

AMENDED IN ASSEMBLY AUGUST 20, 2009

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 726

Introduced by Senator Ashburn

(Principal coauthors: Assembly Members Chesbro and Swanson)

(Coauthors: Senators Cox and Ducheny)

February 27, 2009

An act to amend Sections 2401 and 2401.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Ashburn. Health care districts: rural hospitals: employment of physicians and surgeons.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals to employ a physician and surgeon if certain conditions are satisfied. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. The pilot project requires that the term of a contract with a licensee not exceed 4 years. Existing law requires the Medical Board of California to report to the Legislature not later than October 1, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to authorize the direct employment by qualified health care districts and qualified rural hospitals, as defined, of an unlimited number of physicians and surgeons under the pilot project, and would authorize such a district or hospital to employ up to 5 physicians and surgeons at a time if certain requirements are met. The bill would require that the term of a contract with a physician and surgeon not exceed 10 years and would extend the pilot project until January 1, 2018. The bill would require the board to provide a preliminary report to the Legislature not later than July 1, 2013, and a final report not later than July 1, 2016, evaluating the effectiveness of the pilot project, and would make conforming changes.

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. Section 2401 of the Business and Professions
2 Code is amended to read:
3 2401. (a) Notwithstanding Section 2400, a clinic operated
4 primarily for the purpose of medical education by a public or
5 private nonprofit university medical school, which is approved by
6 the Division of Licensing or the Osteopathic Medical Board of
7 California, may charge for professional services rendered to
8 teaching patients by licensees who hold academic appointments
9 on the faculty of the university, if the charges are approved by the
10 physician and surgeon in whose name the charges are made.
11 (b) Notwithstanding Section 2400, a clinic operated under
12 subdivision (p) of Section 1206 of the Health and Safety Code
13 may employ licensees and charge for professional services rendered
14 by those licensees. However, the clinic shall not interfere with,
15 control, or otherwise direct the professional judgment of a
16 physician and surgeon in a manner prohibited by Section 2400 or
17 any other provision of law.
18 (c) Notwithstanding Section 2400, a narcotic treatment program
19 operated under Section 11876 of the Health and Safety Code and
20 regulated by the State Department of Alcohol and Drug Programs,
21 may employ licensees and charge for professional services rendered
22 by those licensees. However, the narcotic treatment program shall
23 not interfere with, control, or otherwise direct the professional

1 judgment of a physician and surgeon in a manner prohibited by
2 Section 2400 or any other provision of law.

3 (d) Notwithstanding Section 2400, a qualified health care district
4 organized and governed pursuant to Division 23 (commencing
5 with Section 32000) of the Health and Safety Code or a qualified
6 rural hospital may employ a licensee pursuant to Section 2401.1,
7 and may charge for professional services rendered by the licensee,
8 if the physician and surgeon in whose name the charges are made
9 approves the charges. However, the district or hospital shall not
10 interfere with, control, or otherwise direct the physician and
11 surgeon's professional judgment in a manner prohibited by Section
12 2400 or any other provision of law.

13 SEC. 2. Section 2401.1 of the Business and Professions Code
14 is amended to read:

15 2401.1. (a) The Legislature finds and declares as follows:

16 (1) Due to the large number of uninsured and underinsured
17 Californians, a number of California communities are having great
18 difficulty recruiting and retaining physicians and surgeons.

19 (2) In order to recruit physicians and surgeons to provide
20 medically necessary services in rural and medically underserved
21 communities, many qualified health care districts and qualified
22 rural hospitals have no viable alternative but to directly employ
23 physicians and surgeons in order to provide economic security
24 adequate for a physician and surgeon to relocate and reside in their
25 communities.

26 (3) The Legislature intends that a qualified health care district
27 or qualified rural hospital meeting the conditions set forth in this
28 section be able to employ physicians and surgeons directly, and
29 to charge for their professional services.

30 (4) The Legislature reaffirms that Section 2400 provides an
31 increasingly important protection for patients and physicians and
32 surgeons from inappropriate intrusions into the practice of
33 medicine, and further intends that a qualified health care district
34 or qualified rural hospital not interfere with, control, or otherwise
35 direct a physician and surgeon's professional judgment.

36 (b) A pilot project to provide for the direct employment of
37 physicians and surgeons by qualified health care districts and
38 qualified rural hospitals is hereby established in order to improve
39 the recruitment and retention of physicians and surgeons in rural
40 and other medically underserved areas.

1 (c) For purposes of this section, “qualified health care district”
2 means a health care district organized and governed pursuant to
3 the Local Health Care District Law (Division 23 (commencing
4 with Section 32000) of the Health and Safety Code). A qualified
5 health care district shall be eligible to employ physicians and
6 surgeons pursuant to this section if all of the following
7 requirements are met:

8 (1) The district health care facility at which the physician and
9 surgeon will provide services meets both of the following
10 requirements:

11 (A) Is operated by the district itself, and not by another entity.

12 (B) Is located within a medically underserved population or
13 medically underserved area, so designated by the federal
14 government pursuant to Section 254b or 254c-14 of Title 42 of
15 the United States Code, or within a federally designated Health
16 Professional Shortage Area.

17 (2) The chief executive officer of the district has provided
18 certification to the board that the district has been unsuccessful,
19 using commercially reasonable efforts, in recruiting a physician
20 and surgeon to provide services at the facility described in
21 paragraph (1) for at least 12 continuous months beginning on or
22 after July 1, 2008. This certification shall specify the commercially
23 reasonable efforts, ~~including, but not limited to, recruitment~~
24 ~~payments or other incentives~~, used to recruit a physician and
25 surgeon that were unsuccessful and shall specify the reason for
26 the lack of success, if known. *In providing a certification pursuant*
27 *to this paragraph, the chief executive officer need not provide*
28 *confidential information regarding specific contract offers or*
29 *individualized recruitment incentives.*

30 (3) The chief executive officer of the district certifies to the
31 board that the hiring of a physician and surgeon pursuant to this
32 section shall not supplant physicians and surgeons with current
33 privileges or contracts with the facility described in paragraph (1).

34 (4) The district enters into or renews a written employment
35 contract with the physician and surgeon prior to December 31,
36 2017, for a term not in excess of 10 years. The contract shall
37 provide for mandatory dispute resolution under the auspices of the
38 board for disputes directly relating to the physician and surgeon’s
39 clinical practice.

1 (5) The total number of physicians and surgeons employed by
2 the district does not exceed two at any time. However, the board
3 shall authorize the district to hire no more than three additional
4 physicians and surgeons if the district makes a showing of clear
5 need in the community following a public hearing duly noticed to
6 all interested parties, including, but not limited to, those involved
7 in the delivery of medical care.

8 (6) The district notifies the board in writing that the district
9 plans to enter into a written contract with the physician and
10 surgeon, and the board has confirmed that the physician and
11 surgeon's employment is within the maximum number permitted
12 by this section. The board shall provide written confirmation to
13 the district within five working days of receipt of the written
14 notification to the board.

15 (7) The chief executive officer of the district certifies to the
16 board that the district did not actively recruit or employ a physician
17 and surgeon who, at the time, was employed by a federally
18 qualified health center, a rural health center, or other community
19 clinic not affiliated with the district.

20 (d) (1) For purposes of this section, "qualified rural hospital"
21 means any of the following:

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

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

27 (C) *A small and rural hospital as defined in Section 124840 of*
28 *the Health and Safety Code.*

29 ~~(E)~~

30 (D) A rural hospital located within a medically underserved
31 population or medically underserved area, so designated by the
32 federal government pursuant to Section 254b or 254c-14 of Title
33 42 of the United States Code, or within a federally designated
34 Health Professional Shortage Area.

35 (2) To be eligible to employ physicians and surgeons pursuant
36 to this section, a qualified rural hospital shall meet all of the
37 following requirements:

38 (A) The chief executive officer of the hospital has provided
39 certification to the board that the hospital has been unsuccessful,
40 using commercially reasonable efforts, in recruiting a physician

1 and surgeon for at least 12 continuous months beginning on or
2 after July 1, 2008. This certification shall specify the commercially
3 reasonable efforts, ~~including, but not limited to, recruitment~~
4 ~~payments or other incentives~~, used to recruit a physician and
5 surgeon that were unsuccessful and shall specify the reason for
6 the lack of success, if known. *In providing a certification pursuant*
7 *to this subparagraph, the chief executive officer need not provide*
8 *confidential information regarding specific contract offers or*
9 *individualized recruitment incentives.*

10 (B) The chief executive officer of the hospital certifies to the
11 board that the hiring of a physician and surgeon pursuant to this
12 section shall not supplant physicians and surgeons with current
13 privileges or contracts with the hospital.

14 (C) The hospital enters into or renews a written employment
15 contract with the physician and surgeon prior to December 31,
16 2017, for a term not in excess of 10 years. The contract shall
17 provide for mandatory dispute resolution under the auspices of the
18 board for disputes directly relating to the physician and surgeon's
19 clinical practice.

20 (D) The total number of physicians and surgeons employed by
21 the hospital does not exceed two at any time. However, the board
22 shall authorize the hospital to hire no more than three additional
23 physicians and surgeons if the hospital makes a showing of clear
24 need in the community following a public hearing duly noticed to
25 all interested parties, including, but not limited to, those involved
26 in the delivery of medical care.

27 (E) The hospital notifies the board in writing that the hospital
28 plans to enter into a written contract with the physician and
29 surgeon, and the board has confirmed that the physician's and
30 surgeon's employment is within the maximum number permitted
31 by this section. The board shall provide written confirmation to
32 the hospital within five working days of receipt of the written
33 notification to the board.

34 (F) The chief executive officer of the hospital certifies to the
35 board that the hospital did not actively recruit ~~or employ~~ a
36 physician and surgeon who, at the time, was employed by a
37 federally qualified health center, a rural health center, or other
38 community clinic not affiliated with the hospital.

39 (e) The board shall provide a preliminary report to the
40 Legislature not later than July 1, 2013, and a final report not later

1 than July 1, 2016, evaluating the effectiveness of the pilot project
2 in improving access to health care in rural and medically
3 underserved areas and the project's impact on consumer protection
4 as it relates to intrusions into the practice of medicine. The board
5 shall include in the report an analysis of the impact of the pilot
6 project on the ability of nonprofit community clinics and health
7 centers located in close proximity to participating health care
8 district facilities and participating rural hospitals to recruit and
9 retain physicians and surgeons.

10 (f) Nothing in this section shall exempt a qualified health care
11 district or qualified rural hospital from any reporting requirements
12 or affect the board's authority to take action against a physician
13 and surgeon's license.

14 (g) This section shall remain in effect only until January 1, 2018,
15 and as of that date is repealed, unless a later enacted statute that
16 is enacted before January 1, 2018, deletes or extends that date.