

From the President

Donald A. Balasa, JD, MBA, CAAHEP President
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California Passes “Earn and Learn” Legislation

On October 4, 2021, California Governor Gavin Newsom signed into law Assembly Bill (AB) 1273. This legislation mandates that the California Department of Consumer Affairs (DCA) and Department of Public Health (DPH) and their respective regulatory boards (including many boards that regulate health professions) incorporate “earn and learn” programs into the eligibility pathways for their licensing and certification examinations. The following is a brief explanation of the key points of this new California statutory language that go into effect January 1, 2024.

The phrase “earn and learn” under California law is essentially synonymous with the general understanding of the concept of apprenticeship. Note the following from the California Legislative Counsel’s Digest for this bill:

Existing law defines “earn and learn” to include programs that combine applied learning in a workplace setting with compensation allowing workers or students to gain work experience and secure a wage as they develop skills and competencies directly relevant to the occupation or career for which they are preparing, and programs that bring together classroom instruction with on-the-job training to combine both formal instruction and actual paid work experience.

A purpose of AB 1273 is set forth in the following language from the bill:

(b) It is in the interest of the state’s economic recovery to remove barriers to ensure California’s diverse workforce have equal access to educational opportunities that result in family sustaining careers in all industry and public health sectors.

Opposition to AB 1273 (unless amended) was expressed by the California Society of Radiologic Technologists (CSRT). The CSRT asserted that there are other means of providing financial assistance to students without requiring earn and learn programs such as paid externships. Here is an excerpt from the testimony of the CSRT regarding AB 1273:

The California Society of Radiologic Technologists shares the same concerns as the opponents of this bill and requests amendments to clarify the payment of wages to students. CSRT [asserts that] the ability to award stipends or a provision of scholarships does not violate JRCERT [Joint Review Committee on the Education in Radiologic Technology, the national accrediting body in radiologic technology] policies while leaving the ability to provide optional funds to students, which supports the underlying goal of this bill to allow greater access to these professions.

AB 1273 was amended during the legislative process. The following is a summary of the key provisions of the final version of AB 1273:

- The Department of Consumer Affairs (DCA) and its boards are forbidden from approving an accrediting body in one of the licensed or certified professions or occupations that prohibits earn and learn programs. The DCA is comprised of the following:
 - (a) The Dental Board of California.
 - (b) The Medical Board of California. – including Polysomnographic Technologist
 - (c) The State Board of Optometry.
 - (d) The California State Board of Pharmacy.
 - (e) The Veterinary Medical Board.
 - (f) The California Board of Accountancy.
 - (g) The California Architects Board.
 - (h) The State Board of Barbering and Cosmetology.
 - (i) The Board for Professional Engineers, Land Surveyors, and Geologists.
 - (j) The Contractors State License Board.
 - (k) The Bureau for Private Postsecondary Education.
 - (l) The Bureau of Household Goods and Services.
 - (m) The Board of Registered Nursing.
 - (n) The Board of Behavioral Sciences.
 - (o) The State Athletic Commission.
 - (p) The Cemetery and Funeral Bureau.
 - (q) The Bureau of Security and Investigative Services.
 - (r) The Court Reporters Board of California.
 - (s) The Board of Vocational Nursing and Psychiatric Technicians.
 - (t) The Landscape Architects Technical Committee.
 - (u) The Division of Investigation.
 - (v) The Bureau of Automotive Repair.
 - (w) The Respiratory Care Board of California.
 - (x) The Acupuncture Board.
 - (y) The Board of Psychology.
 - (z) The Podiatric Medical Board of California.
 - (aa) The Physical Therapy Board of California.
 - (ab) The Arbitration Review Program.
 - (ac) The Physician Assistant Board.
 - (ad) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
 - (ae) The California Board of Occupational Therapy.
 - (af) The Osteopathic Medical Board of California.
 - (ag) The Naturopathic Medicine Committee.
 - (ah) The Dental Hygiene Board of California.
 - (ai) The Professional Fiduciaries Bureau.
 - (aj) The State Board of Chiropractic Examiners.
 - (ak) The Bureau of Real Estate Appraisers.
 - (al) The Structural Pest Control Board.
 - (am) Any other boards, offices, or officers subject to its jurisdiction by law.

- The Department of Public Health (DPH) and its boards are forbidden from prohibiting earn and learn programs for training in one of the licensed or certified professions or occupations. Professions regulated by the DPH (accessed November 2021) include:
 - CA Genetic Counselor Licensure Program
 - Clinical Laboratory Professionals – including Cytotechnologist
 - Health Care Professionals
 - Certified Nurse Assistant
 - Home Health Aide
 - Certified Hemodialysis Technician
 - Training Providers
 - Nursing Home Administrator
 - Health & Medical Physicists
 - Industrial Radiography
 - Lead-Related Construction Program
 - Medical Device Manufacturers
 - Nuclear Medicine Technologist
 - Radiologic Technologists
 - Registered Environmental Health Specialist (REHS)
 - Trauma Scene Waste Practitioners
 - Vector Control Technician Certificate
 - X-Ray Technicians
- The DCA and the DPH and their boards are not required to mandate that an accrediting body ensure that its accredited programs in California offer an earn and learn option.
- The DCA and the DPH and their boards must have earn and learn eligibility pathways for their licensing or certification examinations.

Questions about AB 1273 and its impact on the accreditation of California allied health programs may be directed to me at dbalasa@aama-ntl.org

Analysis of California Assembly Bill No. 1273, Chapter 477
(Approved by Governor October 4, 2021—effective January 1, 2024)

Donald A. Balasa, JD, MBA
CEO, Legal Counsel; American Association of Medical Assistants (AAMA)
President, Commission on Accreditation of Allied Health Education Programs (CAAHEP)
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Legal Analysis of 2021 California AB 1273

A stated purpose of this legislation is to help the economically underprivileged have greater access to education in the health professions. The underlying assumption is that health education programs having unpaid externships/practica/internships/clinicals impose a significant burden on economically underprivileged students that discourages them from pursuing health education. This purpose is stated in the following language from the bill:

(b) It is in the interest of the state's economic recovery to remove barriers to ensure California's diverse workforce have equal access to educational opportunities that result in family sustaining careers in all industry and public health sectors.

“Earn and learn” is another word for “apprenticeship.” Earn and learn programs are defined as follows in existing California law:

LEGISLATIVE COUNSEL’S DIGEST:

Existing law defines “earn and learn” to include programs that combine applied learning in a workplace setting with compensation allowing workers or students to gain work experience and secure a wage as they develop skills and competencies directly relevant to the occupation or career for which they are preparing, and programs that bring together classroom instruction with on-the-job training to combine both formal instruction and actual paid work experience.

I.

Department of Consumer Affairs (DCA) and its Boards

Note the following from the existing California statute:

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS [100 - 472.5]

(Heading of Division 1 amended by Stats. 1973, Ch. 77.)

CHAPTER 1. The Department [100 - 144.5]

(Chapter 1 enacted by Stats. 1937, Ch. 399.)

100.

There is in the state government, in the Business, Consumer Services, and Housing Agency, a Department of Consumer Affairs (DCA).

(Amended by Stats. 2012, Ch. 147, Sec. 1. (SB 1039) Effective January 1, 2013. Operative July 1, 2013, by Sec. 23 of Ch. 147.)

101.

The department is comprised of the following:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The State Board of Barbering and Cosmetology.
- (i) The Board for Professional Engineers, Land Surveyors, and Geologists.
- (j) The Contractors State License Board.
- (k) The Bureau for Private Postsecondary Education.
- (l) The Bureau of Household Goods and Services.
- (m) The Board of Registered Nursing.
- (n) The Board of Behavioral Sciences.
- (o) The State Athletic Commission.
- (p) The Cemetery and Funeral Bureau.
- (q) The Bureau of Security and Investigative Services.
- (r) The Court Reporters Board of California.
- (s) The Board of Vocational Nursing and Psychiatric Technicians.
- (t) The Landscape Architects Technical Committee.
- (u) The Division of Investigation.
- (v) The Bureau of Automotive Repair.
- (w) The Respiratory Care Board of California.
- (x) The Acupuncture Board.
- (y) The Board of Psychology.
- (z) The Podiatric Medical Board of California.
- (aa) The Physical Therapy Board of California.
- (ab) The Arbitration Review Program.
- (ac) The Physician Assistant Board.
- (ad) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (ae) The California Board of Occupational Therapy.
- (af) The Osteopathic Medical Board of California.
- (ag) The Naturopathic Medicine Committee.
- (ah) The Dental Hygiene Board of California.
- (ai) The Professional Fiduciaries Bureau.
- (aj) The State Board of Chiropractic Examiners.
- (ak) The Bureau of Real Estate Appraisers.
- (al) The Structural Pest Control Board.
- (am) Any other boards, offices, or officers subject to its jurisdiction by law.

101.6.

The boards, bureaus, and commissions in the department are established for the purpose of ensuring that those private businesses and professions deemed to

engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. They provide a means for redress of grievances by investigating allegations of unprofessional conduct, incompetence, fraudulent action, or unlawful activity brought to their attention by members of the public and institute disciplinary action against persons licensed or registered under the provisions of this code when such action is warranted. In addition, they conduct periodic checks of licensees, registrants, or otherwise certified persons in order to ensure compliance with the relevant sections of this code.

New Language from AB 1273

The following is relevant language from the enacted legislation:

SEC. 2.

Section 314 is added to the Business and Professions Code, to read:

314.

(a) The department [Department of Consumer Affairs (DCA)] or board shall not approve an accrediting entity that prohibits earn and learn programs for training in a profession licensed or certified by the board. A board shall use licensing or certification standards that authorize the use of earn and learn training.

(b) Notwithstanding subdivision (a), the department (DCA) and its boards shall not be required to establish a mandate specifying an accrediting entity must provide earn and learn programs for training in a profession licensed or certified by a board.

Analysis

The above language of AB 1273 is a bit more complicated than it might appear on initial review, partly because of the California Senate amendment to the bill that I mention in the second bullet point below. The following is my effort to distill the substance of the legislation into a few statements:

- The Department of Consumer Affairs (DCA) and its boards are forbidden from approving an accrediting body in one of the licensed or certified professions or occupations listed above that prohibits earn and learn programs.
- However, the Department (DCA) and its boards are not required to mandate that an accrediting body ensure that its accredited programs offer an earn and learn option. (This provision was added by a September 1, 2021, California Senate floor amendment.)
- Further however, the Department and its boards must have earn and learn eligibility pathways for their licensing or certification examinations.

II.

Department of Public Health (DPH) and its Boards

Note the following from the existing California statute:

Professions Regulated by the California Department of Public Health (accessed November 2021)

- [CA Genetic Counselor Licensure Program](#)
- [Clinical Laboratory Professionals](#)
- [Health Care Professionals](#)

- **Certified Nurse Assistant**
 - Certified nurse assistants provide basic patient care directed at the safety, comfort, personal hygiene, and protection of elderly, disabled, or injured individuals, and are certified as having completed the state training requirements.
- **Home Health Aide**
 - A home health aide is an individual who is employed by a home health agency or hospice program to provide personal care services in the patient's home upon successful completion of a state-approved training program.
- **Certified Hemodialysis Technician**
 - A hemodialysis technician is a health care provider who is employed by a hemodialysis clinic or unit and participates in the direct treatment of patients undergoing hemodialysis. A hemodialysis technician is certified by the state for meeting the requirements in Section 1247.61 of the Business and Professions Code.
- **Training Providers**
 - Training providers are nursing facilities, agencies, public educational training institutions, instructors and directors of staff development who provide pre-certification training or continuing education to nurse assistants, home health aides or hemodialysis technicians.
- **Nursing Home Administrator**
 - A nursing home administrator is educated and trained to carry out the policies of a nursing home, and is licensed in accordance with California Health and Safety Code, Section 1416. The nursing home administrator is charged with the general administration of a nursing home, regardless of

whether he or she has an ownership interest and whether the administrator's function or duties are shared with others.

- [Health & Medical Physicists](#)
- [Industrial Radiography](#)
- [Lead-Related Construction Program](#)
- [Medical Device Manufacturers](#)
- [Nuclear Medicine Technologist](#)
- [Radiologic Technologists](#)
- [Registered Environmental Health Specialist \(REHS\)](#)
- [Trauma Scene Waste Practitioners](#)
- [Vector Control Technician Certificate](#)
- [X-Ray Technicians](#)

New Language from AB 1273

The following is language from the enacted legislation:

SEC. 3.

Section 131088 is added to the Health and Safety Code, to read:

131088.

(a) The department [Department of Public Health (DPH)], in the licensing and certification of health professions in accordance with this chapter, shall not prohibit earn and learn programs for training of personnel. The department (DPH) shall use licensing and certification standards that authorize the use of earn and learn training.

(b) Notwithstanding subdivision (a), the department (DPH) shall not be required to establish a mandate specifying an accrediting entity must provide earn and learn programs for training in a profession licensed or certified by the department.

Analysis

The above language of AB 1273 pertaining to the California Department of Public Health (DPH) may be summarized in three points that are similar to the above three points pertaining to the California Department of Consumer Affairs (DCA). The following is taken from a September 1, 2021, analysis of the bill by the California Senate Rules Committee:

- a) Prohibits the DPH [Department of Public Health], in the licensing and certification of health professions, from prohibiting "earn and learn" programs for training of personnel.
- b) Requires the DPH to use licensing or certification standards that authorize the use of earn and learn training.
- c) Specifies that the DPH is not required to establish a mandate specifying that an accrediting entity must provide earn and learn programs for training in a profession licensed or certified by the department.

Opposition

This bill was opposed by the California Society for Respiratory Care and the Respiratory Care Board of California (Board). The following is an excerpt from a June 20, 2021, report of the California Senate Rules Committee:

ARGUMENTS IN OPPOSITION: According to the California Society for Respiratory Care, “Respiratory care education programs in California are required by Business & Professions Code 3740 to be accredited by the Commission on Accreditation for Respiratory Care (CoARC). Importantly, CoARC sets rigorous standards for respiratory care education that respiratory care programs must meet in order to operate in California. This accreditation protects students and the public by ensuring students are gaining a quality education that enables them to pass the licensure test and operate safely as fully skilled Respiratory Therapists in California. Managing patients’ breathing can have lethal consequences, this makes the rigorous standards of CoARC accreditation that much more important. CoARC prohibits earn and learn programs. CoARC accreditation would be out of compliance with AB 1273 should the bill become law as written.”

Additional opposition comes from the Respiratory Care Board of California (Board), within the DCA, which states, “the (Board) has reviewed AB 1273 and has respectfully taken an oppose unless amended position, as the bill directly conflicts with respiratory care practitioner education requirements as established within Business and Professions Code (B&PC) section 3740.”

According to the Board, pursuant to CoARC’s Standards, students are prohibited from being compensated for clinical training. They write, “A CoARC Interpretive Guideline for Accreditation Standard 5.09 further states, “Programs must include a service work statement in program materials available to both students and clinical supervisors, which specifies that program students must not be substituted for paid staff while they are on clinical rotations, and that they cannot complete clinical coursework while functioning as part-time employees at any healthcare site. *This does not prohibit a paid/unpaid internship in states where this is allowed, but is intended to ensure that students are not used as ‘back-ups’ in the absence of paid staff during clinical rotations, that students who opt to reinforce competencies and skill sets as ‘interns’ are adequately supervised and do not receive educational credits for this experience, and that they receive no educational credits while functioning as a paid employee at any healthcare facility.*” (Emphasis added)

Opposition unless Amended

As included a March 22, 2021, report of the California Senate Committee on Health, the California Society of Radiologic Technologists express opposition to AB 1273 unless amended. Note the following excerpt:

The California Society of Radiologic Technologists (CSRT) shares the same concerns as the opponents of this bill and requests amendments to clarify the payment of wages to students. CSRT [asserts that] the ability to award stipends or a provision of scholarships does not violate JRCERT [Joint Review Committee on the Education in Radiologic

Technology, the national accrediting body in radiologic technology] policies while leaving the ability to provide optional funds to students, which supports the underlying goal of this bill to allow greater access to these professions.

Proffered Reasons for 2021 California AB 1273

(From March 22, 2021, report of the California Senate Committee on Health)

COMMENTS:

1) Author's [bill sponsor's] statement. According to the author, during a time when health care workers are desperately needed in allied health occupations, expanded earn and learn opportunities would successfully provide the greatly needed bridge that connects workers with employers. Expanding earn and learn opportunities would also open up the workforce to a more diverse group of students who otherwise could not afford to do unpaid training, which would result in increased cultural competency for patients.

2) Allied health professions and “earn and learn” training programs. According to the U.S. Department of Labor's Bureau of Labor Statistics, employment in health care occupations is projected to grow 15% from 2019 to 2029, much faster than the average for all occupations, adding about 2.4 million new jobs. This projected growth is mainly due to an aging population, leading to greater demand for health care services. The median annual wage for health care practitioners and technical occupations (such as registered nurses, physicians and surgeons, and dental hygienists) was \$69,870 in May 2020, which was higher than the median \$41,950 annual wage for all occupations. AB 2105 (Rodriguez, Chapter 410, Statutes of 2016) directed DCA [Department of Consumer Affairs] to engage in a stakeholder process to update policies and remove barriers to facilitate the development of earn and learn training programs in allied health professions and include identified barriers in a report. The stakeholder process concluded by January 1, 2020, and the DCA issued “Barriers and Recommendations to Facilitating Earn and Learn Training Programs in Allied Health Professions” [see attached] in July 2020 with key findings and recommendations that include the following:

a) Some accrediting entities prohibit payment for trainings by the program. However, DCA and DPH [Department of Public Health] have both stated that there are no specific prohibitions in their laws, regulations, or standards that limit the creation of earn and learn programs. The DCA report recommended that entities work with accrediting bodies to remove any prohibitions and to provide educational outreach to them about the value of earn and learn training models, and should accrediting bodies refuse, further review would be required;

b) Registered apprenticeship requirements are not aligned with allied health training programs. Many allied health professions require fewer hours of on-the-job training than do all of the state-registered apprenticeship programs. The DCA report recommended an evaluation of the requirements to increase the flexibility for apprenticeship programs in allied health professions, and that DAS [Division of Apprenticeship Standards] could leverage the IACA [Interagency Advisory Committee on Apprenticeship] health subcommittee to help address these issues;

c) Lack of knowledge about registered apprenticeship for the California health care industry. DCA found through its stakeholder process that there is a lack of information applicable to the health care sector on apprenticeship and earn and learn programs in California. There is also no clean delineated process for registering apprenticeships in the health care industry. The DCA report recommended developing a comprehensive health-centric employer guide/toolkit for the California Registered Apprenticeship Process through DAS, including how to work with DAS;

d) Lack of coordinated effort among relevant state agencies. Stakeholders involved in the DCA process agreed that not having a single entity responsible for earn and learn training programs in the health care industry or a single point of contact are barriers to easily accessing resources and information. The DCA report recommended the establishment of a workgroup to serve as the centralized task force on earn and learn job training programs; and,

e) The current educational structure makes it difficult to develop career pathways from high school through graduate degree programs when there are overlapping requirements that may require repeating coursework to move between or within professions, such as the lack of common prerequisites at the post-secondary level for all health care programs. There is not a clear earn and learn process that allows community colleges' health programs to quickly adapt to industry need. Also, the wage disparity between classroom instructors and working health care professionals makes it difficult for educational institutions to recruit and retain instructors, creating a bottleneck in developing more programs and the ability to grow existing programs. The DCA report suggested supporting and expanding existing programs, and supporting stackable credentials through the creation of pathways for health care workers.