

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON HEALTH
Rob Bonta, Chair
AB 1177 (Gomez) – As Introduced February 27, 2015

SUBJECT: Primary care clinics: written transfer agreements

SUMMARY: Requires the Department of Public Health (DPH) to repeal the regulation requiring primary care clinics to enter into a written transfer agreement with a nearby hospital as a condition of licensure, no later than July 1, 2016.

EXISTING STATE LAW:

- 1) Licenses and regulates clinics, including primary care clinics and specialty clinics, such as surgical clinics, by DPH.
- 2) Defines a primary care clinic as a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, and government funds or contributions. In a community clinic, any charges to the patient must be based on the patient's ability to pay, utilizing a sliding fee scale.
- 3) Permits DPH to issue a permit to authorize a clinic to offer one or more special services, which is a type of care for which DPH has established special standards for ensuring the quality of care, including birth services and abortion services.
- 4) Provides for exemptions from licensing requirements for certain types of clinics, including federally operated clinics, local government primary care clinics, clinics affiliated with an institution of higher learning, clinics conducted as outpatient departments of hospitals, and community or free clinics.
- 5) Authorizes DPH to take various types of enforcement actions against a primary care clinic that has violated state law or regulation, including imposing fines, sanctions, civil or criminal penalties, and suspension or revocation of the clinic's license.

EXISTING STATE REGULATIONS: Require primary care clinics, as a condition of licensure, to have a written transfer agreement with a nearby hospital. Allows all licensed clinics, except for those providing abortion services or birthing services, to request that DPH waive the requirement to maintain a written transfer agreement, if the clinic can show that no hospital would agree to enter into a transfer agreement.

EXISTING FEDERAL LAW: The Emergency Medical Treatment and Active Labor Act, (EMTALA) is an act of the United States Congress, passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act. It requires hospitals that accept payments from Medicare to provide emergency health care treatment to anyone needing it regardless of citizenship, legal status, or ability to pay. There are no reimbursement provisions. Participating hospitals may not transfer or discharge patients needing emergency treatment except with the informed consent or stabilization of the patient or when their condition requires transfer to a hospital better equipped to administer the treatment. EMTALA applies to "participating hospitals." The statute defines

participating hospitals as those that accept payment from the Department of Health and Human Services, Centers for Medicare and Medicaid Services under the Medicare program. Because there are very few hospitals that do not accept Medicare, the law applies to nearly all hospitals.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, under current California law, clinics are obliged to obtain a hospital transfer agreement (HTA) from a nearby hospital as a condition of licensure in order to begin performing services. DPH regulations allow clinics who cannot get an HTA from a nearby hospital to apply for a waiver to this requirement. However, clinics that provide abortions or birthing services are not allowed to apply for a waiver, even if a local hospital won't agree to enter into an HTA. The author states that this effectively allows a hospital that does not want to enter into an HTA to prevent an abortion clinic from opening. The author notes that if this bill is enacted, this regulation will be repealed and unenforceable, and will give Californians equal access to reproductive services and the ability to choose.
- 2) **BACKGROUND.** As required by Title 22, Division 5, Chapter 7, Article 6 of the California Code of regulations, primary care clinics must have an HTA with a local hospital as a condition of licensure. Should a patient undergoing a procedure at a clinic require transport to the hospital, an HTA facilitates the timely transfer of the patient between the hospital and the facility. The agreements delineate the responsibilities of both the clinic and the hospital, including the required sharing of vital information such as the current medical findings regarding the patient, diagnoses, transfer of medical records, and the patients' personal effects.

When a patient goes to the emergency department it is critical for emergency physicians to understand the condition and what treatment the patient has received which has led them to be brought into the emergency department. It is also very helpful when the physician from the clinic speaks to the emergency physician as many times notations in medical records are not clear. This can all be built into an HTA.

- 3) **SUPPORT.** Planned Parenthood Affiliates of California (PPAC) are the sponsors of this bill and they state by requiring hospital transfer agreements as a condition of licensure, DPH has essentially delegated some of its licensure authority to the hospitals, because any hospital corporation with either a moral objection or desire to secure a competitive edge can refuse to sign a transfer agreement and bring a clinic's license application to a halt. PPAC notes they believe the decision of whether to grant a clinic a license should rest exclusively with the state. PPAC also notes the existing transfer agreement requirement acts as a targeted restriction on abortion providers, or TRAP law, because only abortion clinics and birthing centers are ineligible to receive a waiver from the requirement, even in the event that they are unable to secure a transfer agreement.

The California Primary Care Association is also in support of this bill, noting, some of their members have found it difficult to secure these agreements, and patient safety is already protected by standards of care.

- 4) **OPPOSITION.** The California Chapter of the American College of Emergency Physicians is opposed to this bill unless it is amended to make all clinics equal by allowing community clinics providing birthing or abortion services to apply for an exemption. The California Right to Life Committee, Inc. (CRCL), is opposed to this bill because it would remove the necessity of having a written transfer agreement with one or more nearby hospital when a primary care clinic seeks licensure. CRLC believes this would be a very serious regulation change and would threaten the physical safety of patients at these primary care clinics. It would seem to be a logical requirement for any facility performing surgery or any treatment with potential medical complications.
- 5) **RELATED LEGISLATION.** AB 941 (Wood) expands the exemption from licensure by DPH to certain clinics operated by a federally recognized tribe or tribal organization.
- 6) **PREVIOUS LEGISLATION.** AB 980 (Pan), Chapter 663, Statutes of 2013, required the California Building Standards Commission to adopt emergency regulations to delete a provision of the 2013 California Building Standards Code that establishes building standards for primary care clinics that provide abortion services, and prohibited the Commission from adopting any building code standards for clinics providing medication or aspiration abortion services that differ from construction standards applicable to other primary care clinics.

REGISTERED SUPPORT / OPPOSITION:

Support

Planned Parenthood Affiliates of California
California Family Health Council
California Primary Care Association
Planned Parenthood of Los Angeles County
Planned Parenthood of the Pacific Southwest
Planned Parenthood of Santa Barbara, Ventura, & San Luis Obispo Counties
Planned Parenthood of Orange and San Bernardino Counties

Opposition

California Chapter of the American College of Emergency Physicians (unless amended)
California Right to Life Committee, Inc.

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