AMENDED IN ASSEMBLY JULY 2, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 17, 2012

SENATE BILL No. 1483

Introduced by Senator Steinberg

February 24, 2012

An act to add Article 12.7 (commencing with Section 830) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1483, as amended, Steinberg. Physicians and surgeons.

Existing law provides for the ~~licensing~~ *licensure* and regulation of physicians and surgeons by the Medical Board of California (board) within the Department of Consumer Affairs (department). Under existing law, the biennial license renewal fee for physicians and surgeons is required to be fixed by the board and may not exceed $790.

This bill would create the Physician Health Program, administered by the Physician Health, Recovery, and Monitoring Oversight Committee within the department, with 14 members to be appointed as specified. The purpose of the program would be, among other things, to promote awareness and education relative to physician and surgeon health issues, including impairment due to alcohol or substance abuse, mental disorders, or other health conditions that could affect the safe practice of medicine, and to make treatment available to all physicians and surgeons subject to a written agreement with the program that includes agreement by the physician and surgeon to pay for expenses

associated with the treatment. The bill would also provide for referral by the program of physicians and surgeons, as defined, to certified monitoring programs on a voluntary basis, governed by a written agreement between the participant and the program. The bill would require the department to select a contractor to implement the program, with the committee serving as the evaluation body for submitted proposals. The bill would require the program to report the name of a participant to the board and the committee when it learns of the participant's failure to meet the requirements of the program. The bill would require the committee to report to the department certain statistics received from the program, would require the department to report to the Legislature on the outcomes of the program, and would require regular audits of the program.

This bill would increase the biennial license renewal fee by $39.50 for purposes of these provisions, except as specified. The bill would direct the board to transfer this revenue on a monthly basis to the Physician Health, Awareness, and Monitoring Quality Trust Fund, which the bill would create, and would specify that the use of these funds is subject to appropriation by the Legislature.

The bill would enact other related provisions and make other conforming changes.

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

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

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

(a) (1) It is in every patient's interest to have physicians and surgeons who are healthy and well.

(2) Physicians and surgeons may have health conditions that interfere with their ability to practice medicine safely.

(3) In such cases, the most effective long-term protection for patients is early intervention to address health issues that have the potential to interfere with the safe practice of physicians and surgeons.

(b) While the Legislature recognizes that physicians and surgeons have a number of options for obtaining treatment, it is the intent of the Legislature in enacting this act to promote awareness among members of the medical community about health

issues that could interfere with safe practice, to promote awareness that private early intervention options are available, to provide resources and referrals to ensure physicians and surgeons are better able to choose high-quality private interventions that meet their specific needs, and to provide a separate mechanism for monitoring treatment.

SEC. 2. Article 12.7 (commencing with Section 830) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 12.7. Physician Health, Awareness, and Monitoring Quality

830. This article shall be known and may be cited as the Physician Health, Awareness, and Monitoring Quality Act of 2012.

830.2. For purposes of this article, the following terms shall have the following meanings:

(a) "Board" means the Medical Board of California.

(b) "Committee" means the Physician Health, Awareness, and Monitoring Quality Oversight Committee established pursuant to Section 830.6.

(c) "Department" means the Department of Consumer Affairs.

(d) "Impairment" means the inability to practice medicine with reasonable skill and safety to patients by reason of alcohol or substance abuse, a mental disorder, or another health condition as determined by a clinical evaluation in individual circumstances.

(e) "Participant" means a physician and surgeon enrolled in the program pursuant to an agreement entered into as provided in Section 830.10.

(f) "Physician Health Program" or "program" means the program defined in Section 830.4 and includes vendors, providers, or entities that contract with the committee pursuant to this article. The program itself shall not offer or provide treatment services to physicians and surgeons.

(g) "Physician and surgeon" means a holder of a valid physician and surgeon's certificate. For the purposes of participating in the program under this article, "physician and surgeon" shall also mean a student enrolled in a medical school approved or recognized by the board, a graduate of a medical school enrolled in a medical specialty residency training program approved or recognized by

the board, or a physician and surgeon seeking reinstatement of a license from the board.

(h) "Qualifying illness" means alcohol or substance abuse, a mental disorder, or another health condition that a clinical evaluation determines can be monitored and treated with private clinical and monitoring programs.

830.4. The Physician Health Program shall do all of the following:

(a) Subject to the requirements of Section 830.10, be available to all physicians and surgeons, as defined in subdivision (g) of Section 830.2.

(b) Promote awareness among members of the medical community on the recognition of health issues that could interfere with safe practice.

(c) Educate the medical community on the benefits of and options available for early intervention to address those health issues.

(d) Refer physicians and surgeons to monitoring programs certified by the program by executing a written agreement with the participant and monitoring the compliance of the participant with that agreement.

(e) Provide for the confidential participation by physicians and surgeons who have a qualifying illness and who are not on probation with the board.

830.6. (a) (1) There is hereby established within the Department of Consumer Affairs the Physician Health, Awareness, and Monitoring Quality Oversight Committee that shall have the duties and responsibilities set forth in this article. The committee may take any reasonable administrative actions to carry out the responsibilities and duties set forth in this article, including, but not limited to, hiring staff and entering into contracts.

(2) The committee shall be formed no later than April 1, 2013.

(3) The committee composition shall be as follows:

(A) All of the members under this subparagraph shall be appointed by the Governor and licensed in this state as physicians and surgeons with education, training, and experience in the identification and treatment of substance use or mental disorders, or both.

(i) Two members recommended by a statewide association representing psychiatrists with at least 3,000 members.

(ii) Two members recommended by a statewide association representing addiction medicine specialists with at least 300 members.

(iii) Three members recommended by a statewide association representing physicians and surgeons from all specialties, modes of practice, and practice settings with at least 25,000 members.

(iv) One member recommended by a statewide hospital association representing at least 400 hospitals.

(v) For the purpose of the initial composition of the committee, one member appointed under clause (i) shall be appointed for a two-year term and the other member for a three-year term; one member appointed under clause (ii) shall be appointed for a two-year term and the other member for a three-year term; one member appointed under clause (iii) shall be appointed for a two-year term, one member ~~for a~~ shall be appointed for *a* three-year term, and one member shall be appointed for a four-year term; and the member appointed under clause (iv) shall be appointed for a four-year term.

(B) All members appointed under this subparagraph shall have experience in a field related to mental illness, or alcohol or substance abuse, or both.

(i) Four members of the public appointed by the Governor. For the initial appointment to the committee, two members shall be appointed to serve for two-year terms and two members shall be appointed to serve for four-year terms.

(ii) One member of the public appointed by the Speaker of the Assembly. The initial appointment shall be for a three-year term.

(iii) One member of the public appointed by the Senate Committee on Rules. The initial appointment shall be for a three-year term.

(4) For the purposes of this section, a public member may not be any of the following:

(A) A current or former physician and surgeon or an immediate family member of a physician and surgeon.

(B) A current or former employee of a physician and surgeon, or a business providing or arranging for physician and surgeon services, or having any financial interest in the business of a physician and surgeon.

(C) An employee or agent or representative of any organization representing physicians and surgeons.

(D) An individual or an affiliate of an organization who has conducted business with or regularly appeared before the board.

(5) A public member shall meet all of the requirements for public members on a board as set forth in Chapter 6 (commencing with Section 450) of Division 1.

(b) Members of the committee shall serve without compensation.

(c) Except as provided for in subdivision (a), committee members shall serve terms of four years and may be reappointed.

(d) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(e) The rules adopted by the committee shall be consistent with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315, the guidelines of the Federation of State Physician Health Programs, Inc., as well as community standards of practice, including, but not limited to, criteria for acceptance of participants into the program and the refusal to accept a person as a participant into the program and the assigning of costs of participation and associated financial responsibilities of participants. In the event of any conflicts between the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315 and the guidelines of the Federation of State Physician Health Programs, Inc., and community standards of practice, the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315 shall prevail.

830.8. (a) The department shall select a contractor for the Physician Health Program pursuant to a request for proposals, and the committee shall contract for a five-year term with that entity. The process for procuring the services for the program shall be administered by the department pursuant to Article 4 (commencing

with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. However, the committee shall serve as the evaluation body for the procurement.

(b) The ~~chief executive officer of the~~ program vendor shall have expertise in the areas of substance or alcohol abuse, and mental disorders in health care professionals.

(c) The program vendor shall ~~have a medical director to~~ oversee clinical aspects of the program's operations. The ~~medical director~~ *program vendor* shall have expertise in the diagnosis and treatment of alcohol and substance abuse and mental disorders in health care professionals.

~~(d) The program vendor shall have established relationships with local medical societies and hospital well-being committees for conducting education, outreach, and referrals for physician and surgeon health.~~

~~(e)~~

(d) The program vendor shall monitor the monitoring entities that participating physicians and surgeons have retained for monitoring a participant's treatment and shall provide ongoing services to physicians and surgeons that resume practice.

~~(f)~~

(e) The program vendor shall have a system for immediately reporting physicians and surgeons who fail to meet the requirements of the program as provided in subdivision (e) of Section 830.10. This system shall ensure absolute confidentiality in the communication to the enforcement division of the board, and shall not provide this information to any other individual or entity unless authorized by the enrolled physician and surgeon.

~~(g)~~

(f) The contract entered into pursuant to this article shall also require the program vendor to do both of the following:

(1) Report annually to the committee statistics related to the program, including, but not limited to, the number of participants currently in the program, the number of participants referred by the board as a condition of probation, the number of participants who have successfully completed their agreement period, the number of participants terminated from the program, and the number of participants reported by the program pursuant to subdivision (e) of Section 830.10. However, in making that report,

the program shall not disclose any personally identifiable information relating to any participant.

(2) Submit to periodic audits and inspections of all operations, records, and management related to the program to ensure compliance with the requirements of this article and its implementing rules and regulations.

~~(h)~~

(g) In addition to the requirements of Section 830.16, the committee shall monitor compliance of the program with the requirements of this article. The committee or its designee may make periodic inspections and onsite visits with the vendor contracted to provide Physician Health Program services.

~~(i)~~

(h) Copies of the audits referenced in paragraph (2) of subdivision ~~(g)~~ *(f)* shall be published and provided to the appropriate policy committees of the Legislature within 10 business days of publication. A copy shall also be made available to the public by posting a link on the committee's Internet Web site homepage no more than 10 business days after publication.

830.10. (a) A physician and surgeon shall, as a condition of participation in the Physician Health Program, enter into an individual agreement with the program and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement with the program.

(b) The written agreement between the physician and surgeon and the program shall be consistent with the standards adopted by the committee pursuant to subdivision (e) of Section 830.6, and shall include all of the following:

(1) A jointly agreed-upon plan and mandatory conditions and procedures to monitor compliance with the program, including, but not limited to, an agreement to cease practice.

(2) Compliance with terms and conditions of treatment and monitoring.

(3) Limitations on practice.

(4) Conditions and terms for return to practice.

(5) Criteria for program completion.

(6) Criteria for termination of the participant from the program.

(7) A stipulation that expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement with the program will be paid by the participant.

(c) In addition, if the physician and surgeon retains the services of a private monitoring entity, he or she shall agree to authorize the program vendor to receive reports from the private monitoring entity and to request information from the private monitoring entity regarding his or her treatment status. Except as provided in subdivisions (b), ~~(c),~~ (d), and (e), and subdivision ~~(f)~~ *(e)* of Section 830.8, a physician and surgeon's participation in the program pursuant to an agreement shall be confidential unless waived by the physician and surgeon.

(d) Any agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, and shall not be disclosed to the committee or the board if both of the following apply:

(1) The physician and surgeon did not enroll in the program as a condition of probation or as a result of an action of the board.

(2) The physician and surgeon is in compliance with the conditions and procedures in the agreement.

(e) (1) The program shall immediately report the name of a participant to the board and the committee when it learns of the participant's failure to meet the requirements of the program, including failure to cease practice when required, failure to submit to evaluation, treatment, or biological testing when required, or a violation of the rules adopted by the committee pursuant to subdivision (e) of Section 830.6. The program shall also immediately report the name of a participant to the committee when it learns that the participant's impairment is not substantially alleviated through treatment, or if the participant withdraws or is terminated from the program prior to completion, or if, in the opinion of the program after a risk assessment is conducted, the participant is unable to practice medicine with reasonable skill and safety.

(2) Notwithstanding subdivision ~~(f)~~ *(e)* of Section 830.8, the report shall provide sufficient information to permit the board to assess whether discipline or other action is required to protect the public.

(f) Except as otherwise provided in subdivisions (b), (c), ~~(e), and (f)~~ *(d), and (e)* of Section 830.8, subdivision (e) of this section,

and this subdivision, any oral or written information reported to the board pursuant to this section, including, but not limited to, any physician and surgeon's participation in the program and any agreement entered into pursuant to this article, shall remain confidential as provided in subdivision (c) of Section 800, and shall not constitute a waiver of any existing evidentiary privileges under any other provision or rule of law. However, confidentiality regarding the physician and surgeon's participation in the program and of all information and records created by the program related to that participation shall not apply if the board has referred a participant as a condition of probation.

(g) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the board against a physician and surgeon based on acts or omissions within the course and scope of his or her practice.

(h) Any information received, developed, or maintained by the committee regarding a physician and surgeon in the program shall not be used for any other purposes.

830.12. (a) The biennial license renewal fee established in subdivision (d) of Section 2435 shall increase by thirty-nine dollars and fifty cents ($39.50) for purposes of this article, except those purposes specified in Section 830.10. The board shall, on a monthly basis, transfer the revenue generated from this increase to the trust fund described in subdivision (b).

(b) There is hereby established in the State Treasury the Physician Health, Awareness, and Monitoring Quality Trust Fund into which all revenue generated pursuant to subdivision (a) shall be deposited. These funds shall be used, upon appropriation by the Legislature, exclusively for the purposes of this article, except those purposes specified in Section 830.10.

(c) Nothing in this section shall be construed to prohibit additional funding from private sources from being used to support operations of the program or to support the establishment of the committee and the program.

830.14. (a) The committee shall report to the department statistics received from the program pursuant to Section 830.8, and the department shall, thereafter, report to the appropriate policy committees of the Legislature on or before October 1, 2014, and annually thereafter, the outcomes of the program, including, but not limited to, the number of individuals served, the number of

participants currently in the program, the number of participants referred by the board as a condition of probation, the number of individuals who have successfully completed their agreement period, the number of participants terminated from the program, and the number of individuals reported to the board for noncompliance pursuant to subdivision (e) of Section 830.10. However, in making those reports, the committee and the department shall not disclose any personally identifiable information relating to any physician and surgeon participating in the program pursuant to an agreement entered into pursuant to Section 830.10.

(b) This section shall become inoperative on October 1, 2018, pursuant to Section 10231.5 of the Government Code.

830.16. (a) The committee shall biennially contract to perform an audit of the Physician Health Program and its vendors. This section is not intended to reduce the number of audits the committee may otherwise conduct. The initial audit shall commence two years after the award of an initial five-year contract. Under no circumstances shall General Fund revenue be used for this purpose.

(b) Any person or entity conducting the audit required by this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the audit and shall not disclose any information identifying any program participant.

(c) The biennial audit shall be completed by ____ and shall ascertain if the program is operating in conformance with the rules and regulations established by the committee.

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