

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2467

Introduced by Assembly Member Gomez

February 19, 2016

An act to add Chapter 2.17 (commencing with Section 1339.85) to Division 2 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2467, as amended, Gomez. Health facilities: executive compensation.

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

This bill would require covered hospitals and medical entities, as defined, to annually submit to the Office of Statewide Health Planning and Development an executive compensation report for every executive whose annual compensation exceeds a specified threshold. *The bill would also require each covered hospital or medical entity with 100 or more employees to annually report compensation information by employee classification and by gender, ethnicity, race, sexual orientation, and gender identity, as self-reported by its employees.* The bill would require specified information to be included in the report, ~~and include a requirement~~ *these reports, and would require* that certain reports be attested to under penalty of perjury. Because a violation thereof would be a crime, the bill would impose a state-mandated local program. The bill would authorize the office to impose a reasonable fee to cover the costs of implementation and administration of these

provisions. The bill would require the office to post these reports on its Internet Web site.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Hospital Executive Compensation Transparency Act of 2016.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) The public has a direct and immediate interest in ensuring
5 its money is spent efficiently and wisely. Through direct cash
6 payments and exemptions from paying taxes, nonprofit hospitals
7 receive billions in taxpayer funds.

8 (b) The compensation packages of chief executive officers,
9 executives, managers, and administrators of hospitals, hospital
10 groups, and affiliated medical entities that operate under nonprofit
11 corporate status are often excessive, unnecessary, and inconsistent
12 with the corporations' charitable purposes, as revealed by
13 compensation surveys and other sources.

14 (c) Payment of excessive compensation to executives, managers,
15 and administrators undermines the purposes of nonprofit
16 corporations because it results in fewer funds being available for
17 their charitable purposes, and it is often the case that the hospitals,
18 hospital groups, and affiliated medical entities that pay the most
19 excessive compensation also provide less charitable care than
20 comparable institutions that pay reasonable compensation to their
21 executives, managers, and administrators.

22 (d) Existing requirements of law do not adequately ensure that
23 assets held for charitable purposes are not instead used to enrich
24 executives, managers, and administrators of nonprofit hospitals,
25 hospital groups, and affiliated medical entities through payment
26 of excessive compensation.

27 (e) The compensation packages for chief executive officers,
28 executives, managers, and administrators of for-profit hospitals in

1 California are often excessive, unnecessary, and inconsistent with
2 the provision of high-quality, affordable medical care, by diverting
3 funds that could be used to expand access to affordable medical
4 care for all Californians.

5 (f) Chief executive officers, executives, managers, and
6 administrators at hospitals, hospital groups, and affiliated medical
7 entities who are also compensated for their positions on boards of
8 directors of publicly traded companies, privately held companies,
9 and nonprofit organizations risk spending time away from their
10 primary responsibilities to the detriment of high-quality, affordable
11 medical care.

12 (g) In order to properly assess the scope of excessive
13 compensation packages in the nonprofit hospital sector and to
14 inform policy decisions related to escalating health care costs, it
15 is necessary to understand excessive compensation among private
16 hospitals.

17 (h) *In order to ensure equal opportunity and compensation*
18 *among health care workers in California, it is necessary to*
19 *understand compensation by job classification and by race,*
20 *ethnicity, gender, sexual orientation, and gender identity.*

21 ~~(h)~~

22 (i) It is the intent of the Legislature in enacting this act to ensure
23 that compensation packages for chief executive officers, executives,
24 managers, and administrators of for-profit and nonprofit hospitals
25 are consistent with the goal of providing affordable, high-quality
26 medical care to all Californians.

27 ~~(i)~~

28 (j) The intent of the Legislature in enacting this act is also to
29 ensure that compensation packages for chief executive officers,
30 executives, managers, and administrators of nonprofit hospitals,
31 hospital groups, and affiliated medical entities are consistent with
32 the charitable purposes of those nonprofits and are reasonable and
33 not excessive in light of the substantial public benefit that the state
34 tax exemption for nonprofit organizations conveys.

35 (k) *It is also the intent of the Legislature in enacting this act to*
36 *ensure that compensation packages for employees of for-profit*
37 *and nonprofit hospitals are not discriminatory based on race,*
38 *ethnicity, gender, sexual orientation, or gender identity.*

39 SEC. 3. Chapter 2.17 (commencing with Section 1339.85) is
40 added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.17. HOSPITAL EXECUTIVE COMPENSATION
TRANSPARENCY ACT OF 2016

1339.85. For purposes of this chapter, the following definitions shall have the following meanings:

(a) “Annual hospital executive compensation report” refers to the report described in Section 1339.87.

(b) “Board compensation” shall mean the total annual compensation provided to each hospital executive by any publicly traded company, privately held company, or nonprofit organization on whose board of directors a hospital executive sits and from which the hospital executive received total annual compensation of more than one thousand dollars (\$1,000).

(c) (1) “Covered hospital or medical entity” shall mean any of the following:

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

(B) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250.

(C) Any private for-profit general acute care hospital that is licensed under subdivision (a) or (b) of Section 1250 and operated within the state for profit under Division 1 (commencing with Section 100) of Title 1 of the Corporations Code, including by a foreign corporation.

(D) A hospital group, which shall mean any group of two or more hospitals described in paragraph (1) or (2) or any person, corporation, partnership, limited liability company, ~~trust~~ trust, or other entity that owns, operates, or controls, in whole or in part, any such group.

(E) A hospital-affiliated medical foundation, which shall mean a medical foundation, as defined in subdivision (f) of Section 1206, that is directly or indirectly, including through one or more intermediaries, controlled or owned by, or controlled or owned by the same person or entity as, a hospital, hospital group, hospital-affiliated physicians group, or nonprofit corporation that owns, operates, or controls, in whole or in part, a hospital, hospital group, or hospital-affiliated physicians group. A medical foundation shall be deemed a hospital-affiliated medical foundation if either or both of the following are true:

1 (i) The medical foundation is a disregarded entity of, or would
2 be required to be designated as a related organization on Internal
3 Revenue Service Form 990 (or its accompanying schedules or the
4 successor of such forms or schedules) of, a hospital, hospital group,
5 hospital-affiliated physicians group, or a nonprofit corporation
6 that owns, operates, or controls, in whole or in part, a hospital,
7 hospital group, or hospital-affiliated physicians group.

8 (ii) A majority of the medical foundation's assets are owned by
9 a hospital, hospital group, or hospital-affiliated physicians group
10 or by a nonprofit corporation that owns, operates, or controls, in
11 whole or in part, a hospital, hospital group, or hospital-affiliated
12 physicians group, or the medical foundation owns a majority of
13 the assets of a hospital, hospital group, or hospital-affiliated
14 physicians group or of a nonprofit corporation that owns, operates,
15 or controls, in whole or in part, a hospital, hospital group, or
16 hospital-affiliated physicians group.

17 (F) A hospital-affiliated physicians group, which shall mean
18 any physicians group or medical group that is directly or indirectly,
19 including through one or more intermediaries, controlled or owned
20 by, or controlled or owned by the same person or entity as, a
21 hospital, hospital group, hospital-affiliated medical foundation, or
22 a nonprofit corporation that owns, operates, or controls, in whole
23 or in part, a hospital, hospital group, or hospital-affiliated medical
24 foundation. A physicians group shall be deemed a
25 hospital-affiliated physicians group if either or both of the
26 following are true:

27 (i) The physicians group is a disregarded entity of, or would be
28 required to be designated as a related organization on Internal
29 Revenue Service Form 990 (or its accompanying schedules or the
30 successor of such forms or schedules) of, a hospital, hospital group,
31 or hospital-affiliated medical foundation or a nonprofit corporation
32 that owns, operates, or controls, in whole or in part, a hospital,
33 hospital group, or hospital-affiliated medical foundation.

34 (ii) A majority of the physicians group's assets are owned by a
35 hospital, hospital group, or hospital-affiliated medical foundation
36 or a nonprofit corporation that owns, operates, or controls, in whole
37 or in part, a hospital, hospital group, or hospital-affiliated medical
38 foundation.

39 (G) A health care district organized pursuant to Chapter 1
40 (commencing with Section 32000) of Division 23.

(2) “Covered hospital or medical entity” shall not include any of the following:

(A) Hospitals operated or licensed by the United States Department of Veterans Affairs or public hospitals as defined in paragraph (25) of subdivision (a) of Section 14105. 98 of the Welfare and Institutions Code, with the exception of hospitals owned or operated by a health care district organized pursuant to Chapter 1 (commencing with Section 32000) of Division 23.

(B) Designated public hospitals, as described in subdivision (d) of Section 14166.1 of the Welfare and Institutions Code.

(d) “Executive compensation reporting threshold” shall mean the total annual compensation from any source for work performed or services provided at or for the covered hospital or medical entity that is greater than two hundred fifty thousand dollars (\$250,000) in a year.

(e) (1) “Hospital executive” shall mean all persons whose primary duties are executive, managerial, or administrative at or for the covered hospital or medical entity, even if that person also performs or performed other duties.

(2) “Hospital executive” shall include, but is not limited to, chief executive officers, chief executive managers, chief executives, executive officers, executive directors, chief financial officers, presidents, executive presidents, vice presidents, executive vice presidents, and other comparable positions.

(3) The definition of “hospital executive” shall apply irrespective of whether the person exercising executive, managerial, or administrative authority is or was an employee of a covered hospital or medical entity or a nonprofit corporation that owns, operates, or controls, in whole or in part, a covered hospital or medical entity. The definition shall also apply to any person who exercises or exercised such authority even if the arrangements for such authority or for compensation or both are pursuant to a contract or subcontract.

(4) “Hospital executive” shall include any person who held the duties described under this paragraph during the period covered by the annual report, even if the person is postemployment or postservice.

(5) “Hospital executive” shall not apply to medical or health care professionals whose primary duties are or were the provision

1 of medical services, research, direct patient care, or other
2 nonmanagerial, nonexecutive, and nonadministrative services.

3 (f) “Office” means the Office of Statewide Health Planning and
4 Development.

5 (g) (1) “Total annual compensation” shall mean all
6 remuneration paid, earned, or accrued in the course of a fiscal year
7 for work performed or services provided, including the cash value
8 of all remuneration (including benefits) in any medium other than
9 cash, except as otherwise specified in paragraph (2), and including,
10 but not limited to, all of the following:

11 (A) Wages; salary; paid time off; bonuses; incentive payments;
12 lump-sum cash payments; the fair market value of
13 below-market-rate loans or loan forgiveness; housing payments;
14 payments for transportation, travel, meals, or other expenses in
15 excess of actual documented expenses incurred in the performance
16 of duties; payments or reimbursement for entertainment or social
17 club memberships; the cash value of housing, automobiles, parking,
18 or similar benefits; scholarships or fellowships; the cash value of
19 dependent care or adoption assistance or personal legal or financial
20 services; the cash value of stock options or awards; payments or
21 contributions for ~~insurance~~ *insurance*, except as exempted in
22 paragraph (2), to a Section 125 cafeteria plan or equivalent
23 arrangement, to a health savings account, or for severance or its
24 equivalent; and deferred compensation earned or accrued, even if
25 not yet vested nor paid.

26 (B) The total value in the aggregate of the compensation or
27 payments authorized or paid under a severance or similar
28 postservice or postemployment arrangement, to include the fair
29 market value of all cash remuneration as well as the fair market
30 value of all remuneration (including benefits) paid in any medium
31 other than cash, as defined in paragraph (1), subject to the exclusion
32 set forth in paragraph (2).

33 (C) Payments, compensation, or remuneration for work
34 performed or services provided at or for a covered hospital or
35 medical entity even if made by a separate person or entity,
36 including, but not limited to, any of the following:

37 (i) A for-profit or unincorporated entity.

38 (ii) A corporation, partnership, or limited liability company.

39 (iii) A trust or other entity that is controlled by the same person
40 or persons who govern a covered hospital or medical entity.

1 (iv) A supporting or supported organization within the meaning
2 of Sections 509(a)(3) and 509(f)(3) of the Internal Revenue Code.

3 (v) A disregarded entity of, or related organization as set forth
4 within, the Internal Revenue Service Form 990 of a covered
5 hospital or medical entity or a nonprofit corporation that owns,
6 operates, or controls, in whole or in part, a covered hospital or
7 medical entity.

8 (D) Payment of compensation or remuneration by any person,
9 corporation, partnership, limited liability company, trust, or other
10 entity that a covered hospital or medical entity, or a nonprofit
11 corporation that owns, operates, or controls, in whole or in part, a
12 covered hospital or medical entity, participates in, belongs to, is
13 a member of, or pays into shall be presumed compensation for
14 work performed or services provided at or for the covered hospital
15 or medical entity.

16 (2) “Total annual compensation” shall not include the cost of
17 health insurance or disability insurance or payments or
18 contributions to a health reimbursement account.

19 1339.87. (a) On and after October 1, 2017, each covered
20 hospital or medical entity shall submit an annual hospital executive
21 compensation report to the office for every hospital executive
22 whose total annual compensation met or exceeded the executive
23 compensation reporting threshold. The report shall include all of
24 the following information for the prior fiscal year:

25 (1) The names, positions, or titles of each hospital executive
26 and the aggregate total annual compensation for each hospital
27 executive at or exceeding the executive compensation reporting
28 threshold, including all of the information described under
29 subdivision (g) of Section 1339.85, with a description of each
30 entity that has contributed to the total annual compensation of each
31 hospital executive, in any form, and the amount of such
32 compensation.

33 (2) A detailed breakdown of all wage and nonwage
34 compensation.

35 (3) Identification of any benefit or remuneration excluded from
36 the definition of total annual compensation pursuant to paragraph
37 (2) of subdivision (g) of Section 1339.85.

38 (4) A detailed breakdown of board compensation, which shall
39 include all of the following:

1 (A) The name of the publicly traded company, privately held
2 company, or nonprofit organization that provided the board
3 compensation.

4 (B) The number of hours the hospital executive spent on matters
5 related to their duties as a director of the publicly traded company,
6 privately held company, or nonprofit organization for which the
7 board compensation was received.

8 *(b) Consistent with the annual equal employment opportunity*
9 *and compensation report on employees' ethnicity, race, and sex*
10 *by job category and compensation required by Part 1602 of*
11 *Chapter XIV of Subtitle B of Title 29 of the Code of Federal*
12 *Regulations, on or after October 1, 2017, and annually thereafter,*
13 *each covered hospital or medical entity with 100 or more*
14 *employees shall submit to the office all of the following information*
15 *for the prior fiscal year:*

16 *(1) The number of employees earning annual total compensation*
17 *in 12 pay bands, as proposed by the federal Equal Employment*
18 *Opportunity Commission in the Federal Register, Volume 81,*
19 *Number 20, on February 1, 2016, on pages 5113 to 5121, inclusive,*
20 *for each of the eight employee classifications defined in the office's*
21 *hospital annual financial data and by self-reported gender,*
22 *ethnicity, and race, and voluntarily self-reported sexual orientation*
23 *and gender identity.*

24 *(2) The total number of hours worked by the employees included*
25 *in each pay band described in paragraph (1).*

26 ~~(b)~~

27 (c) On and after January 1, 2018, the office shall post the annual
28 hospital executive compensation report for each covered hospital
29 or medical entity on the office's Internet Web site.

30 ~~(e)~~

31 (d) The annual report shall be submitted on the form or in the
32 format required by the office.

33 ~~(d)~~

34 (e) (1) The board of directors of any nonprofit or for-profit
35 corporation that owns, operates, or controls, in whole or in part, a
36 covered hospital or medical entity shall approve the annual report
37 before it is submitted to the office.

38 (2) Each director shall act in good faith and with reasonable
39 care and inquiry in approving the annual report and in ensuring
40 that the corporation complies with the requirements of this section.

(3) For each covered hospital or medical entity governed, owned, or controlled by a board of directors, the annual report shall state that it was approved by the board of directors and set forth the date of such approval, and shall be attested to under penalty of perjury by an authorized representative of the covered hospital or medical entity board of directors.

~~(e)~~

(f) (1) Any scheme or artifice that has the purpose of avoiding the reporting requirements established by this section shall constitute a violation of this section.

(2) Payments, compensation, or remuneration by a separate entity that is purported not to be for work performed or services provided at or for a covered hospital or medical entity, but that is disproportionate to its purported purpose so as to evade the annual hospital executive compensation reporting requirements specified in this section, shall constitute a violation of this section.

~~(f)~~

(g) The office shall establish and assess reasonable fees, to be submitted with each annual report, to cover only the reasonable costs of implementing and ensuring compliance with this section and each activity authorized or required by this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.