

AMENDED IN SENATE MAY 29, 2012
AMENDED IN SENATE APRIL 30, 2012
AMENDED IN SENATE APRIL 17, 2012

SENATE BILL

No. 1483

Introduced by Senator Steinberg

February 24, 2012

An act to add Article ~~14 (commencing with Section 2340)~~ to Chapter ~~5 12.7 (commencing with Section 830)~~ to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1483, as amended, Steinberg. Physicians and surgeons.

Existing law provides for the licensing and regulation of physicians and surgeons by the Medical Board of California (*board*) *within the Department of Consumer Affairs (department)*. Under existing law, the *biennial license renewal fee for physicians and surgeons is required to be fixed by the board and may not exceed \$790*.

This bill would create the Physician Health Program, administered by the Physician Health, Recovery, and Monitoring Oversight Committee *within the department*, with 14 members to be appointed as specified. The purpose of the program would be, *among other things*, to promote awareness and education relative to physician and surgeon health issues, including impairment due to alcohol or substance abuse, mental disorders, or other health conditions that could affect the safe practice of medicine, *and to make treatment available to all physicians and surgeons subject to a written agreement with the program that includes agreement by the physician and surgeon to pay for expenses associated with the treatment*. The bill would *also* provide for referral

by the program of physicians and surgeons, as defined, to certified monitoring programs on a voluntary basis, governed by a written agreement between the participant and the program. The bill would require the ~~Department of Consumer Affairs~~ *department* to select a contractor to implement the program, with the committee serving as the evaluation body for submitted proposals. The bill would require the program to report the name of a participant to the board and the committee when it learns of the participant's failure to meet the requirements of the program. The bill would require the committee to report to the department certain statistics received from the program, would require the department to report to the Legislature on the outcomes of the program, and would require regular audits of the program. ~~The bill would enact other related provisions.~~

This bill would increase the biennial license renewal fee by \$39.50 for purposes of these provisions, except as specified. The bill would direct the board to transfer this revenue on a monthly basis to the Physician Health, Awareness, and Monitoring Quality Trust Fund, which the bill would create, and would specify that the use of these funds is subject to appropriation by the Legislature.

The bill would enact other related provisions and make other 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. The Legislature finds and declares all of the
2 following:
3 (a) (1) It is in every patient's interest to have physicians and
4 surgeons ~~that~~ *who* are healthy and well.
5 (2) Physicians and surgeons may have health conditions that
6 interfere with their ability to practice medicine safely.
7 (3) In such cases, the most effective long-term protection for
8 patients is early intervention to address health issues that have the
9 potential to interfere with the safe practice of physicians and
10 surgeons.
11 (b) While the Legislature recognizes that physicians and
12 surgeons have a number of options for obtaining treatment, it is
13 the intent of the Legislature in enacting this act to promote
14 awareness among members of the medical community about health

1 issues that could interfere with safe practice, to promote awareness
2 that private early intervention options are available, to provide
3 resources and referrals to ensure physicians and surgeons are better
4 able to choose high-quality private interventions that meet their
5 specific needs, and to provide a separate mechanism for monitoring
6 treatment.

7 ~~SEC. 2.— Article 14 (commencing with Section 2340) is added~~
8 ~~to Chapter 5 of Division 2 of the Business and Professions Code,~~
9 ~~to read:~~

10

11 ~~Article 14. Physician Health, Awareness, and Monitoring~~
12 ~~Quality~~

13

14 ~~2340.—~~

15 ~~SEC. 2. Article 12.7 (commencing with Section 830) is added~~
16 ~~to Chapter 1 of Division 2 of the Business and Professions Code,~~
17 ~~to read:~~

18

19 ~~Article 12.7. Physician Health, Awareness, and Monitoring~~
20 ~~Quality~~

21

22 ~~830. This article shall be known and may be cited as the~~
23 ~~Physician Health, Awareness, and Monitoring Quality Act of 2012.~~
24 ~~2341.~~

25 ~~830.2. For purposes of this article, the following terms shall~~
26 ~~have the following meanings:~~

27 (a) “Board” means the Medical Board of California.

28 (b) “Committee” means the Physician Health, Awareness, and
29 Monitoring Quality Oversight Committee established pursuant to
30 Section ~~2343~~ 830.6.

31 (c) “Department” means the Department of Consumer Affairs.

32 (d) “Impairment” means the inability to practice medicine with
33 reasonable skill and safety to patients by reason of alcohol or
34 substance abuse, a mental disorder, or another health condition as
35 determined by a clinical evaluation in individual circumstances.

36 (e) “Participant” means a physician and surgeon enrolled in the
37 program pursuant to an agreement entered into as provided in
38 Section ~~2346~~ 830.10.

39 (f) “Physician Health Program” or “program” means the program
40 defined in Section ~~2342~~ 830.4 and includes vendors, providers, or

1 entities that contract with the committee pursuant to this article.
2 The program itself shall not offer or provide treatment services to
3 physicians and surgeons.

4 (g) “Physician and surgeon” means a holder of a valid physician
5 and surgeon’s certificate. For the purposes of participating in the
6 program under this article, “physician and surgeon” shall also
7 mean a student enrolled in a medical school approved or recognized
8 by the board, a graduate of a medical school enrolled in a medical
9 specialty residency training program approved or recognized by
10 the board, or a physician and surgeon seeking reinstatement of a
11 license from the board.

12 (h) “Qualifying illness” means alcohol or substance abuse, a
13 mental disorder, or another health condition that a clinical
14 evaluation determines can be monitored and treated with private
15 clinical and monitoring programs.

16 ~~2342.~~

17 830.4. The Physician Health Program shall do all of the
18 following:

19 (a) ~~Be—Subject to the requirements of Section 830.10, be~~
20 available to all physicians and surgeons, as defined in subdivision
21 (g) of Section ~~2341~~ 830.2.

22 (b) Promote awareness among members of the medical
23 community on the recognition of health issues that could interfere
24 with safe practice.

25 (c) Educate the medical community on the benefits of and
26 options available for early intervention to address those health
27 issues.

28 (d) Refer physicians and surgeons to monitoring programs
29 certified by the program by executing a written agreement with
30 the participant and monitoring the compliance of the participant
31 with that agreement.

32 (e) Provide for the confidential participation by physicians and
33 surgeons who have a qualifying illness and ~~that~~ *who* are not on
34 probation with the board.

35 ~~2343.~~

36 830.6. (a) (1) There is hereby established *within the*
37 *Department of Consumer Affairs* the Physician Health, Awareness,
38 and Monitoring Quality Oversight Committee that shall have the
39 duties and responsibilities set forth in this article. The committee
40 may take any reasonable administrative actions to carry out the

1 responsibilities and duties set forth in this article, including, but
2 not limited to, hiring staff and entering into contracts.

3 (2) The committee shall be formed no later than ~~_____~~ *April 1,*
4 *2013.*

5 (3) The committee composition shall be as follows:

6 (A) All of the members under this subparagraph shall be
7 appointed by the Governor and licensed in this state as physicians
8 and surgeons with education, training, and experience in the
9 identification and treatment of substance use or mental disorders,
10 or both.

11 (i) Two members recommended by a statewide association
12 representing psychiatrists with at least 3,000 members.

13 (ii) Two members recommended by a statewide association
14 representing addiction medicine specialists with at least 300
15 members.

16 (iii) Three members recommended by a statewide association
17 representing ~~physician~~ *physicians* and surgeons from all specialties,
18 modes of practice, and practice settings with at least 25,000
19 members.

20 (iv) One member recommended by a statewide hospital
21 association representing at least 400 hospitals.

22 (v) For the purpose of the initial composition of the committee,
23 one member appointed under clause (i) shall be appointed for a
24 two-year term and the other member for a three-year term; one
25 member appointed under clause (ii) shall be appointed for a
26 two-year term and the other member for a three-year term; one
27 member appointed under clause (iii) shall be appointed for a
28 two-year term, one member for a shall be appointed for three-year
29 term, and one member shall be appointed for a four-year term; and
30 the member appointed under clause (iv) shall be appointed for a
31 four-year term.

32 (B) All members appointed under this subparagraph shall have
33 experience in a field related to mental illness, or alcohol or
34 substance abuse, or both.

35 (i) Four members of the public appointed by the Governor. For
36 the initial appointment to the committee, two members shall be
37 appointed to serve for two-year terms and two members shall be
38 appointed to serve for four-year terms.

39 (ii) One member of the public appointed by the Speaker of the
40 Assembly. The initial appointment shall be for a three-year term.

1 (iii) One member of the public appointed by the Senate
2 Committee on Rules. The initial appointment shall be for a
3 three-year term.

4 (4) For the purposes of this section, a public member may not
5 be any of the following:

6 (A) A current or former physician and surgeon or an immediate
7 family member of a physician and surgeon.

8 (B) A current or former employee of a physician and surgeon,
9 or a business providing or arranging for physician and surgeon
10 services, or having any financial interest in the business of a
11 physician and surgeon.

12 (C) An employee or agent or representative of any organization
13 representing physicians and surgeons.

14 (D) An individual or an affiliate of an organization who has
15 conducted business with or regularly appeared before the board.

16 (5) A public member shall meet all of the requirements for
17 public members on a board as set forth in Chapter 6 (commencing
18 with Section 450) of Division 1.

19 (b) Members of the committee shall serve without compensation.

20 (c) Except as provided for in subdivision (a), committee
21 members shall serve terms of four years and may be reappointed.

22 (d) The committee shall be subject to the Bagley-Keene Open
23 Meeting Act (Article 9 (commencing with Section 11120) of
24 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
25 Code), the Administrative Procedure Act (Chapter 3.5
26 (commencing with Section 11340) of Part 1 of Division 3 of Title
27 2 of the Government Code), and the California Public Records
28 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
29 of Title 1 of the Government Code).

30 (e) The rules adopted by the committee shall be consistent with
31 the Uniform Standards Regarding Substance-Abusing Healing
32 Arts Licensees as adopted by the Substance Abuse Coordination
33 Committee of the Department of Consumer Affairs pursuant to
34 Section 315, the guidelines of the Federation of State Physician
35 Health Programs, Inc., as well as community standards of practice,
36 including, but not limited to, criteria for acceptance of participants
37 into the program and the refusal to accept a person as a participant
38 into the program and the assigning of costs of participation and
39 associated financial responsibilities of participants. In the event
40 of any conflicts between the Uniform Standards Regarding

1 Substance-Abusing Healing Arts Licensees as adopted by the
2 Substance Abuse Coordination Committee of the Department of
3 Consumer Affairs pursuant to Section 315 and the guidelines of
4 the Federation of State Physician Health Programs, Inc., and
5 community standards of practice, the Uniform Standards Regarding
6 Substance-Abusing Healing Arts Licensees as adopted by the
7 Substance Abuse Coordination Committee of the Department of
8 Consumer Affairs pursuant to Section 315 shall prevail.

9 ~~2344.~~

10 830.8. (a) The department shall select a contractor for the
11 Physician Health Program pursuant to a request for proposals, and
12 the committee shall contract for a five-year term with that entity.
13 The process for procuring the services for the program shall be
14 administered by the department pursuant to Article 4 (commencing
15 with Section 10335) of Chapter 2 of Part 2 of Division 2 of the
16 Public Contract Code. However, the committee shall serve as the
17 evaluation body for the procurement.

18 (b) The chief executive officer of the program vendor shall have
19 expertise in the areas of substance or alcohol abuse, and mental
20 disorders in health care professionals.

21 (c) The program vendor shall have a medical director to oversee
22 clinical aspects of the program's operations. The medical director
23 shall have expertise in the diagnosis and treatment of alcohol and
24 substance abuse and mental disorders in health care professionals.

25 (d) The program vendor shall have established relationships
26 with local medical societies and hospital well-being committees
27 for conducting education, outreach, and referrals for physician and
28 surgeon health.

29 (e) The program vendor shall monitor the monitoring entities
30 that participating physicians and surgeons have retained for
31 monitoring the a participant's treatment and shall provide ongoing
32 services to physicians and surgeons that resume practice.

33 (f) The program vendor shall have a system for immediately
34 reporting physicians and surgeons who fail to meet the
35 requirements of the program as provided in subdivision (e) of
36 Section ~~2346~~ 830.10. This system shall ensure absolute
37 confidentiality in the communication to the enforcement division
38 of the board, and shall not provide this information to any other
39 individual or entity unless authorized by the enrolled physician
40 and surgeon.

1 (g) The contract entered into pursuant to this article shall also
2 require the program vendor to do both of the following:

3 (1) Report annually to the committee statistics related to the
4 program, including, but not limited to, the number of participants
5 currently in the program, the number of participants referred by
6 the board as a condition of probation, the number of participants
7 who have successfully completed their agreement period, the
8 number of participants terminated from the program, and the
9 number of participants reported by the program pursuant to
10 subdivision (e) of Section-~~2346~~ 830.10. However, in making that
11 report, the program shall not disclose any personally identifiable
12 information relating to any participant.

13 (2) Submit to periodic audits and inspections of all operations,
14 records, and management related to the program to ensure
15 compliance with the requirements of this article and its
16 implementing rules and regulations.

17 (h) In addition to the requirements of Section-~~2349~~ 830.16, the
18 committee shall monitor compliance of the program with the
19 requirements of this article. The committee or its designee may
20 make periodic inspections and onsite visits with the vendor
21 contracted to provide Physician Health Program services.

22 (i) Copies of the audits referenced in paragraph (2) of
23 subdivision (g) shall be published and provided to the appropriate
24 policy committees of the Legislature within 10 business days of
25 publication. A copy shall also be made available to the public by
26 posting a link on the committee’s Internet Web site homepage no
27 more than 10 business days after publication.

28 ~~2346.~~

29 830.10. (a) A physician and surgeon shall, as a condition of
30 participation in the Physician Health Program, enter into an
31 individual agreement with the program *and agree to pay expenses*
32 *related to treatment, monitoring, laboratory tests, and other*
33 *activities specified in the participant’s written agreement with the*
34 *program.*

35 (b) The *written* agreement between the physician and surgeon
36 and the program shall be consistent with the standards adopted by
37 the committee pursuant to subdivision (e) of Section-~~2343~~ 830.6,
38 and shall include all of the following:

1 (1) A jointly agreed-upon plan and mandatory conditions and
2 procedures to monitor compliance with the program, including,
3 but not limited to, an agreement to cease practice.

4 (2) Compliance with terms and conditions of treatment and
5 monitoring.

6 (3) Limitations on practice.

7 (4) Conditions and terms for return to practice.

8 (5) Criteria for program completion.

9 (6) Criteria for termination of the participant from the program.

10 (7) *A stipulation that expenses related to treatment, monitoring,*
11 *laboratory tests, and other activities specified in the participant's*
12 *written agreement with the program will be paid by the participant.*

13 (c) In addition, if the physician and surgeon retains the services
14 of a private monitoring entity, he or she shall agree to authorize
15 the program vendor to receive reports from the private monitoring
16 entity and to request information from the private monitoring entity
17 regarding his or her treatment status. Except as provided in
18 subdivisions (b), (c), (d), and (e), and subdivision (f) of Section
19 ~~2344~~ 830.8, a physician and surgeon's participation in the program
20 pursuant to an agreement shall be confidential unless waived by
21 the physician and surgeon.

22 (d) Any agreement entered into pursuant to this section shall
23 not be considered a disciplinary action or order by the board, and
24 shall not be disclosed to the committee or the board if both of the
25 following apply:

26 (1) The physician and surgeon did not enroll in the program as
27 a condition of probation or as a result of an action of the board.

28 (2) The physician and surgeon is in compliance with the
29 conditions and procedures in the agreement.

30 (e) (1) The program shall immediately report the name of a
31 participant to the board and the committee when it learns of the
32 participant's failure to meet the requirements of the program,
33 including failure to cease practice when required, failure to submit
34 to evaluation, treatment, or biological testing when required, or a
35 violation of the rules adopted by the committee pursuant to
36 subdivision (e) of Section ~~2343~~ 830.6. The program shall also
37 immediately report the name of a participant to the committee
38 when it learns that the participant's impairment is not substantially
39 alleviated through treatment, or if the participant withdraws or is
40 terminated from the program prior to completion, or if, in the

1 opinion of the program after a risk assessment is conducted, the
2 participant is unable to practice medicine with reasonable skill and
3 safety.

4 (2) Notwithstanding subdivision (f) of Section ~~2344~~ 830.8, the
5 report shall provide sufficient information to permit the board to
6 assess whether discipline or other action is required to protect the
7 public.

8 (f) Except as otherwise provided in subdivisions (b), (c), (e),
9 and (f) of Section ~~2344~~ 830.8, subdivision (e) of this section, and
10 this subdivision, any oral or written information reported to the
11 board pursuant to this section, including, but not limited to, any
12 physician and surgeon's participation in the program and any
13 agreement entered into pursuant to this article, shall remain
14 confidential as provided in subdivision (c) of Section 800, and
15 shall not constitute a waiver of any existing evidentiary privileges
16 under any other provision or rule of law. However, confidentiality
17 regarding the physician and surgeon's participation in the program
18 and of all information and records created by the program related
19 to that participation shall not apply if the board has referred a
20 participant as a condition of probation.

21 (g) Nothing in this section prohibits, requires, or otherwise
22 affects the discovery or admissibility of evidence in an action by
23 the board against a physician and surgeon based on acts or
24 omissions within the course and scope of his or her practice.

25 (h) Any information received, developed, or maintained by the
26 committee regarding a physician and surgeon in the program shall
27 not be used for any other purposes.

28 *830.12. (a) The biennial license renewal fee established in*
29 *subdivision (d) of Section 2435 shall increase by thirty-nine dollars*
30 *and fifty cents (\$39.50) for purposes of this article, except those*
31 *purposes specified in Section 830.10. The board shall, on a monthly*
32 *basis, transfer the revenue generated from this increase to the trust*
33 *fund described in subdivision (b).*

34 *(b) There is hereby established in the State Treasury the*
35 *Physician Health, Awareness, and Monitoring Quality Trust Fund*
36 *into which all revenue generated pursuant to subdivision (a) shall*
37 *be deposited. These funds shall be used, upon appropriation by*
38 *the Legislature, exclusively for the purposes of this article, except*
39 *those purposes specified in Section 830.10.*

1 (c) *Nothing in this section shall be construed to prohibit*
2 *additional funding from private sources from being used to support*
3 *operations of the program or to support the establishment of the*
4 *committee and the program.*

5 ~~2347.~~

6 830.14. (a) The committee shall report to the department
7 statistics received from the program pursuant to Section ~~2344~~
8 830.8, and the department shall, thereafter, report to the appropriate
9 policy committees of the Legislature on or before ~~_____~~ *October*
10 *1, 2014*, and annually thereafter, the outcomes of the program,
11 including, but not limited to, the number of individuals served, the
12 number of participants currently in the program, the number of
13 participants referred by the board as a condition of probation, the
14 number of individuals who have successfully completed their
15 agreement period, the number of participants terminated from the
16 program, and the number of individuals reported to the board for
17 noncompliance pursuant to subdivision (e) of Section ~~2346~~ 830.10.
18 However, in making those reports, the committee and the
19 department shall not disclose any personally identifiable
20 information relating to any physician and surgeon participating in
21 the program pursuant to an agreement entered into pursuant to
22 Section ~~2346~~ 830.10.

23 (b) *This section shall become inoperative on October 1, 2018,*
24 *pursuant to Section 10231.5 of the Government Code.*

25 ~~2349.~~

26 830.16. (a) The committee shall biennially contract to perform
27 an audit of the Physician Health Program and its vendors. This
28 section is not intended to reduce the number of audits the
29 committee may otherwise conduct. The initial audit shall
30 commence two years after the award of an initial five-year contract.
31 Under no circumstances shall General Fund revenue be used for
32 this purpose.

33 (b) Any person or entity conducting the audit required by this
34 section shall maintain the confidentiality of all records reviewed
35 and information obtained in the course of conducting the audit and
36 shall not disclose any information identifying any program
37 participant.

- 1 (c) The biennial audit shall be ~~done~~ *completed* by ____ and shall
- 2 ascertain if the program is operating in conformance with the rules
- 3 and regulations established by the committee.

O