

AMENDED IN SENATE AUGUST 26, 2015

AMENDED IN SENATE AUGUST 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 941

Introduced by Assembly Member Wood

February 26, 2015

An act to amend Section 1206 of the Health and Safety Code, relating to clinics.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Wood. Clinics: licensure and regulation: exemption.

Existing law provides for the regulation and licensure of clinics, as defined, by the State Department of Public Health. Under existing law, specified types of clinics are exempted from these licensing provisions, including a clinic that is conducted, maintained, or operated by a federally recognized Indian tribe and is located on land recognized as tribal land by the federal government.

This bill would expand that exemption to also include a clinic conducted, maintained, or operated by a federally recognized Indian tribe under a contract with the United States pursuant to federal law, without regard to the location of the clinic, except that if the clinic chooses to apply to the department for a state facility license, then the department would retain authority to regulate that clinic as a primary care clinic.

This bill would incorporate additional changes to Section 1206 of the Health and Safety Code proposed by AB 1130 that would become

operative if this bill and AB 1130 are chaptered and this bill is chaptered last.

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 1206 of the Health and Safety Code is
2 amended to read:

3 1206. This chapter does not apply to the following:

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

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

23 (c) (1) Any clinic conducted, maintained, or operated by a
24 federally recognized Indian tribe or tribal organization, as defined
25 in Section 450 or 1603 of Title 25 of the United States Code, that
26 is located on land recognized as tribal land by the federal
27 government.

28 (2) Any clinic conducted, maintained, or operated by a federally
29 recognized Indian tribe or tribal organization, as defined in Section
30 450 or 1603 of Title 25 of the United States Code, under a contract
31 with the United States pursuant to the Indian Self-Determination
32 and Education Assistance Act (Public Law 93-638), regardless of
33 the location of the clinic, except that if the clinic chooses to apply

1 to the State Department of Public Health for a state facility license,
2 then the State Department of Public Health will retain authority
3 to regulate that clinic as a primary care clinic as defined by
4 subdivision (a) of Section 1204.

5 (d) Clinics conducted, operated, or maintained as outpatient
6 departments of hospitals.

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

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

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

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

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

27 (j) Student health centers operated by public institutions of
28 higher education.

29 (k) Nonprofit speech and hearing centers, as defined in Section
30 1201.5. Any nonprofit speech and hearing clinic desiring an
31 exemption under this subdivision shall make application therefor
32 to the director, who shall grant the exemption to any facility
33 meeting the criteria of Section 1201.5. Notwithstanding the
34 licensure exemption contained in this subdivision, a nonprofit
35 speech and hearing center shall be deemed to be an organized
36 outpatient clinic for purposes of qualifying for reimbursement as
37 a rehabilitation center under the Medi-Cal Act (Chapter 7
38 (commencing with Section 14000) of Part 3 of Division 9 of the
39 Welfare and Institutions Code).

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

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

16 (n) A clinic operated by an employer or jointly by two or more
17 employers for their employees only, or by a group of employees,
18 or jointly by employees and employers, without profit to the
19 operators thereof or to any other person, for the prevention and
20 treatment of accidental injuries to, and the care of the health of,
21 the employees comprising the group.

22 (o) A community mental health center, as defined in Section
23 5601.5 of the Welfare and Institutions Code.

24 (p) (1) A clinic operated by a nonprofit corporation exempt
25 from federal income taxation under paragraph (3) of subsection
26 (c) of Section 501 of the Internal Revenue Code of 1954, as
27 amended, or a statutory successor thereof, as an entity organized
28 and operated exclusively for scientific and charitable purposes and
29 that satisfied all of the following requirements on or before January
30 1, 2005:

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

33 (B) Conducted research in, among other areas, prostatic cancer,
34 cardiovascular disease, electronic neural prosthetic devices,
35 biological effects and medical uses of lasers, and human magnetic
36 resonance imaging and spectroscopy.

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

39 (D) Received grants and contracts from the National Institutes
40 of Health.

- 1 (E) Held and licensed patents on medical technology.
- 2 (F) Received charitable contributions and bequests totaling at
- 3 least five million dollars (\$5,000,000).
- 4 (G) Provides health care services to patients only:
 - 5 (i) In conjunction with research being conducted on procedures
 - 6 or applications not approved or only partially approved for payment
 - 7 (I) under the Medicare program pursuant to Section 1359y(a)(1)(A)
 - 8 of Title 42 of the United States Code, or (II) by a health care service
 - 9 plan registered under Chapter 2.2 (commencing with Section 1340),
 - 10 or a disability insurer regulated under Chapter 1 (commencing
 - 11 with Section 10110) of Part 2 of Division 2 of the Insurance Code;
 - 12 provided that services may be provided by the clinic for an
 - 13 additional period of up to three years following the approvals, but
 - 14 only to the extent necessary to maintain clinical expertise in the
 - 15 procedure or application for purposes of actively providing training
 - 16 in the procedure or application for physicians and surgeons
 - 17 unrelated to the clinic.
 - 18 (ii) Through physicians and surgeons who, in the aggregate,
 - 19 devote no more than 30 percent of their professional time for the
 - 20 entity operating the clinic, on an annual basis, to direct patient care
 - 21 activities for which charges for professional services are paid.
- 22 (H) Makes available to the public the general results of its
- 23 research activities on at least an annual basis, subject to good faith
- 24 protection of proprietary rights in its intellectual property.
- 25 (I) Is a freestanding clinic, whose operations under this
- 26 subdivision are not conducted in conjunction with any affiliated
- 27 or associated health clinic or facility defined under this division,
- 28 except a clinic exempt from licensure under subdivision (m). For
- 29 purposes of this subparagraph, a freestanding clinic is defined as
- 30 “affiliated” only if it directly, or indirectly through one or more
- 31 intermediaries, controls, or is controlled by, or is under common
- 32 control with, a clinic or health facility defined under this division,
- 33 except a clinic exempt from licensure under subdivision (m). For
- 34 purposes of this subparagraph, a freestanding clinic is defined as
- 35 “associated” only if more than 20 percent of the directors or trustees
- 36 of the clinic are also the directors or trustees of any individual
- 37 clinic or health facility defined under this division, except a clinic
- 38 exempt from licensure under subdivision (m). Any activity by a
- 39 clinic under this subdivision in connection with an affiliated or
- 40 associated entity shall fully comply with the requirements of this

1 subdivision. This subparagraph shall not apply to agreements
2 between a clinic and any entity for purposes of coordinating
3 medical research.

4 (2) By January 1, 2007, and every five years thereafter, the
5 Legislature shall receive a report from each clinic meeting the
6 criteria of this subdivision and any other interested party
7 concerning the operation of the clinic's activities. The report shall
8 include, but not be limited to, an evaluation of how the clinic
9 impacted competition in the relevant health care market, and a
10 detailed description of the clinic's research results and the level
11 of acceptance by the payer community of the procedures performed
12 at the clinic. The report shall also include a description of
13 procedures performed both in clinics governed by this subdivision
14 and those performed in other settings. The cost of preparing the
15 reports shall be borne by the clinics that are required to submit
16 them to the Legislature pursuant to this paragraph.

17 *SEC. 1.5. Section 1206 of the Health and Safety Code is*
18 *amended to read:*

19 1206. This chapter does not apply to the following:

20 (a) Except with respect to the option provided with regard to
21 surgical clinics in paragraph (1) of subdivision (b) of Section 1204
22 and, further, with respect to specialty clinics specified in paragraph
23 (2) of subdivision (b) of Section 1204, any place or establishment
24 owned or leased and operated as a clinic or office by one or more
25 licensed health care practitioners and used as an office for the
26 practice of their profession, within the scope of their license,
27 regardless of the name used publicly to identify the place or
28 establishment.

29 (b) Any clinic directly conducted, maintained, or operated by
30 the United States or by any of its departments, officers, or agencies,
31 and any primary care clinic specified in subdivision (a) of Section
32 1204 that is directly conducted, maintained, or operated by this
33 state or by any of its political subdivisions or districts, or by any
34 city. Nothing in this subdivision precludes the state department
35 from adopting regulations that utilize clinic licensing standards as
36 eligibility criteria for participation in programs funded wholly or
37 partially under Title XVIII or XIX of the federal Social Security
38 Act.

39 (c) (1) Any clinic conducted, maintained, or operated by a
40 federally recognized Indian tribe or tribal organization, as defined

1 in Section 450 or ~~1601~~ 1603 of Title 25 of the United States Code,
2 that is located on land recognized as tribal land by the federal
3 government.

4 (2) *Any clinic conducted, maintained, or operated by a federally*
5 *recognized Indian tribe or tribal organization, as defined in Section*
6 *450 or 1603 of Title 25 of the United States Code, under a contract*
7 *with the United States pursuant to the Indian Self-Determination*
8 *and Education Assistance Act (Public Law 93-638), regardless of*
9 *the location of the clinic, except that if the clinic chooses to apply*
10 *to the State Department of Public Health for a state facility license,*
11 *then the State Department of Public Health will retain authority*
12 *to regulate that clinic as a primary care clinic as defined by*
13 *subdivision (a) of Section 1204.*

14 (d) Clinics conducted, operated, or maintained as outpatient
15 departments of hospitals.

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

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

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

25 (h) A clinic that is operated by a primary care community or
26 free clinic and that is operated on separate premises from the
27 licensed clinic and is only open for limited services of no more
28 than ~~20~~ 30 hours a week. An intermittent clinic as described in
29 this subdivision shall, however, meet all other requirements of
30 law, including administrative regulations and requirements,
31 pertaining to fire and life safety.

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

36 (j) Student health centers operated by public institutions of
37 higher education.

38 (k) Nonprofit speech and hearing centers, as defined in Section
39 1201.5. Any nonprofit speech and hearing clinic desiring an
40 exemption under this subdivision shall make application therefor

1 to the director, who shall grant the exemption to any facility
2 meeting the criteria of Section 1201.5. Notwithstanding the
3 licensure exemption contained in this subdivision, a nonprofit
4 speech and hearing center shall be deemed to be an organized
5 outpatient clinic for purposes of qualifying for reimbursement as
6 a rehabilitation center under the Medi-Cal Act (Chapter 7
7 (commencing with Section 14000) of Part 3 of Division 9 of the
8 Welfare and Institutions Code).

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

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

24 (n) A clinic operated by an employer or jointly by two or more
25 employers for their employees only, or by a group of employees,
26 or jointly by employees and employers, without profit to the
27 operators thereof or to any other person, for the prevention and
28 treatment of accidental injuries to, and the care of the health of,
29 the employees comprising the group.

30 (o) A community mental health center, as defined in Section
31 ~~5601.5~~ 5667 of the Welfare and Institutions Code.

32 (p) (1) A clinic operated by a nonprofit corporation exempt
33 from federal income taxation under paragraph (3) of subsection
34 (c) of Section 501 of the Internal Revenue Code of 1954, as
35 amended, or a statutory successor thereof, as an entity organized
36 and operated exclusively for scientific and charitable purposes and
37 that satisfied all of the following requirements on or before January
38 1, 2005:

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

- 1 (B) Conducted research in, among other areas, prostatic cancer,
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3 biological effects and medical uses of lasers, and human magnetic
4 resonance imaging and spectroscopy.
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6 articles in peer-reviewed publications.
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8 of Health.
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11 least five million dollars (\$5,000,000).
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- 13 (i) In conjunction with research being conducted on procedures
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15 (I) under the Medicare program pursuant to Section 1359y(a)(1)(A)
16 of Title 42 of the United States Code, or (II) by a health care service
17 plan registered under Chapter 2.2 (commencing with Section 1340),
18 or a disability insurer regulated under Chapter 1 (commencing
19 with Section 10110) of Part 2 of Division 2 of the Insurance Code;
20 provided that services may be provided by the clinic for an
21 additional period of up to three years following the approvals, but
22 only to the extent necessary to maintain clinical expertise in the
23 procedure or application for purposes of actively providing training
24 in the procedure or application for physicians and surgeons
25 unrelated to the clinic.
- 26 (ii) Through physicians and surgeons who, in the aggregate,
27 devote no more than 30 percent of their professional time for the
28 entity operating the clinic, on an annual basis, to direct patient care
29 activities for which charges for professional services are paid.
- 30 (H) Makes available to the public the general results of its
31 research activities on at least an annual basis, subject to good faith
32 protection of proprietary rights in its intellectual property.
- 33 (I) Is a freestanding clinic, whose operations under this
34 subdivision are not conducted in conjunction with any affiliated
35 or associated health clinic or facility defined under this division,
36 except a clinic exempt from licensure under subdivision (m). For
37 purposes of this subparagraph, a freestanding clinic is defined as
38 “affiliated” only if it directly, or indirectly through one or more
39 intermediaries, controls, or is controlled by, or is under common
40 control with, a clinic or health facility defined under this division,

1 except a clinic exempt from licensure under subdivision (m). For
2 purposes of this subparagraph, a freestanding clinic is defined as
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8 associated entity shall fully comply with the requirements of this
9 subdivision. This subparagraph shall not apply to agreements
10 between a clinic and any entity for purposes of coordinating
11 medical research.

12 (2) By January 1, 2007, and every five years thereafter, the
13 Legislature shall receive a report from each clinic meeting the
14 criteria of this subdivision and any other interested party
15 concerning the operation of the clinic’s activities. The report shall
16 include, but not be limited to, an evaluation of how the clinic
17 impacted competition in the relevant health care market, and a
18 detailed description of the clinic’s research results and the level
19 of acceptance by the payer community of the procedures performed
20 at the clinic. The report shall also include a description of
21 procedures performed both in clinics governed by this subdivision
22 and those performed in other settings. The cost of preparing the
23 reports shall be borne by the clinics that are required to submit
24 them to the Legislature pursuant to this paragraph.

25 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
26 *Section 1206 of the Health and Safety Code proposed by both this*
27 *bill and Assembly Bill 1130. It shall only become operative if (1)*
28 *both bills are enacted and become effective on or before January*
29 *1, 2016, (2) each bill amends Section 1206 of the Health and Safety*
30 *Code, and (3) this bill is enacted after Assembly Bill 1130, in which*
31 *case Section 1 of this bill shall not become operative.*