

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 824**

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**Introduced by Assembly Member Chesbro**

February 17, 2011

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~~An act to amend Section 1179 of the Health and Safety Code, relating to rural health, and to add and repeal Chapter 6.5 (commencing with Section 124871) of Part 4 of Division 106 of the Health and Safety Code, relating to public health.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 824, as amended, Chesbro. ~~Rural health.~~ *Rural hospitals: physician services.*

Existing law requires the Secretary of the California Health and Welfare Agency to establish an Office of Rural Health within the agency and sets forth its powers and duties relating to promoting a strong working relationship between state government, prescribed entities, and rural consumers and relating to developing health initiatives and maximizing existing resources without duplication. ~~Existing law makes related findings and declarations, including, but not limited to, recognizing the need to take a comprehensive approach to strengthen and coordinate rural health programs and health care delivery systems.~~

~~This bill would revise those findings and declarations to, instead, recognize the need to take a comprehensive approach, which includes federal health care reform, to strengthen and coordinate rural health programs and health care delivery systems.~~

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

*Existing law requires the department to provide expert technical assistance to strategically located, high-risk rural hospitals, as defined, to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. Existing law also requires the department to continue to provide regulatory relief when appropriate through program flexibility for such items as staffing, space, and physical plant requirements.*

*This bill would, until January 1, 2022, establish a demonstration project authorizing a rural hospital, as defined, that meets specified conditions, to employ up to 10 physicians and surgeons at one time, except as provided, to provide medical services at the rural hospital or other health facility that the rural hospital owns or operates, and to retain all or part of the income generated by the physicians and surgeons for medical services billed and collected by the rural hospital if the physician and surgeon in whose name the charges are made approves the charges. The bill would require a rural hospital that employs a physician and surgeon pursuant to those provisions to develop and implement a policy regarding the independent medical judgment of the physician and surgeon. The bill would require these physicians and surgeons to biennially sign a specified statement.*

*The bill would impose various duties on the department and the Medical Board of California including a requirement that the board deliver a report to the Legislature regarding the demonstration project by January 1, 2019.*

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

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

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *Many hospitals in the state are having great difficulty*
- 4     *recruiting and retaining physicians.*
- 5     (b) *There is a shortage of physicians in communities across*
- 6     *California, particularly in rural areas, and this shortage limits*
- 7     *access to health care for Californians in these communities.*
- 8     (c) *The average age of physicians in rural and underserved*
- 9     *urban communities is approaching 60 years of age, with many of*
- 10    *these physicians planning to retire within the next two years.*

1 (d) *Allowing rural hospitals to directly employ physicians will*  
2 *allow rural hospitals to provide economic security adequate for*  
3 *a physician to relocate and reside in the communities served by*  
4 *the rural hospitals and will help rural hospitals recruit physicians*  
5 *to provide medically necessary services in these communities and*  
6 *further enhance technological developments such as the adoption*  
7 *of electronic medical records.*

8 (e) *Allowing rural hospitals to directly employ physicians will*  
9 *provide physicians with the opportunity to focus on the delivery*  
10 *of health services to patients without the burden of administrative,*  
11 *financial, and operational concerns associated with the*  
12 *establishment and maintenance of a medical office, thereby giving*  
13 *the physicians a reasonable professional and personal lifestyle.*

14 (f) *Direct employment of physicians by the University of*  
15 *California hospitals, county hospitals, and community clinics has*  
16 *proved to be a successful recruitment tool for those entities and*  
17 *provided physicians with much sought after economic and*  
18 *professional security.*

19 (g) *It is the intent of the Legislature by enacting this act to*  
20 *establish a demonstration project authorizing a rural hospital that*  
21 *meets the conditions set forth in Chapter 6.5 (commencing with*  
22 *Section 124871) of Part 4 of Division 106 of the Health and Safety*  
23 *Code to employ physicians directly and to charge for their*  
24 *professional services.*

25 (h) *It is the intent of the Legislature to prevent a rural hospital*  
26 *that employs a physician from interfering with, controlling, or*  
27 *otherwise directing the physician's medical judgment or medical*  
28 *treatment of patients.*

29 (i) *It is the further intent of the Legislature to increase the*  
30 *number of physicians in rural communities to address the*  
31 *unprecedented physician shortage and not to redistribute the*  
32 *current physicians, by allowing rural hospitals to directly hire*  
33 *physicians currently working in health clinics in these communities.*

34 SEC. 2. *Chapter 6.5 (commencing with Section 124871) is*  
35 *added to Part 4 of Division 106 of the Health and Safety Code, to*  
36 *read:*

1        *CHAPTER 6.5. RURAL HOSPITAL PHYSICIAN AND SURGEON*  
2                                    *SERVICES DEMONSTRATION PROJECT*

3  
4        124871. *For purposes of this chapter, “rural hospital” means*  
5 *all of the following:*

6        (a) *A general acute care hospital located in an area designated*  
7 *as nonurban by the United States Census Bureau.*

8        (b) *A general acute care hospital located in a rural-urban*  
9 *commuting area code of 4 or greater as designated by the United*  
10 *States Department of Agriculture.*

11        (c) *A rural general acute care hospital, as defined in subdivision*  
12 *(a) of Section 1250.*

13        124872. (a) *Notwithstanding Article 18 (commencing with*  
14 *Section 2400) of Chapter 5 of Division 2 of the Business and*  
15 *Professions Code and in addition to other applicable laws, a rural*  
16 *hospital whose service area includes a medically underserved*  
17 *area, a medically underserved population, or that has been*  
18 *federally designated as a health professional shortage area may*  
19 *employ one or more physicians and surgeons, not to exceed 10*  
20 *physicians and surgeons at one time, except as provided in*  
21 *subdivision (c), to provide medical services at the rural hospital*  
22 *or other health facility, as defined in Section 1250, that the rural*  
23 *hospital owns or operates. The rural hospital may retain all or*  
24 *part of the income generated by the physician and surgeon for*  
25 *medical services billed and collected by the rural hospital, if the*  
26 *physician and surgeon in whose name the charges are made*  
27 *approves the charges.*

28        (b) *A rural hospital may participate in the program if both of*  
29 *the following conditions are met:*

30        (1) *The rural hospital documents that it has been unsuccessful*  
31 *in recruiting one or more primary care or speciality physicians*  
32 *for at least 12 continuous months beginning July 1, 2010. An*  
33 *exception shall be provided to the 12 month recruiting process*  
34 *when there is an unexpected or sudden vacancy that needs to be*  
35 *filled immediately.*

36        (2) *The chief executive officer of the rural hospital certifies to*  
37 *the Medical Board of California that the inability to recruit primary*  
38 *care or speciality physicians has negatively impacted patient care*  
39 *in the community and that there is a critical unmet need in the*  
40 *community, based on a number of factors, including, but not limited*

1 to, the number of patients referred for care outside the community,  
2 the number of patients who experienced delays in treatment, and  
3 the length of the treatment delays.

4 (c) The total number of licensees employed by the rural hospital  
5 at one time shall not exceed 10, unless the employment of  
6 additional physicians and surgeons is deemed appropriate by the  
7 Medical Board of California on a case-by-case basis. In making  
8 this determination, the board shall take into consideration whether  
9 access to care is improved for the community served by the hospital  
10 by increasing the number of physicians and surgeons employed.

11 124873. (a) A rural hospital that employs a physician and  
12 surgeon pursuant to Section 124872 shall develop and implement  
13 a written policy to ensure that each employed physician and  
14 surgeon exercises his or her independent medical judgment in  
15 providing care to patients.

16 (b) Each physician and surgeon employed by a rural hospital  
17 pursuant to Section 124872 shall sign a statement biennially  
18 indicating that the physician and surgeon:

19 (1) Voluntarily desires to be employed by the hospital.

20 (2) Will exercise independent medical judgment in all matters  
21 relating to the provision of medical care to his or her patients.

22 (3) Will report immediately to the Medical Board of California  
23 any action or event that the physician and surgeon reasonably and  
24 in good faith believes constitutes a compromise of his or her  
25 independent medical judgment in providing care to patients in a  
26 rural hospital or other health care facility owned or operated by  
27 the rural hospital.

28 (c) The signed statement required by subdivision (b) shall be  
29 retained by the rural hospital for a period of at least three years.  
30 A copy of the signed statement shall be submitted by the rural  
31 hospital to the Medical Board of California within 10 working  
32 days after the statement is signed by the physician and surgeon.

33 (d) A rural hospital shall not interfere with, control, or direct  
34 a physician and surgeon's exercise of his or her independent  
35 medical judgment in providing medical care to patients. If,  
36 pursuant to a report to the Medical Board of California required  
37 by paragraph (3) of subdivision (a), the Medical Board of  
38 California believes that a rural hospital has violated this  
39 prohibition, the Medical Board of California shall refer the matter  
40 to the State Department of Public Health, which shall investigate

1 *the matter. If the department concludes that the rural hospital has*  
2 *violated the prohibition, it shall notify the rural hospital. The rural*  
3 *hospital shall have 20 working days to respond in writing to the*  
4 *department's notification, following which the department shall*  
5 *make a final determination. If the department finds that the rural*  
6 *hospital violated the prohibition, it shall assess a civil penalty of*  
7 *five thousand dollars (\$5,000) for the first violation and twenty-five*  
8 *thousand dollars (\$25,000) for any subsequent violation that occurs*  
9 *within three years of the first violation. If no subsequent violation*  
10 *occurs within three years of the most recent violation, the next*  
11 *civil penalty, if any, shall be assessed at the five thousand dollar*  
12 *(\$5,000) level. If the rural hospital disputes a determination by*  
13 *the department regarding a violation of the prohibition, the rural*  
14 *hospital may request a hearing pursuant to Section 131071.*  
15 *Penalties, if any, shall be paid when all appeals have been*  
16 *exhausted and the department's position has been upheld.*

17 *(e) Nothing in this chapter shall exempt a rural hospital from*  
18 *a reporting requirement or affect the authority of the board to take*  
19 *action against a physician and surgeon's license.*

20 *124874. (a) Not later than January 1, 2019, the Medical Board*  
21 *of California shall deliver a report to the Legislature regarding*  
22 *the demonstration project established pursuant to this chapter.*  
23 *The report shall include an evaluation of the effectiveness of the*  
24 *demonstration project in improving access to health care in rural*  
25 *and medically underserved areas and the demonstration project's*  
26 *impact on consumer protection as it relates to intrusions into the*  
27 *practice of medicine.*

28 *(b) This chapter shall remain in effect only until January 1,*  
29 *2022, and as of that date is repealed, unless a later enacted statute,*  
30 *that is enacted before January 1, 2022, deletes or extends that*  
31 *date.*

32 ~~SECTION 1. Section 1179 of the Health and Safety Code is~~  
33 ~~amended to read:~~

34 ~~1179. The Legislature finds and declares all of the following:~~

35 ~~(a) Outside of California's four major metropolitan areas, the~~  
36 ~~majority of the state is rural. In general, the rural population is~~  
37 ~~older, sicker, poorer, and more likely to be unemployed, uninsured,~~  
38 ~~or underinsured. The lack of primary care, specialty providers and~~  
39 ~~transportation continue to be significant barriers to access to health~~  
40 ~~services in rural areas.~~

1     ~~(b) There is no coordinated or comprehensive plan of action for~~  
2 ~~rural health care in California to ensure the health of California's~~  
3 ~~rural residents. Most of the interventions that have taken place on~~  
4 ~~behalf of rural communities have been limited in scope and purpose~~  
5 ~~and were not conceived or implemented with any comprehensive~~  
6 ~~or systematic approach in mind. Because health planning tends to~~  
7 ~~focus on approaches for population centers, the unique needs of~~  
8 ~~rural communities may not be addressed. A comprehensive plan~~  
9 ~~and approach is necessary to obtain federal support and relief, as~~  
10 ~~well as to realistically institute state and industry interventions.~~

11     ~~(c) Rural communities lack the resources to make the transition~~  
12 ~~from present practices to managed care, and to make other changes~~  
13 ~~that may be necessary as the result of health care reform efforts.~~  
14 ~~With numerous health care reform proposals being debated and~~  
15 ~~with the extensive changes in the current health care delivery~~  
16 ~~system, a comprehensive and coordinated analysis must take place~~  
17 ~~regarding the impact of these proposals on rural areas.~~

18     ~~(d) Rural areas lack the technical expertise and resources to~~  
19 ~~improve and coordinate their local data collection activities, which~~  
20 ~~are necessary for well-targeted health planning, program~~  
21 ~~development, and resource development. Data must be available~~  
22 ~~to local communities to enable them to plan effectively.~~

23     ~~(e) The Legislature recognizes the need to take a comprehensive~~  
24 ~~approach, which includes federal health care reform, to strengthen~~  
25 ~~and coordinate rural health programs and health care delivery~~  
26 ~~systems in order to:~~

27     ~~(1) Facilitate access to high quality health care for California's~~  
28 ~~rural communities.~~

29     ~~(2) Promote coordinated planning and policy development~~  
30 ~~among state departments and between the State and local public~~  
31 ~~and private providers.~~