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HEALTH AND SAFETY CODE - HSC

DIVISION 101. ADMINISTRATION OF PUBLIC HEALTH [100100 - 101997] (*Division 101 added by Stats. 1995, Ch. 415, Sec. 3.*)

PART 4. SPECIAL HEALTH AUTHORITIES [101525 - 101881] (*Part 4 added by Stats. 1995, Ch. 415, Sec. 3.*)

CHAPTER 5.5. Kern County Hospital Authority Act [101852 - 101856] (*Chapter 5.5 added by Stats. 2014, Ch. 613, Sec. 3.*)

ARTICLE 2. Establishment of the Kern County Hospital Authority [101853 - 101853.1] (*Article 2 added by Stats. 2014, Ch. 613, Sec. 3.*)

101853. (a) Pursuant to this chapter, the board of supervisors may establish by ordinance the Kern County Hospital Authority, which shall be a public agency that is a local unit of government separate and apart from the county and any other public entity for all purposes. The authority established pursuant to this chapter shall file the statement required by Section 53051 of the Government Code, and is a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(b) The purpose of the authority shall be to do all of the following:

(1) Provide management, administration, and other controls consistent with this chapter as needed to operate the medical center and maintain its status as a designated public hospital, as defined in subdivision (d) of Section 14166.1 of the Welfare and Institutions Code, and for the operation of additional programs, clinics and other facilities, care organizations, health care service and physician practice plans, and delivery systems that may be affiliated or consolidated with the medical center, to ensure the viability of the health care safety net in the county in a manner consistent with the county's requirements under Section 17000 of the Welfare and Institutions Code.

(2) Provide management, administration, and other controls consistent with this chapter to negotiate and enter into contracts to provide or arrange, or provide directly, on a fee-for-service, capitated, or other basis, health care services to individuals including, but not limited to, those covered under Subchapters XVIII (commencing with Section 1395), XIX (commencing with Section 1396), and XXI (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under private group coverage, private individual coverage, including without limitation, coverage through Covered California, other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals.

(c) Subject to the requirements of this chapter, the authority shall have, and be charged with, authority for the maintenance, operation, management, control, ownership, or lease of the medical center and other health-related resources, as provided by the enabling ordinance. The State Department of Health Care Services shall take all necessary steps to ensure all of the following:

(1) The authority has all of the licenses, permits, and approvals needed to operate the medical center.

(2) The medical center continues its status as a designated public hospital to at least the same extent as it would be designated in the absence of its transfer to the authority pursuant to this chapter.

(3) The authority may participate as a contributing public agency for all of the purposes specified in Section 433.51 of Title 42 of the Code of Federal Regulations, to the extent permitted by federal law.

(d) The board of supervisors, in the enabling ordinance, shall establish the terms and conditions of the transfer to the authority from the county, including, but not limited to, all of the following:

(1) Any transfer of real and personal property, assets, and liabilities, including, but not limited to, liabilities of the medical center determined and assigned by the county for county funds previously advanced, but not repaid or otherwise recovered, to fund the operations of the medical center.

(2) Transfer of employees, including any necessary personnel transition plan, as specified in Section 101853.1, allocation of credit for funded pension assets and responsibility for any unfunded pension liabilities under the Kern County Employees' Retirement Association, as specified in paragraph (7) of subdivision (g) of Section 101853.1, or other retirement plans, and funding of the accrued benefits of employees of the authority in the event of withdrawal from the plan or dissolution of the authority. Any allocation of credit for funded pension assets and responsibility for any unfunded pension liabilities with respect to the Kern County Employees' Retirement Association must be approved by its governing board of retirement after consideration of legal and actuarial analysis, and no such allocation may be made that would jeopardize the qualified status of the Kern County Employees' Retirement Association under the federal Internal Revenue Code.

(3) Maintenance, operation, management, control, ownership, or lease of the medical center.

(4) Transfer of licenses.

(5) Whether funds of the authority shall be deposited in the custody of, and paid out solely through, the county treasurer's office.

(6) Any other matters as the board of supervisors deems necessary, appropriate, or convenient for the conduct of the authority's activities.

(e) (1) Notwithstanding any other law, a transfer of control of the medical center to the authority may be made, with or without the payment of a purchase price by the authority, and otherwise upon the terms and conditions as found necessary by the board of supervisors and specified in the enabling ordinance to ensure that the transfer will constitute an ongoing material benefit to the county and its residents.

(2) A transfer of control of the medical center to the authority shall not be construed as empowering the authority to transfer any ownership interest of the county in any portion of the medical center except as otherwise approved by the board of supervisors.

(3) The authority shall not transfer the maintenance, operation, management, control, ownership, or lease of the medical center to any other person or entity without the prior written approval of the board of supervisors. This paragraph shall not prevent the county, by ordinance, from allowing the disposal of obsolete or surplus equipment, supplies, or furnishings of the medical center by the authority.

(4) With respect to its maintenance, operation, management, control, ownership, or lease of the medical center, the authority shall conform to both of the following requirements:

(A) Comply with any applicable requirements of Section 14000.2 of the Welfare and Institutions Code.

(B) Comply with any applicable requirements of Section 1442.5.

(5) The board of supervisors may retain control of the medical center physical plant and facilities, as specifically provided for in the enabling ordinance or other lawful agreements entered into by the board of supervisors. Any lease agreement between the county and the authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

(6) Notwithstanding any other provision of this chapter, and whether or not accompanied by a change in licensing, the authority's responsibility for the maintenance, operation, management, or control of the medical center, or any ownership or leasehold interest of the authority in the medical center, does not relieve the county of the ultimate responsibility for indigent care pursuant to Section 17000 of the Welfare and Institutions Code.

(7) For purposes of Article 12 (commencing with Section 17612.1) of Chapter 6 of Part 5 of Division 9 of the Welfare and Institutions Code, and the definition set forth in subdivision (f) of Section 17612.2 of the Welfare and Institutions Code, the medical center, excluding components that provide predominately public health services, and the county are affiliated governmental entities.

(f) The board of supervisors may contract with the authority for the provision of indigent care services on behalf of the county. The contract shall specify that county policies, as may be modified from time to time and consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, shall be applicable. Notwithstanding any other provision of this chapter, the authority shall not undertake any of the county's obligations under Section 17000 of the Welfare and Institutions Code, nor shall the authority have an entitlement to receive any revenue for the discharge of the county's obligations, without a written agreement with the county. Any contract executed by and between the county and the authority shall provide for the indemnification of the county by the authority for liabilities as specifically set forth in the contract, except that the contract shall include a provision that the county shall remain liable for its own negligent acts. Indemnification by the authority shall not divest the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

(g) Unless otherwise agreed to by the authority and the board of supervisors or as otherwise provided by this chapter, an obligation of the authority, statutory, contractual, or otherwise, shall be the obligation solely of the authority and shall not be the obligation of the county or any other entity, and any contract executed by and between the county and the authority, or any other entity and the

authority, shall contain a provision that liabilities or obligations of the authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the authority and shall not be or become the liabilities or obligations of the county or the other entity, respectively. An obligation of the authority, statutory, contractual, or otherwise, shall not be the obligation of the state.

(h) The authority shall not be a "person" subject to suit under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(i) The authority is not subject to the jurisdiction of a local agency formation commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), or any successor statute.

(j) The authority is a "district" within the meaning set forth in the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). Employees of the authority are eligible to become members or maintain membership, as applicable, in the Kern County Employees' Retirement Association, to the extent described in subdivision (g) of Section 101853.1.

(k) Any determination with respect to the manner in which the authority qualifies as a governmental plan sponsor under Section 414(d) of the Internal Revenue Code shall be limited to relevant employee benefits purposes of that code only, and shall not change or otherwise modify the authority's status as a public agency that is a local unit of government for other purposes specified in this chapter.

(Amended by Stats. 2015, Ch. 790, Sec. 3. (AB 1350) Effective January 1, 2016.)

101853.1. (a) In exercising its powers to employ personnel, the authority shall implement, and the board of supervisors shall adopt, a personnel transition plan. The personnel transition plan shall require all of the following:

(1) Ongoing communication to employees and recognized employee organizations regarding the impact of the transition on existing medical center, county, and other health care facility employees and employee classifications.

(2) Meeting and conferring with representatives of affected bargaining unit employees on both of the following issues:

(A) A timeframe for which the transfer of personnel shall occur.

(B) Specified periods of time during which county or medical center employees affected by the establishment of the authority may elect to be considered for appointment and exercise reinstatement rights, if applicable, to funded, equivalent, vacant county positions for which they are qualified and eligible. An employee who first elects to remain with the county may subsequently seek reinstatement with the authority within 30 days of the election to remain with the county and shall be subject to the requirements of this article.

(3) Acknowledgment that the authority, to the extent permitted by federal and state law, and consistent with paragraph (3) of subdivision (d), shall be bound by the terms of those memoranda of understanding executed between the county and its exclusive employee representatives that are in effect on the date of the transfer of control of the medical center to the authority. Subsequent memoranda of understanding with exclusive employee representatives shall be subject to approval only by the board of governors.

(4) Communication to the Board of Retirement of the Kern County Employees' Retirement Association or other retirement plan of any personnel transition plan, memoranda of understanding, or other arrangements that are related to the participation of the authority's employees or the addition of new employees in the retirement plan.

(b) Implementation of this chapter shall not be a cause for the modification of the medical center or county employment benefits. Employees of the medical center or county on the date of transfer, who become authority employees, shall retain their existing or equivalent classifications and job descriptions upon transfer to the authority, comparable pension benefits (if permissible pursuant to relevant plan terms), and their existing salaries and other benefits that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, health care, retiree health benefits, and deferred compensation plans. The transfer of an employee from the medical center or county shall not constitute a termination of employment for purposes of Section 227.3 of the Labor Code, or employee benefit plans and arrangements maintained by the medical center or county, except as otherwise provided in the enabling ordinance or personnel transition plan, nor shall it be counted as a break in uninterrupted employment for purposes of Section 31641 of the Government Code with respect to the Kern County Employees' Retirement Association, or state service for purposes of the Public Employees' Retirement System (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

(c) Subject to applicable state law, the authority shall recognize the exclusive employee representatives of those authority employees who are transferred from the county or medical center to the authority pursuant to this chapter.

(d) In order to stabilize labor and employment relations and provide continuity of care and services to the people of the county, and notwithstanding any other law, the authority shall do all of the following for a period of 24 months after the effective date of the

transfer of control of the medical center to the authority:

(1) Continue to recognize each exclusive employee representative of each bargaining unit.

(2) Continue to provide the same level of employee benefits to authority employees, whether the obligation to provide those benefits arises out of a memorandum of understanding, or other agreement or law.

(3) Extend and continue to be bound by any existing memoranda of understanding covering the terms and conditions of employment for employees of the authority, including the level of wages and benefits, and any county rules, ordinances, or policies specifically identified and incorporated by reference in a memorandum of understanding for 24 months or through the term of the memorandum of understanding, whichever is longer, unless modified by mutual agreement with each of the exclusive employee representatives. The authority shall continue to provide those pension benefits specified in any memoranda of agreement as long as doing so does not conflict with any Kern County Employees' Retirement Association plan provisions, or federal or state law including the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code and the federal Internal Revenue Code). If a memorandum of understanding is expired on the date of the transfer of control of the medical center, then the authority shall continue to be bound by the terms and conditions of the most recent memoranda of understanding, unless modified by a mutual agreement with each of the exclusive employee representatives, and the benefits and wages of transferred employees shall be retained consistent with subdivision (b).

(4) Meet and confer with the exclusive employee representatives to develop processes and procedures to address employee disciplinary action taken against permanent employees. If the authority terminates, suspends, demotes, or reduces the pay of a permanent employee for disciplinary reasons, those actions shall only be for cause consistent with state law, and an employee shall be afforded applicable due process protections granted to public employees under state law. Permanent employees laid off by the authority within six months of the date of the transfer of control of the medical center shall remain on the county reemployment list for two years. Inclusion on the county reemployment list is not a guarantee of reemployment. For the purposes of this paragraph, the term "permanent employees" excludes probationary employees, temporary employees, seasonal employees, provisional employees, extra help employees, and per diem employees.

(5) To the extent layoffs occur, and provided that all other previously agreed upon factors are equal, ensure that seniority shall prevail. The authority shall meet and confer with the exclusive employee representatives to address layoff procedures and the manner in which, and the extent to which, seniority shall be measured for employees who transfer from the medical center or county.

(e) Permanent employees of the medical center or county on the effective date of the transfer of control of the medical center to the authority, shall be deemed qualified for employment in equivalent positions at the authority, and no other qualifications shall be required except as otherwise required by state or federal law. Probationary employees on the effective date of the transfer, as set forth in this paragraph, shall retain their probationary status and rights and shall not be required to serve a new probationary period or extend their probationary period by reason of the transfer. To the extent possible, employees who transfer to equivalent positions at the authority shall retain their existing classifications and job descriptions, but if there is a dispute over this issue, the authority agrees to meet and confer with the exclusive employee representatives of the transferred employees.

(f) Employees who transfer from the medical center or county to the authority shall retain the seniority they earned at the medical center or county and any benefits or privileges based on the seniority.

(g) Notwithstanding any other law, except as provided in subdivision (h), employees of the authority may participate in the Kern County Employees' Retirement Association, operated pursuant to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) as set forth below. However, the authority and employees of the authority, or certain designated parts thereof, shall not participate in the Kern County Employees' Retirement Association if the board of retirement, in its sole discretion, determines that their participation could jeopardize the Kern County Employees' Retirement Association's tax-qualified or governmental plan status under federal law, or if a contract or related contract amendment proposed by the authority contains any benefit provisions that are not specifically authorized by Chapters 3 (commencing with Section 31450) and 3.9 (commencing with Section 31899) of Part 3 of Division 4 of Title 3 of the Government Code or Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1 of the Government Code, and that the board determines would adversely affect the administration of the system. There shall not be any individual employee elections regarding participation in the Kern County Employees' Retirement Association or other retirement plans except to the extent such retirement plans provide for elective employee salary deferral contributions in accordance with federal Internal Revenue Code rules.

(1) Employees transferred from the county or medical center to the authority who are subject to a memorandum of understanding between the authority and an exclusive employee representative, as described in paragraphs (2) and (3) of subdivision (d), and who were members of the Kern County Employees' Retirement Association at the time of their transfer of employment, shall continue to be a member of the Kern County Employees' Retirement Association, retaining service credit earned to the date of transfer, to the extent provided for in the applicable memorandum of understanding.

(2) Employees transferred from the county or medical center to the authority who are subject to a memorandum of understanding between the authority and an exclusive employee representative, as described in paragraphs (2) and (3) of subdivision (d), and who were not members of the Kern County Employees' Retirement Association at the time of their transfer of employment, shall subsequently become a member of the Kern County Employees' Retirement Association only to the extent provided for in the applicable memorandum of understanding.

(3) Employees transferred from the county or medical center to the authority who are not subject to a memorandum of understanding between the authority and an exclusive employee representative, as described in paragraphs (2) and (3) of subdivision (d), and who were members of the Kern County Employees' Retirement Association at the time of their transfer of employment, shall continue to be a member of the Kern County Employees' Retirement Association, retaining service credit earned to the date of transfer, as provided in the enabling ordinance or the personnel transition plan.

(4) Employees transferred from the county or medical center to the authority who are not subject to a memorandum of understanding between the authority and an exclusive employee representative, as described in paragraphs (2) and (3) of subdivision (d), and who were not members of the Kern County Employees' Retirement Association at the time of their transfer of employment, shall subsequently become a member of the Kern County Employees' Retirement Association only to the extent provided in the enabling ordinance or the personnel transition plan.

(5) Employees hired by the authority on or after the effective date of the transfer of control of the medical center shall become a member of the Kern County Employees' Retirement Association only to the extent provided in the enabling ordinance or personnel transition plan described in subdivision (a), or, if subject to a memorandum of understanding between the authority and an exclusive employee representative as described in paragraphs (2) and (3) of subdivision (d), to the extent provided for in the applicable memorandum of understanding.

(6) (A) Notwithstanding any other law, for purposes of California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1 of the Government Code), an individual who was employed by the county or the medical center when it was a constituent department of the county, and is a member of the Kern County Employees' Retirement Association or the Public Employees' Retirement System, as set forth in Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code or a member prior to January 1, 2013, and who transfers, directly or after a break in service of less than six months, to the authority, in which the individual continues to be a member of either the Kern County Employees' Retirement Association or the Public Employees' Retirement System, as applicable, shall not be deemed to be a new employee or a new member within the meaning of Section 7522.04 of the Government Code, and shall continue to be subject, immediately after the transfer, to the same defined benefit formula, as defined in Section 7522.04 of the Government Code, and plan of replacement benefits offered by the county pursuant to Section 31899.4 of the Government Code and the Kern County Replacement Benefits Plan for retirement benefits limited by Section 415 of Title 26 of the United States Code.

(B) For purposes of subdivision (c) of Section 7522.43 of the Government Code, the authority shall be treated as a public employer that offered a plan of replacement benefits prior to January 1, 2013. The county's plan of replacement benefits that was in effect prior to January 1, 2013, is deemed to also be the authority's replacement plan for the sole purpose of allowing the authority to continue to offer the plan of replacement benefits, immediately after the transfer, for Kern County Employees' Retirement Association members who meet both of the following requirements, and the qualifying survivors or beneficiaries of those members:

(i) The employee was employed as of January 1, 2013, by the county or the medical center when it was a constituent department of the county.

(ii) The employee is part of a member group to which the county offered a plan of replacement benefits prior to January 1, 2013.

(7) (A) Notwithstanding any other law, legacy employees shall be deemed to be county employees for purposes of participation in a benefit plan administered by the Kern County Employees' Retirement Association, but only for that purpose, and shall not be employees of the county for any other purpose. Upon the transfer of control of the medical center and thereafter, the county shall include legacy employees in a special county employee group for which the county has primary financial responsibility to fund all employer contributions that, together with contributions by employees and earnings thereon, are necessary to fund all benefits for legacy employees administered by the Kern County Employees' Retirement Association, notwithstanding the fact that, following the transfer of control of the medical center, the authority shall commence making periodic employer contributions for legacy employees. In the event the authority fails to make required employer contributions for legacy employees when due and after demand from the Kern County Employees' Retirement Association, the county, after receipt of notice and demand from the Kern County Employees' Retirement Association, shall be obligated to make those contributions in place of the authority.

(B) The authority shall be primarily responsible for any employer contributions that, together with contributions by employees and earnings thereon, are necessary to fund all benefits for new employees. In the event the authority fails to make required

contributions for new employees, the county shall be obligated to make the required contributions after receipt of notice and demand from the Kern County Employees' Retirement Association. The county shall maintain this obligation for new employees until the authority demonstrates, and the Kern County Employees' Retirement Association's Board of Retirement determines, that the authority is sufficiently capable financially to fully assume the obligation to make all employer contributions for new employees, based upon the standard of financial capability approved by the Kern County Employees' Retirement Association and the county in a plan of participation, and incorporated within a written agreement between the county and the authority. In the event the authority fails to make required contributions for any new employees due to the authority's dissolution or bankruptcy, the county shall be obligated to make the required contributions after receipt of notice and demand from the Kern County Employees' Retirement Association.

(h) Subject to the provisions of subdivision (g) granting the Board of Retirement of the Kern County Employees' Retirement Association the sole discretion to exclude the authority or employees of the authority from the Kern County Employees' Retirement Association if the board determines that their participation could jeopardize the association's tax-qualified or governmental plan status under federal law, an employee hired by the authority on or after the operative date of the act adding this subdivision shall be a member of the Kern County Employees' Retirement Association, except as modified in an applicable memorandum of understanding.

(i) This chapter does not prohibit the authority from contracting with the Public Employees' Retirement System, in accordance with the requirements of Section 20508 and any other applicable provisions of Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, for the purpose of providing employee participation in that system, or from establishing an alternative or supplemental retirement system or arrangement, including, but not limited to, deferred compensation arrangements, to the extent permitted by law and subject to any applicable agreement between the authority and the exclusive employee representatives, and as provided in the enabling ordinance or the personnel transition plan. Notwithstanding any other law, the authority and employees of the authority shall not participate in the Public Employees' Retirement System if the Board of Administration of the Public Employees' Retirement System, in its sole discretion, determines that their participation could jeopardize the Public Employees' Retirement System's tax-qualified or governmental plan status under federal law, or if a contract or related contract amendment proposed by the authority contains any benefit provisions that are not specifically authorized by Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, and that the board determines would adversely affect the administration of the system.

(j) Provided that this is not inconsistent with anything in this chapter, this chapter does not prohibit the authority from determining the number of employees, the number of full-time equivalent positions, job descriptions, the nature and extent of classified employment positions, and salaries of employees.

(Amended by Stats. 2018, Ch. 405, Sec. 7. (SB 846) Effective September 14, 2018.)