

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN SENATE JUNE 6, 2016

AMENDED IN ASSEMBLY APRIL 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2744**

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**Introduced by Assembly Member Gordon**  
(Coauthor: Senator Hill)

February 19, 2016

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An act to amend Section 650 of the Business and Professions Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2744, as amended, Gordon. Healing arts: referrals.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, it is unlawful for licensed healing arts practitioners, except as specified, to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person. Existing law makes a violation of this provision a public offense punishable upon a first conviction by imprisonment, as specified, or a fine not exceeding \$50,000, or by imprisonment and that fine.

This bill would provide that the payment or receipt of consideration for advertising, wherein a licensed healing arts practitioner offers or sells services through a third-party advertiser does not constitute a referral of patients when the third-party advertiser does not itself

recommend, endorse, or otherwise select a licensee. The bill would require the purchaser of the service to receive a refund of the full purchase price if the licensee determines, after consultation with the purchaser, that the service is not appropriate for the ~~purchaser~~. *purchaser, as specified.* The bill would specify that these provisions do not apply to basic health care services or essential health benefits, as defined. The bill would also provide that the entity that provides advertising is required to be able to demonstrate that the licensee consented in writing to these provisions. The bill would require a third-party advertiser to make available ~~for purchase services advertised by all licensees to prospective purchasers advertisements for services of all licensees then advertising through the third-party advertiser~~ in the applicable geographic region.

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 650 of the Business and Professions Code
- 2 is amended to read:
- 3 650. (a) Except as provided in Chapter 2.3 (commencing with
- 4 Section 1400) of Division 2 of the Health and Safety Code, the
- 5 offer, delivery, receipt, or acceptance by any person licensed under
- 6 this division or the Chiropractic Initiative Act of any rebate, refund,
- 7 commission, preference, patronage dividend, discount, or other
- 8 consideration, whether in the form of money or otherwise, as
- 9 compensation or inducement for referring patients, clients, or
- 10 customers to any person, irrespective of any membership,
- 11 proprietary interest, or coownership in or with any person to whom
- 12 these patients, clients, or customers are referred is unlawful.
- 13 (b) The payment or receipt of consideration for services other
- 14 than the referral of patients which is based on a percentage of gross
- 15 revenue or similar type of contractual arrangement shall not be
- 16 unlawful if the consideration is commensurate with the value of
- 17 the services furnished or with the fair rental value of any premises
- 18 or equipment leased or provided by the recipient to the payer.
- 19 (c) The offer, delivery, receipt, or acceptance of any
- 20 consideration between a federally qualified health center, as defined
- 21 in Section 1396d(l)(2)(B) of Title 42 of the United States Code,
- 22 and any individual or entity providing goods, items, services,

1 donations, loans, or a combination thereof to the health center  
2 entity pursuant to a contract, lease, grant, loan, or other agreement,  
3 if that agreement contributes to the ability of the health center  
4 entity to maintain or increase the availability, or enhance the  
5 quality, of services provided to a medically underserved population  
6 served by the health center, shall be permitted only to the extent  
7 sanctioned or permitted by federal law.

8 (d) Except as provided in Chapter 2.3 (commencing with Section  
9 1400) of Division 2 of the Health and Safety Code and in Sections  
10 654.1 and 654.2 of this code, it shall not be unlawful for any person  
11 licensed under this division to refer a person to any laboratory,  
12 pharmacy, clinic (including entities exempt from licensure pursuant  
13 to Section 1206 of the Health and Safety Code), or health care  
14 facility solely because the licensee has a proprietary interest or  
15 coownership in the laboratory, pharmacy, clinic, or health care  
16 facility, provided, however, that the licensee's return on investment  
17 for that proprietary interest or coownership shall be based upon  
18 the amount of the capital investment or proportional ownership of  
19 the licensee which ownership interest is not based on the number  
20 or value of any patients referred. Any referral excepted under this  
21 section shall be unlawful if the prosecutor proves that there was  
22 no valid medical need for the referral.

23 (e) Except as provided in Chapter 2.3 (commencing with Section  
24 1400) of Division 2 of the Health and Safety Code and in Sections  
25 654.1 and 654.2 of this code, it shall not be unlawful to provide  
26 nonmonetary remuneration, in the form of hardware, software, or  
27 information technology and training services, as described in  
28 subsections (x) and (y) of Section 1001.952 of Title 42 of the Code  
29 of Federal Regulations, as amended October 4, 2007, as published  
30 in the Federal Register (72 Fed. Reg. 56632 and 56644), and  
31 subsequently amended versions.

32 (f) "Health care facility" means a general acute care hospital,  
33 acute psychiatric hospital, skilled nursing facility, intermediate  
34 care facility, and any other health facility licensed by the State  
35 Department of Public Health under Chapter 2 (commencing with  
36 Section 1250) of Division 2 of the Health and Safety Code.

37 (g) The payment or receipt of consideration for advertising,  
38 wherein a licensee offers or sells services through a third-party  
39 advertiser, shall not constitute a referral of patients when the  
40 third-party advertiser does not itself recommend, endorse, or

1 otherwise select a licensee. ~~To the extent~~ *If* the licensee determines,  
2 after consultation with the purchaser of the service, that the service  
3 is not appropriate for the purchaser, the purchaser shall receive a  
4 refund of the full purchase ~~price~~. *price as determined by the terms*  
5 *of the advertising service agreement between the third-party*  
6 *advertiser and the licensee.* This subdivision shall not apply to  
7 basic health care services, as defined in subdivision (b) of Section  
8 1345 of the Health and Safety Code, or essential health benefits,  
9 as defined in Section 1367.005 of the Health and Safety Code and  
10 Section 10112.27 of the Insurance Code. The entity that provides  
11 the advertising shall be able to demonstrate that the licensee  
12 consented in writing to the requirements of this subdivision. A  
13 third-party advertiser shall make available ~~for purchase services~~  
14 ~~advertised by all licensees to prospective purchasers~~  
15 ~~advertisements for services of all licensees then advertising through~~  
16 ~~the third-party advertiser~~ in the applicable geographic region.

17 (h) A violation of this section is a public offense and is  
18 punishable upon a first conviction by imprisonment in a county  
19 jail for not more than one year, or by imprisonment pursuant to  
20 subdivision (h) of Section 1170 of the Penal Code, or by a fine not  
21 exceeding fifty thousand dollars (\$50,000), or by both that  
22 imprisonment and fine. A second or subsequent conviction is  
23 punishable by imprisonment pursuant to subdivision (h) of Section  
24 1170 of the Penal Code, or by that imprisonment and a fine of fifty  
25 thousand dollars (\$50,000).

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