

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 648

Introduced by Assembly Member Chesbro
(Coauthor: Assembly Member ~~Swanson~~ Buchanan)
(Coauthor: Senator Cox)

February 25, 2009

An act to add and repeal Chapter 6.5 (commencing with Section 124871) of Part 4 of Division 106 of the Health and Safety Code, relating to rural hospitals.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, as amended, Chesbro. Rural hospitals: physician services.

Existing law generally provides for the licensure of health facilities, including rural general acute care hospitals, by the State Department of Public Health.

Existing law requires the department to provide expert technical assistance to strategically located, high-risk rural hospitals, as defined, to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. Existing law also requires the department to continue to provide regulatory relief when appropriate through program flexibility for such items as staffing, space, and physical plant requirements.

This bill would, until January 1, 2020, establish a demonstration project authorizing a rural hospital, as defined, *that meets specified conditions*, to employ up to 10 physicians and surgeons at one time, except as provided, to provide medical services at the rural hospital or

other health facility that the rural hospital owns or operates, and *to* retain all or part of the income generated by the physicians and surgeons for medical services billed and collected by the rural hospital if the physician and surgeon in whose name the charges are made approves the charges. The bill would require a rural hospital that employs a physician and surgeon pursuant to ~~its~~ *those* provisions to develop and implement a policy regarding the independent medical judgment of the physician and surgeon.

The bill would require these physicians and surgeons to biennially sign a specified statement.

The bill would impose various duties on the department and the Medical Board of California including, not later than January 1, 2019, a requirement that the board deliver a report to the Legislature regarding the demonstration project.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Many hospitals in the state are having great difficulty
- 4 recruiting and retaining physicians.
- 5 (b) There is a shortage of physicians in communities across
- 6 California, particularly in rural areas, and this shortage limits access
- 7 to health care for Californians in these communities.
- 8 (c) Allowing rural hospitals to directly employ physicians will
- 9 allow rural hospitals to provide economic security adequate for a
- 10 physician to relocate and reside in the communities served by the
- 11 rural hospitals and will help rural hospitals recruit physicians to
- 12 provide medically necessary services in these communities and
- 13 further enhance technological developments such as the adoption
- 14 of electronic medical records.
- 15 (d) Allowing rural hospitals to directly employ physicians will
- 16 provide physicians with the opportunity to focus on the delivery
- 17 of health services to patients without the burden of administrative,
- 18 financial, and operational concerns associated with the
- 19 establishment and maintenance of a medical office, thereby giving
- 20 the physicians a reasonable professional and personal lifestyle.

(e) It is the intent of the Legislature by enacting this act to establish a demonstration project authorizing a rural hospital that meets the conditions set forth in Chapter 6.5 (commencing with Section 124871) of the Health and Safety Code to employ physicians directly and to charge for their professional services.

(f) It is the further intent of the Legislature to prevent a rural hospital that employs a physician from interfering with, controlling, or otherwise directing the physician's medical judgment or medical treatment of patients.

SEC. 2. Chapter 6.5 (commencing with Section 124871) is added to Part 4 of Division 106 of the Health and Safety Code, to read:

CHAPTER 6.5. RURAL HOSPITAL PHYSICIAN AND SURGEON
SERVICES DEMONSTRATION PROJECT

124871. For purposes of this chapter, a rural hospital means all of the following:

(a) A general acute care hospital located in an area designated as nonurban by the United States Census Bureau.

(b) A general acute care hospital located in a rural-urban commuting area code of 4 or greater as designated by the United States Department of Agriculture.

(c) A rural general acute care hospital, as defined in subdivision (a) of Section 1250.

124872. (a) Notwithstanding Article 18 (commencing with Section 2400) of Chapter 5 of Division 2 of the Business and Professions Code and in addition to other applicable laws, a rural hospital *whose service area includes a medically underserved area, a medically underserved population, or that has been federally designated as a health professional shortage area* may employ one or more physicians and surgeons, not to exceed 10 physicians and surgeons at one time, except as provided in subdivision ~~(b)~~ (c), to provide medical services at the rural hospital or other health facility, as defined in Section 1250, that the rural hospital owns or operates. The rural hospital may retain all or part of the income generated by the physician and surgeon for medical services billed and collected by the rural hospital, if the physician and surgeon in whose name the charges are made approves the charges.

1 **(b)** A rural hospital may participate in the program if both of
2 the following conditions are met:

3 **(1)** The rural hospital can document that it has been
4 unsuccessful in recruiting one or more primary care or speciality
5 physicians for at least 12 continuous months beginning July 1,
6 2008.

7 **(2)** The chief executive officer of the rural hospital certifies to
8 the Medical Board of California that the inability to recruit primary
9 care or speciality physicians has negatively impacted patient care
10 in the community and that there is a critical unmet need in the
11 community, based on a number of factors, including, but not limited
12 to, the number of patients referred for care outside the community,
13 the number of patients who experienced delays in treatment, and
14 the length of the treatment delays.

15 ~~**(b)**~~

16 **(c)** The total number of licensees employed by the rural hospital
17 at one time shall not exceed 10, unless the employment of
18 additional physicians and surgeons is deemed appropriate by the
19 Medical Board of California on a case-by-case basis. In making
20 this determination the board shall take into consideration whether
21 access to care is improved for the community served by the hospital
22 by increasing the number of physicians and surgeons employed.

23 124873. **(a)** A rural hospital that employs a physician and
24 surgeon pursuant to Section 124872 shall develop and implement
25 a written policy to ensure that each employed physician and
26 surgeon exercises his or her independent medical judgment in
27 providing care to patients.

28 **(b)** Each physician and surgeon employed by a rural hospital
29 pursuant to Section 124872 shall sign a statement biennially
30 indicating that the physician and surgeon:

31 **(1)** Voluntarily desires to be employed by the hospital.

32 **(2)** Will exercise independent medical judgment in all matters
33 relating to the provision of medical care to his or her patients.

34 **(3)** Will report immediately to the Medical Board of California
35 any action or event that the physician and surgeon reasonably and
36 in good faith believes constitutes a compromise of his or her
37 independent medical judgment in providing care to patients in a
38 rural hospital or other health care facility owned or operated by
39 the rural hospital.

1 (c) The signed statement required by subdivision (b) shall be
2 retained by the rural hospital for a period of at least three years.
3 A copy of the signed statement shall be submitted by the rural
4 hospital to the Medical Board of California within 10 working
5 days after the statement is signed by the physician and surgeon.

6 (d) A rural hospital shall not interfere with, control, or direct a
7 physician's and surgeon's exercise of his or her independent
8 medical judgment in providing medical care to patients. If, pursuant
9 to a report to the Medical Board of California required by paragraph
10 (3) of subdivision (a), the Medical Board of California believes
11 that a rural hospital has violated this prohibition, the Medical Board
12 of California shall refer the matter to the State Department of
13 Public Health, which shall investigate the matter. If the department
14 concludes that the rural hospital has violated the prohibition, it
15 shall notify the rural hospital. The rural hospital shall have 20
16 working days to respond in writing to the department's notification,
17 following which the department shall make a final determination.
18 If the department finds that the rural hospital violated the
19 prohibition, it shall assess a civil penalty of five thousand dollars
20 (\$5,000) for the first violation and twenty-five thousand dollars
21 (\$25,000) for any subsequent violation that occurs within three
22 years of the first violation. If no subsequent violation occurs within
23 three years of the most recent violation, the next civil penalty, if
24 any, shall be assessed at the five thousand dollar (\$5,000) level.
25 If the rural hospital disputes a determination by the department
26 regarding a violation of the prohibition, the rural hospital may
27 request a hearing pursuant to Section 131071. Penalties, if any,
28 shall be paid when all appeals have been exhausted and the
29 department's position has been upheld.

30 (e) Nothing in this chapter shall exempt a rural hospital from a
31 reporting requirement or affect the authority of the board to take
32 action against a physician's and surgeon's license.

33 124874. (a) Not later than January 1, 2019, the board shall
34 deliver a report to the Legislature regarding the demonstration
35 project established pursuant to this chapter. The report shall include
36 an evaluation of the effectiveness of the demonstration project in
37 improving access to health care in rural and medically underserved
38 areas and the demonstration project's impact on consumer
39 protection as it relates to intrusions into the practice of medicine.

- 1 (b) This chapter shall remain in effect only until January 1,
- 2 2020, and as of that date is repealed, unless a later enacted statute,
- 3 that is enacted before January 1, 2020, deletes or extends that date.