

ASSEMBLY BILL

No. 646

**Introduced by Assembly Member Swanson
(Coauthor: Assembly Member Chesbro)**

February 25, 2009

An act to amend Section 2401 of, and to repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as introduced, Swanson. Physicians and surgeons: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50 percent of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals to provide medically necessary services in rural and medically underserved communities, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete the pilot project, and would instead authorize a health care district, as defined, that is located in a rural area, or a public or nonprofit hospital or clinic located in a health care district serving medically underserved urban populations and communities, to

employ physicians and surgeons if specified requirements are met and the district, hospital, or clinic does not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon.

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

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

1 SECTION 1. Section 2401 of the Business and Professions
 2 Code is amended to read:

3 2401. (a) Notwithstanding Section 2400, a clinic operated
 4 primarily for the purpose of medical education by a public or
 5 private nonprofit university medical school, which is approved by
 6 the Division of Licensing or the Osteopathic Medical Board of
 7 California, may charge for professional services rendered to
 8 teaching patients by licensees who hold academic appointments
 9 on the faculty of the university, if the charges are approved by the
 10 physician and surgeon in whose name the charges are made.

11 (b) Notwithstanding Section 2400, a clinic operated under
 12 subdivision (p) of Section 1206 of the Health and Safety Code
 13 may employ licensees and charge for professional services rendered
 14 by those licensees. However, the clinic shall not interfere with,
 15 control, or otherwise direct the professional judgment of a
 16 physician and surgeon in a manner prohibited by Section 2400 or
 17 any other provision of law.

18 (c) Notwithstanding Section 2400, a narcotic treatment program
 19 operated under Section 11876 of the Health and Safety Code and
 20 regulated by the State Department of Alcohol and Drug Programs,
 21 may employ licensees and charge for professional services rendered
 22 by those licensees. However, the narcotic treatment program shall
 23 not interfere with, control, or otherwise direct the professional
 24 judgment of a physician and surgeon in a manner prohibited by
 25 Section 2400 or any other provision of law.

26 (d) Notwithstanding Section 2400, ~~a hospital-owned and~~
 27 ~~operated by a health care district in a rural area that is operated~~
 28 pursuant to Division 23 (commencing with Section 32000) of the
 29 Health and Safety Code may employ a licensee pursuant to Section
 30 2401.1 physicians and surgeons, and may charge for professional
 31 services rendered by the licensee a physician and surgeon, if the
 32 physician and surgeon in whose name the charges are made

1 approves the charges. However, the ~~hospital~~ *district* shall not
2 interfere with, control, or otherwise direct ~~the~~ a physician and
3 surgeon's professional judgment in a manner prohibited by Section
4 2400 or any other provision of law.

5 *(e) Notwithstanding Section 2400, a public or nonprofit hospital*
6 *or clinic located in a health care district serving medically*
7 *underserved urban populations and communities, pursuant to*
8 *Division 23 (commencing with Section 32000) of the Health and*
9 *Safety Code, may employ physicians and surgeons, and may charge*
10 *for professional services rendered by a physician and surgeon, if*
11 *the physician and surgeon in whose name the charges are made*
12 *approves the charges. However, the hospital or clinic shall not*
13 *interfere with, control, or otherwise direct a physician and*
14 *surgeon's professional judgment in a manner prohibited by Section*
15 *2400 or any other provision of law.*

16 SEC. 2. Section 2401.1 of the Business and Professions Code
17 is repealed.

18 ~~2401.1. (a) The Legislature finds and declares as follows:~~

19 ~~(1) Due to the large number of uninsured and underinsured~~
20 ~~Californians, a number of California communities are having great~~
21 ~~difficulty recruiting and retaining physicians and surgeons.~~

22 ~~(2) In order to recruit physicians and surgeons to provide~~
23 ~~medically necessary services in rural and medically underserved~~
24 ~~communities, many district hospitals have no viable alternative~~
25 ~~but to directly employ physicians and surgeons in order to provide~~
26 ~~economic security adequate for a physician and surgeon to relocate~~
27 ~~and reside in their communities.~~

28 ~~(3) The Legislature intends that a district hospital meeting the~~
29 ~~conditions set forth in this section be able to employ physicians~~
30 ~~and surgeons directly, and to charge for their professional services.~~

31 ~~(4) The Legislature reaffirms that Section 2400 provides an~~
32 ~~increasingly important protection for patients and physicians and~~
33 ~~surgeons from inappropriate intrusions into the practice of~~
34 ~~medicine, and further intends that a district hospital not interfere~~
35 ~~with, control, or otherwise direct a physician and surgeon's~~
36 ~~professional judgment.~~

37 ~~(b) A pilot project to provide for the direct employment of a~~
38 ~~total of 20 physicians and surgeons by qualified district hospitals~~
39 ~~is hereby established in order to improve the recruitment and~~

1 retention of physicians and surgeons in rural and other medically
2 underserved areas.

3 (e) For purposes of this section, a qualified district hospital
4 means a hospital that meets all of the following requirements:

5 (1) Is a district hospital organized and governed pursuant to the
6 Local Health Care District Law (Division 23 (commencing with
7 Section 32000) of the Health and Safety Code).

8 (2) Provides a percentage of care to Medicare, Medi-Cal, and
9 uninsured patients that exceeds 50 percent of patient days.

10 (3) Is located in a county with a total population of less than
11 750,000.

12 (4) Has net losses from operations in fiscal year 2000-01, as
13 reported to the Office of Statewide Health Planning and
14 Development.

15 (d) In addition to the requirements of subdivision (c), and in
16 addition to other applicable laws, a qualified district hospital may
17 directly employ a licensee pursuant to subdivision (b) if all of the
18 following conditions are satisfied:

19 (1) The total number of physicians and surgeons employed by
20 all qualified district hospitals under this section does not exceed
21 20.

22 (2) The medical staff and the elected trustees of the qualified
23 district hospital concur by an affirmative vote of each body that
24 the physician and surgeon's employment is in the best interest of
25 the communities served by the hospital.

26 (3) The licensee enters into or renews a written employment
27 contract with the qualified district hospital prior to December 31,
28 2006, for a term not in excess of four years. The contract shall
29 provide for mandatory dispute resolution under the auspices of the
30 board for disputes directly relating to the licensee's clinical
31 practice.

32 (4) The total number of licensees employed by the qualified
33 district hospital does not exceed two at any time.

34 (5) The qualified district hospital notifies the board in writing
35 that the hospital plans to enter into a written contract with the
36 licensee, and the board has confirmed that the licensee's
37 employment is within the maximum number permitted by this
38 section. The board shall provide written confirmation to the hospital
39 within five working days of receipt of the written notification to
40 the board.

1 ~~(e) The board shall report to the Legislature not later than~~
2 ~~October 1, 2008, on the evaluation of the effectiveness of the pilot~~
3 ~~project in improving access to health care in rural and medically~~
4 ~~underserved areas and the project's impact on consumer protection~~
5 ~~as it relates to intrusions into the practice of medicine.~~

6 ~~(f) Nothing in this section shall exempt the district hospital from~~
7 ~~any reporting requirements or affect the board's authority to take~~
8 ~~action against a physician and surgeon's license.~~

9 ~~(g) This section shall remain in effect only until January 1, 2011,~~
10 ~~and as of that date is repealed, unless a later enacted statute that~~
11 ~~is enacted before January 1, 2011, deletes or extends that date.~~

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