AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY AUGUST 31, 2009

AMENDED IN ASSEMBLY AUGUST 20, 2009

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL No. 364

Introduced by Senator Florez

February 25, 2009

An act to add ~~Section 1285.5 to~~ *Article 7.3 (commencing with Section 1323.10) to Chapter 2 of Division 2 of* the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 364, as amended, Florez. Health facilities: ~~cancer centers.~~ *patient impact report.*

Under existing law, the State Department of Public Health is responsible for licensing and regulating health facilities, including general acute care hospitals. Violation of these provisions is a crime.

This bill would require the lead agency, the office of the Attorney General, to either produce a patient impact report or a negative declaration, as defined, whenever a general acute care hospital proposes to change its management structure from nonprofit to for profit or when a nonprofit general acute care hospital proposes to establish a medical foundation. The bill would specify when a patient impact report would

be required as well as the public notice, hearing, comment, and challenge procedures that the lead agency would be required to use in this process. The bill would prohibit the lead agency approving a conversion for which a patient impact report has been certified where the report identifies one or more significant effects on health services that would occur if the conversion is carried out unless the lead agency makes specified findings with respect to each significant effect. The bill would also allow the lead agency to charge an applicant for a conversion a reasonable fee.

~~This bill would prohibit an officer, director, or member of a governing board of a general acute care hospital that is designated by the National Cancer Institute as a comprehensive cancer center and that accepts state funds from holding a position as an officer, director, or member of a governing board of a corporation that either manufactures or sells tobacco products, as defined, or that has, within the past 5 years, violated federal or state controlled substances laws or regulations. By creating a new crime, this bill would impose 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~~ *no*.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The maintenance of quality health services, assurance of the best possible health care for the public at the lowest cost, and provision of available and accessible health and medical services for the people of this state, now and in the future, is a matter of statewide concern.

(b) It is necessary to provide high-quality health services that at all times separate medical services from fiscal and administrative management so that medical decisions will not be unduly influenced by fiscal and administrative management.

(c) There is a need to understand the relationship between the maintenance of high-quality health services and the general welfare

of the people of the state, including the ramifications of a potential nonprofit to for-profit hospital conversion or a nonprofit hospital seeking to establish a medical foundation.

(d) The capacity and level of service of hospitals is limited. It is the intent of the Legislature that state government take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a right to quality health services; regardless of race, ethnicity, age, gender, or income level.

(f) The interrelationship of policies and practices in health services requires systematic and concerted efforts by public and private interests to enhance health services and ensure an acceptable level of service and to protect the public from possible abuses stemming from the commercial exploitation of the practice of medicine.

(g) It is the intent of the Legislature that all agencies of state government that regulate the activities of private individuals, corporations, and entities that are found to affect the quality of health services, regulate those activities so that major consideration is given to preventing the degradation of services in the event of a hospital structure conversion, either from nonprofit to for-profit or a nonprofit hospital seeking to establish a medical foundation.

SEC. 2. Article 7.3 (commencing with Section 1323.10) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 7.3. Patient Impact Reports

1323.10. (a) This article shall be known and may be cited as the California Patient Impact Report Act.

(b) The basic purposes of the patient impact report are to do all of the following:

(1) Inform governmental decisionmakers and the public about the potential, significant health service effects of proposed activities.

(2) Identify the ways that declines in health services can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to health services by requiring changes in conversions through the use of alternatives

or mitigation measures when the lead agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a lead agency approved the conversion in the manner the agency chose if significant health services effects are involved.

1323.13. For the purposes of this article the following definitions shall apply:

(a) "Conversion" means a change in the management structure of a general acute care hospital, as defined in Section 1250, including, either changing from nonprofit to for-profit structure or a nonprofit general acute care hospital establishing a medical foundation, that either will cause a change to health services or is reasonably foreseeable to cause a change to health services and that is any of the following:

(1) An activity undertaken by a person or entity that is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(2) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) "Conversion-specific effect" means all the effects, other than cumulative effects, on health services resulting from the conversion of a general acute care hospital.

(c) "Discretionary conversion" means a conversion subject to the judgmental controls of the lead agency.

(d) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, social, and technological factors.

(e) "Lead agency" means the Office of the Attorney General.

(f) "Local agency" means a public agency other than a state agency, board, or commission. For purposes of this article a redevelopment agency and a local agency formation commission are local agencies.

(g) "Negative declaration" means the statement by the lead agency that a patient impact report does not need to be done for a specified conversion.

(h) "Patient impact report " means the public document created to analyze the significant health service effects of a proposed

conversion, to identify alternatives, and to disclose possible ways to reduce or avoid the possible declines in health services.

(i) "Person" includes a person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, or any of the agencies or political subdivisions of those entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

(j) "Public agency" includes a state agency, board, or commission, a county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

(k) "Responsible agency" means a public agency, other than the lead agency, that has responsibility for carrying out or approving a conversion.

(l) "Significant effect on the health services" means a substantial, or potentially substantial, adverse change in the level of service that is provided to the community served by the general acute care hospital.

(m) "Trustee agency" means a state agency that has jurisdiction by law over public health services affected by a conversion that are held in trust for the people of the State of California.

1323.15. Except as otherwise provided, this article shall apply only to discretionary conversions proposed to be carried out or approved by the lead agency.

1323.17. (a) Applications for conversion shall be considered for approval only after the lead agency publishes either a patient impact report or a negative declaration.

(b) If there is substantial evidence, in light of the whole record before the lead agency, that the conversion may have a significant effect on health services, a patient impact report shall be prepared.

(1) The patient impact report shall be an informational document that will inform the lead agency decision makers and the public generally of the significant health services effect of a conversion, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the conversion.

(2) The patient impact report shall identify any significant effect on the level of service and patient care provided by the general acute care hospital after the conversion, identify alternatives to the conversion, and indicate the manner in which that significant effect can be mitigated or avoided.

(c) For the purposes of subdivision (b), substantial evidence includes facts, a reasonable assumption predicated upon facts, or expert opinion supported by facts. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, impacts on health services.

(d) The lead agency shall adopt regulations setting forth objectives, criteria, and procedures for the evaluation of conversions and the preparation of a patient impact report and negative declarations pursuant to this article. The lead agency shall be responsible for determining whether a patient impact report shall be required for a conversion. That determination shall be final and conclusive.

(e) If the lead agency determines that a patient impact report is required for a conversion, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Offices of Planning and Research, and all trustee agencies.

(f) The existence of public controversy over the health services effects of a conversion shall not require preparation of a patient impact report if there is no substantial evidence, in light of the whole record before the lead agency, that the conversion may have a significant effect on health services.

(g) The determination of whether a patient impact report is needed shall be made within 30 days from the date on which an application for a conversion has been received and accepted as complete by the lead agency. This period may be extended 15 days upon the consent of the lead agency and the conversion applicant. Patient impact reports and negative declarations should be prepared as early as feasible in the planning process. The patient impact report preparation and review should be coordinated in a timely fashion with other existing planning, review, and conversion approval processes and should, to the maximum extent feasible, run concurrently, not consecutively, with those processes.

1323.19. If the lead agency determines that a patient impact report is necessary pursuant to Section 1323.17, then the lead agency shall begin investigation and drafting of a preliminary patient impact report to determine whether the conversion may

have a significant effect on health services based on substantial evidence in light of the whole record.

1323.20. (a) A draft patient impact report prepared pursuant to the requirements of this article shall be prepared directly by, or under contract to, the lead agency.

(b) When drafting a patient impact report, the lead agency shall solicit and respond to comments from the public and other agencies concerned with the conversion.

(c) The lead agency shall include provisions in its patient impact report procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reaction to health service issues. These procedures should include, whenever possible, making public health service information available in electronic format on the Internet, on an Internet Web site maintained or utilized by the lead agency.

1323.21. (a) The lead agency shall provide public notice pursuant to subdivision (b) for all of the following:

(1) The determination that no patient impact report is required and the decision to issue a negative declaration.

(2) When a draft patient impact report is available.

(3) When significant new information is added to a patient impact report after notice has been given, but prior to certification.

(4) Completion of a patient impact report.

(b) The lead agency shall provide public notice in the following ways:

(1) By mail to the last known name and address of all organizations and individuals who have previously requested that notice in writing. If the agency offers to provide the notices by e-mail, a person may request that the notices be provided to him or her by e-mail. The lead agency may require requests for notices to be annually renewed. The lead agency may charge a fee that is reasonably related to the costs of providing this service.

(2) Publication at least once in a newspaper of general circulation in the area affected by the proposed conversion. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(3) Posting on and off the site in the area where the general acute care hospital proposing the conversion is to be located.

(4) Direct mailing to the owners and patients of the general acute care hospital.

(5) Posting in the office of the county clerk of each county in which the general acute care hospital proposing the conversion is located for a period of at least 30 days. The county clerk shall post the notices within 24 hours of receipt.

(c) The means of providing notice specified in subdivision (b) shall not preclude the lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude the lead agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the conversion.

(d) The public notice shall disclose the following:

(1) A brief description of the proposed conversion and the name and address of the general acute care hospital at which the conversion is proposed.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of scheduled public meetings or hearings to be held by the lead agency on the proposed conversion, if known to the lead agency at the time of notice.

(4) A list of the significant health service effects anticipated as a result of the conversion, to the extent that those effects are known to the lead agency at the time of the notice.

(5) The addresses where copies of the draft patient impact report and all documents referenced in the patient impact report will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(e) This section shall not be construed to invalidate an action because of the alleged inadequacy of the notice, provided that there has been substantial compliance with the notice content requirements of this section.

1323.23. (a) Copies of the draft patient impact report shall be made available by the lead agency to public library systems serving the area involved. Copies shall also be available in offices of the lead agency.

(b) The lead agency shall use the State Clearinghouse to distribute draft patient impact report to state agencies for review and should use area clearinghouses to distribute the documents to regional and local agencies.

(c) If the submittal of a patient impact report is determined by the State Clearinghouse to be complete, the State Clearinghouse shall distribute the document within three working days from the date of receipt. The State Clearinghouse shall specify the information that will be required in order to determine the completeness of the submittal of a patient impact report.

1323.25. (a) The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft patient impact report or negative declaration.

(b) The lead agency may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on patient impact reports.

(c) The public review period for a draft patient impact report shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances. When a draft patient impact report is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(d) If a draft patient impact report has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(e) Criteria for shorter review periods by the State Clearinghouse for documents that must be submitted to the State Clearinghouse shall be set forth in written guidelines.

(1) Shortened review periods may not be less than 30 days for a draft patient impact report and 20 days for a negative declaration.

(2) A request for a shortened review period shall be made only in writing by the decisionmaking body of the lead agency.

(3) A request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines.

(4) A shortened review period may not be approved for a proposed conversion of statewide, regional, or areawide health service significance.

(5) An approval of a shortened review period shall be given prior to, and reflected in, the public notice.

(f) A review period for a patient impact report shall not require a halt in other planning or evaluation activities related to a conversion. Planning should continue in conjunction with public health service evaluation.

1323.27. (a) The lead agency shall evaluate comments on health service issues received from persons who reviewed the draft patient impact report and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions, and may respond to late comments.

(b) There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The written response shall describe the disposition of each significant health service issue that is raised by the comments. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 2010.

(d) With respect to the consideration of comments received on a draft patient impact report, the lead agency shall accept comments via e-mail and shall treat e-mail comments as equivalent to written comments.

(e) The response to comments may take the form of a revision to the draft patient impact report or may be a separate section in the final patient impact report. Where the response to comments makes important changes in the information contained in the text of the draft patient impact report, the lead agency shall do either of the following:

(1) Revise the text in the body of the patient impact report.

(2) Include marginal notes showing that the information is revised in the response to comments.

(f) If any public agency or person who is consulted with regard to a patient impact report fails to comment within a reasonable

time as specified by the lead agency, it shall be assumed, without a request for a specific extension of time, that the agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

(g) Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final patient impact report. Comments which may be received on a draft patient impact report or negative declaration under preparation shall also be considered and kept on file.

(h) Every public agency may comment on patient impact report documents dealing with conversions that affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the lead agency.

(i) This section shall not be construed as prohibiting a person from submitting information or other comments to the lead agency drafting the patient impact report. The information or other comments may be submitted in any format, shall be considered by the lead agency, and may be included, in whole or in part, in a report or declaration.

1323.29. (a) A draft patient impact report does not require formal hearings at any stage of the review process.

(b) If the lead agency provides a public hearing on its decision to carry out or approve a conversion, the agency shall include patient impact report review as one of the subjects for the hearing.

(c) A public hearing on the health service impact of a conversion should usually be held when the lead agency determines it would facilitate the purposes and goals of patient impact report to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft patient impact report or negative declaration shall be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the lead

agency. To the extent that the lead agency maintains an Internet Web site, notice of all public hearings shall be made available in electronic format on that site.

(f) The lead agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the lead agency for regularly conducted legislative, planning, and other activities.

1323.30. (a) Prior to completing the draft patient impact report, the lead agency may also consult directly with any person or organization it believes will be concerned with the health service effects of the conversion. This early consultation may be called scoping.

(b) The lead agency shall call at least one scooping meeting for a conversion of statewide, regional, or area wide significance.

(c) If a scoping meeting is held, notice shall be provided to all of the following:

(1) A county or city that borders on a county or city within which the conversion is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) Any responsible agency.

(3) Any public agency that has jurisdiction by law with respect to the conversion.

(4) An organization or individual who has filed a written request for the notice.

(d) For an entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting may be met by including the notice of a scoping meeting in the public meeting notice.

1323.31. The lead agency shall not approve a conversion for which a patient impact report has been certified where the report identifies one or more significant effects on health services that would occur if the conversion is carried out unless the lead agency makes one or more of the following findings with respect to each significant effect:

(a) Changes or alterations have been required in, or incorporated into, the conversion that mitigate or avoid the significant effects.

(b) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the patient impact report.

(c) Specific overriding economic, legal, social, technological, or other benefits of the conversion outweigh the significant effects on health services.

1323.33. (a) Whenever the lead agency has completed a patient impact report, it shall provide notice of that completion pursuant to Section 1323.21. The notice of completion shall briefly identify the general acute care hospital at which the conversion is proposed and shall indicate that a final patient impact report has been prepared. Failure to provide the notice required by this section shall not affect the validity of a conversion.

(b) In addition to other notice required by subdivision (a), notice of completion of a patient impact report on a conversion shall be provided to any legislator in whose district the conversion has a public health service, if the legislator requests the notice.

1323.35. Nothing in this article shall preclude a conversion applicant or other person from challenging, in an administrative or judicial proceeding, the legality of a condition of conversion approval imposed by the lead agency. If any condition of conversion approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on health services, the lead agency's approval of the conversion shall be invalid and a new patient impact report review process shall be conducted before the conversion can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on health services and that does not cause any potentially significant effect on health services.

1323.37. A lead agency may charge and collect a reasonable fee from a person proposing a conversion subject to this article in order to recover the estimated costs incurred by the lead agency in preparing a negative declaration or a patient impact report for the conversion and for procedures necessary to comply with this article on the conversion. Litigation expenses, costs, and fees

incurred in actions alleging noncompliance with this article are not recoverable under this section.

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) Cancer research and treatment ensures the development of cures for many life-threatening diseases.~~

~~(b) Consumption of tobacco products, particularly by minors, is a leading cause of cancer.~~

~~(c) California, through the Medi-Cal program, provides several millions of dollars each year for cancer treatment and research to general acute care hospitals that are designated by the National Cancer Institute as comprehensive cancer centers.~~

~~(d) California advocates, as a matter of public policy, reduction in overall tobacco consumption and prohibits tobacco consumption near public thoroughfares.~~

~~(e) General acute care hospitals that are designated as comprehensive cancer centers also take steps to educate the public about the dangers of tobacco use.~~

~~(f) It is misleading for a general acute care hospital that is designated as a comprehensive cancer center and that is provided resources by the state to employ officers and directors who profit from the sale and distribution of tobacco products.~~

~~(g) A general acute care hospital that is designated as a comprehensive cancer center and that is provided resources by the state should seek to ensure that its directors and officers do not profit from the consumption of tobacco products and do not render services to corporations that have violated federal or state laws.~~

~~SEC. 2. Section 1285.5 is added to the Health and Safety Code, to read:~~

~~1285.5. An officer, director, or member of a governing board of a general acute care hospital that is designated by the National Cancer Institute as a comprehensive cancer center to conduct cancer research and treatment and that accepts state funds shall not hold a position as either of the following:~~

~~(a) (1) An officer, director, or member of the board, or a similar position of a corporation that manufactures or sells tobacco products.~~

~~(2) For purposes of paragraph (1), "a corporation that manufactures or sells tobacco products" means a corporation or other entity that owns or operates any of the following:~~

~~(A) One or more clinics or health facilities licensed pursuant to this division that derive revenue from tobacco products.~~

~~(B) One or more pharmacies licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code that derive revenue from tobacco products.~~

~~(C) Any entity that derives more than 1 percent of its annual revenue from tobacco products.~~

~~(b) An officer, director, or member of the board, or a similar position of a corporation that has, within the past five years, violated federal or state controlled substances laws or regulations.~~

~~SEC. 3. 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.~~

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