate
33 in the Medicare Program under Title XVIII (42 U.S.C. Sec. 1395
34 et seq.) of the federal Social Security Act.

35 (b) Any clinic conducted, maintained, or operated by a federally
36 recognized Indian tribe or tribal organization, as defined in Section
37 450 or 1601 of Title 25 of the United States Code, and located on
38 land recognized as tribal land by the federal government.

39 (c) Any clinic directly conducted, maintained, or operated by
40 the United States or by any of its departments, officers, or agencies.

1 (d) Any primary care clinic licensed under subdivision (a) of
2 Section 1204 or any ambulatory surgical center licensed under
3 subdivision (b) of Section 1204.

4 (e) Any health facility licensed as a general acute care hospital
5 under Chapter 2 (commencing with Section 1250).

6 (f) Any outpatient setting to the extent that it is used by a dentist
7 or physician and surgeon in compliance with Article 2.7
8 (commencing with Section 1646) or Article 2.8 (commencing with
9 Section 1647) of Chapter 4 of Division 2 of the Business and
10 Professions Code.

11 (g) An outpatient setting accredited by an accreditation agency
12 approved by the division pursuant to this chapter.

13 (h) A setting, including, but not limited to, a mobile van, in
14 which equipment is used to treat patients admitted to a facility
15 described in subdivision (a), (d), or (e), and in which the procedures
16 performed are staffed by the medical staff of, or other health care
17 practitioners with clinical privileges at, the facility and are subject
18 to the peer review process of the facility but which setting is not
19 a part of a facility described in subdivision (a), (d), or (e).

20 Nothing in this section shall relieve an association, corporation,
21 firm, partnership, or person from complying with all other
22 provisions of law that are otherwise applicable.

23 SEC. 12. Section 139.3 of the Labor Code is amended to read:

24 139.3. (a) Notwithstanding any other provision of law, to the
25 extent those services are paid pursuant to Division 4 (commencing
26 with Section 3200), it is unlawful for a physician to refer a person
27 for clinical laboratory, diagnostic nuclear medicine, radiation
28 oncology, physical therapy, physical rehabilitation, psychometric
29 testing, home infusion therapy, outpatient surgery, or diagnostic
30 imaging goods or services, whether for treatment or medical-legal
31 purposes, if the physician, or his or her immediate family, has a
32 financial interest with the person or in the entity that receives the
33 referral.

34 (b) For purposes of this section and Section 139.31, the
35 following shall apply:

36 (1) "Diagnostic imaging" includes, but is not limited to, all
37 X-ray, computed axial tomography, magnetic resonance imaging,
38 nuclear medicine, positron emission tomography, mammography,
39 and ultrasound goods and services.

1 (2) “Immediate family” includes the spouse and children of the
2 physician, the parents of the physician, and the spouses of the
3 children of the physician.

4 (3) “Physician” means a physician as defined in Section 3209.3.

5 (4) A “financial interest” includes, but is not limited to, any
6 type of ownership, interest, debt, loan, lease, compensation,
7 remuneration, discount, rebate, refund, dividend, distribution,
8 subsidy, or other form of direct or indirect payment, whether in
9 money or otherwise, between a licensee and a person or entity to
10 whom the physician refers a person for a good or service specified
11 in subdivision (a). A financial interest also exists if there is an
12 indirect relationship between a physician and the referral recipient,
13 including, but not limited to, an arrangement whereby a physician
14 has an ownership interest in any entity that leases property to the
15 referral recipient. Any financial interest transferred by a physician
16 to, or otherwise established in, any person or entity for the purpose
17 of avoiding the prohibition of this section shall be deemed a
18 financial interest of the physician.

19 (5) A “physician’s office” is either of the following:

20 (A) An office of a physician in solo practice.

21 (B) An office in which the services or goods are personally
22 provided by the physician or by employees in that office, or
23 personally by independent contractors in that office, in accordance
24 with other provisions of law. Employees and independent
25 contractors shall be licensed or certified when that licensure or
26 certification is required by law.

27 (6) The “office of a group practice” is an office or offices in
28 which two or more physicians are legally organized as a
29 partnership, professional corporation, or not-for-profit corporation
30 licensed according to subdivision (a) of Section 1204 of the Health
31 and Safety Code for which all of the following are applicable:

32 (A) Each physician who is a member of the group provides
33 substantially the full range of services that the physician routinely
34 provides, including medical care, consultation, diagnosis, or
35 treatment, through the joint use of shared office space, facilities,
36 equipment, and personnel.

37 (B) Substantially all of the services of the physicians who are
38 members of the group are provided through the group and are
39 billed in the name of the group and amounts so received are treated
40 as receipts of the group, and except that in the case of

1 multispecialty clinics, as defined in subdivision (I) of Section 1206
2 of the Health and Safety Code, physician services are billed in the
3 name of the multispecialty clinic and amounts so received are
4 treated as receipts of the multispecialty clinic.

5 (C) The overhead expenses of, and the income from, the practice
6 are distributed in accordance with methods previously determined
7 by members of the group.

8 (7) Outpatient surgery includes both of the following:

9 (A) Any procedure performed on an outpatient basis in the
10 operating rooms, ambulatory surgery rooms, endoscopy units,
11 cardiac catheterization laboratories, or other sections of a
12 freestanding ambulatory surgical center, whether or not licensed
13 under paragraph (1) of subdivision (b) of Section 1204 of the
14 Health and Safety Code.

15 (B) The ambulatory surgery itself.

16 (c) (1) It is unlawful for a licensee to enter into an arrangement
17 or scheme, such as a cross-referral arrangement, that the licensee
18 knows, or should know, has a principal purpose of ensuring
19 referrals by the licensee to a particular entity that, if the licensee
20 directly made referrals to that entity, would be in violation of this
21 section.

22 (2) It shall be unlawful for a physician to offer, deliver, receive,
23 or accept any rebate, refund, commission, preference, patronage
24 dividend, discount, or other consideration, whether in the form of
25 money or otherwise, as compensation or inducement for a referred
26 evaluation or consultation.

27 (d) No claim for payment shall be presented by an entity to any
28 individual, third-party payer, or other entity for any goods or
29 services furnished pursuant to a referral prohibited under this
30 section.

31 (e) A physician who refers to or seeks consultation from an
32 organization in which the physician has a financial interest shall
33 disclose this interest to the patient or if the patient is a minor, to
34 the patient's parents or legal guardian in writing at the time of the
35 referral.

36 (f) No insurer, self-insurer, or other payer shall pay a charge or
37 lien for any goods or services resulting from a referral in violation
38 of this section.

39 (g) A violation of subdivision (a) shall be a misdemeanor. The
40 appropriate licensing board shall review the facts and circumstances

1 of any conviction pursuant to subdivision (a) and take appropriate
2 disciplinary action if the licensee has committed unprofessional
3 conduct. Violations of this section may also be subject to civil
4 penalties of up to five thousand dollars (\$5,000) for each offense,
5 which may be enforced by the Insurance Commissioner, Attorney
6 General, or a district attorney. A violation of subdivision (c), (d),
7 (e), or (f) is a public offense and is punishable upon conviction by
8 a fine not exceeding fifteen thousand dollars (\$15,000) for each
9 violation and appropriate disciplinary action, including revocation
10 of professional licensure, by the Medical Board of California or
11 other appropriate governmental agency.

12 SEC. 13. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.