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CalDerm Pushes for Stronger “Corporate Bar” to Protect Access & Patients

California’s “bar on the corporate practice of medicine” may not be the stuff of most headlines now coming out of Sacramento, where the State’s finances edge ever closer to oblivion. Yet this somewhat arcane policy area is at the heart of three current legislative proposals, each with different stakes for the practice of dermatology. CalDerm opposes two of the bills, which propose to expand on current exceptions to the corporate bar. And we are co-sponsoring a third that invokes the bar to tighten oversight and embolden prosecution of illegal medi-spas that perform unsafe cosmetic procedures.

The “bar” refers the state prohibition on the direct employment of physicians by hospitals. California is one of just five states with this restriction, which dates to 1930s and whose intent is to ensure that physicians aren’t asked to compromise between the medical needs of a patient and the financial interests of an employer. Historically the prohibition has been near-absolute as it applies to hospitals, although an exception is made for teaching hospitals, and also for some community clinics and drug treatment centers.

In a move to increase access to physician services in rural areas, the Legislature under SB 376 (Chesbro, 2003) launched a pilot program to allow rural hospitals that meet certain criteria to directly employ a limited number of physicians. That pilot is due to expire Jan. 1, 2011.

[AB 646 \(Swanson\)](#), as amended in April, proposes to push back the sunset until 2021. Furthermore, it would seem to expand on the number of hospitals eligible to participate by removing the limitation based on county population (the current ceiling is 750,000 residents), as well as the requirements that the hospital must have operated at a loss in fiscal year 2000-01, and that 50 percent of its patients must be covered under Medi-Cal or Medicare, or be uninsured. AB 646 would allow the healthcare district to make up 10 direct hires under contracts that could last up to 10 years.

Similarly [SB 726 \(Ashburn\)](#) would extend the sunset date of the pilot to 2018, and remove the same eligibility limits as the Swanson bill. In addition, SB 726 would allow the direct hire of primary care and specialty physicians beyond two “core” physicians (i.e. primary care or general surgeons) with the approval of the Medical Board of California.

CalDerm supports the purported goals of both bills – to increase access to physician services in rural areas. However, the bills fail to tackle the problem of physician shortages and maldistribution head-on and might unintentionally make matters worse. CalDerm believes that direct employment by local healthcare districts would discourage traditional contracting arrangements and potentially aggravate the shortages in primary and specialty care that (by definition) already exist in the area. Indeed, among the other opponents of SB 726 is a large network of Federally Qualified Health Centers (FQHCs), which has expressed concern that if exemptions to the bar are granted to the local districts, federally designated safety net clinics would be hindered in their own ability to recruit.

SB 726 in May was moved off the Assembly Floor’s “inactive” file – a move that prompted CalDerm to issue a Floor Alert urging all Assembly members to oppose it should it advance to a floor vote. Meanwhile, AB 646 has been at least temporarily idled. A Senate Business, Professions and Economic Development Committee hearing on the bill was cancelled in April at the request of the author.

Elsewhere CalDerm is co-sponsoring [AB 2566 \(Carter\)](#), which approaches the medi-spa problem by clarifying that if such facilities are owned or operated by an entity other than a physician, they are committing fraud by violating the bar on the corporate practice of medicine. The Medical Board’s ability to investigate such cases is also clarified, and a fraud conviction could entail greater possible penalties: imprisonment from six months to five years, and fines totaling \$50,000 or double the amount of the fraud, whichever is greater.

After the Assembly in late April passed AB 2566 off the Floor by a vote of 74-0, the bill has been referred for hearing to the Senate Business, Professions and Economic Development Committee.