

AMENDED IN ASSEMBLY APRIL 21, 2016

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

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

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

37 SEC. 3. Chapter 2.17 (commencing with Section 1339.85) is
38 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)~~ *subparagraphs (A) to (C), inclusive*, or any person, corporation, partnership, limited liability company, 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 (E) A hospital-affiliated medication foundation, which shall
2 mean a medical foundation, as described in subdivision (l) of
3 Section 1206, that satisfies either or both of the following
4 conditions:

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

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

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

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

39 (ii) A majority of the physicians group's assets are owned by a
40 hospital, hospital group, or hospital-affiliated medical foundation

1 or a nonprofit corporation that owns, operates, or controls, in whole
2 or in part, a hospital, hospital group, or hospital-affiliated medical
3 foundation.

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

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

8 (A) Hospitals operated or licensed by the United States
9 Department of Veterans Affairs or public hospitals as defined in
10 paragraph (25) of subdivision (a) of Section 14105.98 of the
11 Welfare and Institutions Code, with the exception of hospitals
12 owned or operated by a health care district organized pursuant to
13 Chapter 1 (commencing with Section 32000) of Division 23.

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

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

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

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

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

39 (4) “Hospital executive” shall include any person who held the
40 duties described under this paragraph during the period covered

1 by the annual report, even if the person is postemployment or
2 postservice.

3 (5) "Hospital executive" shall not apply to medical or health
4 care professionals whose primary duties are or were the provision
5 of medical services, research, direct patient care, or other
6 nonmanagerial, nonexecutive, and nonadministrative services.

7 (f) "Office" means the Office of Statewide Health Planning and
8 Development.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) A detailed breakdown of all wage and nonwage
38 compensation.

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

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

6 (A) The name of the publicly traded company, privately held
7 company, or nonprofit organization that provided the board
8 compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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