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AB-1538 Alameda Health System Hospital Authority: physician services. (2017-2018)

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Assembly Bill No. 1538

CHAPTER 263

An act to amend Section 101850 of the Health and Safety Code, relating to hospital authorities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 2017. Filed with Secretary of State September 23, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1538, Bonta. Alameda Health System Hospital Authority: physician services.

Existing law authorizes the Board of Supervisors of Alameda County to establish the Alameda Health System Hospital Authority for the management, administration, and control of the medical center in that county. Existing law prohibits the hospital authority, before January 1, 2024, from entering into a contract with any other person or entity, including, but not limited to, a subsidiary or other entity established by the authority, to replace services being provided by physicians and surgeons who are employed by the hospital authority and in a recognized collective bargaining unit as of March 31, 2013, with services provided by that other person or entity without clear and convincing evidence that the needed medical care can only be delivered cost effectively by that other person or entity.

This bill would prohibit the hospital authority, before January 1, 2024, from entering into a contract with any other person or entity to replace services being provided by physicians and surgeons who are employed by the hospital authority and in a recognized collective bargaining unit, irrespective of when they joined that bargaining unit, with services provided by that other person or entity without clear and convincing evidence that the needed medical care can only be delivered cost effectively by that other person or entity.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 101850 of the Health and Safety Code is amended to read:

101850. The Legislature finds and declares the following:

(a) (1) Due to the challenges facing the Alameda Health System arising from changes in the public and private health industries, the Alameda County Board of Supervisors has determined that a transfer of governance of the Alameda Health System to an independent governing body, a hospital authority, is needed to improve the efficiency, effectiveness, and economy of the community health services provided at the medical center. The board of supervisors has further determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical

center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County. To accomplish this, it is necessary that the board of supervisors be given authority to create a hospital authority. Because there is no general law under which this authority could be formed, the adoption of a special act and the formation of a special authority is required.

(2) The following definitions apply for purposes of this section:

(A) "The county" means the County of Alameda.

(B) "Governing board" means the governing body of the hospital authority.

(C) "Hospital authority" means the separate public agency established by the Board of Supervisors of Alameda County to manage, administer, and control the Alameda Health System.

(D) "Medical center" means the Alameda Health System, which was formerly known as the Alameda County Medical Center.

(b) The board of supervisors of the county may, by ordinance, establish a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of the medical center in accordance with Section 14000.2 of the Welfare and Institutions Code. A hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of the medical center within parameters set forth in this chapter, and in the ordinance, bylaws, and contracts adopted by the board of supervisors that shall not be in conflict with this chapter, Section 1442.5 of this code, or Section 17000 of the Welfare and Institutions Code.

(c) A hospital authority established pursuant to this chapter shall be governed by a board that is appointed, both initially and continually, by the Board of Supervisors of the County of Alameda. This hospital authority governing board shall reflect both the expertise necessary to maximize the quality and scope of care at the medical center in a fiscally responsible manner and the diverse interest that the medical center serves. The enabling ordinance shall specify the membership of the hospital authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the hospital authority's activities.

(d) The mission of the hospital authority shall be the management, administration, and other control, as determined by the board of supervisors, of the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations, including special populations in the County of Alameda.

(e) The board of supervisors shall adopt bylaws for the medical center that set forth those matters related to the operation of the medical center by the hospital authority that the board of supervisors deems necessary and appropriate. The bylaws shall become operative upon approval by a majority vote of the board of supervisors. Changes or amendments to the bylaws shall be by majority vote of the board of supervisors.

(f) The hospital authority created and appointed pursuant to this section is a duly constituted governing body within the meaning of Section 1250 of this code and Section 70035 of Title 22 of the California Code of Regulations as currently written or subsequently amended.

(g) Unless otherwise provided by the board of supervisors by way of resolution, the hospital authority may, or the board of supervisors may on behalf of the hospital authority, apply as a public agency for one or more licenses for the provision of health care pursuant to statutes and regulations governing licensing as currently written or subsequently amended.

(h) In the event of a change of license ownership, the governing body of the hospital authority shall comply with the obligations of governing bodies of general acute care hospitals generally, as set forth in Section 70701 of Title 22 of the California Code of Regulations, as currently written or subsequently amended, as well as the terms and conditions of the license. The hospital authority is the responsible party with respect to compliance with these obligations, terms, and conditions.

(i) (1) A transfer by the county to the hospital authority of the administration, management, and control of the medical center, whether or not the transfer includes the surrendering by the county of the existing general acute care hospital license and corresponding application for a change of ownership of the license, does not affect the eligibility of the county, or in the case of a change of license ownership, the hospital authority, to do any of the following:

(A) Participate in, and receive allocations pursuant to, the California Healthcare for the Indigents Program (CHIP).

(B) Receive appropriations from the Medi-Cal Inpatient Payment Adjustment Fund without relieving the county of its obligation to make intergovernmental transfer payments related to the Medi-Cal Inpatient Payment Adjustment Fund pursuant to Section 14163 of the Welfare and Institutions Code.

(C) Receive Medi-Cal capital supplements pursuant to Section 14085.5 of the Welfare and Institutions Code.

(D) Receive any other funds that would otherwise be available to a county hospital.

(2) A transfer described in paragraph (1) does not otherwise disqualify the county, or in the case of a change in license ownership, the hospital authority, from participating in any of the following:

(A) Other funding sources either specific to county hospitals or county ambulatory care clinics or for which there are special provisions specific to county hospitals or to county ambulatory care clinics.

(B) Funding programs in which the county, on behalf of the medical center and the Alameda County Health Care Services Agency, had participated prior to the creation of the hospital authority, or would otherwise be qualified to participate in had the hospital authority not been created, and administration, management, and control not been transferred by the county to the hospital authority, pursuant to this chapter.

(j) A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county. The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

(k) (1) A contract executed by and between the county and the hospital authority shall provide that liabilities or obligations of the hospital authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the hospital authority, and shall not become the liabilities or obligations of the county.

(2) Liabilities or obligations of the hospital authority with respect to the liquidation or disposition of the hospital authority's assets upon termination of the hospital authority shall not become the liabilities or obligations of the county.

(3) An obligation of the hospital authority, statutory, contractual, or otherwise, shall be the obligation solely of the hospital authority and shall not be the obligation of the county or the state.

(l) (1) Notwithstanding any other provision of this section, a transfer of the administration, management, or assets of the medical center, whether or not accompanied by a change in licensing, does not relieve the county of the ultimate responsibility for indigent care pursuant to Section 17000 of the Welfare and Institutions Code or any obligation pursuant to Section 1442.5 of this code.

(2) A contract executed by and between the county and the hospital authority shall provide for the indemnification of the county by the hospital 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.

(3) Indemnification by the hospital authority shall not be construed as divesting the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

(m) Notwithstanding the provisions of this section relating to the obligations and liabilities of the hospital authority, a transfer of control or ownership of the medical center shall confer onto the hospital authority all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.

(n) (1) A transfer of the maintenance, operation, and management or ownership of the medical center to the hospital authority shall comply with the provisions of Section 14000.2 of the Welfare and Institutions Code.

(2) A transfer of maintenance, operation, and management or ownership to the hospital authority may be made with or without the payment of a purchase price by the hospital authority and upon the terms and conditions on which the parties mutually agree, which shall include those found necessary by the board of supervisors to ensure that the transfer will constitute an ongoing material benefit to the county and its residents.

(3) A transfer of the maintenance, operation, and management to the hospital authority shall not be construed as empowering the hospital authority to transfer any ownership interest of the county in the medical center except as otherwise approved by the board of supervisors.

(o) The board of supervisors shall retain control over the use of the medical center physical plant and facilities except as otherwise specifically provided for in lawful agreements entered into by the board of supervisors. A lease agreement or other agreement between the county and the hospital authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

(p) The statutory authority of a board of supervisors to prescribe rules that authorize a county hospital to integrate its services with those of other hospitals into a system of community service that offers free choice of hospitals to those requiring hospital

care, as set forth in Section 14000.2 of the Welfare and Institutions Code, shall apply to the hospital authority upon a transfer of maintenance, operation, and management or ownership of the medical center by the county to the hospital authority.

(q) The hospital authority may acquire and possess real or personal property and may dispose of real or personal property other than that owned by the county, as may be necessary for the performance of its functions. The hospital authority may sue or be sued, to employ personnel, and to contract for services required to meet its obligations. Before January 1, 2024, the hospital authority shall not enter into a contract with any other person or entity, including, but not limited to, a subsidiary or other entity established by the authority, to replace services being provided by physicians and surgeons who are employed by the hospital authority and in a recognized collective bargaining unit, with services provided by that other person or entity without clear and convincing evidence that the needed medical care can only be delivered cost effectively by that other person or entity. Prior to entering into a contract for any of those services, the authority shall negotiate with the representative of the recognized collective bargaining unit of its physician and surgeon employees over the decision to privatize and, if unable to resolve any dispute through negotiations, shall submit the matter to final binding arbitration.

(r) An agreement between the county and the hospital authority shall provide that all existing services provided by the medical center shall continue to be provided to the county through the medical center subject to the policy of the county and consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code.

(s) A hospital authority to which the maintenance, operation, and management or ownership of the medical center is transferred shall be 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 a hospital authority are eligible to participate in the County Employees Retirement System to the extent permitted by law, except as described in Section 101851.

(t) Members of the governing board of the hospital authority shall not be vicariously liable for injuries caused by the act or omission of the hospital authority to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(u) The hospital authority shall be a public agency subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(v) Any transfer of functions from county employee classifications to a hospital authority established pursuant to this section shall result in the recognition by the hospital authority of the employee organization that represented the classifications performing those functions at the time of the transfer.

(w) (1) In exercising its powers to employ personnel, as set forth in subdivision (p), the hospital authority shall implement, and the board of supervisors shall adopt, a personnel transition plan. The personnel transition plan shall require all of the following:

(A) Ongoing communications to employees and recognized employee organizations regarding the impact of the transition on existing medical center employees and employee classifications.

(B) Meeting and conferring on all of the following issues:

(i) The timeframe for which the transfer of personnel shall occur. The timeframe shall be subject to modification by the board of supervisors as appropriate, but in no event shall it exceed one year from the effective date of transfer of governance from the board of supervisors to the hospital authority.

(ii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be appointed to vacant positions with the Alameda County Health Care Services Agency for which they have tenure.

(iii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be considered for reinstatement into positions with the county for which they are qualified and eligible.

(iv) Compensation for vacation leave and compensatory leave accrued while employed with the county in a manner that grants affected employees the option of either transferring balances or receiving compensation to the degree permitted employees laid off from service with the county.

(v) A transfer of sick leave accrued while employed with the county to hospital authority employment.

(vi) The recognition by the hospital authority of service with the county in determining the rate at which vacation accrues.

(vii) The possible preservation of seniority, pensions, health benefits, and other applicable accrued benefits of employees of the county impacted by the transfer of governance.

(2) This subdivision shall not be construed as prohibiting the hospital authority from determining the number of employees, the number of full-time equivalent positions, the job descriptions, and the nature and extent of classified employment positions.

(3) Employees of the hospital authority are public employees for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code relating to claims and actions against public entities and public employees.

(x) The hospital authority created pursuant to this section shall be bound by the terms of the memorandum of understanding executed by and between the county and health care and management employee organizations that is in effect as of the date this legislation becomes operative in the county. Upon the expiration of the memorandum of understanding, the hospital authority has sole authority to negotiate subsequent memorandums of understanding with appropriate employee organizations. Subsequent memorandums of understanding shall be approved by the hospital authority.

(y) The hospital authority created pursuant to this section may borrow from the county and the county may lend the hospital authority funds or issue revenue anticipation notes to obtain those funds necessary to operate the medical center and otherwise provide medical services.

(z) The hospital authority is subject to state and federal taxation laws that are applicable to counties generally.

(aa) The hospital authority, the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the community at the medical center.

(ab) The hospital authority is not 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).

(ac) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, a member of the hospital authority administrative staff shall not be considered to be engaged in activities inconsistent and incompatible with his or her duties as a result of employment or affiliation with the county.

(ad) (1) The hospital authority may use a computerized management information system in connection with the administration of the medical center.

(2) Information maintained in the management information system or in other filing and records maintenance systems that is confidential and protected by law shall not be disclosed except as provided by law.

(3) The records of the hospital authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to trade secrets or to payment rates or the determination thereof, or that relate to contract negotiations with providers of health care, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors does not constitute a waiver of exemption from disclosure, and the records and information, once transmitted, shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in-camera review, which, at the discretion of the court, may include the parties to the proceeding, and shall not be made a part of the court file unless sealed.

(ae) (1) Notwithstanding any other law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on hospital authority trade secrets, as defined in subdivision (d) of Section 3426.1 of the Civil Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session that are provided to persons who have made the timely or standing request.

(3) This section shall not be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(af) Open sessions of the hospital authority constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code. The privileges set forth in that section with respect to official proceedings apply to open sessions of the hospital authority.

(ag) The hospital authority is a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the hospital authority are tax deductible to the extent permitted by state and federal law. Nonproprietary income of the hospital authority is exempt from state income taxation.

(ah) Contracts by and between the hospital authority and the state and contracts by and between the hospital authority and providers of health care, goods, or services may be let on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ai) (1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies apply to the peer review activities of the hospital authority. Peer review proceedings constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the hospital authority. If the hospital authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission does not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other law, Section 1461 applies to hearings on the reports of hospital medical audit or quality assurance committees.

(aj) The hospital authority shall carry general liability insurance to the extent sufficient to cover its activities.

(ak) In the event the board of supervisors determines that the hospital authority should no longer function for the purposes set forth in this chapter, the board of supervisors may, by ordinance, terminate the activities of the hospital authority and expire the hospital authority as an entity.

(al) A hospital authority that is created pursuant to this section, but does not obtain the administration, management, and control of the medical center or has those duties and responsibilities revoked by the board of supervisors, shall not be empowered with the powers enumerated in this section.

(am) (1) The county shall establish baseline data reporting requirements for the medical center consistent with the Medically Indigent Care Reporting System (MICRS) program established pursuant to Section 16910 of the Welfare and Institutions Code and shall collect that data for at least one year prior to the final transfer of the medical center to the hospital authority established pursuant to this chapter. The baseline data shall include, but not be limited to, all of the following:

(A) Inpatient days by facility by quarter.

(B) Outpatient visits by facility by quarter.

(C) Emergency room visits by facility by quarter.

(D) Number of unduplicated users receiving services within the medical center.

(2) Upon transfer of the medical center, the county shall establish baseline data reporting requirements for each of the medical center inpatient facilities consistent with data reporting requirements of the Office of Statewide Health Planning and Development, including, but not limited to, monthly average daily census by facility for all of the following:

(A) Acute care, excluding newborns.

(B) Newborns.

(C) Skilled nursing facility, in a distinct part.

(3) From the date of transfer of the medical center to the hospital authority, the hospital authority shall provide the county with quarterly reports specified in paragraphs (1) and (2) and any other data required by the county. The county, in consultation with health care consumer groups, shall develop other data requirements that shall include, at a minimum, reasonable measurements of the changes in medical care for the indigent population of Alameda County that result from the transfer of the administration, management, and control of the medical center from the county to the hospital authority.

(an) A hospital authority established pursuant to this section shall comply with the requirements of Sections 53260 and 53261 of the Government Code.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure, at the earliest possible time, that no employee's position is contracted out without first determining a cost savings, it is necessary that this act take effect immediately.