

ASSEMBLY BILL

No. 2467

Introduced by Assembly Member Gomez

February 19, 2016

An act to add Chapter 2.17 (commencing with Section 1339.85) to Division 2 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2467, as introduced, Gomez. Health facilities: executive compensation.

Existing law provides for the licensure and regulation of health facilities, including general acute care hospitals, by the State Department of Public Health.

This bill would require covered hospitals and medical entities, as defined, to annually submit to the Office of Statewide Health Planning and Development an executive compensation report for every executive whose annual compensation exceeds a specified threshold. The bill would require specified information to be included in the report, and include a requirement that certain reports be attested to under penalty of perjury. Because a violation thereof would be a crime, the bill would impose a state-mandated local program. The bill would authorize the office to impose a reasonable fee to cover the costs of implementation and administration of these provisions. The bill would require the office to post these reports on its Internet Web site.

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. This act shall be known and may be cited as the
2 Hospital Executive Compensation Transparency Act of 2016.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) The public has a direct and immediate interest in ensuring
5 its money is spent efficiently and wisely. Through direct cash
6 payments and exemptions from paying taxes, nonprofit hospitals
7 receive billions in taxpayer funds.
- 8 (b) The compensation packages of chief executive officers,
9 executives, managers, and administrators of hospitals, hospital
10 groups, and affiliated medical entities that operate under nonprofit
11 corporate status are often excessive, unnecessary, and inconsistent
12 with the corporations' charitable purposes, as revealed by
13 compensation surveys and other sources.
- 14 (c) Payment of excessive compensation to executives, managers,
15 and administrators undermines the purposes of nonprofit
16 corporations because it results in fewer funds being available for
17 their charitable purposes, and it is often the case that the hospitals,
18 hospital groups, and affiliated medical entities that pay the most
19 excessive compensation also provide less charitable care than
20 comparable institutions that pay reasonable compensation to their
21 executives, managers, and administrators.
- 22 (d) Existing requirements of law do not adequately ensure that
23 assets held for charitable purposes are not instead used to enrich
24 executives, managers, and administrators of nonprofit hospitals,
25 hospital groups, and affiliated medical entities through payment
26 of excessive compensation.
- 27 (e) The compensation packages for chief executive officers,
28 executives, managers, and administrators of for-profit hospitals in
29 California are often excessive, unnecessary, and inconsistent with
30 the provision of high-quality, affordable medical care, by diverting
31 funds that could be used to expand access to affordable medical
32 care for all Californians.
- 33 (f) Chief executive officers, executives, managers, and
34 administrators at hospitals, hospital groups, and affiliated medical
35 entities who are also compensated for their positions on boards of

1 directors of publicly traded companies, privately held companies,
2 and nonprofit organizations risk spending time away from their
3 primary responsibilities to the detriment of high-quality, affordable
4 medical care.

5 (g) In order to properly assess the scope of excessive
6 compensation packages in the nonprofit hospital sector and to
7 inform policy decisions related to escalating health care costs, it
8 is necessary to understand excessive compensation among private
9 hospitals.

10 (h) It is the intent of the Legislature in enacting this act to ensure
11 that compensation packages for chief executive officers, executives,
12 managers, and administrators of for-profit and nonprofit hospitals
13 are consistent with the goal of providing affordable, high-quality
14 medical care to all Californians.

15 (i) The intent of the Legislature in enacting this act is also to
16 ensure that compensation packages for chief executive officers,
17 executives, managers, and administrators of nonprofit hospitals,
18 hospital groups, and affiliated medical entities are consistent with
19 the charitable purposes of those nonprofits and are reasonable and
20 not excessive in light of the substantial public benefit that the state
21 tax exemption for nonprofit organizations conveys.

22 SEC. 3. Chapter 2.17 (commencing with Section 1339.85) is
23 added to Division 2 of the Health and Safety Code, to read:

24
25 CHAPTER 2.17. HOSPITAL EXECUTIVE COMPENSATION
26 TRANSPARENCY ACT OF 2016
27

28 1339.85. For purposes of this chapter, the following definitions
29 shall have the following meanings:

30 (a) “Annual hospital executive compensation report” refers to
31 the report described in Section 1339.87.

32 (b) “Board compensation” shall mean the total annual
33 compensation provided to each hospital executive by any publicly
34 traded company, privately held company, or nonprofit organization
35 on whose board of directors a hospital executive sits and from
36 which the hospital executive received total annual compensation
37 of more than one thousand dollars (\$1,000).

38 (c) (1) “Covered hospital or medical entity” shall mean any of
39 the following:

1 (A) A private nonprofit general acute care hospital, as defined
2 in subdivision (a) of Section 1250.

3 (B) An acute psychiatric hospital, as defined in subdivision (b)
4 of Section 1250.

5 (C) Any private for-profit general acute care hospital that is
6 licensed under subdivision (a) or (b) of Section 1250 and operated
7 within the state for profit under Division 1 (commencing with
8 Section 100) of Title 1 of the Corporations Code, including by a
9 foreign corporation.

10 (D) A hospital group, which shall mean any group of two or
11 more hospitals described in paragraph (1) or (2) or any person,
12 corporation, partnership, limited liability company, trust or other
13 entity that owns, operates, or controls, in whole or in part, any
14 such group.

15 (E) A hospital-affiliated medical foundation, which shall mean
16 a medical foundation, as defined in subdivision (f) of Section 1206,
17 that is directly or indirectly, including through one or more
18 intermediaries, controlled or owned by, or controlled or owned by
19 the same person or entity as, a hospital, hospital group,
20 hospital-affiliated physicians group, or nonprofit corporation that
21 owns, operates, or controls, in whole or in part, a hospital, hospital
22 group, or hospital-affiliated physicians group. A medical
23 foundation shall be deemed a hospital-affiliated medical foundation
24 if either or both of the following are true:

25 (i) The medical foundation is a disregarded entity of, or would
26 be required to be designated as a related organization on Internal
27 Revenue Service Form 990 (or its accompanying schedules or the
28 successor of such forms or schedules) of, a hospital, hospital group,
29 hospital-affiliated physicians group, or a nonprofit corporation
30 that owns, operates, or controls, in whole or in part, a hospital,
31 hospital group, or hospital-affiliated physicians group.

32 (ii) A majority of the medical foundation's assets are owned by
33 a hospital, hospital group, or hospital-affiliated physicians group
34 or by a nonprofit corporation that owns, operates, or controls, in
35 whole or in part, a hospital, hospital group, or hospital-affiliated
36 physicians group, or the medical foundation owns a majority of
37 the assets of a hospital, hospital group, or hospital-affiliated
38 physicians group or of a nonprofit corporation that owns, operates,
39 or controls, in whole or in part, a hospital, hospital group, or
40 hospital-affiliated physicians group.

1 (F) A hospital-affiliated physicians group, which shall mean
2 any physicians group or medical group that is directly or indirectly,
3 including through one or more intermediaries, controlled or owned
4 by, or controlled or owned by the same person or entity as, a
5 hospital, hospital group, hospital-affiliated medical foundation, or
6 a nonprofit corporation that owns, operates, or controls, in whole
7 or in part, a hospital, hospital group, or hospital-affiliated medical
8 foundation. A physicians group shall be deemed a
9 hospital-affiliated physicians group if either or both of the
10 following are true:

11 (i) The physicians group is a disregarded entity of, or would be
12 required to be designated as a related organization on Internal
13 Revenue Service Form 990 (or its accompanying schedules or the
14 successor of such forms or schedules) of, a hospital, hospital group,
15 or hospital-affiliated medical foundation or a nonprofit corporation
16 that owns, operates, or controls, in whole or in part, a hospital,
17 hospital group, or hospital-affiliated medical foundation.

18 (ii) A majority of the physicians group's assets are owned by a
19 hospital, hospital group, or hospital-affiliated medical foundation
20 or a nonprofit corporation that owns, operates, or controls, in whole
21 or in part, a hospital, hospital group, or hospital-affiliated medical
22 foundation.

23 (G) A health care district organized pursuant to Chapter 1
24 (commencing with Section 32000) of Division 23.

25 (2) "Covered hospital or medical entity" shall not include any
26 of the following:

27 (A) Hospitals operated or licensed by the United States
28 Department of Veterans Affairs or public hospitals as defined in
29 paragraph (25) of subdivision (a) of Section 14105.98 of the
30 Welfare and Institutions Code, with the exception of hospitals
31 owned or operated by a health care district organized pursuant to
32 Chapter 1 (commencing with Section 32000) of Division 23.

33 (B) Designated public hospitals, as described in subdivision (d)
34 of Section 14166.1 of the Welfare and Institutions Code.

35 (d) "Executive compensation reporting threshold" shall mean
36 the total annual compensation from any source for work performed
37 or services provided at or for the covered hospital or medical entity
38 that is greater than two hundred fifty thousand dollars (\$250,000)
39 in a year.

1 (e) (1) “Hospital executive” shall mean all persons whose
2 primary duties are executive, managerial, or administrative at or
3 for the covered hospital or medical entity, even if that person also
4 performs or performed other duties.

5 (2) “Hospital executive” shall include, but is not limited to,
6 chief executive officers, chief executive managers, chief executives,
7 executive officers, executive directors, chief financial officers,
8 presidents, executive presidents, vice presidents, executive vice
9 presidents, and other comparable positions.

10 (3) The definition of “hospital executive” shall apply irrespective
11 of whether the person exercising executive, managerial, or
12 administrative authority is or was an employee of a covered
13 hospital or medical entity or a nonprofit corporation that owns,
14 operates, or controls, in whole or in part, a covered hospital or
15 medical entity. The definition shall also apply to any person who
16 exercises or exercised such authority even if the arrangements for
17 such authority or for compensation or both are pursuant to a
18 contract or subcontract.

19 (4) “Hospital executive” shall include any person who held the
20 duties described under this paragraph during the period covered
21 by the annual report, even if the person is postemployment or
22 postservice.

23 (5) “Hospital executive” shall not apply to medical or health
24 care professionals whose primary duties are or were the provision
25 of medical services, research, direct patient care, or other
26 nonmanagerial, nonexecutive, and nonadministrative services.

27 (f) “Office” means the Office of Statewide Health Planning and
28 Development.

29 (g) (1) “Total annual compensation” shall mean all
30 remuneration paid, earned, or accrued in the course of a fiscal year
31 for work performed or services provided, including the cash value
32 of all remuneration (including benefits) in any medium other than
33 cash, except as otherwise specified in paragraph (2), and including,
34 but not limited to, all of the following:

35 (A) Wages; salary; paid time off; bonuses; incentive payments;
36 lump-sum cash payments; the fair market value of
37 below-market-rate loans or loan forgiveness; housing payments;
38 payments for transportation, travel, meals, or other expenses in
39 excess of actual documented expenses incurred in the performance
40 of duties; payments or reimbursement for entertainment or social

1 club memberships; the cash value of housing, automobiles, parking,
2 or similar benefits; scholarships or fellowships; the cash value of
3 dependent care or adoption assistance or personal legal or financial
4 services; the cash value of stock options or awards; payments or
5 contributions for insurance except as exempted in paragraph (2),
6 to a Section 125 cafeteria plan or equivalent arrangement, to a
7 health savings account, or for severance or its equivalent; and
8 deferred compensation earned or accrued, even if not yet vested
9 nor paid.

10 (B) The total value in the aggregate of the compensation or
11 payments authorized or paid under a severance or similar
12 postservice or postemployment arrangement, to include the fair
13 market value of all cash remuneration as well as the fair market
14 value of all remuneration (including benefits) paid in any medium
15 other than cash, as defined in paragraph (1), subject to the exclusion
16 set forth in paragraph (2).

17 (C) Payments, compensation, or remuneration for work
18 performed or services provided at or for a covered hospital or
19 medical entity even if made by a separate person or entity,
20 including, but not limited to, any of the following:

- 21 (i) A for-profit or unincorporated entity.
- 22 (ii) A corporation, partnership, or limited liability company.
- 23 (iii) A trust or other entity that is controlled by the same person
24 or persons who govern a covered hospital or medical entity.
- 25 (iv) A supporting or supported organization within the meaning
26 of Sections 509(a)(3) and 509(f)(3) of the Internal Revenue Code.
- 27 (v) A disregarded entity of, or related organization as set forth
28 within, the Internal Revenue Service Form 990 of a covered
29 hospital or medical entity or a nonprofit corporation that owns,
30 operates, or controls, in whole or in part, a covered hospital or
31 medical entity.

32 (D) Payment of compensation or remuneration by any person,
33 corporation, partnership, limited liability company, trust, or other
34 entity that a covered hospital or medical entity, or a nonprofit
35 corporation that owns, operates, or controls, in whole or in part, a
36 covered hospital or medical entity, participates in, belongs to, is
37 a member of, or pays into shall be presumed compensation for
38 work performed or services provided at or for the covered hospital
39 or medical entity.

1 (2) “Total annual compensation” shall not include the cost of
2 health insurance or disability insurance or payments or
3 contributions to a health reimbursement account.

4 1339.87. (a) On and after October 1, 2017, each covered
5 hospital or medical entity shall submit an annual hospital executive
6 compensation report to the office for every hospital executive
7 whose total annual compensation met or exceeded the executive
8 compensation reporting threshold. The report shall include all of
9 the following information for the prior fiscal year:

10 (1) The names, positions, or titles of each hospital executive
11 and the aggregate total annual compensation for each hospital
12 executive at or exceeding the executive compensation reporting
13 threshold, including all of the information described under
14 subdivision (g) of Section 1339.85, with a description of each
15 entity that has contributed to the total annual compensation of each
16 hospital executive, in any form, and the amount of such
17 compensation.

18 (2) A detailed breakdown of all wage and nonwage
19 compensation.

20 (3) Identification of any benefit or remuneration excluded from
21 the definition of total annual compensation pursuant to paragraph
22 (2) of subdivision (g) of Section 1339.85.

23 (4) A detailed breakdown of board compensation, which shall
24 include all of the following:

25 (A) The name of the publicly traded company, privately held
26 company, or nonprofit organization that provided the board
27 compensation.

28 (B) The number of hours the hospital executive spent on matters
29 related to their duties as a director of the publicly traded company,
30 privately held company, or nonprofit organization for which the
31 board compensation was received.

32 (b) On and after January 1, 2018, the office shall post the annual
33 hospital executive compensation report for each covered hospital
34 or medical entity on the office’s Internet Web site.

35 (c) The annual report shall be submitted on the form or in the
36 format required by the office.

37 (d) (1) The board of directors of any nonprofit or for-profit
38 corporation that owns, operates, or controls, in whole or in part, a
39 covered hospital or medical entity shall approve the annual report
40 before it is submitted to the office.

1 (2) Each director shall act in good faith and with reasonable
2 care and inquiry in approving the annual report and in ensuring
3 that the corporation complies with the requirements of this section.

4 (3) For each covered hospital or medical entity governed, owned,
5 or controlled by a board of directors, the annual report shall state
6 that it was approved by the board of directors and set forth the date
7 of such approval, and shall be attested to under penalty of perjury
8 by an authorized representative of the covered hospital or medical
9 entity board of directors.

10 (e) (1) Any scheme or artifice that has the purpose of avoiding
11 the reporting requirements established by this section shall
12 constitute a violation of this section.

13 (2) Payments, compensation, or remuneration by a separate
14 entity that is purported not to be for work performed or services
15 provided at or for a covered hospital or medical entity, but that is
16 disproportionate to its purported purpose so as to evade the annual
17 hospital executive compensation reporting requirements specified
18 in this section, shall constitute a violation of this section.

19 (f) The office shall establish and assess reasonable fees, to be
20 submitted with each annual report, to cover only the reasonable
21 costs of implementing and ensuring compliance with this section
22 and each activity authorized or required by this section.

23 SEC. 4. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.