

AMENDED IN SENATE APRIL 28, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 595

Introduced by Senator Speier

February 23, 1999

An act to amend Section 2216 of the Business and Professions Code, and to amend Sections 1248, 1248.1, 1248.15, 1248.2, and 1248.25 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, as amended, Speier. Outpatient settings.

Existing law provides for the regulation of outpatient settings by the Division of Licensing of the Medical Board of California. Existing law defines an outpatient setting as any facility, clinic, unlicensed clinic, center, office, or other setting that is not a part of a general acute care facility and where designated anesthesia is used in compliance with community standards in doses that when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

This bill would redefine outpatient setting for purposes of the provisions regulating outpatient settings.

Existing law prohibits any physician and surgeon from performing surgery in an outpatient setting using specified anesthesia unless the setting is one of enumerated health care settings.

Existing law prohibits a person from operating an outpatient setting unless the setting is one of enumerated health care settings.

This bill would make technical, nonsubstantive changes to these provisions.

Existing law requires the division to adopt standards for the accreditation of outpatient settings, ~~including standards that require outpatient settings to meet certain conditions in order for procedures to be performed in that setting.~~

This bill would ~~revise those conditions.~~

~~The bill also would~~ require outpatient settings to post, as designated in the bill, a certificate of accreditation and the name and telephone number of the accrediting agency with instructions on the submission of complaints.

The bill would require outpatient settings and certain other settings to have a minimum of 2 staff persons on the premises, including one licensed health care professional, as long as a patient who has not been discharged from supervised care is present. The bill would require these settings to have a written discharge criteria and would provide that the transfer of a patient who does not meet discharge criteria shall constitute unprofessional conduct.

Existing law requires the division to notify the public, upon inquiry, whether an outpatient setting is accredited, certified, or licensed or whether the setting's accreditation, certification, or license has been revoked.

This bill also would require the division to notify the public pursuant to this provision about whether the outpatient setting's accreditation, certification, or license has been denied.

Existing law requires an accreditation agency to deny accreditation to an outpatient setting that does not meet the standards approved by the division and requires the accreditation agency to notify the outpatient setting of the reasons for the denial. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill also would require the accreditation agency to notify the division of the reasons that an outpatient setting is denied accreditation. The bill would authorize an outpatient



setting to reapply for accreditation no sooner than 12 months after receiving notification of the denial.

Under existing law, the willful violation of these provisions regulating outpatient settings is a misdemeanor.

Because this bill would change the requirements of outpatient settings and accreditation agencies, it would change the definition of an existing crime, thereby imposing a state-mandated local program.

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. Section 2216 of the Business and
2 Professions Code is amended to read:
3 2216. (a) No physician and surgeon shall perform
4 procedures in an outpatient setting using anesthesia,
5 except local anesthesia or peripheral nerve blocks, or
6 both, complying with the community standard of
7 practice, in doses that, when administered, have the
8 probability of placing a patient at risk for loss of the
9 patient's life-preserving protective reflexes, unless the
10 setting is specified in Section 1248.1. Outpatient settings
11 where anxiolytics and analgesics are administered are
12 excluded when administered, in compliance with the
13 community standard of practice, in doses that do not have
14 the probability of placing the patient at risk for loss of the
15 patient's life-preserving protective reflexes.
16 (b) On and after July 1, 2000, no physician and surgeon
17 shall perform procedures in an outpatient setting using
18 anesthesia, except local anesthesia, minor blocks, or
19 minimal oral tranquilization, unless the setting is
20 specified in Section 1248.1 of the Health and Safety Code.



1 (c) The definition of “outpatient settings” contained
2 in subdivision (c) of Section 1248 shall apply to this
3 section.

4 SEC. 2. Section 1248 of the Health and Safety Code is
5 amended to read:

6 1248. For purposes of this chapter, the following
7 definitions shall apply:

8 (a) “Division” means the Division of Licensing of the
9 Medical Board of California.

10 (b) “Division of Medical Quality” means the Division
11 of Medical Quality of the Medical Board of California.

12 (c) “Outpatient setting” means any facility, clinic,
13 unlicensed clinic, center, office, or other setting that is not
14 part of a general acute care facility, as defined in Section
15 1250, and where anesthesia, including intravenous,
16 intramuscular, or rectal sedation or analgesia is
17 administered.

18 “Outpatient setting” does not include any setting
19 where local anesthesia, minor blocks, or minimal oral
20 tranquilization are administered.

21 (d) “Accreditation agency” means a public or private
22 organization that is approved to issue certificates of
23 accreditation to outpatient settings by the division
24 pursuant to Sections 1248.15 and 1248.4.

25 SEC. 3. Section 1248.1 of the Health and Safety Code
26 is amended to read:

27 1248.1. No association, corporation, firm, partnership,
28 or person shall operate, manage, conduct, or maintain an
29 outpatient setting in this state, unless the setting is one of
30 the following:

31 (a) An ambulatory surgical center that is certified to
32 participate in the Medicare program under Title XVIII
33 (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security
34 Act.

35 (b) Any clinic conducted, maintained, or operated by
36 a federally recognized Indian tribe or tribal organization,
37 as defined in Section 450 or 1601 of Title 25 of the United
38 States Code, and located on land recognized as tribal land
39 by the federal government.



1 (c) Any clinic directly conducted, maintained, or
2 operated by the United States or by any of its
3 departments, officers, or agencies.

4 (d) Any primary care clinic licensed under subdivision
5 (a) and any surgical clinic licensed under subdivision (b)
6 of Section 1204.

7 (e) Any health facility licensed as a general acute care
8 hospital under Chapter 2 (commencing with Section
9 1250).

10 (f) Any outpatient setting to the extent that it is used
11 by a dentist or physician and surgeon in compliance with
12 Article 2.7 (commencing with Section 1646) or Article 2.8
13 (commencing with Section 1647) of Chapter 4 of Division
14 2 of the Business and Professions Code.

15 (g) An outpatient setting accredited by an
16 accreditation agency approved by the division pursuant
17 to this chapter.

18 (h) A setting, including, but not limited to, a mobile
19 van, in which equipment is used to treat patients
20 admitted to a facility described in subdivision (a), (d), or
21 (e), and in which the procedures performed are staffed
22 by the medical staff of, or other healthcare practitioners
23 with clinical privileges at, the facility and are subject to
24 the peer review process of the facility but which setting
25 is not a part of a facility described in subdivision (a), (d),
26 or (e).

27 (i) Nothing in this section shall relieve an association,
28 corporation, firm, partnership, or person from complying
29 with all other laws that are otherwise applicable.

30 SEC. 4. Section 1248.15 of the Health and Safety Code
31 is amended to read:

32 1248.15. (a) The division shall adopt standards for
33 accreditation and, in approving accreditation agencies to
34 perform accreditation of outpatient settings, shall ensure
35 that the certification program shall, at a minimum,
36 include standards for the following aspects of the settings'
37 operations:

38 (1) Outpatient setting allied health staff shall be
39 licensed or certified to the extent required by state or
40 federal law.



1 (2) (A) Outpatient settings shall have a system for
2 facility safety and emergency training requirements.

3 (B) There shall be onsite equipment, medication, and
4 trained personnel to facilitate handling of services sought
5 or provided and to facilitate handling of any medical
6 emergency that may arise in connection with services
7 sought or provided.

8 (C) In order for procedures to be performed in an
9 outpatient setting as defined in Section 1248, the
10 outpatient setting shall do one of the following:

11 (i) Have a written transfer agreement with a local
12 accredited or licensed acute care hospital, approved by
13 the facility's medical staff.

14 (ii) Permit surgery only by a licensee who has
15 admitting privileges at a local accredited or licensed
16 acute care hospital, with the exception that licensees who
17 may be precluded from having admitting privileges by
18 their professional classification or other administrative
19 limitations, shall have a written transfer agreement with
20 licensees who have admitting privileges at local
21 accredited or licensed acute care hospitals.

22 (iii) *Submit for approval by an accrediting agency, a*
23 *detailed procedural plan for handling medical*
24 *emergencies that shall be reviewed at the time of*
25 *accreditation. No reasonable plan shall be disapproved by*
26 *the accrediting agency.*

27 (D) All physicians and surgeons transferring patients
28 from an outpatient setting shall agree to cooperate with
29 the medical staff peer review process on the transferred
30 case, the results of which shall be referred back to the
31 outpatient setting, if deemed appropriate by the medical
32 staff peer review committee. If the medical staff of the
33 acute care facility determines that inappropriate care was
34 delivered at the outpatient setting, the acute care
35 facility's peer review outcome shall be reported, as
36 appropriate, to the accrediting body, the Health Care
37 Financing Administration, the State Department of
38 Health Services, and the appropriate licensing authority.

39 (3) The outpatient setting shall permit surgery by a
40 dentist acting within his or her scope of practice under



1 Chapter 4 (commencing with Section 1600) of the
2 Business and Professions Code or physician and surgeon,
3 osteopathic physician and surgeon, or podiatrist acting
4 within his or her scope of practice under Chapter 5
5 (commencing with Section 2000) of the Business and
6 Professions Code or the Osteopathic Initiative Act. The
7 outpatient setting may, in its discretion, permit
8 anesthesia service by a certified registered nurse
9 anesthetist acting within his or her scope of practice
10 under Article 7 (commencing with Section 2825) of
11 Chapter 6 of the Business and Professions Code.

12 (4) Outpatient settings shall have a system for
13 maintaining clinical records.

14 (5) Outpatient settings shall have a system for patient
15 care and monitoring procedures.

16 (6) (A) Outpatient settings shall have a system for
17 quality assessment and improvement.

18 (B) Members of the medical staff and other
19 practitioners who are granted clinical privileges shall be
20 professionally qualified and appropriately credentialed
21 for the performance of privileges granted. The outpatient
22 setting shall grant privileges in accordance with
23 recommendations from qualified health professionals,
24 and credentialing standards established by the outpatient
25 setting.

26 (C) Clinical privileges shall be periodically
27 reappraised by the outpatient setting. The scope of
28 procedures performed in the outpatient setting shall be
29 periodically reviewed and amended as appropriate.

30 (7) Outpatient settings regulated by this chapter that
31 have multiple service locations governed by the same
32 standards may elect to have all service sites surveyed on
33 any accreditation survey. Organizations that do not elect
34 to have all sites surveyed shall have a sample, not to
35 exceed 20 percent of all service sites, surveyed. The actual
36 sample size shall be determined by the division. The
37 accreditation agency shall determine the location of the
38 sites to be surveyed. Outpatient settings that have five or
39 fewer sites shall have at least one site surveyed. When an
40 organization that elects to have a sample of sites surveyed



1 is approved for accreditation, all of the organizations' sites
2 shall be automatically accredited.

3 (8) Outpatient settings shall post the certificate of
4 accreditation in a location readily visible to patients and
5 staff.

6 (9) Outpatient settings shall post the name and
7 telephone number of the accrediting agency with
8 instructions on the submission of complaints in a location
9 readily visible to patients and staff.

10 (10) Outpatient settings shall have written discharge
11 criteria.

12 (b) Outpatient settings, and settings excluded from
13 the definition of "outpatient setting" pursuant to
14 subdivision (c) of Section 1248, shall have a minimum of
15 two staff persons on the premises, one of whom shall be
16 a licensed health care professional, as long as a patient
17 who has not been discharged from supervised care is
18 present. These settings shall have written discharge
19 criteria. The transfer of a patient who does not meet the
20 discharge criteria to an unlicensed setting shall constitute
21 unprofessional conduct.

22 (c) An accreditation agency may include additional
23 standards in its determination to accredit outpatient
24 settings if these are approved by the division to protect
25 the public health and safety.

26 (d) No accreditation standard adopted or approved by
27 the division, and no standard included in any certification
28 program of any accreditation agency approved by the
29 division, shall serve to limit the ability of any allied
30 healthcare practitioner to provide services within his or
31 her full scope of practice. Notwithstanding this or any
32 other provision of law, each outpatient setting may limit
33 the privileges, or determine the privileges, within the
34 appropriate scope of practice, that will be afforded to
35 physicians and allied health care practitioners who
36 practice at the facility, in accordance with credentialing
37 standards established by the outpatient setting in
38 compliance with this chapter. Privileges may not be
39 arbitrarily restricted based on category of licensure.



1 SEC. 5. Section 1248.2 of the Health and Safety Code
2 is amended to read:

3 1248.2. (a) Any outpatient setting may apply to an
4 accreditation agency for a certificate of accreditation.
5 Accreditation shall be issued by the accreditation agency
6 solely on the basis of compliance with its standards as
7 approved by the division under this chapter.

8 (b) The division shall obtain and maintain a list of all
9 accredited, certified, and licensed outpatient settings
10 from the information provided by the accreditation,
11 certification, and licensing agencies approved by the
12 division, and shall notify the public, upon inquiry,
13 whether a setting is accredited, certified, or licensed, or
14 whether the setting's accreditation, certification, or
15 license has been denied or revoked.

16 SEC. 6. Section 1248.25 of the Health and Safety Code
17 is amended to read:

18 1248.25. If an outpatient setting does not meet the
19 standards approved by the division, accreditation shall be
20 denied by the accreditation agency, which shall provide
21 the outpatient setting and the division with notification
22 of the reasons for the denial. An outpatient setting may
23 reapply for accreditation no sooner than 12 months after
24 receiving notification of the denial.

25 SEC. 7. No reimbursement is required by this act
26 pursuant to Section 6 of Article XIII B of the California
27 Constitution because the only costs that may be incurred
28 by a local agency or school district will be incurred
29 because this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition
33 of a crime within the meaning of Section 6 of Article
34 XIII B of the California Constitution.

