

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 396

Introduced by Senator Hill

February 25, 2015

An act to amend Sections 805 and 805.5 of, and to add Section 2216.5 to, the Business and Professions Code, *to amend Section 12529.7 of the Government Code*, and to amend Sections 1204, 1248.15, 1248.3, and 1248.35 of the Health and Safety Code, relating to health ~~and care facilities: care.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Hill. ~~Health and care facilities: care:~~ outpatient settings and surgical ~~clinics: clinics: facilities: licensure and enforcement.~~

Existing law provides for the licensure and regulation of clinics by the State Department of Public Health. A violation of those provisions is a misdemeanor. Existing law provides that certain types of specialty clinics, including surgical clinics, as defined, are eligible for licensure. *Existing law excludes from the definition of surgical clinic any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice. Existing law requires a surgical clinic that is licensed or seeking licensure to comply with federal certification standards for an ambulatory surgical clinic until the department adopts regulations relating to the provision of services by a surgical clinic.*

This bill would ~~clarify~~ provide that a surgical clinic that has met the federal certification standards and requirements for an ambulatory surgical clinic is eligible for licensure by the department regardless of physician, podiatrist, or dentist ownership. *The bill would provide that*

a surgical clinic is deemed to have met the licensure requirements under the chapter upon presenting documentation, within a 3-year period, that the surgical clinic has met the federal certification requirements for an ambulatory surgical clinic.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law provides that it is unprofessional conduct for a physician and surgeon to perform procedures in any outpatient setting except in compliance with specified provisions. Existing law prohibits an association, corporation, firm, partnership, or person from operating, managing, conducting, or maintaining an outpatient setting in the state unless the setting is one of the specified settings, which includes, among others, *an ambulatory surgical clinic that is certified to participate in the Medicare program*, a surgical clinic licensed by the State Department of Public ~~Health~~ Health, or an outpatient setting accredited by an accreditation agency approved by the Division of Licensing of the Medical Board of California.

Existing law provides that an outpatient setting that is accredited shall be inspected by the accreditation agency and may be inspected by the Medical Board of California. Existing law requires that the inspections be conducted no less often than once every 3 years by the accreditation agency and as often as necessary by the Medical Board of California to ensure quality of care provided. Existing law requires that certificates for accreditation issued to outpatient settings by an accreditation agency shall be valid for not more than 3 years.

This bill would require that all subsequent inspections after the initial inspection for accreditation be unannounced. This bill would require an outpatient setting accredited by the division *and a facility certified to participate in the federal Medicare program as an ambulatory surgical center* to pay certain fees and to comply with certain data submission requirements. The bill would also instead require that an initial certificate of accreditation by an accreditation agency be valid for not more than 2 years and that a renewal certificate be valid for not more than 3 years.

Existing law requires members of the medical staff and other practitioners who are granted clinical privileges in an outpatient setting to be professionally qualified and appropriately credentialed for the performance of privileges granted and requires the outpatient setting to grant privileges in accordance with recommendations from qualified

health professionals, and credentialing standards established by the outpatient setting.

This bill would additionally require that each ~~physician and surgeon licensee~~ who performs procedures in an outpatient setting that requires the outpatient setting to be accredited be peer reviewed, *at least every 2 years*, by ~~California-licensed physicians~~ licensees who are qualified by education *and* experience to perform the same types of, *or similar* procedures. *The bill would require the findings of the peer review to be reported to the accrediting body who shall determine if the licensee continues to be professionally qualified and appropriately credentialed for the performance of privileges granted.* By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law requires specified entities, including any health care service plan or medical care foundation, to request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California, prior to granting or renewing staff privileges, to determine if a certain report has been made indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted.

This bill would also require an outpatient setting and a facility certified to participate in the federal Medicare program as an ambulatory surgical center to request that report. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law establishes a vertical enforcement and prosecution model for cases before the Medical Board of California, and requires the board to report to the Governor and the Legislature on that model by March 1, 2015.

This bill would extend the date that report is due to March 1, 2016.

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:

SECTION 1. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) (A) “Peer review” means both of the following:

(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:

(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.

(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

(ii) Any other activities of a peer review body as specified in subparagraph (B).

(B) “Peer review body” includes:

(i) A medical or professional staff of any health care ~~facility or facility, of a~~ clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, of a facility certified to participate in the federal Medicare program as an ambulatory surgical center, or of an outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code.

(ii) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(iii) Any medical, psychological, marriage and family therapy, social work, professional clinical counselor, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

1 (iv) A committee organized by any entity consisting of or
2 employing more than 25 licentiates of the same class that functions
3 for the purpose of reviewing the quality of professional care
4 provided by members or employees of that entity.

5 (2) “Licentiate” means a physician and surgeon, doctor of
6 podiatric medicine, clinical psychologist, marriage and family
7 therapist, clinical social worker, professional clinical counselor,
8 dentist, or physician assistant. “Licentiate” also includes a person
9 authorized to practice medicine pursuant to Section 2113 or 2168.

10 (3) “Agency” means the relevant state licensing agency having
11 regulatory jurisdiction over the licentiates listed in paragraph (2).

12 (4) “Staff privileges” means any arrangement under which a
13 licentiate is allowed to practice in or provide care for patients in
14 a health facility. Those arrangements shall include, but are not
15 limited to, full staff privileges, active staff privileges, limited staff
16 privileges, auxiliary staff privileges, provisional staff privileges,
17 temporary staff privileges, courtesy staff privileges, locum tenens
18 arrangements, and contractual arrangements to provide professional
19 services, including, but not limited to, arrangements to provide
20 outpatient services.

21 (5) “Denial or termination of staff privileges, membership, or
22 employment” includes failure or refusal to renew a contract or to
23 renew, extend, or reestablish any staff privileges, if the action is
24 based on medical disciplinary cause or reason.

25 (6) “Medical disciplinary cause or reason” means that aspect
26 of a licentiate’s competence or professional conduct that is
27 reasonably likely to be detrimental to patient safety or to the
28 delivery of patient care.

29 (7) “805 report” means the written report required under
30 subdivision (b).

31 (b) The chief of staff of a medical or professional staff or other
32 chief executive officer, medical director, or administrator of any
33 peer review body and the chief executive officer or administrator
34 of any licensed health care facility or clinic shall file an 805 report
35 with the relevant agency within 15 days after the effective date on
36 which any of the following occur as a result of an action of a peer
37 review body:

38 (1) A licentiate’s application for staff privileges or membership
39 is denied or rejected for a medical disciplinary cause or reason.

1 (2) A licentiate's membership, staff privileges, or employment
2 is terminated or revoked for a medical disciplinary cause or reason.

3 (3) Restrictions are imposed, or voluntarily accepted, on staff
4 privileges, membership, or employment for a cumulative total of
5 30 days or more for any 12-month period, for a medical disciplinary
6 cause or reason.

7 (c) If a licentiate takes any action listed in paragraph (1), (2),
8 or (3) after receiving notice of a pending investigation initiated
9 for a medical disciplinary cause or reason or after receiving notice
10 that his or her application for membership or staff privileges is
11 denied or will be denied for a medical disciplinary cause or reason,
12 the chief of staff of a medical or professional staff or other chief
13 executive officer, medical director, or administrator of any peer
14 review body and the chief executive officer or administrator of
15 any licensed health care facility or clinic where the licentiate is
16 employed or has staff privileges or membership or where the
17 licentiate applied for staff privileges or membership, or sought the
18 renewal thereof, shall file an 805 report with the relevant agency
19 within 15 days after the licentiate takes the action.

20 (1) Resigns or takes a leave of absence from membership, staff
21 privileges, or employment.

22 (2) Withdraws or abandons his or her application for staff
23 privileges or membership.

24 (3) Withdraws or abandons his or her request for renewal of
25 staff privileges or membership.

26 (d) For purposes of filing an 805 report, the signature of at least
27 one of the individuals indicated in subdivision (b) or (c) on the
28 completed form shall constitute compliance with the requirement
29 to file the report.

30 (e) An 805 report shall also be filed within 15 days following
31 the imposition of summary suspension of staff privileges,
32 membership, or employment, if the summary suspension remains
33 in effect for a period in excess of 14 days.

34 (f) A copy of the 805 report, and a notice advising the licentiate
35 of his or her right to submit additional statements or other
36 information, electronically or otherwise, pursuant to Section 800,
37 shall be sent by the peer review body to the licentiate named in
38 the report. The notice shall also advise the licentiate that
39 information submitted electronically will be publicly disclosed to
40 those who request the information.

1 The information to be reported in an 805 report shall include the
2 name and license number of the licensee involved, a description
3 of the facts and circumstances of the medical disciplinary cause
4 or reason, and any other relevant information deemed appropriate
5 by the reporter.

6 A supplemental report shall also be made within 30 days
7 following the date the licensee is deemed to have satisfied any
8 terms, conditions, or sanctions imposed as disciplinary action by
9 the reporting peer review body. In performing its dissemination
10 functions required by Section 805.5, the agency shall include a
11 copy of a supplemental report, if any, whenever it furnishes a copy
12 of the original 805 report.

13 If another peer review body is required to file an 805 report, a
14 health care service plan is not required to file a separate report
15 with respect to action attributable to the same medical disciplinary
16 cause or reason. If the Medical Board of California or a licensing
17 agency of another state revokes or suspends, without a stay, the
18 license of a physician and surgeon, a peer review body is not
19 required to file an 805 report when it takes an action as a result of
20 the revocation or suspension.

21 (g) The reporting required by this section shall not act as a
22 waiver of confidentiality of medical records and committee reports.
23 The information reported or disclosed shall be kept confidential
24 except as provided in subdivision (c) of Section 800 and Sections
25 803.1 and 2027, provided that a copy of the report containing the
26 information required by this section may be disclosed as required
27 by Section 805.5 with respect to reports received on or after
28 January 1, 1976.

29 (h) The Medical Board of California, the Osteopathic Medical
30 Board of California, and the Dental Board of California shall
31 disclose reports as required by Section 805.5.

32 (i) An 805 report shall be maintained electronically by an agency
33 for dissemination purposes for a period of three years after receipt.

34 (j) No person shall incur any civil or criminal liability as the
35 result of making any report required by this section.

36 (k) A willful failure to file an 805 report by any person who is
37 designated or otherwise required by law to file an 805 report is
38 punishable by a fine not to exceed one hundred thousand dollars
39 (\$100,000) per violation. The fine may be imposed in any civil or
40 administrative action or proceeding brought by or on behalf of any

1 agency having regulatory jurisdiction over the person regarding
2 whom the report was or should have been filed. If the person who
3 is designated or otherwise required to file an 805 report is a
4 licensed physician and surgeon, the action or proceeding shall be
5 brought by the Medical Board of California. The fine shall be paid
6 to that agency but not expended until appropriated by the
7 Legislature. A violation of this subdivision may constitute
8 unprofessional conduct by the licensee. A person who is alleged
9 to have violated this subdivision may assert any defense available
10 at law. As used in this subdivision, “willful” means a voluntary
11 and intentional violation of a known legal duty.

12 (l) Except as otherwise provided in subdivision (k), any failure
13 by the administrator of any peer review body, the chief executive
14 officer or administrator of any health care facility, or any person
15 who is designated or otherwise required by law to file an 805
16 report, shall be punishable by a fine that under no circumstances
17 shall exceed fifty thousand dollars (\$50,000) per violation. The
18 fine may be imposed in any civil or administrative action or
19 proceeding brought by or on behalf of any agency having
20 regulatory jurisdiction over the person regarding whom the report
21 was or should have been filed. If the person who is designated or
22 otherwise required to file an 805 report is a licensed physician and
23 surgeon, the action or proceeding shall be brought by the Medical
24 Board of California. The fine shall be paid to that agency but not
25 expended until appropriated by the Legislature. The amount of the
26 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
27 violation, shall be proportional to the severity of the failure to
28 report and shall differ based upon written findings, including
29 whether the failure to file caused harm to a patient or created a
30 risk to patient safety; whether the administrator of any peer review
31 body, the chief executive officer or administrator of any health
32 care facility, or any person who is designated or otherwise required
33 by law to file an 805 report exercised due diligence despite the
34 failure to file or whether they knew or should have known that an
35 805 report would not be filed; and whether there has been a prior
36 failure to file an 805 report. The amount of the fine imposed may
37 also differ based on whether a health care facility is a small or
38 rural hospital as defined in Section 124840 of the Health and Safety
39 Code.

(m) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 2. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, any health care service plan or medical care foundation, the medical staff of the institution, a facility certified to participate in the federal Medicare program as an ambulatory surgical center, or an outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff the board shall furnish a copy of any report made pursuant to Section 805 as well as any additional exculpatory or explanatory information submitted electronically to the board by the licensee pursuant to subdivision (f) of that section. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds, in a final judgment, that the peer review, as defined in Section 805, resulting in the report was conducted in bad faith and

1 the licensee who is the subject of the report notifies the board of
2 that finding, or (4) if a period of three years has elapsed since the
3 report was submitted. This three-year period shall be tolled during
4 any period the licensee has obtained a judicial order precluding
5 disclosure of the report, unless the board is finally and permanently
6 precluded by judicial order from disclosing the report. If a request
7 is received by the board while the board is subject to a judicial
8 order limiting or precluding disclosure, the board shall provide a
9 disclosure to any qualified requesting party as soon as practicable
10 after the judicial order is no longer in force.

11 If the board fails to advise the institution within 30 working days
12 following its request for a report required by this section, the
13 institution may grant or renew staff privileges for the physician
14 and surgeon, psychologist, podiatrist, or dentist.

15 (c) Any institution described in subdivision (a) or its medical
16 staff that violates subdivision (a) is guilty of a misdemeanor and
17 shall be punished by a fine of not less than two hundred dollars
18 (\$200) nor more than one thousand two hundred dollars (\$1,200).

19 SEC. 3. Section 2216.5 is added to the Business and Professions
20 Code, to read:

21 2216.5. An outpatient setting accredited pursuant to Section
22 1248.1 of the Health and Safety Code ~~is and a facility certified to~~
23 ~~participate in the federal Medicare program as an ambulatory~~
24 ~~surgical center are~~ subject to the requirements of Section ~~1216,~~
25 ~~1216 of,~~ subdivision (f) of Section ~~127280, 127280 of, Section~~
26 ~~127285 of,~~ and Section 128737 ~~of of,~~ the Health and Safety Code.
27 ~~Any fees collected pursuant to subdivision (f) of Section 127280~~
28 ~~of the Health and Safety Code shall not exceed the reasonable~~
29 ~~costs incurred by the Office of Statewide Health Planning and~~
30 ~~Development in regulating the outpatient setting and the facility.~~

31 SEC. 4. Section 12529.7 of the Government Code is amended
32 to read:

33 12529.7. By March 1, ~~2015, 2016,~~ the Medical Board of
34 California, in consultation with the Department of Justice and the
35 Department of Consumer Affairs, shall report and make
36 recommendations to the Governor and the Legislature on the
37 vertical enforcement and prosecution model created under Section
38 12529.6.

~~SEC. 4.~~

SEC. 5. Section 1204 of the Health and Safety Code is amended to read:

1204. Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) (1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A “community clinic” means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient’s ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A “free clinic” means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering

1 into managed care contracts for services provided to private or
2 public health plan subscribers, as long as the clinic meets the
3 requirements identified in subparagraphs (A) and (B). For purposes
4 of this subdivision, any payments made to a community clinic by
5 a third-party payer, including, but not limited to, a health care
6 service plan, shall not constitute a charge to the patient. This
7 paragraph is a clarification of existing law.

8 (b) The following types of specialty clinics shall be eligible for
9 licensure as specialty clinics pursuant to this chapter:

10 (1) (A) A “surgical clinic” means a clinic that is not part of a
11 hospital and that provides ambulatory surgical care for patients
12 who remain less than 24 hours. A surgical clinic does not include
13 any place or establishment owned or leased and operated as a clinic
14 or office by one or more physicians, *podiatrists*, or dentists in
15 individual or group practice, regardless of the name used publicly
16 to identify the place or establishment.

17 (B) A physician, *podiatrist*, or dentist may, at his or her option,
18 apply for licensure. A surgical clinic shall be eligible for licensure
19 by the department regardless of physician, *podiatrist*, or dentist
20 ownership. *A surgical clinic that has met the federal certification*
21 *standards and requirements for an ambulatory surgical clinic, as*
22 *specified in Part 416 of Title 42 of the Code of Federal*
23 *Regulations, shall be eligible for licensure by the department*
24 *pursuant to this chapter.*

25 (C) *Until the department adopts regulations relating to the*
26 *provision of services by a surgical clinic pursuant to Section 1225,*
27 *a surgical clinic is deemed to have met the licensure requirements*
28 *under this chapter upon presenting documentation, within a*
29 *three-year period, that the surgical clinic has met the federal*
30 *certification standards for an ambulatory surgical clinic.*

31 (2) A “chronic dialysis clinic” means a clinic that provides less
32 than 24-hour care for the treatment of patients with end-stage renal
33 disease, including renal dialysis services.

34 (3) A “rehabilitation clinic” means a clinic that, in addition to
35 providing medical services directly, also provides physical
36 rehabilitation services for patients who remain less than 24 hours.
37 Rehabilitation clinics shall provide at least two of the following
38 rehabilitation services: physical therapy, occupational therapy,
39 social, speech pathology, and audiology services. A rehabilitation

1 clinic does not include the offices of a private physician in
2 individual or group practice.

3 (4) An “alternative birth center” means a clinic that is not part
4 of a hospital and that provides comprehensive perinatal services
5 and delivery care to pregnant women who remain less than 24
6 hours at the facility.

7 ~~SEC. 5.~~

8 *SEC. 6.* Section 1248.15 of the Health and Safety Code is
9 amended to read:

10 1248.15. (a) The board shall adopt standards for accreditation
11 and, in approving accreditation agencies to perform accreditation
12 of outpatient settings, shall ensure that the certification program
13 shall, at a minimum, include standards for the following aspects
14 of the settings’ operations:

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

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

19 (B) There shall be onsite equipment, medication, and trained
20 personnel to facilitate handling of services sought or provided and
21 to facilitate handling of any medical emergency that may arise in
22 connection with services sought or provided.

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

26 (i) Have a written transfer agreement with a local accredited or
27 licensed acute care hospital, approved by the facility’s medical
28 staff.

29 (ii) Permit surgery only by a licensee who has admitting
30 privileges at a local accredited or licensed acute care hospital, with
31 the exception that licensees who may be precluded from having
32 admitting privileges by their professional classification or other
33 administrative limitations, shall have a written transfer agreement
34 with licensees who have admitting privileges at local accredited
35 or licensed acute care hospitals.

36 (iii) Submit for approval by an accrediting agency a detailed
37 procedural plan for handling medical emergencies that shall be
38 reviewed at the time of accreditation. No reasonable plan shall be
39 disapproved by the accrediting agency.

(D) The outpatient setting shall submit for approval by an accreditation agency at the time of accreditation a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan shall include, at a minimum, that if a patient is being transferred to a local accredited or licensed acute care hospital, the outpatient setting shall do all of the following:

(i) Notify the individual designated by the patient to be notified in case of an emergency.

(ii) Ensure that the mode of transfer is consistent with the patient's medical condition.

(iii) Ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer.

(iv) Continue to provide appropriate care to the patient until the transfer is effectuated.

(E) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body or in accordance with existing law.

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

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

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

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

5 (B) (i) Members of the medical staff and other practitioners
6 who are granted clinical privileges shall be professionally qualified
7 and appropriately credentialed for the performance of privileges
8 granted. The outpatient setting shall grant privileges in accordance
9 with recommendations from qualified health professionals, and
10 credentialing standards established by the outpatient setting.

11 (ii) Each ~~physician and surgeon licensee~~ who performs
12 procedures in an outpatient setting that requires the outpatient
13 setting to be accredited shall be, *at least every two years*, peer
14 reviewed, as described in *subparagraph (A) of paragraph (1) of*
15 *subdivision (a) of Section 805 of the Business and Professions*
16 *Code, including when the outpatient setting has only one physician*
17 *and surgeon. one licensee.* The peer review shall be performed by
18 ~~California-licensed physicians~~ *licensees* who are qualified by
19 education *and* experience to perform the same types of, *or similar*
20 procedures. *The findings of the peer review shall be reported to*
21 *the accrediting body who shall determine if the licensee continues*
22 *to meet the requirements described in clause (i).*

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

27 (7) Outpatient settings regulated by this chapter that have
28 multiple service locations shall have all of the sites inspected.

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

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

34 (10) Outpatient settings shall have a written discharge criteria.

35 (b) Outpatient settings shall have a minimum of two staff
36 persons on the premises, one of whom shall either be a licensed
37 physician and surgeon or a licensed health care professional with
38 current certification in advanced cardiac life support (ACLS), as
39 long as a patient is present who has not been discharged from
40 supervised care. Transfer to an unlicensed setting of a patient who

1 does not meet the discharge criteria adopted pursuant to paragraph
2 (10) of subdivision (a) shall constitute unprofessional conduct.

3 (c) An accreditation agency may include additional standards
4 in its determination to accredit outpatient settings if these are
5 approved by the board to protect the public health and safety.

6 (d) No accreditation standard adopted or approved by the board,
7 and no standard included in any certification program of any
8 accreditation agency approved by the board, shall serve to limit
9 the ability of any allied health care practitioner to provide services
10 within his or her full scope of practice. Notwithstanding this or
11 any other provision of law, each outpatient setting may limit the
12 privileges, or determine the privileges, within the appropriate scope
13 of practice, that will be afforded to physicians and allied health
14 care practitioners who practice at the facility, in accordance with
15 credentialing standards established by the outpatient setting in
16 compliance with this chapter. Privileges may not be arbitrarily
17 restricted based on category of licensure.

18 (e) The board shall adopt standards that it deems necessary for
19 outpatient settings that offer in vitro fertilization.

20 (f) The board may adopt regulations it deems necessary to
21 specify procedures that should be performed in an accredited
22 outpatient setting for facilities or clinics that are outside the
23 definition of outpatient setting as specified in Section 1248.

24 (g) As part of the accreditation process, the accrediting agency
25 shall conduct a reasonable investigation of the prior history of the
26 outpatient setting, including all licensed physicians and surgeons
27 who have an ownership interest therein, to determine whether there
28 have been any adverse accreditation decisions rendered against
29 them. For the purposes of this section, “conducting a reasonable
30 investigation” means querying the Medical Board of California
31 and the Osteopathic Medical Board of California to ascertain if
32 either the outpatient setting has, or, if its owners are licensed
33 physicians and surgeons, if those physicians and surgeons have,
34 been subject to an adverse accreditation decision.

35 ~~SEC. 6.~~

36 *SEC. 7.* Section 1248.3 of the Health and Safety Code is
37 amended to read:

38 1248.3. (a) An initial certificate of accreditation issued to an
39 outpatient setting by an accreditation agency shall be valid for not

1 more than two years, and a renewal certificate shall be valid for
2 not more than three years.

3 (b) The outpatient setting shall notify the accreditation agency
4 within 30 days of any significant change in ownership, including,
5 but not limited to, a merger, change in majority interest,
6 consolidation, name change, change in scope of services, additional
7 services, or change in locations.

8 (c) Except for disclosures to the division or to the Division of
9 Medical Quality under this chapter, an accreditation agency shall
10 not disclose information obtained in the performance of
11 accreditation activities under this chapter that individually identifies
12 patients, individual medical practitioners, or outpatient settings.
13 Neither the proceedings nor the records of an accreditation agency
14 or the proceedings and records of an outpatient setting related to
15 performance of quality assurance or accreditation activities under
16 this chapter shall be subject to discovery, nor shall the records or
17 proceedings be admissible in a court of law. The prohibition
18 relating to discovery and admissibility of records and proceedings
19 does not apply to any outpatient setting requesting accreditation
20 in the event that denial or revocation of that outpatient setting's
21 accreditation is being contested. Nothing in this section shall
22 prohibit the accreditation agency from making discretionary
23 disclosures of information to an outpatient setting pertaining to
24 the accreditation of that outpatient setting.

25 ~~SEC. 7.~~

26 *SEC. 8.* Section 1248.35 of the Health and Safety Code is
27 amended to read:

28 1248.35. (a) Every outpatient setting that is accredited shall
29 be inspected by the accreditation agency and may also be inspected
30 by the Medical Board of California. The Medical Board of
31 California shall ensure that accreditation agencies inspect outpatient
32 settings.

33 (b) Unless otherwise specified, the following requirements apply
34 to inspections described in subdivision (a).

35 (1) The frequency of inspection shall depend upon the type and
36 complexity of the outpatient setting to be inspected.

37 (2) Inspections shall be conducted no less often than once every
38 three years by the accreditation agency and as often as necessary
39 by the Medical Board of California to ensure the quality of care

1 provided. After the initial inspection for accreditation, all
2 subsequent inspections shall be unannounced.

3 (3) The Medical Board of California or the accreditation agency
4 may enter and inspect any outpatient setting that is accredited by
5 an accreditation agency at any reasonable time to ensure
6 compliance with, or investigate an alleged violation of, any
7 standard of the accreditation agency or any provision of this
8 chapter.

9 (c) If an accreditation agency determines, as a result of its
10 inspection, that an outpatient setting is not in compliance with the
11 standards under which it was approved, the accreditation agency
12 may do any of the following:

13 (1) Require correction of any identified deficiencies within a
14 set timeframe. Failure to comply shall result in the accrediting
15 agency issuing a reprimand or suspending or revoking the
16 outpatient setting's accreditation.

17 (2) Issue a reprimand.

18 (3) Place the outpatient setting on probation, during which time
19 the setting shall successfully institute and complete a plan of
20 correction, approved by the board or the accreditation agency, to
21 correct the deficiencies.

22 (4) Suspend or revoke the outpatient setting's certification of
23 accreditation.

24 (d) (1) Except as is otherwise provided in this subdivision,
25 before suspending or revoking a certificate of accreditation under
26 this chapter, the accreditation agency shall provide the outpatient
27 setting with notice of any deficiencies and the outpatient setting
28 shall agree with the accreditation agency on a plan of correction
29 that shall give the outpatient setting reasonable time to supply
30 information demonstrating compliance with the standards of the
31 accreditation agency in compliance with this chapter, as well as
32 the opportunity for a hearing on the matter upon the request of the
33 outpatient setting. During the allotted time to correct the
34 deficiencies, the plan of correction, which includes the deficiencies,
35 shall be conspicuously posted by the outpatient setting in a location
36 accessible to public view. Within 10 days after the adoption of the
37 plan of correction, the accrediting agency shall send a list of
38 deficiencies and the corrective action to be taken to the board and
39 to the California State Board of Pharmacy if an outpatient setting
40 is licensed pursuant to Article 14 (commencing with Section 4190)

1 of Chapter 9 of Division 2 of the Business and Professions Code.
2 The accreditation agency may immediately suspend the certificate
3 of accreditation before providing notice and an opportunity to be
4 heard, but only when failure to take the action may result in
5 imminent danger to the health of an individual. In such cases, the
6 accreditation agency shall provide subsequent notice and an
7 opportunity to be heard.

8 (2) If an outpatient setting does not comply with a corrective
9 action within a timeframe specified by the accrediting agency, the
10 accrediting agency shall issue a reprimand, and may either place
11 the outpatient setting on probation or suspend or revoke the
12 accreditation of the outpatient setting, and shall notify the board
13 of its action. This section shall not be deemed to prohibit an
14 outpatient setting that is unable to correct the deficiencies, as
15 specified in the plan of correction, for reasons beyond its control,
16 from voluntarily surrendering its accreditation prior to initiation
17 of any suspension or revocation proceeding.

18 (e) The accreditation agency shall, within 24 hours, report to
19 the board if the outpatient setting has been issued a reprimand or
20 if the outpatient setting's certification of accreditation has been
21 suspended or revoked or if the outpatient setting has been placed
22 on probation. If an outpatient setting has been issued a license by
23 the California State Board of Pharmacy pursuant to Article 14
24 (commencing with Section 4190) of Chapter 9 of Division 2 of
25 the Business and Professions Code, the accreditation agency shall
26 also send this report to the California State Board of Pharmacy
27 within 24 hours.

28 (f) The accreditation agency, upon receipt of a complaint from
29 the board that an outpatient setting poses an immediate risk to
30 public safety, shall inspect the outpatient setting and report its
31 findings of inspection to the board within five business days. If an
32 accreditation agency receives any other complaint from the board,
33 it shall investigate the outpatient setting and report its findings of
34 investigation to the board within 30 days.

35 (g) Reports on the results of any inspection shall be kept on file
36 with the board and the accreditation agency along with the plan
37 of correction and the comments of the outpatient setting. The
38 inspection report may include a recommendation for reinspection.
39 All final inspection reports, which include the lists of deficiencies,
40 plans of correction or requirements for improvements and

1 correction, and corrective action completed, shall be public records
2 open to public inspection.

3 (h) If one accrediting agency denies accreditation, or revokes
4 or suspends the accreditation of an outpatient setting, this action
5 shall apply to all other accrediting agencies. An outpatient setting
6 that is denied accreditation is permitted to reapply for accreditation
7 with the same accrediting agency. The outpatient setting also may
8 apply for accreditation from another accrediting agency, but only
9 if it discloses the full accreditation report of the accrediting agency
10 that denied accreditation. Any outpatient setting that has been
11 denied accreditation shall disclose the accreditation report to any
12 other accrediting agency to which it submits an application. The
13 new accrediting agency shall ensure that all deficiencies have been
14 corrected and conduct a new onsite inspection consistent with the
15 standards specified in this chapter.

16 (i) If an outpatient setting's certification of accreditation has
17 been suspended or revoked, or if the accreditation has been denied,
18 the accreditation agency shall do all of the following:

19 (1) Notify the board of the action.

20 (2) Send a notification letter to the outpatient setting of the
21 action. The notification letter shall state that the setting is no longer
22 allowed to perform procedures that require outpatient setting
23 accreditation.

24 (3) Require the outpatient setting to remove its accreditation
25 certification and to post the notification letter in a conspicuous
26 location, accessible to public view.

27 (j) The board may take any appropriate action it deems necessary
28 pursuant to Section 1248.7 if an outpatient setting's certification
29 of accreditation has been suspended or revoked, or if accreditation
30 has been denied.

31 ~~SEC. 8.~~

32 *SEC. 9.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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