

AMENDED IN ASSEMBLY APRIL 2, 2014

AMENDED IN ASSEMBLY MARCH 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1952

Introduced by Assembly Member Pan

February 19, 2014

An act to add Article 1.5 (commencing with Section 127447.10) to Chapter 2.5 of Part 2 of Division 107 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1952, as amended, Pan. Nonprofit hospitals: charity care.

Existing law establishes the State Department of Public Health, under the direction of the State Public Health Officer, and sets forth its powers and duties, including, but not limited to, the licensing and regulation of health facilities.

Existing law requires specified hospitals to maintain an understandable discount policy and charity care policy, and makes uninsured patients with high medical costs who are at or below 350% of the federal poverty level eligible to apply for participation.

This bill would require, *except as specified*, a nonprofit general acute care hospital to annually provide charity care in an amount equaling at least of 5% of the hospital's net patient revenue. The bill would require the State Public Health Officer to assess a penalty against noncomplying hospitals, would establish the Nonprofit Hospital Charity Care Penalty Fund, would require the revenues collected pursuant to these provisions to be deposited into the fund, and would declare these funds available, upon appropriation by the Legislature, for the support of the Medi-Cal

~~program.~~ program and for indigent care and safety net programs. The bill would authorize the State Department of Public Health and the Attorney General to assess reasonable fees, as specified, and bring or intervene in a civil action to collect fines and recover enforcement costs.

This bill would require the Office of Statewide Health Planning and Development (OSHPD) to, no later than January 1, 2016, issue a report to the Legislature addressing the unique accounting difficulties in calculating charity care for integrated nonprofit health systems and issue recommendations for how to calculate the amount of charity care required by these provisions. The bill would require each nonprofit hospital to file an annual report with the State Department of Public Health stating the amount of charity care provided by the hospital, and would require the State Department of Public Health to enter into an interagency agreement with OSHPD relating to the reporting and collection of data.

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. Article 1.5 (commencing with Section 127447.10)
2 is added to Chapter 2.5 of Part 2 of Division 107 of the Health and
3 Safety Code, to read:

4
5 Article 1.5. Nonprofit Hospital Charity Care

6
7 127447.10. (a) Commencing January 1, 2015, a nonprofit
8 hospital, pursuant to its charity care policy maintained under Article
9 1 (commencing with Section 127400), shall annually provide, for
10 each fiscal year, an appropriate level of charity care equal to at
11 least 5 percent of the *nonprofit* hospital’s net patient revenue.

12 (b) For purposes of satisfying subdivision (a), a *nonprofit*
13 hospital shall not change its existing fiscal year unless the *nonprofit*
14 hospital changes its ownership or corporate structure as a result
15 of a sale or merger.

16 (c) A determination of the amount of charity care ~~and~~
17 ~~contributions to the fund~~ provided by a *nonprofit* hospital shall be
18 based on the most recently completed fiscal year of the *nonprofit*
19 hospital.

1 (d) If a *nonprofit* hospital *at any time* reasonably determines
2 that providing charity care in accordance with this article in a given
3 fiscal year would result in the *nonprofit* hospital having an annual
4 operating margin of less than 1 percent, the *nonprofit* hospital may
5 *at any time* petition the department to be excused in whole or in
6 part from complying with subdivision (a) in that fiscal year *or a*
7 *future fiscal year*. The director may excuse compliance if he or
8 she concurs with the *nonprofit* hospital's conclusion that
9 compliance with subdivision (a) would result in the *nonprofit*
10 hospital having an operating margin of less than 1 percent in the
11 fiscal year at issue.

12 (e) This section shall not apply to a *nonprofit* hospital that is
13 part of an integrated nonprofit health system. *No later than January*
14 *1, 2016, the Office of Statewide Health Planning and Development*
15 *shall issue a report to the Legislature addressing the unique*
16 *accounting difficulties in calculating charity care for integrated*
17 *nonprofit health systems and shall issue recommendations to the*
18 *Legislature addressing how to calculate the amount of charity*
19 *care required by subdivision (a) for the integrated nonprofit health*
20 *systems. The office shall, prior to issuing its report, consult with*
21 *stakeholders, including, but not limited to, the integrated nonprofit*
22 *systems, a nonprofit organization that represents physicians who*
23 *are employed by medical groups associated with the systems, a*
24 *trade union organization that represents nurses and other*
25 *employees employed by the systems, an academic center located*
26 *in a university in California specializing in health care financing,*
27 *and representatives of the uninsured and underinsured, including*
28 *representatives of the undocumented.*

29 (f) Nothing in this article shall invalidate an ordinance of, nor
30 be construed to prohibit the adoption of an ordinance by, a city,
31 county, or city and county, unless simultaneous compliance with
32 this article and the ordinance is impossible.

33 127447.15. (a) This article shall be administered and enforced
34 by the State Department of Public Health.

35 (b) The director shall assess a penalty to a *nonprofit* hospital
36 that does not provide the minimum charity care within a fiscal year
37 as required by this article.

38 (c) (1) The penalty shall be at least ____ dollars (\$____), and
39 shall not exceed ____ dollars (\$____) per fiscal year in which the
40 *nonprofit* hospital is in violation.

1 (2) Notwithstanding paragraph (1), for a second and each
 2 subsequent fiscal year of violation within a five-year period, the
 3 penalty shall be a sum that is equivalent to at least twice the
 4 *nonprofit* hospital’s total shortfall in charity care for that fiscal
 5 year, but shall not exceed a sum that is equivalent to ___ percent
 6 of the *nonprofit* hospital’s net patient revenue.

7 (d) In determining the amount of the penalty, the director shall
 8 consider ~~all~~ *both* of the following:

9 (1) The severity of the shortfall in charity care provided by the
 10 *nonprofit* hospital.

11 (2) The good-faith effort of the *nonprofit* hospital to reach the
 12 required level of charity care.

13 (e) *The department or the Attorney General may bring or*
 14 *intervene in a civil action to collect fines imposed by the*
 15 *department for violations of this article and to recover the state’s*
 16 *enforcement costs, including attorney’s fees, and for appropriate*
 17 *equitable relief.*

18 (f) *Fines or other moneys recovered under this section shall*
 19 *first be used to offset any expenses of administering this article,*
 20 *and any moneys beyond those necessary to offset those expenses*
 21 *shall be deposited in the fund.*

22 127447.20. As used in this article, the following terms have
 23 the following meanings:

24 (a) ~~“Fund” means the Nonprofit Hospital Charity Care Penalty~~
 25 ~~Fund established pursuant to Section 127447.25.~~

26 (a) (1) *“Charity care” means the unreimbursed cost to a*
 27 *nonprofit hospital of all of the following:*

28 (A) *Providing, funding, or otherwise financially supporting any*
 29 *of the following community benefits, provided that providing,*
 30 *funding, or financial support of the benefits is demonstrated to*
 31 *reduce community health care costs:*

- 32 (i) *Vaccination programs and services for needy individuals.*
- 33 (ii) *Chronic illness prevention programs and services.*
- 34 (iii) *Nursing and caregiver training.*
- 35 (iv) *Home-based health care programs for needy individuals.*
- 36 (v) *Exercise or nutrition programs for needy individuals.*
- 37 (vi) *Community-based mental health outreach and assessment*
 38 *programs for needy individuals.*

1 (B) Providing, funding, or otherwise financially supporting
2 health care services or items on an inpatient or outpatient basis
3 to needy patients.

4 (C) Providing, funding, or otherwise financially supporting
5 health care services or items provided to needy patients through
6 other outpatient clinics, hospitals, or health care organizations.

7 (D) Any unreimbursed difference between the reimbursement
8 a nonprofit hospital receives from the Medi-Cal program for
9 providing a health care service or item pursuant to the Medi-Cal
10 program, and the reimbursement the nonprofit hospital would
11 have received from the Medicare program for providing the
12 identical health care service or item had it been eligible for
13 reimbursement from the Medicare program.

14 (2) For purposes of this definition, charity care does not include
15 the cost to a nonprofit hospital of paying any taxes or other
16 governmental assessments, uncollected fees, or accounts written
17 off as bad debt.

18 (3) For purposes of this definition, the “cost to a nonprofit
19 hospital” shall be calculated by applying the cost-to-charge ratios,
20 according to the nonprofit hospital’s most recently filed Medicare
21 cost report, to billed charges.

22 (b) “Department” means the State Department of Public Health.

23 (c) “Director” means the State Public Health Officer.

24 ~~(d) “Hospital” means any health facility licensed pursuant to~~
25 ~~subdivision (a) of Section 1250 that is owned or operated by one~~
26 ~~or more nonprofit corporations or associations in which no part of~~
27 ~~the net earnings inures, or may lawfully inure, to the benefit of~~
28 ~~any private shareholder or individual. “Hospital” does not include~~
29 ~~children’s hospitals, as defined in Section 16996 of the Welfare~~
30 ~~and Institutions Code; or public hospitals, as defined in paragraph~~
31 ~~(25) of subdivision (a) of Section 14105.98 of the Welfare and~~
32 ~~Institutions Code.~~

33 (d) “Fund” means the Nonprofit Hospital Charity Care Penalty
34 Fund established pursuant to Section 127447.25.

35 (e) (1) “Integrated nonprofit health system” means a nonprofit
36 hospital and an affiliated health care service plan that are owned,
37 operated, or substantially controlled by the same person or persons
38 or other legal entity or entities, including, but not limited to, by a
39 shared corporate parent.

1 (2) (A) For purposes of this subdivision, “affiliated health care
2 service plan” means a health care service plan licensed under the
3 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2
4 commencing with Section 1340) of Division 2 that in a nonprofit
5 hospital’s most recently concluded fiscal year was the primary
6 payer for 5 percent or more of all annual inpatient discharges
7 from the nonprofit hospital on the date of the discharge, excluding
8 inpatient discharges when the primary payer was Medicare,
9 Medi-Cal, or a county indigent program pursuant to Part 5
10 (commencing with Section 17000) of Division 9 the Welfare and
11 Institutions Code, when the patient was a self-pay patient, as
12 defined in subdivision (f) of Section 127400, or when the care was
13 provided as unreimbursed charity care.

14 (B) For purposes of this subdivision, “primary payer” means
15 the person or other legal entity, other than the patient, that is or
16 was legally required or responsible to make payment with respect
17 to an item or service provided by a nonprofit hospital to a patient,
18 or any portion thereof, before any other person or other legal
19 entity, other than the patient.

20 (f) “Needy individual” and “needy patient” shall have the same
21 meaning as the term “financially qualified patient” is defined in
22 Section 127400. If a nonprofit hospital chooses to grant eligibility
23 for its discount payment policy or charity care policies to patients
24 with incomes over 350 percent of the federal poverty level, as
25 permitted by subparagraph (A) of paragraph (1) of subdivision
26 (a) of Section 127405, patients eligible under those policies shall
27 also be deemed “needy individuals” and “needy patients.”

28 (g) “Net patient revenue” shall be calculated in accordance
29 with generally accepted accounting principles for hospitals, and
30 shall be consistent with information provided by a nonprofit
31 hospital in a compliant Hospital Annual Disclosure Report filed
32 with the Office of Statewide Health Planning and Development
33 pursuant to Section 128735.

34 (h) “Nonprofit hospital” means any health facility licensed
35 pursuant to subdivision (a) of Section 1250 that is owned or
36 operated or substantially controlled by one or more nonprofit
37 corporations or associations, as defined in Division 2 (commencing
38 with Section 5000) of Title 1 of the Corporations Code, in which
39 no part of the net earnings inures, or may lawfully inure, to the
40 benefit of any private shareholder or individual. “Nonprofit

1 hospital” does not include children’s hospitals, as defined in
2 Section 16996 of the Welfare and Institutions Code, or public
3 hospitals, as defined in paragraph (25) of subdivision (a) of Section
4 14105.98 of the Welfare and Institutions Code.

5 (i) “Operating margin” shall be calculated in accordance with
6 generally accepted accounting principles for hospitals, and shall
7 be based on a nonprofit hospital’s operating earnings.

8 (j) “Unreimbursed costs” means either or in combination the
9 costs a nonprofit hospital incurs for providing individuals inpatient
10 and outpatient services or items for which the nonprofit hospital
11 does not receive reimbursement from any source, and for which
12 the nonprofit hospital has no expectation at the time the services
13 or items are provided that any third-party payer will pay in part
14 or in whole. “Unreimbursed costs” does not include payer
15 discounts or contractual adjustments in reimbursements to
16 third-party payers or costs for which the nonprofit hospital receives
17 any partial payment for the related service, including, but not
18 limited to, third-party insurance payments, Medicare payments,
19 payments from TRICARE or the Civilian Health and Medical
20 Program of the Uniformed Services, state reimbursements for
21 education, payments from pharmaceutical companies to pursue
22 research, grant funds for research, and disproportionate share
23 payments.

24 127447.25. (a) The Nonprofit Hospital Charity Care Penalty
25 Fund is hereby established within the General Fund. Revenues
26 derived from penalties assessed pursuant to this article shall be
27 deposited into the ~~fund~~. *fund*. Notwithstanding Section 16305.7
28 of the Government Code, any interest and dividends earned on
29 deposits in the fund shall be retained in the fund for purposes set
30 forth in this article.

31 (b) All moneys in the fund shall be available for expenditure,
32 upon appropriation by the Legislature, for the support of the
33 Medi-Cal program *and for indigent care and safety net programs*.

34 (c) It is the intent of the Legislature that moneys in the fund be
35 used to supplement, and not displace, existing funding for the
36 Medi-Cal program *and for indigent care and safety net programs*.

37 (d) For purposes of this section, “existing funding for the
38 Medi-Cal program” means the total amount expended from
39 appropriations by the Legislature for the Medi-Cal program in the
40 fiscal year in which this section is enacted, or in any subsequent

1 fiscal year, whichever is greater. “Existing funding for the
2 Medi-Cal program” does not include any amount appropriated by
3 the Legislature from the fund. *For purposes of this section,*
4 *“existing funding for indigent care and safety net programs” means*
5 *the total amount expended from appropriations by the Legislature*
6 *for indigent care and safety net programs in the fiscal year in*
7 *which this section is enacted, or in any subsequent fiscal year,*
8 *whichever is greater. “Existing funding for indigent care and safety*
9 *net programs” does not include any amount appropriated by the*
10 *Legislature for the fund.*

11 127447.30. (a) *The department shall adopt necessary*
12 *regulations consistent with this section to govern the reporting*
13 *and collection of data and to ensure the confidentiality of any*
14 *patient-specific data.*

15 (b) *Each nonprofit hospital shall file an annual report with the*
16 *department stating the amount of charity care provided by the*
17 *nonprofit hospital. Nonprofit hospitals shall make these reports*
18 *publicly available, including by posting the report on an Internet*
19 *Web site, except that any confidential patient-specific data included*
20 *in the reports shall be removed before public disclosure.*

21 (c) *The department shall inform the Attorney General of any*
22 *nonprofit hospital that the department reasonably suspects may*
23 *have failed to comply with the requirements of subdivision (a) of*
24 *Section 127447.10.*

25 (d) *The department shall enter into an interagency agreement*
26 *with the Office of Statewide Health Planning and Development*
27 *relating to the reporting and collection of data under this section.*

28 (e) *This article shall not preclude the department from requiring*
29 *nonprofit hospitals to provide additional information regarding*
30 *their charitable activities, or preclude the department from entering*
31 *into interagency agreements with other agencies and departments*
32 *regarding the reporting, collection, and analysis of data relating*
33 *to charity care.*

34 127447.40. (a) *The department shall assess reasonable fees*
35 *on nonprofit hospitals in amounts designed to cover the costs it*
36 *incurs in administering and enforcing this article. The Attorney*
37 *General may assess reasonable fees on nonprofit hospitals in*
38 *amounts designed to cover the costs it incurs in administering and*
39 *enforcing this article.*

1 ***(b) The department, the Office of Statewide Health Planning***
2 ***and Development, and Attorney General may adopt regulations***
3 ***implementing this article.***

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