No. S241431

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

JANICE JARMAN,

Plaintiff and Appellant,

vs.

HCR MANORCARE, INC. and
MANOR CARE OF HEMET CA, LLC,

Defendants and Appellants.

HCR MANORCARE, INC. AND MANOR CARE OF HEMET CA, LLC'S MOTION FOR JUDICIAL NOTICE

After a Published Opinion
of the Fourth District Court of Appeal, Division Three
Case No. G051086

Superior Court of the State of California
County of Riverside
Hon. Phrasel Shelton and Hon. John Vineyard
Case No. RIC10007764

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Attorneys for Defendants and Appellants
HCR MANORCARE, INC. and MANOR CARE OF HEMET CA, LLC

MOTION FOR JUDICIAL NOTICE

Pursuant to California Rules of Court, rule 8.252(a), and California Evidence Code section 451, subdivision (a); section 452, subdivisions (b), (c), (h); and section 459, HCR ManorCare, Inc. and Manor Care of Hemet CA, LLC (ManorCare) move this Court for an order taking judicial notice of the following materials:

Exhibit 1: CD containing entire searchable legislative histories of Sen. Bill No. 1930 (1981-1982 Reg. Sess.) and Assem. Bill No. 2791 (2003-2004 Reg. Sess.)

Exhibit 2: Sen. Bill No. 1930 (1981-1982 Reg. Sess.), as introduced Mar. 17, 1982

Exhibit 3: Sen. Amend. to Sen. Bill No. 1930 (1981-1982 Reg. Sess.) May 12, 1982

Exhibit 4: Assem. Amend. to Sen. Bill No. 1930 (1981-1982 Reg. Sess.) Aug. 2, 1982

Exhibit 5: Stats. 1982, ch. 1455, § 1, p. 5599

Exhibit 6: Felice Tannenbaum, Office of Sen. Nicholas C. Petris, mem. to Legislative Counsel, Feb. 9, 1982

Exhibit 7: Felice Tannenbaum, Office of Sen. Nicholas C. Petris, letter to Bruce Yarwood, California Association of Health Facilities, July 7, 1982

Exhibit 8: Mem. to Nicholas C. Petris, Aug. 4, 1982

Exhibit 9: State of California, Health and Welfare Agency, Bill Analysis of Assem. Bill No. 2696 (1989-90 Reg. Sess.) as introduced on Jan. 5, 1990 (Feb. 28, 1990)

Exhibit 10: Assem. Bill No. 2696 (1989-90 Reg. Sess.) as introduced Jan. 25, 1990

Exhibit 11: Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2696 (1989-90 Reg. Sess.) as amended May 2, 1990

Exhibit 12: Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2696 (1989-90 Reg. Sess.) as amended June 13, 1990

Exhibit 13: Assembly Third Reading on Assem. Bill No. 2696 (1989-90 Reg. Sess.) as amended July 5, 1990

Exhibit 14: Assem. Bill No. 2696 (1989-90 Reg. Sess.) as amended May 2, 1990

Exhibit 15: Assem. Bill No. 2696 (1989-90 Reg. Sess.) as amended June 13, 1990

Exhibit 16: Assem. Bill No. 2696 (1989-90 Reg. Sess.) as amended July 5, 1990

Exhibit 17: Excerpt of Assem. Bill No. 1160 (1999-2000 Reg. Sess.) as introduced February 25, 1999, *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1151-1200/ab_1160_bill_19990225_introduced.pdf

Exhibit 18: Excerpt of Assem. Bill No. 1160 (1999-2000 Reg. Sess.) as amended April 8, 1999, *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1151-1200/ab_1160_bill_19990408_amended_asm.pdf

Exhibit 19: Excerpt of Assem. Bill No. 1160 (1999-2000 Reg. Sess.) as amended April 19, 1999, *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1151-1200/ab_1160_bill_19990419_amended_asm.pdf

Exhibit 20: Sen. Health and Human Services Com., Com. Analysis of Assem. Bill No. 1160 (1999-2000 Reg. Sess.) as amended on May 28, 1999, *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1151-1200/ab_1160_cfa_19990713_091015_sen_comm.html

3

Exhibit 21: Assem. Com. on Health, Rep. on Assem. Bill No. 2791 (2003-2004 Reg. Sess.) as amended Apr. 1, 2004

Exhibit 22: Stats. 1973, ch. 1057, § 1, p. 2093

Exhibit 23: Westlaw printout of Health & Saf. Code, § 1433, showing it was enacted by Stats. 1973, ch. 1057, § 1, p. 2094

Exhibit 24: Stats. 1990, ch. 162, § 1

Exhibit 25: Sen. Com. on Health, analysis of Sen. Bill No. 1248 (2005-2006 Reg. Sess.) as amended Mar. 20, 2006, *available at* http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml

Exhibit 26: California Department of Public Health, California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities, *available at* https://archive.cdph.ca.gov/pubsforms/forms/CtrldForms/cdph327.pdf

Exhibit 27: California Department of Public Health, Attachment F to California Standard Admission Agreement for Skilled Nursing Facilities and Intermediate Care Facilities, *available at* https://archive.cdph.ca.gov/pubsforms/forms/CtrldForms/cdph327-Attachment-F.pdf

MEMORANDUM OF POINTS AND AUTHORITIES

ManorCare requests that the Court take judicial notice of the attached materials, described in the Notice, pursuant to Evidence Code section 451, subdivision (a); section 452, subdivisions (b), (c), (h); and section 459, and California Rules of Court, rule 8.252(a).

All of the materials of which judicial notice is requested are pertinent to arguments in the Opening Brief on the Merits regarding the interpretation of Health & Safety Code section 1430, subdivision (b).

Legislative History Materials:

Exhibits 1 through 21 are excerpts from the legislative file of Health & Safety Code section 1430, subdivision (b) (Section 1430(b)), including various versions of legislation that enacted, amended, or proposed to amend Section 1430(b) (Sen. Bill No. 1930 (1981-1982 Reg. Sess.); Assem. Bill No. 2696 (1989-90 Reg. Sess.); Assem. Bill No. 1160 (1999-2000 Reg. Sess.); Assem. Bill No. 2791 (2003-2004 Reg. Sess.)) as well as legislative committee analyses and correspondence with the Legislative Counsel. The materials relating to the 1982 enactment of Section 1430(b) and the 2004 amendment of Section 1430(b) were compiled by Legislative Intent Service, Inc., reflected on the CD submitted as Exhibit 1 hereto. Exhibits 1 through 21 were presented to the Court of Appeal, which granted the request for judicial notice of legislative history materials.[1] (See Cal. Rules of Court, rule 8.252(a)(2); Op., p. 4, fn. 1.) The materials were not presented to the trial court.

Exhibits 22 through 24 are legislative enactments of other relevant statutes. Specifically, Exhibit 22 is a prior version of Health & Safety Code section 1430 before subdivision (b) was added. Exhibit 22 was obtained from Legislative Intent Service as part of the legislative file of Section 1430(b). Exhibit 23 is the current version of Health & Safety Code section 1433 indicating that the statute has never been amended since its enactment in 1973, obtained from Westlaw. Exhibit 24 is a prior version of Health &

[1] In *Lemaire v. Covenant Care California, LLC* (2015) 234 Cal.App.4th 860, 867, the court granted the defendant's request for judicial notice, which included the material at Exhibits 1 through 20, 25 and 27 herein. In *Nevarrez v. San Marino Skilled Nursing and Wellness Centre* (2013) 221 Cal.App.4th 102, 132-34, the court generally considered materials from the 1982 enactment and 2004 amendment of Section 1430(b), which are contained in Exhibit 1 hereto.

5

Safety Code section 1424, obtained from West's California Legislative Service. These exhibits were not presented to the trial court or the Court of Appeal.

Exhibit 25 is a legislative committee analysis of a bill that amended Health & Safety Code section 1599.1, obtained from the California Legislature's website, http://www.leginfo.ca.gov. These exhibits were not presented to the trial court or the Court of Appeal.

Judicial notice of these legislative history materials is appropriate. Evidence Code section 451, subdivision (a) requires a court to take judicial notice of "[t]he . . . public statutory law of this state . . . ." Evidence Code section 452, subdivision (b) allows a court to take judicial notice of "[r]egulations and legislative enactments issued by or under the authority of . . . any public entity in the United States." Evidence Code section 452, subdivision (c) allows a court to take judicial notice of "[o]fficial acts of the legislative . . . departments of . . . any state of the United States." Evidence Code Section 452, subdivision (h) allows a court to take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (See also Evid. Code § 459 (setting forth procedure for requesting that a court take judicial notice); Cal. R. Ct. 8.252, subd. (a) (setting forth procedure for requesting that the Court of Appeal take judicial notice).)

Legislative histories of California statutes, including compilations by Legislative Intent Service, are commonly the subjects of judicial notice by California courts. (See *People v. Sanchez* (2001) 24 Cal. 4th 983, 992, fn. 4; *Grubb & Ellis Co. v. Bello* (1993) 19 Cal.App.4th 231, 240-241; *Estate of Thomas* (2004) 124 Cal. App. 4th 711, 723, fn. 3.) It is also proper to

6

take judicial notice of failed legislation that would have amended an existing statute. (See *Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal. App. 4th 746, 760-61; *Jutzi v. County of Los Angeles* (1987) 196 Cal. App. 3d 637, 648.)

Administrative Materials:

Exhibits 26 and 27 are materials from the website of the California Department of Public Health. Judicial notice of these documents is appropriate pursuant to Evidence Code section 452, subdivision (c) [allowing judicial notice of "[o]fficial acts of the . . . executive . . . departments of the United States and of any state of the United States"] as well as section 452, subdivision (h), *supra*.

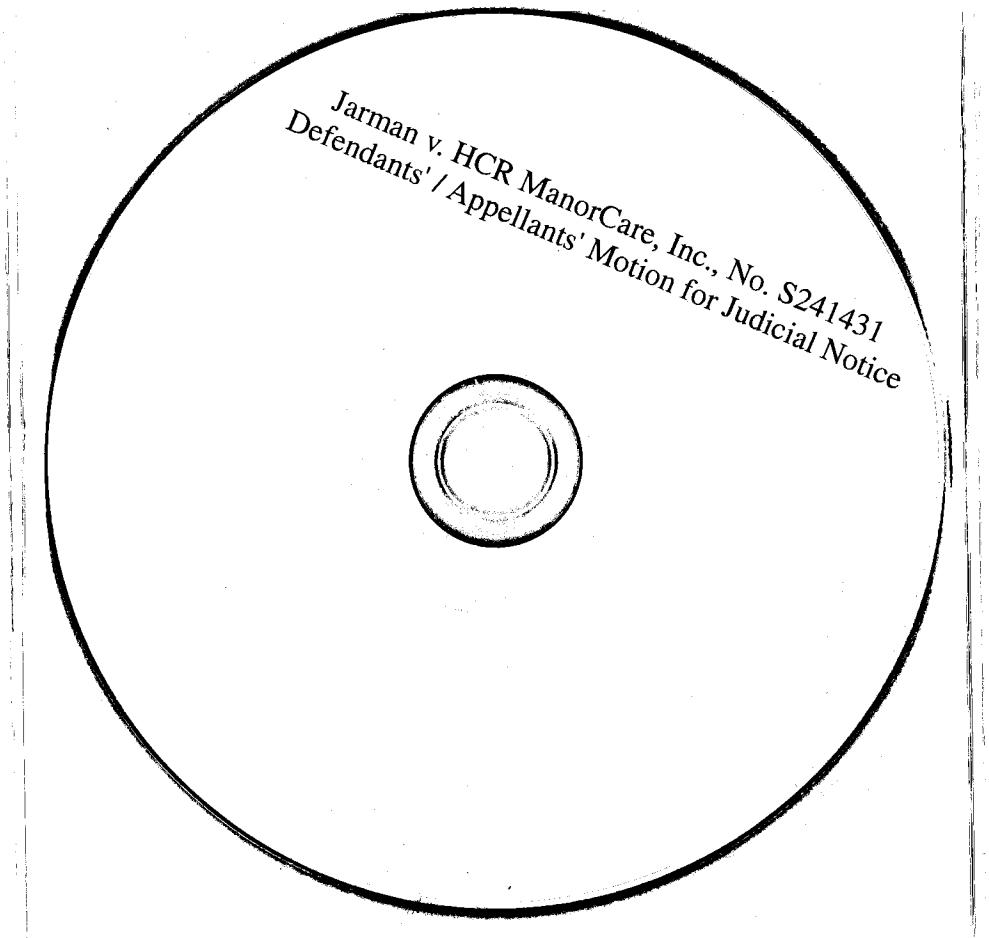
These materials were not presented to the trial court or the Court of Appeal.

ManorCare respectfully requests that the Court grant this motion and take judicial notice of the attached materials.

Dated: September 22, 2017 MANATT, PHELPS & PHILLIPS, LLP

By: s/ Barry S. Landsberg
BARRY S. LANDSBERG
Attorneys for Defendants and Appellants
HCR MANORCARE, INC. AND MANOR CARE OF HEMET CA., LLC

7


Jarman v. HCR ManorCare, Inc., No. S241431
Defendants' / Appellants' Motion for Judicial Notice

SENATE BILL No. 1930

Introduced by Senator Petris

March 17, 1982

An act to amend Section 1430 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1930, as introduced, Petris. Health facilities.

Under existing law, a licensee of certain health facilities who violates licensing provisions may be enjoined from permitting the violation to continue or sued for civil damages, as specified, in addition to any other remedy provided by law. Existing licensing provisions contain a skilled nursing and intermediate care facility patient's bill of rights.

This bill would permit a patient or resident of a skilled nursing facility or intermediate care facility to bring a civil action against the facility if his or her rights under this patient's bill of rights are violated, as specified.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. *(a)* Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his *or her* own complaint or upon

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the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient under the provisions of Chapter 3.9 (commencing with Section 1599). The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for up to two thousand five hundred dollars ($2,500) or three times the actual damages, whichever is greater, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

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AMENDED IN SENATE MAY 12, 1982

AMENDED IN SENATE APRIL 26, 1982

SENATE BILL No. 1930

Introduced by Senator Petris

March 17, 1982

An act to amend Section 1430 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1930, as amended, Petris. Health facilities.

Under existing law, a licensee of certain health facilities who violates licensing provisions may be enjoined from permitting the violation to continue or sued for civil damages, as specified, in addition to any other remedy provided by law. Existing licensing ~~provisions~~ *regulations* contain a skilled nursing and intermediate care facility patient's bill of rights.

This bill would permit a patient or resident of a skilled nursing facility or intermediate care facility to bring a civil action against the facility if his or her rights under this patient's bill of rights are violated, as specified. The bill would provide that the licensee shall be liable for the acts of the licensee's employees.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B"

97 40

violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California ~~Administrative Code or as set forth under the provisions of Chapter 3.9 (commencing with Section 1599). The suit~~ *Administrative Code. The suit* shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for ~~up to two thousand five hundred dollars ($2,500) or three times the actual damages, whichever is greater, and for costs and~~ *damages according to proof, punitive damages upon proof of repeated or intentional violations, and for costs and* attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

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AMENDED IN ASSEMBLY AUGUST 2, 1982
AMENDED IN SENATE MAY 12, 1982
AMENDED IN SENATE APRIL 26, 1982

SENATE BILL No. 1930

Introduced by Senator Petris

March 17, 1982

An act to amend Section 1430 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1930, as amended, Petris. Health facilities.

Under existing law, a licensee of certain health facilities who violates licensing provisions may be enjoined from permitting the violation to continue or sued for civil damages, as specified, in addition to any other remedy provided by law. Existing licensing regulations contain a skilled nursing and intermediate care facility patient's bill of rights.

This bill would permit a patient or resident of a skilled nursing facility or intermediate care facility to bring a civil action against the facility if his or her rights under this patient's bill of rights are violated, as specified. The bill would provide that the licensee shall be liable for the acts of the licensee's employees.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its

satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Administrative Code. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for ~~damages according to proof, punitive damages upon proof of repeated or intentional violations, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An~~ *up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An* agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

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chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. In the case of residential care facilities for the elderly, such notification shall only be given to the state ombudsman in the Department of Aging as well as the local ombudsman, if such exists. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection.

(b) Except in the case of residential care facilities for the elderly where such notifications shall be given to the state ombudsman in the Department of Aging, as well as the local ombudsman if such exists, the state department shall require that the facility operator, at the expense of the facility, transmit a copy of all substantiated complaints, by certified mail, to those persons described pursuant to subdivision (a) in the following cases:

(1) In the case of any substantiated complaint relating to resident physical or sexual abuse. The facility shall have three days, from the date the facility receives the citation from the state department to comply.

(2) In any case in which a facility has received three or more substantiated complaints relating to the same violation during the term of the current license.

(c) Each residential facility shall retain a copy of the notices transmitted pursuant to subdivision (b) and proof of their transmittal by certified mail for a period of one year after their transmittal.

(d) If any residential facility to which this section applies fails to comply with the provisions of this section, as determined by the state department, the state department shall initiate civil penalty action against the facility in accordance with the provisions of Article 3 (commencing with Section 1530) and the related rules and regulations.

(e) The state department shall provide the names and addresses of the state ombudsman in the Department of Aging and, where applicable, the local ombudsman, to each residential care facility for the elderly. Further, the state department shall notify the residential community care facility of its obligation when it is required to comply with the provisions of this section.

CHAPTER 1455

An act to amend Section 1430 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Administrative Code. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

CHAPTER 1456

An act to amend Section 1280 of, and to add Article 8 (commencing with Section 1325) to Chapter 2 of Division 2 of, the Health and Safety Code, relating to health.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 28, 1982.]

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

SECTION 1. Section 1280 of the Health and Safety Code is amended to read:

1280. The state department may provide consulting services

PLEASE REFER TO
SACRAMENTO ADDRESS
STATE CAPITOL, ROOM 2082
SACRAMENTO
95814
445-6577

LEGISLATIVE ADDRESS
1111 JACKSON STREET
STATE 7016
OAKLAND, CALIFORNIA
94607
464-1333

NICHOLAS C. PETRIS
NINTH SENATORIAL DISTRICT
ALAMEDA COUNTY

COMMITTEES
RULES
FINANCE
JUDICIARY
JOINT LEGISLATIVE BUDGET
JOINT RULES
SELECT COMMITTEE ON HOUSING AND URBAN AFFAIRS
SELECT COMMITTEE ON MARITIME INDUSTRY

CALIFORNIA LEGISLATURE

Senate

February 9, 1982

TO: LEGISLATIVE COUNSEL

FROM: Felice Tanenbaum

SUBJECT: Bill Request

EXISTING LAW PROVIDES:

That patients in Intermediate Care Facilities and Skilled Nursing Facilities are guaranteed certain expressed fundamental human rights and that willful or repeated violations of those rights may subject a facility or its personnel to civil and criminal proceedings (Health and Safety Code Section 1599 - 1599.4.22, California Administrative Code Section 72523). It further provides that patients may submit grievances and complaints free from reprisal (Health and Safety Code Section 1599.2). However, existing law does not provide adequate mechanisms to ensure these fundamental rights are not abused. Currently, violations are "C" citations and, therefore, not subject to fine or to the civil remedies available to private citizens and the Attorney General as set out in Section 1430 of the Health and Safety Code.

In order to create a remedy for abuse of these rights so that in a time of decreasing regulation and cutbacks, private citizens will be able to enforce their own rights,

THIS BILL WOULD:

Amend H&S Code 1430 to create a private right of action, making a licensee of a Skilled Nursing Facility or Intermediate Care Facility liable to a resident for any intentional or negligent act or omission of their agents or employees which abridges, violates or infringes the resident's rights as set forth in the "Patient Bill of Rights" (Health & Safety Code 1599-1599.4.22, Cal Admin. Code Section 72523). The licensee

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shall be liable for up to $2,500 or three times the actual damages, whichever is greater, and costs and attorney's fees to a resident whose rights, as specified in Section 72523, are violated. A resident may maintain an action under this Act for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of administrative remedies shall not be required prior to commencement of suit hereunder. Furthermore any waiver by a resident or her legal representative of the right to maintain such an action shall be null and void.

Requested by: February 17, 1982

A-15

PLEASE REFER TO
SACRAMENTO ADDRESS ☐
STATE CAPITOL, ROOM 5080
SACRAMENTO
95814
(916) 445-8577

LEGISLATIVE ADDRESS: ☐
1111 JACKSON STREET
SUITE 7016
OAKLAND, CALIFORNIA
94607-4978
(415) 464-1333

NICHOLAS C. PETRIS
NINTH SENATORIAL DISTRICT
ALAMEDA AND CONTRA COSTA COUNTIES

COMMITTEES
RULES
FINANCE
JUDICIARY
JOINT LEGISLATIVE BUDGET
JOINT RULES
SELECT COMMITTEE ON HOUSING AND URBAN AFFAIRS
SELECT COMMITTEE ON MARITIME INDUSTRY

CALIFORNIA LEGISLATURE

Senate

July 7, 1982

Mr. Bruce Yarwood, Executive Vice-
President
California Association of Health
Facilities
1401 21st Street, Suite 202
Sacramento, California 95814

Dear Bruce:

Since there has been some confusion regarding the California Association of Health Facilities support of Senate Bill 1930, I thought it would be prudent to put our verbal agreements into writing.

It is my understanding that in the May 12th version of the bill, page 2 lines 26 ff, we have agreed to amend it to read:

> "liable for up to $500.00 or three times the damages, whichever is greater, and for costs and attorney fees, and may be enjoined from permitting the violation to continue."

These amendments would delete the punitive damages language and reduce the fine from $2500 to $500, as per our discussions.

I am assuming CAHP will support SB 1930 once these changes are implemented. If you have any problems please notify me before July 14th as I will be sending the request to Legislative Counsel on that date.

Thank you.

Sincerely,

Felice

FELICE TANENBAUM
Administrative Assistant

FT:ig
Enclosure
cc: Tom Truax, CAHF

August 4, 1982

CONFIDENTIAL

to

NICHOLAS C. PETRIS

RE: 1930

We have worked and worked with the California Association of Health Facilities to get their support. We have it now. IF THEY SAY ANYTHING IN OPPOSITION, WE WILL GO BACK TO THE MAY 12th VERSION WITH "PUNITIVE DAMAGES" ETC.

We have changed the liability several times to meet CAHF objections.

1) Originally had $2500 Fine or treble damages (Pg 2, line 17, March 17 version) - they didn't like that.

2) So, changed it to "punitive damages" - their suggestion - then they decided they didn't like that. (May 12 version)

3) Went back to the Fine, but down to $500 or treble damages - based on a meeting with them. Never in print.

4) Only to find out they didn't want to treble the damages. SO! This is it!

We have: Damages, $500 Fine only, and attorney fees.

NO MORE CHANGES!

State of California—Health and Welfare Agency — Department of Health Services

BILL ANALYSIS	Author: Friedmann	Bill Number: AB 2696
	Amendment Date: Original - January 25, 1990	
THIS SECTION TO BE FILLED OUT BY OLL	Sponsored By: Bay Area Advocates for Nursing Home Reform	
OLL Assignment: ☒ S ☐ Other — cc CSA, DOS, DMH 2/13/90	Hearing Date:	Related Bills: None

SUBJECT: CIVIL ACTIONS AGAINST LONG-TERM CARE HEALTH FACILITIES

BILL SUMMARY - AB 2696 would change Health and Safety (H&S) Code, Section 1430, to allow guardians and conservators of patients in long-term health care facilities to bring civil action on behalf of the patient or resident against the facility licensee. Existing statutory authority contained in H&S Code, Section 1430, states that the patient or resident can bring such litigation. This bill also eliminates the current cap of $500 on recoverable amounts.

LEGISLATIVE BACKGROUND - This bill is sponsored by the Bay Area Advocates for Nursing Home Reform and was introduced to the Assembly on January 25, 1990 by Assembly Member Friedman.

PROGRAM BACKGROUND - Health and Safety Code Section 1430 currently allows a resident or patient in a long-term health care facility to institute litigation against the licensee of such a facility if the residents' or patients' rights have been violated pursuant to the Patients' Bill of Rights in Title 22, Section 72527

SPECIFIC FINDINGS AND ANALYSIS - This bill would authorize a guardian or conservator of a patient in a long-term care facility to bring civil action. The existing law does not provide for conservators or guardians to institute a lawsuit on behalf of a patient or resident. The bill further changes the maximum recoverable amount from $500 to actual proven damages.

REGULATIONS IMPACT - No

STATUTORILY MANDATED REPORTS - NONE

FISCAL IMPACT - NONE

RECOMMENDATIONS - NEUTRAL

2/27/90

OTHER DEPARTMENTS THAT MAY BE AFFECTED			GOVERNOR'S APPT ___
DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION	STATE HRMSHIP ___
___S	___O	___S	___O	
___SA	___OUA (OA)	___SA	___OUA (OA)	GOVERNOR'S OFFICE USE
X N	___NP	1 N	___NP	
___NA	___NAR (N/C)	___NA	___NAR (N/C)	POSITION APPROVED
BY:	DATE: 2/28/90	BY: Original signed by	DATE: MAR 05 1990	POSITION DISAPPROVED
		Robert L. Jackson, R. Ph.		POSITION NOTED
				BY: DATE

ASSEMBLY BILL No. 2696

Introduced by Assembly Member Friedman

January 25, 1990

An act to amend Section 1430 of the Health and Safety Code, relating to long-term care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, as introduced, Friedman. Long-term health care facilities.

Under the Long-Term Care, Health, Safety, and Security Act of 1973, a resident or patient of a skilled nursing facility or intermediate care facility is authorized to bring a civil action against the licensee of the facility who violates any rights of the resident or patient provided in the Patients Bill of Rights, as contained in specified regulations of the State Department of Health Services. A licensee is liable for up to $500 in damages in an action under these provisions.

This bill would authorize a guardian or conservator of a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action under these provisions and would make a conforming change.

This bill would also eliminate the $500 damage limitation for a civil action maintained under these provisions.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. ~~Such~~ *These* actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care ~~facilities~~ *facility*, as defined in subdivision (d) of Section 1250, *or a guardian or conservator of that resident or patient,* may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California ~~Administrative~~ Code *of Regulations*. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for ~~up to five hundred dollars ($500)~~ *damages*, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility, *or a guardian or conservator of that resident or patient,* to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in

addition to any other remedy provided by law.

O

Date of Hearing: May 9, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

AB 2696 (Friedman) - As Amended: May 2, 1990

SUBJECT: This bill increases the civil penalty from $500 to $25,000, which a resident or patient of specified care facility may seek for violation of his or her rights as set forth in the Patients' Bill of Rights.

BACKGROUND

Facts. The sponsor has not supplied data regarding the number and types of violations under current law or the number of patients discouraged from exercising their "right of private action" against the licensee.

DIGEST

Existing law:

1) Permits a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action against the licensee of the facility who violates any rights of the resident or patient provided in the Patients' Bill of Rights. The licensee is liable for up to $500 in damages, for attorneys fees and costs, and may be subject to an injunction.

2) Provides that a licensee who commits certain classes of licensing law violations, except for those violations where the state has taken action and the violations have been satisfactorily corrected, also may be subject to an action for injunction relief and civil damages. Such suit may be brought by the Attorney General or by any person acting for the interests of itself, its members or the general public. The amount of civil damages shall not exceed the maximum amount of civil penalties which could be assessed on account of the violations.

3) Specifies that (1) and (2) above are in addition to any other remedy provided by law.

4) Prohibits waiver of the right to sue under (1) above by the resident or patient.

5) Sets forth various other civil and criminal penalties for violation of rules, regulations, and any laws by these facilities.

This bill revises (1) above to:

1) Clarify that a civil action, for violation of the Patients' Bill of Rights, may also be brought by a guardian or conservator of the resident

- continued -

or patient.

2) Deletes the $500 limitation on damages, and instead provides that the licensee shall be liable for damages of up to $25,000, the amount to be commensurate with the rights violated.

FISCAL EFFECT

This bill may increase the cost of operating these facilities, due to the cost of defending more lawsuits and the payment of larger damages. This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

1) Author's Statement. According to the author, the sponsor is the Bay Area Advocates for Nursing Home Reform (BAANHR). The author states:

> Current law allows patients to bring civil actions against any facility which violates their rights as specified in the Nursing Home Patients' Bill of Rights. There is a $500 cap, however, on the civil penalty which can be awarded in such cases. This $500 penalty is an arbitrary amount which bears no relation to the severity of the rights violation. The presence of the cap trivializes the fundamental prerogatives contained in the Bill of Rights and discourages patients whose rights have been violated from exercising their right of private action.
>
> There have only been two instances of action against a facility for violation of patients' rights since this provision was enacted in 1982. Despite a provision in the law which allows for attorneys fees, attorneys are reluctant to advise frail elderly clients to pursue cases where the maximum award is $500. As a result, substantial rights' violations go unaddressed. One attorney told of refusing a case where in an effort to motivate an elderly man in his bowel training, a particular facility would announce any "accidents" the patient had over the public address system to the entire facility. Clearly the deliberate humiliation of a patient is a rights' violation which warrants more than a $500 "slap on the wrist."
>
> The intent of the bill is to increase the utility of this law and to provide a meaningful incentive for facilities to avoid patients rights' violations.

2) Opponents.

a) The California Association of Homes for the Aging raises the concern that this bill permits liability up to $25,000 for "unintentional" violation of the Patients' Bill of Rights.

- continued -

b) The California Association of Health Facilities believes the bill will not improve the quality of patient care, but would instead subject facilities to questionable litigation, serving to deflect resources away from patient services. It opposes this bill because:

i) The amount of civil penalties which may be recovered by a patient could greatly exceed the maximum amount of civil penalties which could be assessed by the Department of Health Services (DHS) for the same patients' rights violation.

ii) A facility would be liable for an extraordinary penalty and attorney's fees without any required proof of negligence, particularly the element of causation. In such an imprecise and subjective area as patients' rights, causation is a stabilizing factor.

iii) Traditional tort remedies are available and successfully used against facilities in cases where patients have suffered loss or injury.

iv) There are over 20 specific types of patients' rights. The rights are stated in very general terms and are open to varying and subjective interpretations. This will lead to inconsistent resolution in the courts and subject facilities to unpredictable penalties.

v) The existing citation system establishes a total program for the imposition of fines and penalties against long term care facilities. When assessing penalties, DHS must consider a number of issues, including the probability and severity of the risk which the violation presents to the patient's mental and physical condition, the patient's medical condition, the patient's mental condition and his or her history of mental disability or disorder, the good faith efforts exercised by the facility to prevent the violation from occurring, and the facility's history of compliance with regulations. None of these provisions are included in the bill.

3) Other Issues.

a) A violation of the Patients' Bill of Rights by a facility or its employees risks liability of up to $25,000. Intentional or negligent conduct may give rise to the violation. Damages may be minimal, but the award may be up to $25,000 in an amount which is to be commensurate with the rights violated.

For example, an employee rushes in to assist a patient who has urgently requested assistance but fails to close the privacy curtain fully. This is an unintentional violation of the Bill of Rights, yet the licensee can be found liable up to $25,000 for such conduct.

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Should not liability under this provision be limited to intentional conduct or conduct which is in reckless disregard of the patient?

b) There are no standards provided in this bill to assist the court in determining what amount is "commensurate with the rights violated?" Should not the amount be based upon the determination of the dollar value of the damages suffered by patient and the degree of fault of the licensee?

c) According to one opponent, the Patients' Bill of Rights was designed to set ideal standards for performance but were not intended to expose individuals to unlimited claims for damages. Therefore, many of its provisions are vague as to the specific conduct of the employees and licensee which may lead to liability. Is it appropriate to impose a penalty for violation of vague rights?

d) It is unclear as to whether any award under this provision cannot exceed the maximum amount of civil penalties which could be assessed by DHS on account of the violation or violations. Subdivision (a) of Health and Safety Code Section 1430 suggests that this limitation may exist as to conduct which is also a violation of the licensing law. Is this limitation consistent with the purposes of the bill?

e) A licensee could be subject to cumulative liability for the same conduct of an employee: for civil penalties sought by the DHS; criminal penalties; civil damages sought by the Attorney General or any other person; civil penalty up to $25,000 sought by a patient or resident; and also tort or other damages sought by a patient or resident. Should not a patient or resident be able to collect damages only once for the same violative act of the licensee or its employee?

4) Patients' Bill of Rights. Contained in 22 California Administrative Code Section 72527 is the Patients' Bill of Rights. Each facility is to have written policies regarding these rights, which are to be made available to the patient, guardian, and anyone requesting them. A patient's rights may be denied or limited only for good cause which shall be evidenced by the written order of the attending physician and if such denial or limitation is otherwise authorized by law. Some of the rights are as follows:

a) To be fully informed at all times of services available in the facility and of related charges.

b) To refuse treatment to the extent permitted by law and to be informed of the medical consequence of such refusal.

c) To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients or for nonpayment of his/her stay and to be given reasonable advance notice to ensure orderly transfer or discharge.

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d) To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination or reprisal.

e) To be free from mental and physical abuse and to be free from chemical and physical restraints except as authorized in writing by a physician or other authorized person, or when necessary.

f) To be assured confidential treatment of records and to approve or refuse their release to any individual outside the facility.

g) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs.

h) To associate and communicate privately with persons of the patient's choice, and to send and receive personal mail unopened.

i) To meet with others and participate in activities of social, religious and community groups, unless medically contraindicated.

j) To retain and use personal clothing and possessions as space permits.

k) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.

l) To have visits from members of the clergy at any time at the request of the patient or the patient's guardian.

m) To allow relatives, or persons responsible, to visit critically ill patients at any time, unless medically contraindicated.

n) To have reasonable access to telephones and to make and receive confidential calls.

SUPPORT	OPPOSITION
Area XI Developmental Disabilities Board	California Association of Homes For the Aging California Association of Health Facilities

D. DeBow
445-4560
ajud

VOTE ONLY

Date of Hearing: June 27, 1990

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

AB 2696 (Friedman) - As Amended: June 13, 1990
(Analysis reflects amendments to be offered in Committee by the author.)

SUBJECT: This bill increases the civil penalty from $500 to $10,000, which a resident or patient of specified care facility may seek for violation of his or her rights as set forth in the Patients' Bill of Rights and prohibits a party from seeking the civil penalty until attempting to resolve the dispute directly with the facility.

BACKGROUND

Facts. The sponsor has not supplied data regarding the number and types of violations under current law or the number of patients discouraged from exercising their "right of private action" against the licensee.

DIGEST

Existing law:

1) Permits a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action against the licensee of the facility who violates any rights of the resident or patient provided in the Patients' Bill of Rights. The licensee is liable for up to $500 in damages, for attorneys fees and costs, and may be subject to an injunction.

2) Provides that a licensee who commits certain classes of licensing law violations, except for those violations where the state has taken action and the violations have been satisfactorily corrected, also may be subject to an action for injunction relief and civil damages. Such suit may be brought by the Attorney General or by any person acting for the interests of itself, its members or the general public. The amount of civil damages shall not exceed the maximum amount of civil penalties which could be assessed on account of the violations.

3) Specifies that (1) and (2) above are in addition to any other remedy provided by law.

4) Prohibits waiver of the right to sue under (1) above by the resident or patient.

- continued -

5) Sets forth various other civil and criminal penalties for violation of rules, regulations, and any laws by these facilities.

This bill revises (1) above to:

1) Prohibit an action for civil penalty:

   a) Until the patient or patient's representative has complained to the facility administrator, in writing, of the rights violation within 60 days of discovery of the violation; and,

   b) Until the facility administrator, within 30 days of receipt, has investigated the complaint, notified the licensee of the complaint, and presented the patient or the patient's representative with a written response, which may include a plan of corrective action, compensation for the violation, or other action; and,

   c) Unless the facility fails to respond in writing within 30 days or the patient or the patient's representative believes that such written response fails to adequately remedy the rights violation.

2) Clarify that the civil action, for violation of the Patients' Bill of Rights, may also be brought by a guardian or conservator of the resident or patient, and to provide a one year statute of limitations from the date of the alleged violation.

3) Delete the $500 limitation on damages, and instead to provide that the licensee shall be liable for a civil penalty of up to $10,000, payable to the patient, the amount to be commensurate with the rights violated.

4) Set forth some of the considerations the court is to use in assessing whether to impose a civil penalty or the amount of the civil penalty:

   a) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

   b) The patient's medical condition, the patient's mental condition, and his or her history of mental disability.

   c) Good faith efforts exercised by the facility to prevent the violation from occurring.

   d) The licensee's history of compliance the the patients' rights;

   e) Whether the plaintiff or the defendant made a good faith effort to resolve the dispute before resorting to litigation.

5) Provides that the written complaints and responses pursuant to (1) above (the informal resolution process) are discoverable.

- continued -

6) Prohibits the court from considering the facility administrator's written response to the alleged violation as an admission of guilt.

FISCAL EFFECT

This bill may increase the cost of operating these facilities, due to the cost of defending more lawsuits and the payment of larger damages. This bill will not be referred to the Assembly Committee on Ways and Means.

COMMENTS

1) Author's Statement. According to the author, the sponsor is the Bay Area Advocates for Nursing Home Reform (BAANHR). The author states:

> Current law allows patients to bring civil actions against any facility which violates their rights as specified in the Nursing Home Patients' Bill of Rights. There is a $500 cap, however, on the civil penalty which can be awarded in such cases. This $500 penalty is an arbitrary amount which bears no relation to the severity of the rights violation. The presence of the cap trivializes the fundamental prerogatives contained in the Bill of Rights and discourages patients whose rights have been violated from exercising their right of private action.
>
> There have only been two instances of action against a facility for violation of patients' rights since this provision was enacted in 1982. Despite a provision in the law which allows for attorneys fees, attorneys are reluctant to advise frail elderly clients to pursue cases where the maximum award is $500. As a result, substantial rights' violations go unaddressed. One attorney told of refusing a case where in an effort to motivate an elderly man in his bowel training, a particular facility would announce any "accidents" the patient had over the public address system to the entire facility. Clearly the deliberate humiliation of a patient is a rights' violation which warrants more than a $500 "slap on the wrist."
>
> The intent of the bill is to increase the utility of this law and to provide a meaningful incentive for facilities to avoid patients rights' violations.

2) Proponents. According to proponents, the current penalty amount is so minor that potential plaintiffs are deterred from filing actions, and it is not in keeping with the severity of many patients' rights violations. Further, they state that this bill will provide patients with significantly enhanced abilities to redress their grievances.

- continued -

3) Comments.

a) The California Association of Homes for the Aging raises the concern that this bill permits liability up to $10,000 for "unintentional" violation of the Patients' Bill of Rights.

b) The California Association of Health Facilities asserts that the bill will not improve the quality of patient care, but will instead encourage questionable lawsuits, deflect vital resources away from patient care, and discourage high quality health care professionals from entering the field of long term care. It further opposes this bill because:

i) The amount of civil penalties which may be recovered by a patient could exceed the maximum amount of civil penalties which could be assessed by the Department of Health Services (DHS) for the same patients' rights violation.

ii) There are no standards regarding the specific conduct of employees which may lead to a violation and liability.

iii) Traditional tort remedies are available in cases where patients have suffered loss or injury.

iv) There are over 20 specific types of patients' rights, which were designed to set ideal standards for performance. The rights are stated in very general terms and are open to varying and subjective interpretations. This will lead to inconsistent resolution in the courts and subject facilities to unpredictable penalties.

v) Facilities would be subject to multiple penalties for a single alleged patients' rights violation, including a citation and civil penalty issued by the Department of Health Services, an additional civil penalty of up to $10,000, and being sued for damages by the patient or representative. Facilities would have to bear the substantial legal costs.

4) Other Issues. This bill mandates an informal resolution process which a patient is to pursue prior to filing suit. The following issues remain:

a) A violation of the Patients' Bill of Rights by a facility or its employees risks liability of up to $10,000. Intentional or negligent conduct may give rise to the violation. Damages may be minimal, but the award may be up to $10,000 in an amount which is to be "commensurate with the rights violated."

For example, an employee rushes in to assist a patient who has urgently requested assistance but fails to close the privacy curtain fully. This is an unintentional violation of the Bill of Rights,

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yet the licensee can be found liable up to $10,000 for such conduct. Should not liability under this provision be limited to intentional conduct or conduct which is in reckless disregard of the patient?

b) There are no standards provided in this bill to assist the court in determining what amount is "commensurate with the rights violated?" Should not the amount be based upon the determination of the dollar value of the damages suffered by patient and the degree of fault of the licensee?

c) According to one opponent, the Patients' Bill of Rights was designed to set ideal standards for performance but were not intended to expose individuals to unlimited claims for damages. Therefore, many of its provisions are vague as to the specific conduct of the employees and licensee which may lead to liability. Is it appropriate to impose a penalty for any conceivable violation of vaguely defined rights? Should not this bill be narrowly focused to more serious specific violation of rights? Should not the rights identified as minor, have a lower cap on the penalties?

d) A licensee could be subject to cumulative liability for the same conduct of an employee: for civil penalties sought by the DHS; criminal penalties; civil damages sought by the Attorney General or any other person; and civil penalty up to $10,000 sought by a patient or resident or other civil (tort) damages sought by a patient or resident. Should not a patient or resident be able to collect damages only once for the same violative act of the licensee or its employee?

The author's amendments offer some relief on the cumulative liability issue, in that they do provide for an offset of the civil penalty against a civil damage award. Further, proponents assert that state-imposed civil penalties are infrequently paid by facilities, once the facilities have taken corrective action to remedy the problem for which the penalty was assessed.

5) Author's Amendments. Committee staff has been advised that the author will make the following amendments to the bill:

a) On page 4, line 3, after "(f)" insert:

Under subdivision (b)

b) On page 4, lines 9 and 10, delete "(3) The patient's medical condition" or delete "medical" in both places and insert:

"mental".

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c) On page 4, line 14, delete "rights" and insert:

Bill of Rights regulation

d) On page 4, line 7, after "(1)" delete existing language and insert:

the probability and severity of the risk which the violation presents to the patient's mental and physical condition.

e) On page 2, line 16, delete "section" and insert "subdivision".

f) On page 4, line 19, add:

Any civil penalty awarded under subdivision (b) shall be an offset against any damages awarded in a civil action for the same conduct.

6) Patients' Bill of Rights. Contained in 22 California Administrative Code Section 72527 is the Patients' Bill of Rights. Each facility is to have written policies regarding these rights, which are to be made available to the patient, guardian, and anyone requesting them. A patient's rights may be denied or limited only for good cause which shall be evidenced by the written order of the attending physician and if such denial or limitation is otherwise authorized by law. Some of the rights are as follows:

a) To be fully informed at all times of services available in the facility and of related charges.

b) To refuse treatment to the extent permitted by law and to be informed of the medical consequence of such refusal.

c) To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients or for nonpayment of his/her stay and to be given reasonable advance notice to ensure orderly transfer or discharge.

d) To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination or reprisal.

e) To be free from mental and physical abuse and to be free from chemical and physical restraints except as authorized in writing by a physician or other authorized person, or when necessary.

f) To be assured confidential treatment of records and to approve or refuse their release to any individual outside the facility.

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g) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs.

h) To associate and communicate privately with persons of the patient's choice, and to send and receive personal mail unopened.

i) To meet with others and participate in activities of social, religious and community groups, unless medically contraindicated.

j) To retain and use personal clothing and possessions as space permits.

k) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.

l) To have visits from members of the clergy at any time at the request of the patient or the patient's guardian.

m) To allow relatives, or persons responsible, to visit critically ill patients at any time, unless medically contraindicated.

n) To have reasonable access to telephones and to make and receive confidential calls.

SUPPORT

Area XI Developmental Disabilities Board
California Seniors Coalition
Estate Planning, Trust and Probate Law Section, State Bar
California Council on Mental Health
California Advocates for Nursing Home Reform

OPPOSITION

California Association of Homes For the Aging
California Association of Health Facilities

ASSEMBLY THIRD READING

AB 2696 (Friedman) - As Amended: July 5, 1990

ASSEMBLY ACTIONS:

COMMITTEE	JUD.	VOTE 6-3	COMMITTEE	VOTE
Ayes:	Connelly, Friedman, Harris, Johnston, M. Waters, Isenberg		Ayes:	
Nays:	Leslie, McClintock, Mojonnier		Nays:	

DIGEST

Existing law:

1) Permits a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action against the licensee of the facility who violates any rights provided in the Patients' Bill of Rights. The licensee is liable for up to $500 in damages, for attorneys fees and costs, and may be subject to an injunction.

2) Provides that a licensee who commits certain classes of licensing law violations, except for those violations where the state has taken action and the violations have been satisfactorily corrected, also may be subject to an action for injunction relief and civil damages. Such suit may be brought by the Attorney General or by any person. The amount of civil damages shall not exceed the maximum amount of civil penalties that could be assessed on account of the violations.

3) Specifies that #1 and #2, above, are in addition to any other remedy provided by law.

4) Establishes other civil and criminal penalties for violation of rules, regulations, and other laws by these facilities.

This bill revises #1, above, to:

1) Prohibit an action for civil penalty:

   a) Until the patient or patient's representative has complained to the facility administrator, in writing, of the rights violation within 60 days of discovery of the violation.

   b) Until the facility administrator, within 30 days of receipt, has investigated the complaint, notified the licensee of the complaint, and presented the patient or the patient's representative with a written response, which may include a plan of corrective action,

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compensation for the violation, or other action.

c) Unless the facility fails to respond in writing within 30 days or the patient or the patient's representative believes that such written response fails to adequately remedy the rights violation.

2) Provide a one-year statute of limitations from the date of the alleged violation.

3) Provide that the licensee may also be liable for a civil penalty of up to $10,000, payable to the resident or patient, where the rights of the resident or patient caused significant humiliation, indignity, anxiety or other emotional trauma.

4) Set forth some of the considerations the court is to use in assessing whether to impose a civil penalty or the amount of the civil penalty, i.e., (a) the probability and severity of the risk which the violation presents to the patient's mental and physical condition; (b) the patient's medical condition, the patient's mental condition, and his or her history of mental disability; (c) good faith efforts exercised by the facility to prevent the violation from occurring; (d) the licensee's history of compliance the patients' rights, and (e) whether the plaintiff or the defendant made a good faith effort to resolve the dispute before resorting to litigation.

5) Provide that the written complaints and responses pursuant to #1, above, (the informal resolution process) are discoverable; and to prohibit the court from considering the facility administrator's written response to the alleged violation as an admission of guilt.

FISCAL EFFECT

Possible increased cost of operating these facilities, due to the cost of defending more lawsuits and the payment of larger damages.

COMMENTS

1) The author states:

> Current law allows patients to bring civil actions against any facility which violates their rights as specified in the Nursing Home Patients' Bill of Rights. There is a $500 cap, however, on the civil penalty which can be awarded in such cases. This $500 penalty is an arbitrary amount which bears no relation to the severity of the rights violation. The presence of the cap trivializes the fundamental prerogatives contained in the Bill of Rights and discourages patients whose rights have been violated from exercising their right of private action.
>
> There have only been two instances of action against a facility for violation of patients' rights since this provision was

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enacted in 1982. Despite a provision in the law which allows for attorneys fees, attorneys are reluctant to advise frail elderly clients to pursue cases where the maximum award is $500. As a result, substantial rights violations go unaddressed. One attorney told of refusing a case where in an effort to motivate an elderly man in his bowel training, a particular facility would announce any "accidents" the patient had over the public address system to the entire facility. Clearly the deliberate humiliation of a patient is a rights' violation which warrants more than a $500 "slap on the wrist."

The intent of the bill is to increase the utility of this law and to provide a meaningful incentive for facilities to avoid patients rights' violations.

2) This bill is sponsored by the Bay Area Advocates for Nursing Home Reform. According to proponents, the current penalty amount is so minor that potential plaintiffs are deterred from filing actions, and it is not in keeping with the severity of many patients' rights violations. They state that this bill will provide patients with significantly enhanced abilities to redress their grievances.

3) The California Association of Health Facilities asserts that the bill will not improve the quality of patient care, but will, instead, deflect vital resources away from patient care and discourage high quality health care professionals from entering the field of long-term care. It further opposes this bill because:

   a) The amount of civil penalties which may be recovered by a patient could exceed the maximum amount of civil penalties which could be assessed by the Department of Health Services for the same patients' rights violation.

   b) There are no standards regarding the specific conduct of employees which may lead to a violation and liability.

   c) There are over 20 specific types of patients' rights, which were designed to set ideal standards for performance. The rights are stated in very general terms and are open to varying and subjective interpretations.

   d) Facilities may be subject to multiple penalties for a single alleged patients' rights violation.

D. DeBow
445-4560
7/7/90:ajud

AMENDED IN ASSEMBLY MAY 2, 1990

CALIFORNIA LEGISLATURE—1989–90 REGULAR SESSION

ASSEMBLY BILL No. 2696

Introduced by Assembly Member Friedman

January 25, 1990

An act to amend Section 1430 of the Health and Safety Code, relating to long-term care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, as amended, Friedman. Long-term health care facilities.

Under the Long-Term Care, Health, Safety, and Security Act of 1973, a resident or patient of a skilled nursing facility or intermediate care facility is authorized to bring a civil action against the licensee of the facility who violates any rights of the resident or patient provided in the Patients Bill of Rights, as contained in specified regulations of the State Department of Health Services. A licensee is liable for up to $500 in damages in an action under these provisions.

This bill would authorize a guardian or conservator of a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action under these provisions and would make a conforming change.

This bill would ~~also eliminate the $500 damage limitation for~~, *instead, make a licensee liable for up to $25,000 in damages, the amount to be commensurate with the rights violated, in* a civil action maintained under these provisions.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. These actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facility, as defined in subdivision (d) of Section 1250, or a guardian or conservator of that resident or patient, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for damages *of up to twenty-five thousand dollars ($25,000), the amount to be commensurate with the rights violated*, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility, or a guardian or conservator of that resident or patient, to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in

addition to any other remedy provided by law.

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AMENDED IN ASSEMBLY JUNE 13, 1990

AMENDED IN ASSEMBLY MAY 2, 1990

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL No. 2696

Introduced by Assembly Member Friedman

January 25, 1990

An act to amend Section 1430 of the Health and Safety Code, relating to long-term care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, as amended, Friedman. Long-term health care facilities.

Under the Long-Term Care, Health, Safety, and Security Act of 1973, a resident or patient of a skilled nursing facility or intermediate care facility is authorized to bring a civil action against the licensee of the facility who violates any rights of the resident or patient provided in the Patients Bill of Rights, as contained in specified regulations of the State Department of Health Services. A licensee is liable for up to $500 in damages in an action under these provisions.

This bill would authorize a guardian or conservator of a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action under these provisions and would make a conforming change.

This bill would, instead, make a licensee liable for *a civil penalty of* up to ~~$25,000 in damages~~ *$10,000, payable to the patient*, the amount to be commensurate with the rights violated, in a civil action maintained under these provisions.

The bill would prohibit a party from invoking the above-described remedy unless the patient or patient's representative has complained in writing to the administrator of the facility within 60 days of discovery of the violation and

unless the administrator of the facility, within 30 days of receipt of the complaint, has investigated the complaint, notified the licensee of the facility of the complaint, and presented the patient with a written response to the complaint, except that if the administrator of the facility has failed to respond in writing within 30 days, or if the patient or patient's representative believes the written response fails to adequately remedy the rights violation, a party is entitled to the above-described remedy.

The bill would impose certain requirements on the court with regard to the above-described action.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. These actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facility, as defined in subdivision (d) of Section 1250, or a guardian or conservator of that resident or patient, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient

as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for ~~damages of up to twenty/five thousand dollars ($25,000), the amount to~~ *a civil penalty of up to ten thousand dollars ($10,000), payable to the patient,* the *amount to* be commensurate with the rights violated, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility, or a guardian or conservator of that resident or patient, to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) *A party shall not invoke the remedy contained in subdivision (b) unless all of the following steps have been taken:*

(1) The patient or patient's representative has complained to the administrator of the facility, in writing, of the rights violation within 60 days of discovery of the violation by the patient or patient's representative.

(2) Within 30 days of receipt of the complaint, the administrator of the facility has investigated the complaint, notified the licensee of the complaint, and presented the patient or the patient's representative with a written response, which may include a plan of corrective action, compensation for the violation, or other action. If the administrator of the facility has failed to respond in writing to the complaint within 30 days of receipt of the complaint, or if the patient or the patient's representative believes that the written response fails to adequately remedy the rights violation, then the party shall be entitled to the remedies provided by subdivision (b).

(d) All written complaints and responses pursuant to paragraphs (1) and (2) of subdivision (c) shall be discoverable.

(e) The court shall not consider the written response of the administrator of the facility to the alleged violation

pursuant to paragraph (2) of sudivision (c) as an admission of guilt.

(f) In assessing whether there shall be a civil penalty, or the amount of the civil penalty, for the patients' rights violation, the court shall consider all relevant factors, including, but not limited to, all of the following:

(1) The nature and severity of the rights violation.

(2) The patient's medical condition.

(3) The patient's medical condition and his or her history of medical disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with the patients' rights.

(6) Whether the plaintiff or the defendant made a good faith effort to resolve the dispute before resorting to litigation.

(g) The remedies specified in this section shall be in addition to any other remedy provided by law.

(h) Any action brought pursuant to subdivision (b) shall be commenced within one year of the date of the alleged patients' rights violation.

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AMENDED IN ASSEMBLY JULY 5, 1990

AMENDED IN ASSEMBLY JUNE 13, 1990

AMENDED IN ASSEMBLY MAY 2, 1990

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL No. 2696

Introduced by Assembly Member Friedman

January 25, 1990

An act to amend Section 1430 of the Health and Safety Code, relating to long-term care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, as amended, Friedman. Long-term health care facilities.

Under the Long-Term Care, Health, Safety, and Security Act of 1973, a resident or patient of a skilled nursing facility or intermediate care facility is authorized to bring a civil action against the licensee of the facility who violates any rights of the resident or patient provided in the Patients Bill of Rights, as contained in specified regulations of the State Department of Health Services. A licensee is liable for up to $500 in damages in an action under these provisions.

This bill would authorize a guardian or conservator of a resident or patient of a skilled nursing facility or intermediate care facility to bring a civil action under these provisions and would make a conforming change.

This bill would, instead, make a licensee liable for a civil penalty of up to $10,000, payable to the *resident or* patient, the amount to be commensurate with the rights violated, in a civil action maintained under these provisions.

The bill would prohibit a party from invoking the above-described remedy unless the ~~patient or patient's~~

~~representative~~ *resident or patient or the representative of the resident or patient* has complained in writing to the administrator of the facility within 60 days of discovery of the violation and unless the administrator of the facility, within 30 days of receipt of the complaint, has investigated the complaint, notified the licensee of the facility of the complaint, and presented the *resident or* patient *or the representative of the resident or patient* with a written response to the complaint, except that if the administrator of the facility has failed to respond in writing within 30 days, or if the *resident or* patient ~~or patient's representative~~ *or the representative of the resident or patient* believes the written response fails to adequately remedy the rights violation, a party is entitled to the above-described remedy.

The bill would impose certain requirements on the court with regard to the above-described action.

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

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

SECTION 1. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. These actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members, or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this ~~section~~ *subdivision* shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as

defined in subdivision (c) of Section 1250, or intermediate care facility, as defined in subdivision (d) of Section 1250, or a guardian or conservator of that resident or patient, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the ~~Patients~~ *Patients'* Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for a civil penalty of up to *five hundred dollars ($500), except in those cases where the rights of the resident or patient violated caused significant humiliation, indignity, anxiety, or other emotional trauma to the resident or patient, in which case the licensee shall be liable for a civil penalty of up to* ten thousand dollars ($10,000), payable to ~~the~~ *resident or* patient, the amount to be commensurate with the rights violated, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility, or a guardian or conservator of that resident or patient, to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) A party shall not invoke the remedy contained in subdivision (b) unless all of the following steps have been taken:

(1) The ~~patient or patient's representative~~ *resident or patient or the representative of the resident or patient* has complained to the administrator of the facility, in writing, of the rights violation within 60 days of discovery of the violation by the ~~patient or patient's representative~~ *resident or patient or the representative of the resident or patient.*

(2) Within 30 days of receipt of the complaint, the administrator of the facility has investigated the complaint, notified the licensee of the complaint, and presented the ~~patient or the patient's representative~~ *resident or patient or the representative of the resident*

or patient with a written response, which may include a plan of corrective action, compensation for the violation, or other action. If the administrator of the facility has failed to respond in writing to the complaint within 30 days of receipt of the complaint, or if the ~~patient or the patient's representative~~ *resident or patient or the representative of the resident or patient* believes that the written response fails to adequately remedy the rights violation, then the party shall be entitled to the remedies provided by subdivision (b).

(d) All written complaints and responses pursuant to paragraphs (1) and (2) of subdivision (c) shall be discoverable.

(e) The court shall not consider the written response of the administrator of the facility to the alleged violation pursuant to paragraph (2) of ~~subdivision~~ *subdivision* (c) as an admission of guilt.

(f) ~~In~~ *Under subdivision (b), in* assessing whether there shall be a civil penalty, or the amount of the civil penalty, for the ~~patients'~~ *resident's or patient's* rights violation, the court shall consider all relevant factors, including, but not limited to, all of the following:

~~(1) The nature and severity of the rights violation.~~

(1) The probability and severity of the risk which the violation presents to the resident's or patient's mental and physical condition.

(2) The *resident's or* patient's medical condition.

(3) The ~~patient's medical~~ *resident's or patient's mental* condition and his or her history of ~~medical~~ *mental* disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with the ~~patients' rights.~~ *Patients' Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations.*

(6) Whether the plaintiff or the defendant made a good faith effort to resolve the dispute before resorting to litigation.

(g) The remedies specified in this section shall be in addition to any other remedy provided by law. *Any civil*

penalty awarded under subdivision (b) may be an offset against any damages awarded in a civil action for the same conduct.

(h) Any action brought pursuant to subdivision (b) shall be commenced within one year of the date of the alleged ~~patients'~~ *resident's or patient's* rights violation.

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ASSEMBLY BILL No. 1160

Introduced by Assembly Member Shelley

February 25, 1999

An act to add Section 27491.42 to the Government Code, to amend Sections 1276.5, 1333, 1336.2, 1420, 1424, 1428, 1430, 1599.1, and 7183 of, to add Sections 1254.7 and 1325.1 to, and to repeal and add Section 1417.1 of, the Health and Safety Code, and to amend Section 14124.7 of the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as introduced, Shelley. Long-term health care facilities.

(1) Existing law requires the coroner to inquire into and determine the circumstance, manner, and cause of any death that occurs under certain conditions.

This bill would require the coroner to determine whether an investigation is warranted, upon receiving a copy of the death certificate of a resident of a nursing facility as required under the bill. The bill would authorize the coroner to request copies of certain medical records of the deceased resident. The bill would require the coroner to transmit copies of the deceased resident's death certificate and medical records of the deceased resident to the Director of Health Services within 2 weeks of the resident's death if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.

Because the bill would impose new duties upon the county coroner, it would impose a state-mandated local program.

(2) Existing law provides for the licensure and regulation of health facilities, including nursing facilities, administered by the State Department of Health Services. Violations of the provisions regulating health facilities are subject to criminal sanction.

This bill would require a nursing facility, upon the death of a resident of the facility, to submit to the coroner a copy of the deceased resident's death certificate within 24 hours of the death and to submit specified medical records of the deceased resident within 8 hours of the request of the coroner.

(3) Existing law requires the department to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

This bill would require the regulations to set forth minimum actual nursing hours per patient required in skilled nursing and intermediate care facilities. The bill would require that the minimum number of actual nursing hours per patient required in skilled nursing facilities start at 3.2 hours, effective January 1, 2000, and increase as provided in the bill to 3.4 hours, effective January 1, 2003.

(4) Existing law authorizes the director to file a petition in the superior court for appointment of a receiver for any long-term health care facility whenever certain conditions exist, including, whenever circumstances exist indicating that continued management of the facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to patients, as specified.

This bill would authorize the department to appoint a temporary manager when (a) continued management of the long-term care facility by the current licensee threatens the health, safety, or security of the residents, (b) the facility has been involuntarily terminated from the Medicare or Medi-Cal program, (c) the facility has been out of compliance with applicable state or federal laws for 3 or more months, or (d) the facility is closing or intends to terminate operations and adequate arrangement for relocation of residents has not been made at least 30 days prior to the closing or termination. The

bill would require the temporary management to end when the facility has been sold to a new licensee. The bill would require the department to adopt, by December 31, 2000, regulations for the administration of this provision.

(5) Existing law provides for the reimbursement of the state for the salary of a receiver from the revenue of the facility and provides that if the revenues are inadequate the reimbursement amount shall constitute a lien upon the assets of the facility.

This bill would apply these provisions, in addition, to the salary of a temporary manager. The bill would provide, instead, that if the revenues of the facility are inadequate, the reimbursement amount shall constitute a lien upon the assets of the licensee or any person or entity with 10% or greater equity interest in the licensee.

(6) Existing law requires a long-term care facility to submit a proposed relocation plan for affected patients to the department for comment if 10 or more patients are likely to be transferred due to any voluntary change in the status of the license or operation of a facility.

This bill would extend this provision to apply if 10 or more patients are likely to be transferred due to any involuntary change in the status of the license or operation of the facility.

(7) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, declares the intent of the Legislature to establish a citation system for the imposition of civil sanctions against long-term health care facilities in violation of state laws and regulations relating to patient care, an inspection and reporting system, and a provisional licensing mechanism.

This bill would declare the intent of the Legislature to establish, instead, an effective enforcement system and a provisional licensing mechanism.

The bill would establish the standards and penalties imposed by the federal law under Title IV of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) for nursing facilities as state law and require that they be applied to all long-term health care facilities. The bill would specify available remedies against a long-term health care facility. The bill would require the department to adopt regulations for the administration of this provision.

(8) Existing law requires the department to assign an inspector to make a preliminary review of any complaint received against a long-term health care facility and notify the complainant of the name of the assigned inspector. Existing law requires the department to make an onsite inspection or investigation within 10 days of the receipt of the complaint unless the department determines the complaint is willfully intended to harass a licensee or is without any reasonable basis.

This bill would define complaint for purposes of this provision, require the department to notify the complainant of the assigned inspector's name within 5 working days of the receipt of the complaint, and require the onsite inspection unless the department determines the complaint is without any reasonable basis. The bill would require the department to make an onsite inspection or investigation within 24 hours of the receipt of a complaint in any case in which there is a serious threat of imminent danger of death or serious bodily harm. The bill would require the department to provide certain notice to the complainant prior to the commencement of the onsite inspection and within 10 working days of completion of the complaint investigation.

(9) Existing law requires a copy of any citation issued against a long-term health care facility as a result of certain complaint procedures to be sent to each complainant.

This bill would require that the copy of the citation be sent to each complainant by certified or registered mail.

(10) Existing law classifies a citation issued against long-term care facilities according to the nature of the violation, in order of decreasing seriousness, as Class "AA," Class "A," and Class "B" violations, and provides for various civil penalties.

This bill would increase the civil penalties with regard to these violations.

(11) Existing law specifies procedures for a licensee of a long-term health care facility who desires to contest a citation or the proposed assessment of a civil penalty.

This bill would include within this process a requirement that the licensee first post security as provided in the bill.

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(12) Existing law requires that costs or penalties assessed pursuant to the provisions regulating long-term health care facilities be paid within 30 days of the date the decision regarding the penalties becomes final and requires the department to withhold any payment under the Medi-Cal program until such a debt is satisfied, unless the department determines that it would cause hardship to the facility or to patients or residents of the facility.

This bill would delete the requirement that any costs and penalties assessed be paid within 30 days of the date the decision becomes final. The bill would require the department to withhold any payment under the Medi-Cal program, without the specified exception.

(13) Existing law provides that, except where the department has taken action and the violations have been corrected to its satisfaction, any licensee of a long-term health care facility who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages. Existing law limits the amount of civil damages that may be recovered in an action brought under this provision to the maximum amount of civil penalties which could be assessed on account of the violation or violations.

This bill would extend the authority to enjoin the violations of a long-term health care facility under this provision to apply to class "AA" violations, authorize suit for reasonable costs and attorney fees, and delete the limitation on the amount of civil damages that may be recovered.

(14) Existing law authorizes a resident or patient of a skilled nursing or intermediate care facility to bring civil action against a licensee of the facility who violates any rights set forth in the Patients Bill of Rights under state regulations. The licensee is liable for up to $500.

This bill would authorize, instead, this civil action for violations of any rights of the resident or patient as set forth in the Patients Bill of Rights under state and federal law and would increase the maximum liability to $25,000.

(15) Existing law requires skilled nursing and intermediate care facilities to establish and make available, as prescribed, written policies regarding the rights of patients. Existing law requires that the procedures ensure that each patient

admitted to the facility has certain rights and is notified of certain facility obligations, in addition to those specified by regulation.

This bill would add to the list of rights of a patient and obligations of a facility that a resident of a nursing facility may appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts a right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The bill would require that the appeal be adjudicated by a state hearing officer designated to adjudicate appeals of transfers and discharges of nursing facility residents. The bill would require the facility to readmit the resident who has filed an appeal pending the final determination of the hearing officer.

(16) Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from transferring or seeking to evict out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

This bill would specify that transferring a resident within the facility, or seeking to evict a resident out of the facility is prohibited under this provision. The bill would provide that this provision applies to residents who have made a timely application to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

(17) This bill would require the department to submit a specified report to the Legislature on or before July 1, 2000, concerning the methodology for reimbursement of skilled nursing facilities under the Medi-Cal program.

(18) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

SEC. 12. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) ~~Except where the state department has taken action and the violations have been corrected to its satisfaction, any~~ *Any* licensee who commits a class ~~"A"~~ *"AA," "A,"* or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages *and for reasonable costs and attorney fees* within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. ~~The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.~~

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights ~~in Section 72527 of Title 22 of the California Administrative Code~~ *under state and federal law*. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to ~~five hundred dollars ($500)~~ *twenty-five thousand dollars ($25,000) in damages*, and for *reasonable* costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to

waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy *or remedies* provided by law.

SEC. 13. Section 1599.1 of the Health and Safety Code is amended to read:

1599.1. Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.

(b) Each patient shall show evidence of good personal hygiene, be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.

(c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

(d) The facility shall provide an activity program staffed and equipped to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities. Patients shall be encouraged to participate in activities suited to their individual needs.

(e) The facility shall be clean, sanitary, and in good repair at all times.

(f) A nurses' call system shall be maintained in operating order in all nursing units and provide visible and audible signal communication between nursing personnel and patients. Extension cords to each patient's bed shall be readily accessible to patients at all times.

(g) If a facility has a significant beneficial interest in an ancillary health service provider or if a facility knows that an ancillary health service provider has a significant

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL No. 1160

Introduced by Assembly Member Shelley
(Principal coauthor: Assembly Member Alquist)
(Coauthors: Assembly Members Havice, Honda, Longville, Romero, Strom-Martin, Washington, and Wildman)
(Coauthors: Senators Baca, Ortiz, and Vasconcellos)

February 25, 1999

An act to add ~~Section~~ *Sections 12528.5 and* 27491.42 to the Government Code, to amend Sections *1267.5,* 1276.5, 1333, 1336.2, *1337.1, 1337.2, 1337.3,* 1420, *1422,* 1424, 1428, 1430, *1438,* 1599.1, and 7183 of, to add Sections 1254.7 and 1325.1 to, and to repeal and add Section 1417.1 of, the Health and Safety Code, and to amend Section 14124.7 of the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Shelley. Long-term health care facilities.

(1) *Existing law establishes, in the office of the Attorney General the Bureau of Medi-Cal Fraud which is authorized to conduct a statewide program for investigating and prosecuting, and referring for prosecution, violations of all applicable laws pertaining to fraud in the administration of the Medi-Cal program.*

This bill would require the bureau to annually submit to the Legislature a report on the nature and extent of crimes in this

state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

(2) Existing law requires the coroner to inquire into and determine the circumstance, manner, and cause of any death that occurs under certain conditions.

This bill would require the coroner to determine whether an investigation is warranted, upon receiving a copy of the death certificate of a resident of a nursing facility as required under the bill. The bill would authorize the coroner to request copies of certain medical records of the deceased resident. The bill would require the coroner to transmit copies of the deceased resident's death certificate and medical records of the deceased resident to the Director of Health Services within 2 weeks of the resident's death if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.

Because the bill would impose new duties upon the county coroner, it would impose a state-mandated local program.

~~(2) Existing~~

(3) Existing law provides for the licensure and regulation of health facilities, including nursing facilities, administered by the State Department of Health Services. Violations of the provisions regulating health facilities are subject to criminal sanction.

This bill would require a nursing facility, upon the death of a resident of the facility, to submit to the coroner a copy of the deceased resident's death certificate within 24 hours of the death and to submit specified medical records of the deceased resident within 8 hours of the request of the coroner.

~~(3) Existing~~

(4) Existing law requires each applicant for a license to operate a skilled nursing facility or intermediate care facility to make certain disclosures regarding ownership and officers to the department.

This bill would revise these disclosure requirements. The bill would require that the information required by these disclosure provisions be included in the department's automated certification and licensure information management system. The bill would require the department

to develop and implement regulations for purposes of these provisions.

(5) Existing law requires the department to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

This bill would require the regulations to set forth minimum actual nursing hours per patient required in skilled nursing and intermediate care facilities. The bill would require that the minimum number of actual nursing hours per patient required in skilled nursing facilities start at 3.2 hours, effective January 1, 2000, and increase as provided in the bill to 3.4 hours, effective January 1, 2003.

~~(4) Existing~~

(6) Existing law authorizes the director to file a petition in the superior court for appointment of a receiver for any long-term health care facility whenever certain conditions exist, including, whenever circumstances exist indicating that continued management of the facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to patients, as specified.

This bill would authorize the department to appoint a temporary manager when (a) continued management of the long-term care facility by the current licensee threatens the health, safety, or security of the residents, (b) the facility has been involuntarily terminated from the Medicare or Medi-Cal program, (c) the facility has been out of compliance with applicable state or federal laws for 3 or more months, or (d) the facility is closing or intends to terminate operations and adequate arrangement for relocation of residents has not been made at least 30 days prior to the closing or termination. The bill would require the temporary management to end when the facility has been sold to a new licensee. The bill would require the department to adopt, by December 31, 2000, regulations for the administration of this provision.

~~(5) Existing~~

(7) Existing law provides for the reimbursement of the state for the salary of a receiver from the revenue of the facility and provides that if the revenues are inadequate the

reimbursement amount shall constitute a lien upon the assets of the facility.

This bill would apply these provisions, in addition, to the salary of a temporary manager. The bill would provide, instead, that if the revenues of the facility are inadequate, the reimbursement amount shall constitute a lien upon the assets of the licensee or any person or entity with 10% or greater equity interest in the licensee.

~~(6) Existing~~

(8) Existing law requires a long-term care facility to submit a proposed relocation plan for affected patients to the department for comment if 10 or more patients are likely to be transferred due to any voluntary change in the status of the license or operation of a facility.

This bill would extend this provision to apply if 10 or more patients are likely to be transferred due to any involuntary change in the status of the license or operation of the facility.

~~(7) Existing~~

(9) Existing law requires a skilled nursing or intermediate care facility to adopt an approved training program that meets standards established by the department. Existing law requires that the precertification training program consist of specified hours of classroom training and instructional content.

This bill would revise the precertification training program requirements to increase the minimum classroom hours of training required and add certain elder abuse recognition and reporting instruction.

(10) Existing law sets forth certification requirements for certified nurse assistants, including a requirement that the applicant be at least 16 years of age.

This bill would increase the minimum age to 18 years and would prohibit an uncertified nurse assistant from providing direct patient care in a skilled nursing or intermediate care facility.

(11) Existing law requires the department to prepare and maintain a list of approved training programs for nurse assistant certification. Existing law specifies certain requirements for an approved training program.

98

This bill would require these training programs to meet certain requirements, some of which would become effective commencing January 1, 2005. The bill would make certain requirements under existing law inoperative on January 1, 2005.

(12) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, declares the intent of the Legislature to establish a citation system for the imposition of civil sanctions against long-term health care facilities in violation of state laws and regulations relating to patient care, an inspection and reporting system, and a provisional licensing mechanism.

This bill would declare the intent of the Legislature to establish, instead, an effective enforcement system and a provisional licensing mechanism.

The bill would establish the standards and penalties imposed by the federal law under Title IV of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) for nursing facilities as state law and require that they be applied to all long-term health care facilities. The bill would specify available remedies against a long-term health care facility. The bill would require the department to adopt regulations for the administration of this provision.

~~(8) Existing~~

The bill would require a long-term care facility to post notice as provided under the bill if certain remedies are imposed for a violation of state or federal requirements. The bill would also make any violation that results in the imposition of these remedies a class "B" violation.

(13) Existing law requires the department to assign an inspector to make a preliminary review of any complaint received against a long-term health care facility and notify the complainant of the name of the assigned inspector. ~~Existing law requires the department to make an onsite inspection or investigation within 10 days of the receipt of the complaint unless the department determines the complaint is willfully intended to harass a licensee or is without any reasonable basis.~~

This bill would define complaint for purposes of this provision~~,~~ *and* require the department to notify the complainant of the assigned inspector's name within 5

working days of the receipt of the complaint~~, and require the onsite inspection unless the department determines the complaint is without any reasonable basis~~. The bill would require the department to make an onsite inspection or investigation within 24 hours of the receipt of a complaint in any case in which there is a serious threat of imminent danger of death or serious bodily harm. The bill would require the department to provide certain notice to the complainant prior to the commencement of the onsite inspection and within 10 working days of completion of the complaint investigation.

~~(9) Existing~~

(14) Existing law requires a copy of any citation issued against a long-term health care facility as a result of certain complaint procedures to be sent to each complainant.

This bill would require that the copy of the citation be sent to each complainant by certified or registered mail.

~~(10) Existing~~

(15) Existing law requires all long-term care facilities to report to the department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.

This bill would require the department to maintain an employment record for each long-term care nursing home administrator and each director of nursing services as provided under this bill.

(16) Existing law classifies a citation issued against long-term care facilities according to the nature of the violation, in order of decreasing seriousness, as Class "AA," Class "A," and Class "B" violations, and provides for various civil penalties.

This bill would increase the civil penalties with regard to these violations.

~~(11) Existing~~

(17) Existing law specifies procedures for a licensee of a long-term health care facility who desires to contest a citation or the proposed assessment of a civil penalty.

This bill would include within this process a requirement that the licensee first post security as provided in the bill.

~~(12) Existing~~

98

(18) Existing law requires that costs or penalties assessed pursuant to the provisions regulating long-term health care facilities be paid within 30 days of the date the decision regarding the penalties becomes final and requires the department to withhold any payment under the Medi-Cal program until such a debt is satisfied, unless the department determines that it would cause hardship to the facility or to patients or residents of the facility.

This bill would delete the requirement that any costs and penalties assessed be paid within 30 days of the date the decision becomes final. The bill would require the department to withhold any payment under the Medi-Cal program, without the specified exception.

~~(13) Existing~~

(19) Existing law provides that, except where the department has taken action and the violations have been corrected to its satisfaction, any licensee of a long-term health care facility who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages. Existing law limits the amount of civil damages that may be recovered in an action brought under this provision to the maximum amount of civil penalties which could be assessed on account of the violation or violations.

This bill would extend the authority to enjoin the violations of a long-term health care facility under this provision to apply to class "AA" violations; *and* authorize suit for reasonable costs and attorney fees~~, and delete the limitation on the amount of civil damages that may be recovered~~.

~~(14) Existing~~

(20) Existing law authorizes a resident or patient of a skilled nursing or intermediate care facility to bring civil action against a licensee of the facility who violates any rights set forth in the Patients Bill of Rights under state regulations. The licensee is liable for up to $500.

This bill would authorize, instead, this civil action for violations of any rights of the resident or patient as set forth ~~in the Patients Bill of Rights~~ under state and federal law and would increase the maximum liability to $25,000.

~~(15) Existing~~

(21) Existing law requires the department to review the effectiveness of certain enforcement provisions in maintaining the quality of care provided by long-term care facilities and submit a report on the enforcement activities.

This bill would require the department to submit the report on or before December 1, 2000, and annually thereafter, regarding these enforcement activities.

(22) Existing law requires skilled nursing and intermediate care facilities to establish and make available, as prescribed, written policies regarding the rights of patients. Existing law requires that the procedures ensure that each patient admitted to the facility has certain rights and is notified of certain facility obligations, in addition to those specified by regulation.

This bill would add to the list of rights of a patient and obligations of a facility that a resident of a nursing facility may appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts a right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The bill would require that the appeal be adjudicated by a state hearing officer designated to adjudicate appeals of transfers and discharges of nursing facility residents. The bill would require the facility to readmit the resident who has filed an appeal pending the final determination of the hearing officer.

~~(16) Existing~~

(23) Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from transferring or seeking to evict out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

This bill would specify that transferring a resident within the facility, or seeking to evict a resident out of the facility is prohibited under this provision. The bill would provide that this provision applies to residents who have made a timely application to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

~~(17) This bill would require the department to submit a specified report to the Legislature on or before July 1, 2000, concerning the methodology for reimbursement of skilled nursing facilities under the Medi-Cal program.~~

~~(18)~~

(24) The bill would require the department to seek to enter into a interagency agreement with the University of California at San Francisco under which the university would submit a specified report to the department no later than July 1, 2000, concerning the methodology for reimbursement of skilled nursing facilities under the Medi-Cal program. The bill would require the department to submit to the Legislature the report, comments on the report, and recommended changes in the reimbursement system based on the report.

(25) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. *Section 12528.5 is added to the Government Code, to read:*

12528.5. The Bureau of Medi-Cal Fraud shall annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

SEC. 2. Section 27491.42 is added to the Government Code, to read:

27491.42. (a) Upon the receipt of a copy of the death certificate of a deceased resident of a nursing facility, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, pursuant to Section 1254.7 of the Health

records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

~~SEC. 12.~~

SEC. 18. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Any licensee who commits a class "AA," "A," or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages and for reasonable costs and attorney fees within a court of competent jurisdiction. ~~Such~~ *These* actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. *The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.*

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth ~~in the Patients Bill of Rights~~ under state and federal law. The suit shall be brought in a court

of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to twenty-five thousand dollars ($25,000) in damages, and for reasonable costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy or remedies provided by law.

~~SEC. 13.~~

SEC. 19. Section 1438 of the Health and Safety Code is amended to read:

1438. ~~On or before January 1, 1977, the~~ *The* state department shall review the effectiveness of the enforcement ~~of the provisions of this chapter~~ *system* in maintaining the quality of care provided by long-term health care facilities and shall submit a report ~~thereon~~ to the Legislature *on enforcement activities, on or before December 1, 2000, and annually thereafter,* together with any recommendations of the state department for additional legislation which it deems necessary to improve the *effectiveness of the* enforcement ~~of the provisions of this chapter~~ *system* or to enhance the quality of care provided by ~~such~~ *long-term health care* facilities.

SEC. 20. Section 1599.1 of the Health and Safety Code is amended to read:

1599.1. Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.

AMENDED IN ASSEMBLY APRIL 19, 1999

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL No. 1160

Introduced by Assembly ~~Member Shelley~~ *Members Shelley and Alquist*

~~(Principal coauthor: Assembly Member Alquist)~~

~~(Coauthors: Assembly Members Havice, Honda, Longville, Romero, Strom-Martin, Washington, and Wildman)~~

(Coauthors: Assembly Members Aanestad, Bates, Corbett, Dutra, Gallegos, Havice, Honda, Keeley, Kuehl, Longville, Lowenthal, Romero, Steinberg, Strom-Martin, Thomson, Vincent, Washington, and Wildman)

(Coauthors: Senators Baca, Ortiz, *Perata*, and Vasconcellos)

February 25, 1999

An act to add Sections 12528.5 and 27491.42 to the Government Code, to amend Sections 1267.5, 1276.5, 1333, 1336.2, 1337.1, 1337.2, 1337.3, 1420, 1422, 1424, 1428, 1430, 1438, 1599.1, and 7183 of, to add Sections 1254.7 and 1325.1 to, and to repeal and add Section 1417.1 of, the Health and Safety Code, and to amend Section 14124.7 of the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Shelley. Long-term health care facilities.

(1) Existing law establishes in the office of the Attorney General the Bureau of Medi-Cal Fraud which is authorized to conduct a statewide program for investigating and prosecuting, and referring for prosecution, violations of all applicable laws pertaining to fraud in the administration of the Medi-Cal program.

This bill would require the bureau to annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

(2) Existing law requires the coroner to inquire into and determine the circumstance, manner, and cause of any death that occurs under certain conditions.

This bill would require the coroner to determine whether an investigation is warranted, upon receiving a copy of the death certificate of a resident of a nursing facility as required under the bill. The bill would authorize the coroner to request copies of certain medical records of the deceased resident. The bill would require the coroner to transmit copies of the deceased resident's death certificate and medical records of the deceased resident to the Director of Health Services within 2 weeks of the resident's death if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.

Because the bill would impose new duties upon the county coroner, it would impose a state-mandated local program.

(3) Existing law provides for the licensure and regulation of health facilities, including nursing facilities, administered by the State Department of Health Services. Violations of the provisions regulating health facilities are subject to criminal sanction.

This bill would require a nursing facility, upon the death of a resident of the facility, to submit to the coroner a copy of the deceased resident's death certificate within 24 hours of the death and to submit specified medical records of the deceased resident within 8 hours of the request of the coroner.

(4) Existing law requires each applicant for a license to operate a skilled nursing facility or intermediate care facility

to make certain disclosures regarding ownership and officers to the department.

This bill would revise these disclosure requirements. The bill would require that the information required by these disclosure provisions be included in the department's automated certification and licensure information management system. The bill would require the department to develop and implement regulations for purposes of these provisions.

(5) Existing law requires the department to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

This bill would require the regulations to set forth minimum actual nursing hours per patient required in skilled nursing and intermediate care facilities. The bill would require that the minimum number of actual nursing hours per patient required in skilled nursing facilities start at 3.2 hours, effective January 1, 2000, and increase as provided in the bill to 3.4 hours, effective January 1, 2003.

(6) Existing law authorizes the director to file a petition in the superior court for appointment of a receiver for any long-term health care facility whenever certain conditions exist, including, whenever circumstances exist indicating that continued management of the facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to patients, as specified.

This bill would authorize the department to appoint a temporary manager when (a) continued management of the long-term care facility by the current licensee threatens the health, safety, or security of the residents, (b) the facility has been involuntarily terminated from the Medicare or Medi-Cal program, (c) the facility has been out of compliance with applicable state or federal laws for 3 or more months, or (d) the facility is closing or intends to terminate operations and adequate arrangement for relocation of residents has not been made at least 30 days prior to the closing or termination. The bill would require the temporary management to end when the facility has been sold to a new licensee. The bill would

require the department to adopt, by December 31, 2000, regulations for the administration of this provision.

(7) Existing law provides for the reimbursement of the state for the salary of a receiver from the revenue of the facility and provides that if the revenues are inadequate the reimbursement amount shall constitute a lien upon the assets of the facility.

This bill would apply these provisions, in addition, to the salary of a temporary manager. The bill would provide, instead, that if the revenues of the facility are inadequate, the reimbursement amount shall constitute a lien upon the assets of the licensee or any person or entity with 10% or greater equity interest in the licensee.

(8) Existing law requires a long-term care facility to submit a proposed relocation plan for affected patients to the department for comment if 10 or more patients are likely to be transferred due to any voluntary change in the status of the license or operation of a facility.

This bill would extend this provision to apply if 10 or more patients are likely to be transferred due to any involuntary change in the status of the license or operation of the facility.

(9) Existing law requires a skilled nursing or intermediate care facility to adopt an approved training program that meets standards established by the department. Existing law requires that the precertification training program consist of specified hours of classroom training and instructional content.

This bill would revise the precertification training program requirements to increase the minimum classroom hours of training required and add certain elder abuse recognition and reporting instruction.

(10) Existing law sets forth certification requirements for certified nurse assistants, including a requirement that the applicant be at least 16 years of age.

This bill would increase the minimum age to 18 years and would prohibit an uncertified nurse assistant from providing direct patient care in a skilled nursing or intermediate care facility.

(11) Existing law requires the department to prepare and maintain a list of approved training programs for nurse

assistant certification. Existing law specifies certain requirements for an approved training program.

This bill would require these training programs to meet certain requirements, some of which would become effective commencing January 1, 2005. The bill would make certain requirements under existing law inoperative on January 1, 2005.

(12) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, declares the intent of the Legislature to establish a citation system for the imposition of civil sanctions against long-term health care facilities in violation of state laws and regulations relating to patient care, an inspection and reporting system, and a provisional licensing mechanism.

This bill would declare the intent of the Legislature to establish, instead, an effective enforcement system and a provisional licensing mechanism.

The bill would establish the standards and penalties imposed by the federal law under Title IV of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) for nursing facilities as state law and require that they be applied to all long-term health care facilities. The bill would specify available remedies against a long-term health care facility. The bill would require the department to adopt regulations for the administration of this provision.

The bill would require a long-term care facility to post notice as provided under the bill if certain remedies are imposed for a violation of state or federal requirements. The bill would also make any violation that results in the imposition of these remedies a class "B" violation.

(13) Existing law requires the department to assign an inspector to make a preliminary review of any complaint received against a long-term health care facility and notify the complainant of the name of the assigned inspector.

This bill would define complaint for purposes of this provision and require the department to notify the complainant of the assigned inspector's name within 5 working days of the receipt of the complaint. The bill would require the department to make an onsite inspection or investigation within 24 hours of the receipt of a complaint in any case in which there is a serious threat of imminent danger

of death or serious bodily harm. The bill would require the department to provide certain notice to the complainant prior to the commencement of the onsite inspection and within 10 working days of completion of the complaint investigation.

(14) Existing law requires a copy of any citation issued against a long-term health care facility as a result of certain complaint procedures to be sent to each complainant.

This bill would require that the copy of the citation be sent to each complainant by certified or registered mail.

(15) Existing law requires all long-term care facilities to report to the department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.

This bill would require the department to maintain an employment record for each long-term care nursing home administrator and each director of nursing services as provided under this bill.

(16) Existing law classifies a citation issued against long-term care facilities according to the nature of the violation, in order of decreasing seriousness, as Class "AA," Class "A," and Class "B" violations, and provides for various civil penalties.

This bill would increase the civil penalties with regard to these violations.

(17) Existing law specifies procedures for a licensee of a long-term health care facility who desires to contest a citation or the proposed assessment of a civil penalty.

This bill would include within this process a requirement that the licensee first post security as provided in the bill.

(18) Existing law requires that costs or penalties assessed pursuant to the provisions regulating long-term health care facilities be paid within 30 days of the date the decision regarding the penalties becomes final and requires the department to withhold any payment under the Medi-Cal program until such a debt is satisfied, unless the department determines that it would cause hardship to the facility or to patients or residents of the facility.

This bill would delete the requirement that any costs and penalties assessed be paid within 30 days of the date the

decision becomes final. The bill would require the department to withhold any payment under the Medi-Cal program, without the specified exception.

(19) Existing law provides that, except where the department has taken action and the violations have been corrected to its satisfaction, any licensee of a long-term health care facility who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages. Existing law limits the amount of civil damages that may be recovered in an action brought under this provision to the maximum amount of civil penalties which could be assessed on account of the violation or violations.

This bill would extend the authority to enjoin the violations of a long-term health care facility under this provision to apply to class "AA" violations and authorize suit for reasonable costs and attorney fees.

(20) Existing law authorizes a resident or patient of a skilled nursing or intermediate care facility to bring civil action against a licensee of the facility who violates any rights set forth in the Patients Bill of Rights under state regulations. The licensee is liable for up to $500.

This bill would authorize, instead, this civil action for violations of any rights of the resident or patient as set forth under state and federal law and would increase the maximum liability to $25,000.

(21) Existing law requires the department to review the effectiveness of certain enforcement provisions in maintaining the quality of care provided by long-term care facilities and submit a report on the enforcement activities.

This bill would require the department to submit the report on or before December 1, 2000, and annually thereafter, regarding these enforcement activities.

(22) Existing law requires skilled nursing and intermediate care facilities to establish and make available, as prescribed, written policies regarding the rights of patients. Existing law requires that the procedures ensure that each patient admitted to the facility has certain rights and is notified of certain facility obligations, in addition to those specified by regulation.

This bill would add to the list of rights of a patient and obligations of a facility that a resident of a nursing facility may appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts a right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The bill would require that the appeal be adjudicated by a state hearing officer designated to adjudicate appeals of transfers and discharges of nursing facility residents. The bill would require the facility to readmit the resident who has filed an appeal pending the final determination of the hearing officer.

(23) Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from transferring or seeking to evict out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

This bill would specify that transferring a resident within the facility, or seeking to evict a resident out of the facility is prohibited under this provision. The bill would provide that this provision applies to residents who have made a timely application to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

(24) The bill would require the department to seek to enter into a interagency agreement with the University of California at San Francisco under which the university would submit a specified report to the department no later than July 1, 2000, concerning the methodology for reimbursement of skilled nursing facilities under the Medi-Cal program. The bill would require the department to submit to the Legislature the report, comments on the report, and recommended changes in the reimbursement system based on the report.

(25) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

97

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

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

SECTION 1. Section 12528.5 is added to the Government Code, to read:

12528.5. The Bureau of Medi-Cal Fraud shall annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

SEC. 2. Section 27491.42 is added to the Government Code, to read:

27491.42. (a) Upon the receipt of a copy of the death certificate of a deceased resident of a nursing facility, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, pursuant to Section 1254.7 of the Health and Safety Code, the coroner shall determine whether an investigation is warranted.

(b) The coroner may request from the nursing facility, and shall receive within eight hours of the request, copies of all or any portion of the medical records of the deceased resident that are kept in accordance with regulations adopted pursuant to Section 1275 of the Health and Safety Code.

(c) The coroner shall transmit copies of the deceased resident's death certificate and medical records of the deceased resident to the Director of Health Services, or the director's designee, within two weeks of the death of the resident if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.

SEC. 3. Section 1254.7 is added to the Health and Safety Code, to read:

1254.7. (a) Upon the death of a resident of a nursing facility, as defined in subdivision (k) of Section 1250, the facility shall submit to the coroner a copy of the resident's

shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

SEC. 18. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Any licensee who commits a class "AA," "A," or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages and for reasonable costs and attorney fees within a court of competent jurisdiction. These actions for injunction or civil damages, or both, may be prosecuted by the

97

Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facilities, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth under state and federal law. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to twenty-five thousand dollars ($25,000) in damages, and for reasonable costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy or remedies provided by law.

SEC. 19. Section 1438 of the Health and Safety Code is amended to read:

1438. The state department shall review the effectiveness of the enforcement system in maintaining the quality of care provided by long-term health care facilities and shall submit a report to the Legislature on enforcement activities, on or before December 1, 2000, and annually thereafter, together with any recommendations of the state department for additional legislation which it deems necessary to improve the effectiveness of the enforcement system or to enhance

SENATE HEALTH AND HUMAN SERVICES
COMMITTEE ANALYSIS
Senator Martha M. Escutia, Chair

BILL NO: AB 1160
A
AUTHOR: Shelly
B
AMENDED: May 28, 1999
HEARING DATE: July 14, 1999
1
FISCAL: Rules/Appropriations
1

6
CONSULTANT:
0
Miller / cg

SUBJECT

Long term health care facilities

SUMMARY

Establishes goals for direct care staffing in skilled nursing facilities (SNFs), revises the calculation for determining nursing hours in SNFs and intermediate care facilities (ICFs), requires specified disclosure of licensee information, establishes a new activity based reimbursement system, increases penalties for violation of laws and regulations, and makes several other changes to existing law impacting nursing homes.

ABSTRACT

Existing Law:

1. Establishes an inspection and citation system for imposing civil penalties against long-term health care facilities that are in violation of patient care laws and regulations. Classifies violations as class AA, class A and class B, and provides a range of civil penalties for each citation.

Continued---

2. Establishes a procedure under which a licensee may contest a citation or the proposed assessment of a civil penalty, and provides licensees with the option to submit appeals of class B citations to binding arbitration.

3. Requires Department of Health Services (DHS) to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in a SNF and ICF, as specified, and defines "nursing hours" as the

number of hours of work performed per patient day by aides, nursing assistants or orderlies plus two times the number of hours worked per patient day by RNs and LVNs, as specified.

This bill:

1. Requires the Bureau of Medi-Cal Fraud to annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

2. Requires each applicant for a license to operate a SNF or ICF to disclose specified information to DHS regarding any parent organizations if the management company of a SNF or ICF is a subsidiary of one or more organizations, and requires other disclosures. Makes a failure to comply subject to a citation for willful materials falsification or willful materials omission.

3. Finds and declares that the goal for direct care staffing in skilled nursing facilities is as follows:

   a) Registered nurses (RN) and licensed vocational nurses (LVN) -
      1 nurse to 15 patients on the day shift;
      1 nurse to 20 patients on the evening shift; and
      1 nurse to 30 patients on the night shift.

Continued---

   b) Certified nurse assistants (CNA) -
      1 CNA to 5 patients on the day shift;
      1 CNA to 10 patients on the evening shift; and
      1 CNA to 15 patients on the night shift.

4. Finds and declares that increases in direct care staffing are required to begin immediately and to be increased over time to reduce the current understaffing at many skilled nursing facilities.

5. Requires the minimum number of actual nursing hours per patient required in a skilled nursing facility to be as follows:

   a) Effective January 1, 2000, 3.0 hours;
   b) Effective January 1, 2001, 3.2 hours;
   c) Effective January 1, 2002, 3.4 hours; and
   d) Effective January 1, 2003, 3.6 hours.

6. Revises the definition of "nursing hours" to mean the number of _actual_ hours of work performed per patient day by aides, nursing assistants, or orderlies, and eliminates the double counting of hours worked per patient day by RNs, LVNs and others who perform direct nursing services for patients in skilled nursing facilities and other specified facilities.

7. Authorizes DHS to appoint a temporary manager under specified circumstances including when the continued management of the facility by the current licensee threatens the health, safety, or security of the residents, or the facility has been out of compliance with applicable state or federal laws for three or more months. Permits DHS to withdraw a manager when a facility returns to compliance. Makes licensees responsible for costs associated with temporary management

8. Requires, effective January 1, 2000, as part of a SNF or ICF nurse assistant training program, 10 additional hours of precertification classroom training (for a total of 60 classroom and 100 hours of on the job training), and adds an elder abuse recognition and reporting component to the training. Adds, effective January 1, 2000, a requirement to include 6 hours of instruction per calendar year on

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recognizing and reporting instances of elder abuse, utilizing courses developed pursuant to existing law.

9. Prohibits, effective January 1, 2005, any uncertified nurse assistants from providing direct patient care in a skilled nursing facility or ICF inless engaged in an approved training program.

10. Permits nursing homes to train CNA's either through an outside agency; a contract with a community based organization; or within their facility through a training agreement with a community organization.

11. Authorizes clinical portions of the training program to be obtained as on the job training supervised by a qualified director of staff development or licensed nurse and evaluated by the certified educational institution. Requires development of an exam for CNA's and inspection of training programs

12. Authorizes the facility's license to be suspended and a provisional license be issued if one or more of the following remedies is actually imposed for a violation of federal or state law:
   a) Involuntary termination from the Medicare or Medi-Cal program.
   b) Appointment of a temporary manager.
   c) Civil monetary penalties of $1000 or more per day.
   d) A ban on new admission or denial of payment for either Medicare or Medi-Cal for current residents.

13. Requires DHS to notify a complainant within 10 working days of receipt of the complaint of the name of the inspector. Requires, in cases in which there is a serious threat of imminent danger or death or serious bodily harm, DHS to make an onsite inspection or investigation within 24 hours of the receipt of the complaint. Requires the complainant to be properly informed of DHS' proposed course of action and the complainant's right to accompany the inspector on the inspection.

14. Increases the state civil penalty amount for class AA

citations, from not less than $5,000, to not less than $25,000 and not to exceed $100,000. Increases the state

Continued---

civil penalty amount for class A citations, from not less than $1,000 to not less than $5,000, and not to exceed $25,000. Increases the state civil penalty amount for class B citations from not less than $100 to not less than $1,000 and not to exceed $5,000.

15. Requires a licensee to post as security, cash or cash equivalent, an amount equal to the civil penalty indicated if a licensee desires to contest a citation or the proposed assessment of a civil penalty. Requires the balance of the security to be returned upon completion of the appeals process if the civil penalty is dismissed, waived, or reduced.

16. Allows any licensee who commits a class AA, A, or B violation to be enjoined from permitting the violation to continue, or be sued for reasonable costs and attorney fees in addition to civil damages.

17. Increases from $500 to $25,000 the amount a licensee is liable in a civil action based on violations of any rights of the resident under state and federal law.

18. Requires DHS to submit a report to the Legislature on or before December 1, 2000, and annually thereafter, reviewing the effectiveness of the long-term health facility enforcement system.

19. Allows a nursing facility resident to appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts a right to readmission pursuant to bed hold provisions or readmission rights under state or federal law. Requires the appeal to be adjudicated by the state hearing officers designated to adjudicate appeals of transfers and discharges of residents. Requires the facility to readmit any resident who has filed an appeal

20. Prohibits a facility participating in Medi-Cal from transferring a resident within the facility as a result of the resident changing his or her manner of purchasing services from private payment or Medicare or Medi-Cal.

21. Requires DHS, by January 2001, to develop and implement a new Medi-Cal reimbursement system. The proposed system

Continued---

is to be based on cost components reflecting direct and indirect resident care facility property and others appropriate components. Directs that daily rates abe adjusted for the acuity (severity) of patients and reflects cost of meeting individual needs. Directs the

department to develop minimum per patient nursing hours. State Legislative intent that reimbursement ensure access, promote quality and support compliance.

FISCAL IMPACT

Undetermined. The Assembly Appropriation Committee found the bill would result in significant increases in oversight and enforcement costs, partially offset by fees and penalties paid by licensees. DHS estimated annual General Fund costs of increasing nursing home hours to be $74 million when implemented in 2004.05

BACKGROUND AND DISCUSSION

This bill is intended to strengthen and enhance California's nursing home staffing, enforcement and reimbursement system and improve the quality of life for nursing home residents. California has been identified by a U.S. General Accounting Office report as a state with one of the worst nursing home records. The findings of the report determined that California's existing nursing facility regulatory and enforcement systems do not effectively assess or ensure the quality of resident care, and the current amount of nursing home direct care staffing is not sufficient to maintain all residents at their highest practical level of function.

This bill is sponsored by the American Association of Retired Persons (AARP), Bet Tzedek Legal Services, California Advocates for Nursing Home Reform (CANHR), and the National Senior Citizens Law Center (NSCLC). This bill is supported by many organizations that represent nursing home residents and workers including the Gray Panthers, the California Senior Legislature, the Congress of California Seniors, and the Service Employees International Union. Proponents believe this bill represents a comprehensive and balanced approach to nursing home reform. According to proponents, many reforms are necessary to ensure quality of patient care, including improvements in:

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Accountability. Providing coroners with timely access to medical records in suspected abuse and neglect cases. The proponents believe that DHS needs access to ownership information to make informed licensing decisions and to track facilities within large groups of homes.

Complaint and Enforcement. Proponents believe the current system is extremely unresponsive, and that while over 7,000 complaints are filed each year in many cases the response is too late. Proponents assert that every major study of California's enforcement system indicates that the system is inadequate. Fines are not collected and licenses are only revoked when residents are already dead or in danger of dying. Proponents state that intermediate sanctions, such as banning admissions, can deter substandard care and provide incentives not to violate the law.

Reimbursement. Proponents indicate that this bill restructures reimbursement so that California can move away from the antiquated day rate used by virtually no other

state, and support a budget augmentation request that funds the increases in staffing and wages effective January 1, 2000.

Staffing. According to proponents, inadequate, underpaid and untrained staff continue to be one of the biggest contributors to inadequate care, noting required training for cosmetologists far exceed the training requirements of CNAs. The average staff turnover rate in California nursing homes is approximately 70% and the average hourly wage for CNAs is $6.99.

The California Association of Health Facilities (CAHF) and the California Rehabilitation Association (CRA) oppose this bill unless amended. CAHF believes this bill does not offer enough beyond new provider penalties, excessive enforcement and additional litigation, none of which will improve the quality of nursing home care. CAHF and CRA request this bill be amended to reflect a more balanced reform approach.

Accountability. CAHF supports public disclosure of certain ownership information, but questions the impact this will

Continued---

have on improving resident care.

Complaint and Enforcement. CAHF maintains that California's nursing facilities are already the most heavily regulated health care providers in the world, and that nearly 300 state survey staff spend an average of 200 hours in each facility per year examining provider compliance with very prescriptive standards through both federal and state enforcement processes. CAHF states that the system provides a wide range of sanctions, including verified plans of correction, admission denial, payment withholds, decertification from Medi-Cal or Medicare, license revocation and penalties ranging from $500 per incident to $10,000 per day. Additionally, CAHF indicates that penalties have been increased on two occasions in the last few years, federal penalties more than doubled overall fines in 1997 and AB 1133 increased state penalties by 25% in 1999.

Reimbursement. CAHF believes the reimbursement study language offers the opportunity for establishing genuine improvement of long-term health care facilities in California. CAHF believes the development and utilization of quality indicators should be used in the enforcement system in addition to the reimbursement methodology, and that quality indicators must also be risk adjusted to account for specialty units and expertise in diseases or diagnosis.

Staffing. CAHF strongly supports increased staffing in nursing facilities but believes Medi-Cal should fully cover the cost of increases. According to CAHF, Medi-Cal is the payer for 2/3 of all nursing facility residents and present Medi-Cal rates rank among the lowest in the nation. Additionally, CAHF agrees that a stable and well-trained workforce is the key to quality and supports increasing direct care staff levels, but asserts that there is no empirical evidence that the implementation of rigid shift ratios improve quality in facility care. The 1999-2000

Budget contained $72 million representing a five percent increase, wage and salary pass-through for nursing facility staff.

Several individuals affiliated with SNFs or ICFs have expressed opposition to this bill indicating that Medi-Cal

Continued---

reimbursement does not provide sufficient funding for the hiring of staff and the provision of adequate training. One operator of a 38-bed facility indicated that to meet the nursing hour requirements in this bill he would have to pay $8,000 per month in labor costs, not including the employer costs and benefits. Another program manager, indicates that what is really needed to improve the quality of care in long-term care facilities is additional funding for staff salaries and training, and a system that checks the criminal record of new hires immediately because the current system takes three months or more.

Related Issues

The author is proposing a number of author's amendments to the bill to address several issues raised by interest groups and state offices. Some of the most significant amendments are as follows:

Requires the minimum nursing hours January 1, 2000 to be 3.0 "undoubled" instead of 3.2 with the minimum to be raised by .2 for the next three years thereafter.

Removes federal OBRA remedies from state licensure law.

Eliminates DHS's requirement to track nursing home administrators and director of nurses.

Removes prohibitions against inter-facility transfers.

Allows the continuation of facility based training centers, however, require facilities to enter into a joint training agreement with a training organization.

Requires a physician to determine if a patient does not have to be readmitted by a facility if he/she determines that the patient requires a move to a more appropriate setting.

There are four additional areas which have been identified as major concerns by several interested parties: civil liability, temporary management, fine levels and reimbursement system reform. The Committee will hear testimony on these particular issues during the hearing.

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Fine levels

Current law provides for the following citations to be issued when the Department of Health Services determines that a facility has violate a state or federal regulation:

Class "AA" citations are violations that the state department determines to have been a direct proximate cause of death of a patient or resident of a long term health care facility. A "AA" citation is subject to a civil penalty of $5,000 not to exceed $25,000.

Class "A" citations are violations that the state department determines present either (1) imminent danger that death or serious harm to the patient or resident of the long term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long term health care facility would result therefrom. A "A" citation is subject to a civil penalty of $1,000 not to exceed $10,000.

Class "B" citations are violations that the state department determines have a direct or immediate relationship to the health safety, or security of a long term health facility patient or resident. A class "B" citation is subject to a civil penalty of $100 not to exceed $1,000.

This bill provides for the following increases in civil penalties for citations:

Changes "AA" citation penalties from not less than $5,000 to not exceed $25,000 to not less than $25,000 to not exceed $100,000. (4 times its current amount)

Changes "A" citation penalties from not less than $1,000 to not exceed $10,000 to not less than $5,000 to not exceed $25,000. (1 times its current amount)

Changes "B" citation penalties from not less than $100 to not exceed $1,000 to not less than $1,000 to not exceed $5,000. (5 times its current amount)

Proponents Argue:

Continued---

The fine levels have not been changed since 1985 and have, as a result, lost their deterrent value. They contend that the higher fine levels proposed in AB 1160 are more reflective of the amount of resident harm associated with the violations as they are defined in current statue. They are particularly troubled by the fact that a "AA" violation which involves a "direct proximate cause of death" is only subject to a $25,000 maximum fine.

Opponents Argue:
The fine levels are already more than sufficient and that fines have been increased on two occasions in the last few years. AB 1133 eliminated the waiver for first-time "B" citations in January, 1999 and federal civil monetary penalties were implemented in October, 1995. Opponents indicate that fines have more than doubled in the last year and point to DHS reports which show that more than $5 million in total (state and federal) fines were collected

in 1998. They argue that California already fines providers at a higher rate than other states and there is no evidence to suggest that higher fines will improve the quality of resident care.

The opponents also argue that the current system used to assess these fines is biased and subjective and provides no recognition for facilities which have acted reasonably and responsibly. They strongly believe that any increase in fines should be accompanied by changes in the criteria for issuing the citation, the burden of proof and the appeal process for contesting citations.

Civil Liability:

Under Section 1430, current law allows any person to sue a long term health care facility for civil damages where a citation has been issued except where DHS has taken action and the violation has been corrected.

Section 1430 also allows any resident of a facility to bring a civil action against the facility who violates any rights of the resident as set forth in the "Patient's Bill of Rights" in Section 72527 of Title 22 of the California Administrative Code.

Facilities are also subject to civil Liability under

Continued---

malpractice provisions affecting all health code provisions and the additional liability under the Elder and Dependent Adult Protection Act.

This bill:
- Removes the exception limiting civil action only against those violations in which D.S. has not taken action and the violations have not been corrected
- Increases liability for a facility by allowing for unlimited recovery of attorney's fees and costs for a civil suit based on a violation.
- Expands the rights for which a resident may sue from those delineated in Title 22 to all rights set forth under state and federal law.
- Increases the amount of civil damages a patient can recover from $500 to $25,000 in damages.

Proponents Argue:
The changes will empower residents and their families to pursue civil remedies for claims of harm; serious financial remedies would add an effective weapon to the drive for higher quality care. Providing the private sector with access to the quality control process will also strengthen the opportunities for regulations to work as intended. The ability of an individual to sue is one reason many other medical providers have adopted stringent quality control mechanisms.

Opponents Argue:
The citation system is an administrative compliance tool; citations issued under this system should not trigger double, or even triple, jeopardy in the civil liability area. The bill will encourage every future violation to become a civil suit by allowing the recovery of unlimited attorney's fees and costs. It increases liability by as

much as 50 times the current amount for resident related civil suits which are often very subjective. These changes will increase liability insurance costs dramatically and possibly eliminate facility coverage all-together.

Reimbursement

Under current law, Medi-Cal skilled nursing facility and intermediate care facility rates are established in accordance with California's approved State Medicaid Plan

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which bases rate setting on allowable costs as reported in costs reports submitted by long term health care facilities. DHS uses this information to establish a single "flat rate" for all facilities in six different size and geographic categories. California is one of only four states that continue to use this prospective, flat-rate reimbursement methodology. Most other states have implemented acuity or case mix reimbursement methodologies. The current average Medi-Cal rate for facilities is $88.00, which is considerably lower than most other states.

This bill directs DHS to develop the system changes necessary to replace California's existing "flat rate" Medi-Cal rates with more resident driven payments.

Proponents Argue:
Proponents agree that reimbursement system changes are essential to nursing home reform and that payments ought to be based on resident need. However, they argue that the bill only includes parameters for DHS development of a new system. The details of system reform have yet to be worked out and it is premature to attach any specific cost to its implementation.

Opponents Argue:
The parameters for system reform should include a specific augmentation to ensure that additional resources are provided for system improvement. They point out that the last time the Legislature developed a reimbursement system reform bill (SB 1087, Mello), extensive data analysis of the detailed language in the bill resulted in a $100 million General Fund cost. In the absence of similar detail and comprehensive analysis for AB 1160, it is critical that some direction be given on the level of investment intended to support system change. Without any specific additional funding they argue that reimbursement system reform will be subject to under-funding and the desired impact on staffing and overall quality will be lost to overzealous cost containment efforts at DHS.

Temporary Manager

Current law allows DHS to petition the Superior Court for appointment of a receiver for any long term care facility when continuing management by the existing licensee

Continued---

presents a substantial probability or imminent danger of serious physical harm or death to patients.

This bill:
Authorizes the director to appoint a temporary manager without court approval when facility residents are in immediate danger of death or injury or the facility fails to comply with resident transfer requirements in the event of a change in facility ownership or operation.

Proponents Argue:
The ability to place a temporary manager in a facility is an important interim sanction and DHS should be able to take immediate action when residents are in jeopardy. In these instances, the department director should be allowed to make a unilateral decision subject to an after -the-fact review by an administrative law judge, if requested by the affected facility.

Opponents Argue
The imposition of a temporary manager is a very heavy-handed sanction which demands some impartial external review. Prior to placing a temporary manager, there should be a quick informal Health and Welfare Agency level review of the DHS rationale for taking over a facility. As the plaintiff, DHS should then be required to file a petition with the appropriate court within a few days after the manager is installed. This level of court oversight is essential to provide an impartial review of DHS actions and adequate due process for affected facilities.

Prior Legislation;
AB 1133 (Gallegos), Chapter 650, Statutes of 1998, made various changes to state long-term care facility enforcement law including eliminating the waiver of civil penalties for certain first time violations and eliminating a facility's ability to pay a lesser penalty in certain circumstances. AB 1133 also provided for statewide training on effective facility practices and provided for technical assistance to facilities regarding licensing and compliance issues.

PRIOR ACTIONS

_ Assembly Floor: 53-15 Pass

Continued---

Assembly Appropriations: 14-6 Do Pass as Amended
Assembly Aging & L.T.C. 3-0 Do Pass
Assembly Health: 11-2 Do Pass

POSITIONS

Support: AARP
AFL-CIO-Active Retirees Club Local No. 3
Alzheimer's Association-California Council
American Nurses Association of California
Area Agency on Aging-Alpine, Amador, Mariposa,
Calaveras, Tuolumne
Attorney General Bill Lockyer

Bet Tzedek Legal Services
Board of Registered Nursing
California Advocates for Nursing Home Reform
California Council of the Blind
California Long-Term Care Ombudsman Association
California Nurses Association
California Senior Legislature
Central Contra Costa County Gray Panthers
Commission on Aging
Congress of California Seniors
Consumer Attorneys of California
Council on Aging-Orange County
County of San Joaquin
County of Marin
Elder Options-Professional Care Management
Family Support Group-Paradise Sunrise Heritage-Paradise
Health Insurance Counseling & Advocacy Prog.-Orange County
Little Hoover Commission
Los Angeles Leadership Council of Aging Organizations
Napa Valley Alliance on Aging
Napa Long-Term Care Ombudsman
National Assn. of Retired Federal Employees-San Diego Chapter
National Senior Citizens Law Center
Older Women's League
Protection & Advocacy, Inc.
San Francisco Labor Council AFL-CIO

Continued---

SEIU
Senior Council-San Benito & Santa Cruz Counties
Triple-A Council of California
Walter Stiern Democratic Club
137 individuals

Oppose: Alameda County Sheriff
Berryman Health - East Whittier
Beverly Enterprise

Continued---

Beverly Healthcare West Covina
California Association of Homes and Services for the Aging
California State Coroners' Association (prior version)
Civic Justice Association of California
County of Los Angeles, Department of Coroner
County of Sacramento, Coroner's Office
Glendale Adventist Medical Center
While Memorial Medical Center

-- END --

Date of Hearing: May 4, 2004

ASSEMBLY COMMITTEE ON HEALTH
Rebecca Cohn, Chair
AB 2791 (Simitian) – As Amended: April 1, 2004

SUBJECT: Skilled nursing and intermediate care facilities: liability.

SUMMARY: Expands rights of nursing home residents to bring civil suits against nursing homes that violate patient rights. Specifically, this bill:

1) Specifies that either a "current or former" resident or patient of a skilled nursing facility (SNF), or intermediate care facility (ICF), may bring a civil action against the licensee of a facility who violates any rights of the resident or patient. Specifies that the rights covered include those set forth in the Patients Bill of Rights, as specified in California nursing home regulations, as well as any other right provided for by federal or state law or regulation.

2) Increases a licensee's maximum civil liability for resident rights violations pursuant to #1) above from $500 to $5,000, plus costs and attorney fees.

EXISTING LAW:

1) Permits a resident or patient of a skilled nursing facility, or intermediate care facility, to bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights, as specified in California nursing home regulations.

2) Requires the licensee to be liable for the acts of the licensee's employees.

3) Makes the licensee liable for up to $500 and for costs and attorney fees, and authorizes the licensee to be enjoined from permitting the violation to continue. Makes an agreement by a resident or patient to waive his or her rights to sue pursuant to this bill void as contrary to public policy.

4) Establishes in SNF regulation, a Patients Bill of Rights, which enumerates 26 rights, including the right to be fully informed, to be transferred only for specified reasons, to be free from abuse, and to be treated with consideration and respect.

FISCAL EFFECT: None

COMMENTS:

1) PURPOSE OF THIS BILL. According to the author, this bill is necessary because, despite numerous deficiencies reported by the Department of Health Services every year and thousands of unresolved complaints received by the Ombudsman, SNF residents have not exercised their private right of action under current law which limits a nursing home's liability to $500. The author states that current law intended to provide a specific mechanism for an individual resident to enforce his or her rights through a private right of action. However, the author believes that the intent of that law remains unfulfilled for a variety of

reasons. First, current residents may fear reprisal if they sue the facility because the home or facility controls every aspect of a resident's daily life. Second, residents' rights cases can be complicated and attorneys will not take cases that involve many hours of work, if the time spent on the case greatly exceeds the maximum damage award of $500. Finally, the damage award may not reflect the extent of the violation. The author notes that the State is facing severe health care cost pressures that are likely to continue and that the number of seniors in California is expected to double in the next 15 years. With such cost and demographic pressures, the author believes that state functions such as licensing and certification of health facilities may suffer, and it thus becomes more important than ever to ensure that residents' rights be respected and enforced.

2) BACKGROUND. Existing law, which makes SNFs and ICFs liable for up to $500 along with litigation costs, has been in effect since 1982. The SNF Patients Bill of Rights, codified in regulations, was last amended in 1992.

3) SUPPORT. Supporters argue that, although federal and state law is reasonably good in establishing the rights of nursing home patients, raising the maximum financial remedy for rights violations from $500 to $5000 is necessary to provide effective enforcement of those rights. Supporters believe that bad nursing homes violate the law based on a cynical calculation that poor care is cheaper and thus more profitable than compliance with the law. This bill will allow the level of penalty to reflect the severity of harm to the patient.

4) OPPOSITION. Opponents argue that current resident rights penalties of up to $500 were enacted to provide residents with a remedy when they have suffered an intangible harm of nominal value and that increasing the penalty to $5000 creates a substantial financial incentive to sue facilities and dramatically changes the purpose of the law. Opponents state that in addition to being liable for civil damages of $500 plus litigation costs under current law, facilities are also liable for administrative penalties that range anywhere from $100 to $100,000 and for civil damages awarded under the Elder and Dependent Adult Civil Protection Act (EADACPA). Opponents argue that during the last round of nursing home reform in 2000 the increased penalty included in this bill was discussed and rejected. Finally, opponents believe that increased facility liability will inevitably raise costs for liability insurance, which has already increased substantially in the last five years, resulting in higher operating costs and necessitating higher Medi-Cal reimbursements. Opponents cite a 2003 report from the federal Centers for Medicare and Medicaid Services that states that the national average liability cost per occupied skilled nursing bed has grown at an average rate of 24% per year since 1991.

5) PREVIOUS LEGISLATION. SB 679 (Mello), Chapter 774, Statutes of 1991, enacted EADACPA, which prescribes conduct for the care of elderly or dependant adults and authorizes civil actions arising from abuse or neglect of elderly or dependent adults. In any such action, attorney's fees and costs, "pain and suffering" damages, and punitive damages may be awarded where there is clear and convincing evidence that a defendant has acted recklessly, or with malice, fraud or oppression. AB 634 (Steinberg), Chapter 242, Statutes of 2003, creates a statewide policy against confidential settlement agreements in cases brought under EADACPA.

AB 1731 (Shelley), Chapter 451, Statutes of 2000, established increased state civil penalties on SNFs and ICFs, increasing Class "AA" fines from not less than $5,000 to a range of

$25,000 to $100,000, and Class "A" fines from not less than $1,000 to a range of $2,000 to $20,000. AB 1731 also increased fines for "willful material falsification" and "willful material omission." "AA" violations are those that are a direct proximate cause of death of a patient. "A" violations present an imminent danger or substantial probability of death or serious harm to a patient.

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature (sponsor)
AARP California
American Federation of State, County and Municipal Employees
California Advocates for Nursing Home Reform
Consumer Attorneys of California
National Senior Citizens Law Center

Opposition

California Association of Health Facilities
California Association of Homes and Services for the Aging
California Healthcare Association
Crestwood Behavioral Health, Inc.
658 individuals

Analysis Prepared by: John Gilman / HEALTH / (916) 319-2097

Date of Hearing: May 4, 2004

ASSEMBLY COMMITTEE ON HEALTH
Rebecca Cohn, Chair
AB 2791 (Simitian) – As Amended: April 1, 2004

SUBJECT: Skilled nursing and intermediate care facilities: liability.

SUMMARY: Expands rights of nursing home residents to bring civil suits against nursing homes that violate patient rights. Specifically, this bill:

1) Specifies that either a "current or former" resident or patient of a skilled nursing facility (SNF), or intermediate care facility (ICF), may bring a civil action against the licensee of a facility who violates any rights of the resident or patient. Specifies that the rights covered include those set forth in the Patients Bill of Rights, as specified in California nursing home regulations, as well as any other right provided for by federal or state law or regulation.

2) Increases a licensee's maximum civil liability for resident rights violations pursuant to #1) above from $500 to $5,000, plus costs and attorney fees.

EXISTING LAW:

1) Permits a resident or patient of a skilled nursing facility, or intermediate care facility, to bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights, as specified in California nursing home regulations.

2) Requires the licensee to be liable for the acts of the licensee's employees.

3) Makes the licensee liable for up to $500 and for costs and attorney fees, and authorizes the licensee to be enjoined from permitting the violation to continue. Makes an agreement by a resident or patient to waive his or her rights to sue pursuant to this bill void as contrary to public policy.

4) Establishes in SNF regulation, a Patients Bill of Rights, which enumerates 26 rights, including the right to be fully informed, to be transferred only for specified reasons, to be free from abuse, and to be treated with consideration and respect.

FISCAL EFFECT: None

COMMENTS:

1) PURPOSE OF THIS BILL. According to the author, this bill is necessary because, despite numerous deficiencies reported by the Department of Health Services every year and thousands of unresolved complaints received by the Ombudsman, SNF residents have not exercised their private right of action under current law which limits a nursing home's liability to $500. The author states that current law intended to provide a specific mechanism for an individual resident to enforce his or her rights through a private right of action. However, the author believes that the intent of that law remains unfulfilled for a variety of

reasons. First, current residents may fear reprisal if they sue the facility because the home or facility controls every aspect of a resident's daily life. Second, residents' rights cases can be complicated and attorneys will not take cases that involve many hours of work, if the time spent on the case greatly exceeds the maximum damage award of $500. Finally, the damage award may not reflect the extent of the violation. The author notes that the State is facing severe health care cost pressures that are likely to continue and that the number of seniors in California is expected to double in the next 15 years. With such cost and demographic pressures, the author believes that state functions such as licensing and certification of health facilities may suffer, and it thus becomes more important than ever to ensure that residents' rights be respected and enforced.

2) BACKGROUND. Existing law, which makes SNFs and ICFs liable for up to $500 along with litigation costs, has been in effect since 1982. The SNF Patients Bill of Rights, codified in regulations, was last amended in 1992.

3) SUPPORT. Supporters argue that, although federal and state law is reasonably good in establishing the rights of nursing home patients, raising the maximum financial remedy for rights violations from $500 to $5000 is necessary to provide effective enforcement of those rights. Supporters believe that bad nursing homes violate the law based on a cynical calculation that poor care is cheaper and thus more profitable than compliance with the law. This bill will allow the level of penalty to reflect the severity of harm to the patient.

4) OPPOSITION. Opponents argue that current resident rights penalties of up to $500 were enacted to provide residents with a remedy when they have suffered an intangible harm of nominal value and that increasing the penalty to $5000 creates a substantial financial incentive to sue facilities and dramatically changes the purpose of the law. Opponents state that in addition to being liable for civil damages of $500 plus litigation costs under current law, facilities are also liable for administrative penalties that range anywhere from $100 to $100,000 and for civil damages awarded under the Elder and Dependent Adult Civil Protection Act (EADACPA). Opponents argue that during the last round of nursing home reform in 2000 the increased penalty included in this bill was discussed and rejected. Finally, opponents believe that increased facility liability will inevitably raise costs for liability insurance, which has already increased substantially in the last five years, resulting in higher operating costs and necessitating higher Medi-Cal reimbursements. Opponents cite a 2003 report from the federal Centers for Medicare and Medicaid Services that states that the national average liability cost per occupied skilled nursing bed has grown at an average rate of 24% per year since 1991.

5) PREVIOUS LEGISLATION. SB 679 (Mello), Chapter 774, Statutes of 1991, enacted EADACPA, which prescribes conduct for the care of elderly or dependant adults and authorizes civil actions arising from abuse or neglect of elderly or dependent adults. In any such action, attorney's fees and costs, "pain and suffering" damages, and punitive damages may be awarded where there is clear and convincing evidence that a defendant has acted recklessly, or with malice, fraud or oppression. AB 634 (Steinberg), Chapter 242, Statutes of 2003, creates a statewide policy against confidential settlement agreements in cases brought under EADACPA.

AB 1731 (Shelley), Chapter 451, Statutes of 2000, established increased state civil penalties on SNFs and ICFs, increasing Class "AA" fines from not less than $5,000 to a range of

$25,000 to $100,000, and Class "A" fines from not less than $1,000 to a range of $2,000 to $20,000. AB 1731 also increased fines for "willful material falsification" and "willful material omission." "AA" violations are those that are a direct proximate cause of death of a patient. "A" violations present an imminent danger or substantial probability of death or serious harm to a patient.

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature (sponsor)
AARP California
American Federation of State, County and Municipal Employees
California Advocates for Nursing Home Reform
Consumer Attorneys of California
National Senior Citizens Law Center

Opposition

California Association of Health Facilities
California Association of Homes and Services for the Aging
California Healthcare Association
Crestwood Behavioral Health, Inc.
658 individuals

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BILL ANALYSIS BACKGROUND INFORMATION WORKSHEET

BILL NUMBER: **AB 2791** AUTHOR: **Simitian**

*Please return a total of **FIVE COPIES** of the completed worksheet, including position letters.*

The above bill has been referred to the Assembly Health Committee. Please bring the following information to the Committee, **Room 6005** of the State Capitol. Please **type your comments** on this form or on attachments. The **information and amendments** must be submitted at least **seven days** before the bill is to be heard at the Committee's hearing. **We require the original amendments plus nine copies.** The Chair may **withdraw** the bill from its scheduled hearing if the worksheet and/or the amendments are not received within the specified timeline. The bill "set" that is put over for this reason will count against the author's limit of three sets. Please call the Committee Secretary at **319-2097** if you have any questions.

1. What does your bill do?

AB 2791 expands the currently liability limit for nursing homes for violation of residents' rights from $500 to $5,000. It clarifies that former residents also have a right of private action under H&S 1430(b), and expands the scope of rights to include other rights in state and federal law and regulation in addition to those enumerated in the Patients Bill of Rights.

2. Describe the deficiency in existing law in this area (include code citations).

Existing law, Section 1430 (B) of Health and Safety Code, allows a resident or patient of a skilled nursing facility to bring a civil action against the licensee of a facility who violates any rights set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations. The law allows for an award of $500 maximum in civil damages plus cost and attorney's fees.

The current maximum damage award is insufficient to attract attorneys to take these cases. Existing law is also silent on whether former residents have this right. Additionally, many other resident rights have been added to state and federal law and regulation since the Patients Bill of Rights was updated.

3. **Why is this bill needed? Please be specific and present significant facts, research studies, and pertinent background. Please provide any relevant background materials supporting the need for the bill. Attach copies of all Assembly (if there are multiple committee referrals) and Senate analyses (policy, fiscal and floor).**

Since 1430(B) went into effect nearly two decades ago, virtually no stand-alone residents' rights suits have been filed. An estimate by the California Advocates for Nursing Home Reform (CANHR) puts the number of stand-alone 1430(b) suits at five in the last two decades. Despite the numerous citations and deficiencies reported by the Department of Health Services every year [CANHR report attached cites at least 25,000 deficiencies and 700 citations annually according to DHS/Licensing and Certification Program, Automated Certification and Licensing Administrative Information and Management Systems], and the many thousands of complaints received by the Ombudsman that are not successfully resolved, residents have not exercised their private right of action.

Following the enactment of the Patients Bill of Rights in 1979, Senator Nicholas Petris introduced SB 1930 in 1982 to ensure that nursing homes and intermediate care facilities respect the fundamental rights of their residents. With the passage of SB 1930, H&S 1430(b) provided for a specific mechanism for an individual resident to enforce his or her rights through private right of action.

The intent of the bill, however, remains unfulfilled for a variety of reasons. 1) Current residents may fear reprisal if they sue the nursing home or intermediate care facility. Because every aspect of a resident's daily life is controlled by the home or facility, there is little incentive to go forward with a suit while remaining under a violator's care. 2) Residents' rights cases can be complicated; attorneys will not take cases that involve many hours of work, if the time spent on the case greatly exceeds the maximum damage award of $500. Additionally, the damage award may not reflect the extent of the violation.

Though opponents of this bill suggest that private right of action is already available and much used with the enactment of WIC 15657, the high burden of proof—clear and convincing—for the underlying offense, liability, as well as bad faith, recklessness, oppression or malice make it so that only the most egregious cases of neglect and abuse go forward. H&S 1430(b) is meant to address less egregious violations, but ones that are still fundamental to a resident's daily life.

The elderly population is increasing. According to the U.S. Census Bureau, the 65+ age group in California will double by the year 2020 to over 7 million. The State is facing severe cost pressures which are unlikely to be relieved in the near future. In the context of these trends, functions such as licensing and certification of health facilities may suffer. It becomes more important than ever to fulfill the intent of the Legislature in ensuring that residents' rights be respected and that the enforcement mechanism work.

4. **What state agencies does this bill affect? (NOTE: The Chair has asked that departments, agencies, boards, etc. affected by proposed legislation provide testimony on bills that affect their program areas.)**

None.

5. **Has a similar bill been introduced either this session or during a previous legislative session? _____ If yes, please identify the bill, the legislative session, and its disposition, and include all bill analyses related to it.**

AB 2696, 1990. The bill increases the civil penalty from $500 to $10,000, which a resident or patient of specified care facility may seek for violation of his her rights as set forth in the Patients' Bill of Rights and prohibits a party from seeking the civil penalty until attempting to resolve the dispute directly with the facility. Held in Senate Rules Committee.

AB 1160, 1999. Omnibus Bill affecting long-term health facilities. Among other things, this bill would authorize civil action for violations of any rights of the resident or patient as set forth in the Patients Bill of Rights under state and federal law and would increase the maximum liability to $25,000. Amended out of bill.

6. **Has there been an interim hearing or report on the bill or on this topic? If yes, please provide the hearing transcript and/or the report.**

No.

7. **Please provide the Committee with a total of 5 copies of all letters of <u>support and opposition</u> received for bill. Support and opposition letters must be received by the committee no later than 12:00 noon on the Wednesday prior to a Tuesday hearing to be assured reference in the committee analysis.**

8. **Do you plan to <u>amend</u> this bill prior to the hearing? YES ____ NO __x__**

If yes, briefly explain the substance of the amendments and attach a copy of the proposed language. Legislative Counsel amendments must be received by Tuesday, 7 days prior to the hearing. Please hand deliver the signed original amendment(s) plus 9 copies (unsigned) to the Committee Secretary.

NOTE: If the deadline for submitting amendments is not met by the author, the bill may be put over by the Chair. The bill "set" that is put over for this reason will count against the author's limit of 3 sets.

estimated price a statement of any automotive repair service which, if required to be done, will be done by someone other than the dealer or his employees. No service shall be done by other than the dealer or his employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any such service in the same manner as if he or his employees had done the service.

SEC. 2. There are no state-mandated local costs in this act which require reimbursement under Section 2231 of the Revenue and Taxation Code.

CHAPTER 1057

An act to add Chapter 2.4 (commencing with Section 1417) to Division 2 of the Health and Safety Code, relating to health care.

[Approved by Governor October 1, 1973. Filed with Secretary of State October 1, 1973.]

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

SECTION 1. Chapter 2.4 (commencing with Section 1417) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 2.4. QUALITY OF LONG-TERM HEALTH FACILITIES

1417. This chapter shall be known and may be cited as the Long-Term Care, Health, Safety, and Security Act of 1973.

1417.1. It is the intent of the Legislature in enacting this chapter to establish (1) a citation system for the imposition of prompt and effective civil sanctions against long-term health care facilities in violation of the laws and regulations of this state relating to patient care; (2) an inspection and reporting system to insure that long-term health care facilities are in compliance with state statutes and regulations pertaining to patient care; and (3) a provisional licensing mechanism to insure that full-term licenses are issued only to those long-term health care facilities that meet state standards relating to patient care.

1418. As used in this chapter:

(a) "Long-term health care facility" means any facility licensed pursuant to Chapter 2 (commencing with Section 1250) which (1) maintains and operates 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent patients, including mental, emotional, or behavioral problems, mental retardation, or alcoholism; or (2) provides supportive, restorative, and preventive health services in conjunction with a socially oriented program to its residents, and which maintains and operates 24-hour services including board, room, personal care, and intermittent nursing care.

"Long-term health care facility" includes nursing homes, skilled nursing facilities, extended care facilities, intermediate care facilities, and shall not include acute care hospital or other licensed facilities except for that distinct part of such hospital or facility which provides nursing home, skilled nursing facility, extended care facility, or intermediate care facility services.

(b) "Licensee" means the holder of a license issued under Chapter 2 (commencing with Section 1250) for a long-term health care facility.

1419. Any person may request an inspection of any long-term health care facility in accordance with the provisions of this chapter by giving notice to the state department of an alleged violation of applicable requirements of state law. Any such notice shall be in writing signed by the complainant and shall set forth with reasonable particularity the matters complained of. The substance of the complaint shall be provided to the licensee no earlier than at the commencement of the inspection. Neither the substance of the complaint provided the licensee nor any copy of the complaint or record published, released, or otherwise made available to the licensee shall disclose the name of any individual complainant or other person mentioned in the complaint, except the name or names of any duly authorized officer, employee, or agent of the state department conducting the investigation or inspection pursuant to this chapter, unless such complainant specifically requests the release of such name or names or the matter results in a judicial proceeding.

1420. Upon receipt of a complaint, the state department shall assign an inspector to make a preliminary review of the complaint and shall notify the complainant of the name of such inspector. Unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection within 10 working days of the receipt of the complaint. In either event, the complainant shall be promptly informed of the department's proposed course of action. Upon the request of either the complainant or the department, the complainant or his representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby.

1421. (a) Any duly authorized officer, employee, or agent of the state department may enter and inspect any long-term health care facility, including, but not limited to, interviewing residents and reviewing records, at any time to enforce any provision of this chapter. Inspections conducted pursuant to complaints filed with the state department shall be conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection conducted pursuant to this chapter unless previously and specifically authorized by the director or required by federal law.

(b) Any public employee giving such advance notice in violation

of this section shall be deemed to be in violation of subdivision (t) of Section 19572 of the Government Code and shall be suspended from all duties without pay for a period determined by the director.

1422. The state department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to Section 1419, conduct at least two general inspections, and as many additional inspections as may be necessary, in every calendar year of all long-term health care facilities in the state without providing notice of such inspections.

1423. If upon inspection or investigation the director determines that a long-term health care facility is in violation of any statutory provision or rule or regulation relating to the operation or maintenance of such facility, except with respect to violations determined to have only a minimal relationship to safety or health pursuant to Section 1427, he shall promptly, but not later than one day after the date of inspection, issue a citation to the licensee. The citation shall be served upon the licensee personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. A copy of the citation shall also be sent to each complainant. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, rule or regulation alleged to have been violated. The citation shall fix the earliest feasible time for the elimination of the condition constituting the violation, where appropriate.

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof, as follows:

(a) Class "A" violations are violations which the state department determines present an imminent danger to the patients or guests of the long-term health care facility or a substantial probability that death or serious physical harm would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute such a violation. The condition or practice constituting a class "A" violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. A class "A" violation is subject to a civil penalty in an amount not less than one thousand dollars ($1,000) and not exceeding five thousand dollars ($5,000) for each and every violation.

(b) Class "B" violations are violations which the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients, other than class "A" violations. A class "B" violation is subject to a civil penalty in an amount not less than fifty dollars ($50) and not exceeding two hundred fifty dollars ($250) for each and every violation. A citation for a class "B" violation shall specify the time within which the violation is required to be corrected. If a class "B" violation is corrected within the time specified, no civil penalty shall

be imposed.

1425. Where a licensee has failed to correct a violation within the time specified in the citation, the state department shall assess the licensee a civil penalty in the amount of fifty dollars ($50) for each day that such deficiency continues beyond the date specified for correction.

1426. After consultation with industry, professional, and consumer groups affected thereby, but not later than three months after the effective date of this chapter, the director shall publish proposed regulations setting forth the criteria and, where feasible, the specific acts that constitute class "A" and "B" violations under this chapter. Not later than six months after the effective date of this chapter, the director shall adopt regulations setting forth criteria and, where feasible, specific acts constituting class "A" and "B" violations. The regulations shall be adopted as prescribed in Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, except that such regulations shall not be adopted as emergency regulations pursuant to subdivision (b) of Section 11421 of the Government Code and shall not mandate a quality of care or new procedures which were not required on January 1, 1974, without providing additional reimbursement if the change in quality of care or the new procedures entail substantial new costs.

For purposes of this section, "new costs" shall not include costs which are the direct or indirect consequence of meeting the requirements of the citation system established under this chapter.

1427. The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

1428. (a) If a licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, he shall within four business days after service of the citation notify the director in writing of his request for an informal conference with the designee of the director for the county in which the cited long-term health care facility is located. The director's designee shall hold, within four business days from the receipt of the request, an informal conference, at the conclusion of which he may affirm, modify, or dismiss the citation or proposed assessment of a civil penalty. If the director's designee modifies or dismisses the citation or proposed assessment of a civil penalty, he shall state with particularity in writing his reasons for such action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the informal conference, he shall inform the director in writing within four business days after he receives the decision by the director's designee. If the licensee fails to notify the director in writing that he intends to contest the citation or the proposed assessment of a civil penalty therefor or the decision made by a director's designee after an informal conference within the time specified in this subdivision, the citation or the proposed

assessment of a civil penalty or the decision by a director's designee after an informal conference shall be deemed a final order of the state department and shall not be subject to further administrative review.

(b) A licensee may, in lieu of contesting a citation pursuant to this section, transmit to the department the minimum amount specified by law for each violation within four business days after the issuance of the citation.

(c) If a licensee notifies the director that he intends to contest a citation, the director shall immediately notify the Attorney General. Upon such notification, the Attorney General shall promptly take all appropriate action to enforce the citation and recover the civil penalty prescribed thereon, and shall take such other action as he shall deem appropriate, in the superior court of the county in which the long-term health care facility is located.

(d) In assessing the civil penalty for each count of violation, a court shall consider the nature of the violation and the seriousness of the effect of such violation upon the effectuation of the purposes and provisions of this chapter.

(e) The civil penalties authorized by this chapter shall be trebled for a second or subsequent violation occurring within any 12-month period, if a citation was issued for the previous violation occurring within such period and a civil penalty was assessed therefor.

(f) Actions brought under the provisions of this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. The times for responsive pleadings and for hearings in any such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

1429. (a) Each citation for a class "A" violation specified in subdivision (a) of Section 1424 which is issued pursuant to this section and which has become final, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, until the violation is corrected to the satisfaction of the state department up to a maximum of 120 days. The citation or copy shall be posted in a place or places in plain view of the patients in the long-term health care facility, persons visiting those patients, and persons who inquire about placement in the facility.

(b) Each citation for class "A" and class "B" violations specified in subdivisions (a) and (b) of Section 1424 which is issued pursuant to this section and which has become final, or a copy or copies thereof, shall be retained by the licensee at the facility cited until the violation is corrected to the satisfaction of the department. Each such citation shall be made promptly available by the licensee for inspection or examination by any member of the public who so requests. In addition, every licensee shall post in a place or places in plain view of the patient in the long-term health care facility, persons visiting those patients, and persons who inquire about placement in

the facility, a prominent notice informing such persons that copies of all final uncorrected violations issued by the department to the facility will be made promptly available by the licensee for inspection by any person who so requests.

1430. Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class "A" or "B" violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. Such actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

The remedies specified in this section shall be in addition to any other remedy provided by law.

1431. It is a misdemeanor for any person to do any of the following:

(a) Willfully prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the state department in the lawful enforcement of any provision of this chapter.

(b) Willfully prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of his official duties under this chapter.

(c) Willfully prevent or interfere with any such representative in the preserving of evidence of any violation of any of the provisions of this chapter or of the rules and regulations promulgated under this chapter.

1432. (a) No licensee shall discriminate or retaliate in any manner against a patient or employee in its long-term health care facility on the basis or for the reason that such patient or employee or any other person has initiated or participated in any proceeding specified in this chapter. A licensee who violates this section is subject to a civil penalty of no more than five hundred dollars ($500), to be assessed by the director and collected in the manner provided in Section 1430.

(b) Any attempt to expel a patient from a long-term health care facility, or any type of discriminatory treatment of a patient by whom, or upon whose behalf, a complaint has been submitted to the state department or any proceeding instituted under or related to this chapter within 120 days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the licensee in retaliation for the filing of the complaint.

(c) No licensee shall be cited for any violation caused by any

person licensed pursuant to the State Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code) if such person is independent of and not connected with the licensee and the licensee shows that he has exercised reasonable care and diligence in notifying such persons of their duty to the patients in the licensee's long-term health care facility.

1433. The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

1434. Commencing in 1974, the state department shall, on or before February 1 of each year, notify all public agencies which refer patients to long-term health care facilities of all of the long-term health care facilities in the area found upon inspection within the previous 12-month period to be without class "A" or "B" violations. Public agencies shall give priority to such long-term health care facilities in referring publicly assisted patients. No public agency shall refer patients to long-term health care facilities with any uncorrected class "A" violations or five or more uncorrected class "B" violations, except those long-term health care facilities which the director may exempt because of a lack of facilities of the same type in the area sufficient to satisfy the demand for services provided by such type of facilities.

1435. The state department shall annually prepare and make available in all offices of the facilities licensing section a report listing all licensees by name and address, indicating (1) the number of citations and the nature of each citation issued to each licensee during the previous 12-month period and the status of any action taken pursuant to each citation, including penalties assessed, and (2) the nature and status of action taken with respect to each uncorrected violation for which a citation is outstanding.

1436. On or before July 1, 1974, the state department shall provide for additional and ongoing training for inspectors charged with implementation of this chapter in investigative techniques and standards relating to the quality of care provided by long-term health care facilities. The investigative-technique element of such training shall be adopted after consultation with the Department of Justice and such investigative training may, but need not, be provided through a contract with the Department of Justice.

1437. If a long-term health care facility has not been previously licensed pursuant to Chapter 2 (commencing with Section 1250), the state department may only provisionally license such facility as provided in this section. A provisional license to operate a long-term health care facility shall terminate six months from the date of issuance. Within 30 days of the termination of a provisional license, the state department shall give such facility a full and complete inspection, and, if the facility meets all applicable requirements for

licensure, a regular license shall be issued. If the long-term health care facility does not meet the requirements for licensure but has made substantial progress towards meeting such requirements, as determined by the state department, the initial provisional license shall be renewed for six months. If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is lack of full compliance with such requirements, no further license shall be issued.

If an applicant for a provisional license to operate a long-term health care facility has been denied provisional licensing by the state department, he may contest such denial by filing a statement of issues, as provided in Section 11504 of the Government Code, and the proceedings to review such denial shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

1438. On or before January 1, 1977, the state department shall review the effectiveness of the enforcement of the provisions of this chapter in maintaining the quality of care provided by long-term health care facilities and shall submit a report thereon to the Legislature together with any recommendations of the state department for additional legislation which it deems necessary to improve the enforcement of the provisions of this chapter or to enhance the quality of care provided by such facilities.

1439. Any writing received, owned, used, or retained by the state department in connection with the provisions of this chapter is a public record within the meaning of subdivision (d) of Section 6252 of the Government Code, and, as such, is open to public inspection pursuant to the provision of Sections 6253, 6256, 6257, and 6258 of the Government Code. However, the names of any persons contained in such records, except the names of duly authorized officers, employees, or agents of the state department conducting an investigation or inspection in response to a complaint filed pursuant to this chapter, shall not be open to public inspection and copies of such records provided for public inspection shall have such names deleted.

SEC. 2. There are no state-mandated local costs in this act that require reimbursement under Section 2164.3 of the Revenue and Taxation Code.

West's Annotated California Codes
Health and Safety Code (Refs & Annos)
Division 2. Licensing Provisions (Refs & Annos)
Chapter 2.4. Quality of Long-Term Health Facilities (Refs & Annos)

West's Ann.Cal.Health & Safety Code § 1433

§ 1433. Cumulative remedies

Currentness

The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

Credits

(Added by Stats.1973, c. 1057, p. 2094, § 1.)

West's Ann. Cal. Health & Safety Code § 1433, CA HLTH & S § 1433
Current with urgency legislation through Ch. 181 of 2017 Reg.Sess

End of Document

HEALTH CARE FACILITIES—LONG-TERM CARE—LICENSING VIOLATIONS

CHAPTER 162

A.B.No. 3432

AN ACT to amend and repeal Section 1424 of the Health and Safety Code, relating to long-term health care facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 22, 1990.]

[Filed with Secretary of State June 22, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3432, Isenberg. Long-term health care facilities: citations: burden of proof: reduction or dismissal.

Existing law which will become inoperative December 1, 1990, and will be repealed January 1, 1991, requires that, if the State Department of Health Services establishes that certain violations of long-term health care facility licensing requirements have occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation, and authorizes reduction or dismissal of prescribed citations if the burden is met.

This bill would delete the inoperative and repeal dates. This bill would, also, repeal an existing inoperative provision which would become operative January 1, 1991, and which, except for reduction of citations for class "AA" violations, as defined, would delete the provisions establishing this burden of proof upon the licensee and authorizing reduction or dismissal of citations.

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

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

SECTION 1. Section 1424 of the Health and Safety Code, as amended by Section 1 of Chapter 1141 of the Statutes of 1987, is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk which the violation presents to the patient's mental and physical condition.

(2) The patient's medical condition.

(3) The patient's mental condition and his or her history of mental disability or disorder.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(b) Class "AA" violations are violations which meet the criteria for a class "A" violation and which the state department determines to have been a direct proximate cause of death of a patient of a long-term health care facility. A class "AA" violation is subject to a civil penalty in the amount of not less than five thousand dollars ($5,000) and not exceeding twenty-five thousand dollars ($25,000) for each violation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

(1) The violation was a direct proximate cause of death of a patient.

(2) The death resulted from an occurrence of a nature which the regulation was designed to prevent.

(3) The patient suffering the death was among the class of persons for whose protection the regulation was adopted.

If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

For each class "AA" violation within a 12-month period which has become final, the state department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class "AA" violation in a facility within that 12-month period which has been sustained following a citation review conference, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(c) Class "A" violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class "A" violation. The condition or practice constituting a class "A" violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. A class "A" violation is subject to a civil penalty in an amount not less than one thousand dollars ($1,000) and not exceeding ten thousand dollars ($10,000) for each and every violation.

If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

(d) Class "B" violations are violations which the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients, other than class "AA" or "A" violations. Unless otherwise determined by the state department to be a class "A" violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Administrative Code, which is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class "B" violation. A class "B" violation is subject to a civil penalty in an amount not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000) for each and every violation. A citation for a class "B" violation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

If a class "B" violation is corrected within the time specified, no civil penalties shall be imposed, unless it is a second or subsequent violation of the same regulation occurring within the period since and including the previous full annual licensing survey inspection or 12 months, whichever is greater. In no case shall the period extend beyond 13 months. At the citation review conference, the director's designee may, utilizing the criteria set forth in subdivision (a), waive or reduce the penalty as specified in subdivision (a) of Section 1428, taking into consideration the seriousness of the previous and present violations, the similarity between the two violations, the extent to which there is a direct

relationship to the health and safety or security of patients, and the good faith exercised by the licensee in correcting the problem. The decision to waive or not to waive these penalties shall not be reviewable. In the event of any violation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee violating the regulation did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation may be reduced or dismissed.

(e) Any willful material falsification or willful material omission in the health record for a patient of a long-term health care facility is a violation. "Willful material falsification," as used in this section, means any entry in the patient health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of decubitus ulcers or contractures, or pertaining to tests and measurements of vital signs, or notations of input and output of fluids, which was made with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

"Willful material omission," as used in this section, means the willful failure to record any untoward event which has affected the health, safety, or security of the specific patient, and which was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided. A violation of this subdivision may result in a civil penalty not to exceed ten thousand dollars ($10,000), as specified in paragraphs (1) to (3), inclusive. However, in no case shall the civil penalty be trebled.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) or more than ten thousand dollars ($10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars ($2,500).

(2) Where the penalty assessed is one thousand dollars ($1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "B" violation, and shall include the right of appeal as specified in Section 1428 and the payment of the minimum fine as specified in subdivision (d) and in Section 1428.1. Where the assessed penalty is in excess of one thousand dollars ($1,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "A" violation, and shall include the right of appeal as specified in Section 1428 and the payment of the minimum fine as specified in Section 1428.1.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the state department from issuing a class "A" or class "B" citation for any violation which meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class "A" or class "B" violation and as a violation of this subdivision.

(f) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to patient safety or health.

* * *

SEC. 2. Section 1424 of the Health and Safety Code, as added by Section 2 of Chapter 1141 of the Statutes of 1987, is repealed.

SEC. 3. 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 Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure a consistent statutory requirement for long-term health care facility licensees to sustain the burden of proving they acted reasonably to comply with regulations for these facilities, it is necessary that this act take effect immediately.

COUNTY FINANCE—ADVANCE PAYMENT PROGRAMS—REPORTS

CHAPTER 163

A.B.No. 3684

AN ACT relating to county government finance.

[Approved by Governor June 22, 1990.]

[Filed with Secretary of State June 22, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3684, Hauser. County finance: Office of Planning and Research: report.

Existing law provides that upon the request by the board of supervisors of a county which has a population of 150,000 or less as of January 1, 1983, any state department, except for the State Department of Social Services, may make advance payments to the county which are essential to the effective implementation of any particular program. Prior to January 1, 1990, this authority only extended to specified state departments.

This bill would require the Legislative Analyst, on or before January 1, 1992, to prepare a report for the Governor and the fiscal committees of the Legislature regarding the implementation and effectiveness of these advance payment provisions, including the changes that became effective on January 1, 1990, to provide resources to help stabilize fiscal conditions in the affected counties.

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

SECTION 1. On or before January 1, 1992, the Legislative Analyst, in cooperation with the involved state and local agencies, shall prepare a report for the Governor and the chairpersons of the fiscal committees of the Legislature regarding the implementation and effectiveness of Section 11019.5 of the Government Code, including findings and recommendations to provide state resources to help stabilize fiscal conditions in counties which qualify for the advance payment program.

LOCAL GOVERNMENT—COUNTY PURCHASING AGENTS—CONTRACTS FOR SERVICES

CHAPTER 164

S.B.No. 281

AN ACT to amend Section 25501 of the Government Code, to amend Section 20120 of, to amend and repeal Section 20131 of, and to repeal Section 20133 of, the Public Contract Code, relating to county contracts.

[Approved by Governor June 22, 1990.]

[Filed with Secretary of State June 22, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

SB 281, Leonard. County contracts: state-licensed independent contractors.

BILL ANALYSIS

SENATE HEALTH
COMMITTEE ANALYSIS
Senator Deborah V. Ortiz, Chair

BILL NO: SB 1248
S
AUTHOR: Alquist
B
AMENDED: March 20, 2006
HEARING DATE: March 29, 2006
1
FISCAL: Judiciary / Non-fiscal
2

4
CONSULTANT:
8
Vazquez / ak

SUBJECT

Long-term health care facilities: resident rights

SUMMARY

This bill would require, as of July 1, 2007, that specified federal regulations regarding the rights of residents in long-term care facilities and the duties of facilities toward their residents apply to each skilled nursing facility and intermediate care facility regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the skilled nursing facility or intermediate care facility in which the resident resides.

ABSTRACT

Existing law:
1.Defines "skilled nursing facility" (SNF) as a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

2.Defines "intermediate care facility" (ICF) as a health
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facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

3.States that intent of the Legislature in enacting the current chapter in state law related to resident rights to expressly set forth fundamental human rights which all patients shall be entitled to in SNFs or ICFs and to ensure that patients in such facilities are advised of their fundamental rights and the obligations of the facility.

4.Specifies that written policies regarding the rights of patient shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public.

5.Requires that the aforementioned policies and procedures ensure that each patient admitted has specified rights, including the following, and is notified of the following facility obligations, in addition to those specified by regulation:
a. The facility shall employ an adequate number of qualified personnel.
b. Each patient shall show evidence of good personal hygiene and be given care to prevent bedsores and prevent or reduce incontinence.
c. The facility shall provide food of the quality and quantity to meet patient needs in accordance with physician orders.
d. The facility shall provide a staffed and equipped activity program to meet the needs and interests of each patient.
e. The facility shall be clean, sanitary, and in good repair at all times.

f. A nurses call system shall be maintained and provide visual and audible signal communication between nurses and patients.
g. If a facility has a significant beneficial interest in an ancillary health service provider or facility or if a facility knows that such a provider or facility has the same interest in a facility, that the patient

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may choose to select this provider or service ordered by a member of the medical staff of the facility.
h. The resident may appeal a facility's refusal to readmit him or her if that resident has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions, with related provisions specific to Medi-Cal and non-Medi-Cal residents.

This bill:
1. Requires, effective July 1, 2007, that Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations (CFR) apply to each skilled nursing facility and intermediate care facility regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the skilled nursing facility or intermediate care facility in which the resident resides.

2. Exempts a noncertified facility from the obligation to provide notice of Medicaid or Medicare benefits, covered services, or eligibility procedures.

FISCAL IMPACT

This bill is keyed non-fiscal.

BACKGROUND AND DISCUSSION

Purpose of the bill
The author states that this bill seeks to establish equity among California nursing home residents. The author and sponsor state that currently nursing home residents in Medicare and Medicaid certified facilities enjoy a broader array of rights than those in non-certified facilities. The bill states that federal regulations regarding resident rights and facility obligations under the 1991 Nursing Home Reform Law apply to each SNF and ICF, regardless of a resident's payment source of the certification status of the facility. Currently, if a facility is certified under either Medicare or Medicaid, these regulations apply to all residents in the facility.

The net effect of this bill is to expand the applicability

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of these federal regulations to residents in non-certified or exclusively private pay facilities. The bill allows for federal regulations which should only apply to certified facilities, i.e. regulations that are particular to the benefits, services, and eligibility procedures for Medicare and Medicaid beneficiaries, to reasonably not be extended to the private pay facilities as their applicability is unnecessary. According to the Department of Health Services, this bill would affect 16 private pay, non-certified facilities in California.

Real effect of the legislation
The sponsor states that in some instances, federal law establishes a right that does not exist under California law. For example, California rights do not expressly give a resident the right to reside and receive services in the facility with reasonable accommodations of individual needs and preferences, as is required by 42 CFR Section 483.15(e). In most cases where federal rights are superior, a similar California right exists, but may be less prescriptive or protective. For example, federal regulations give family members the right to visit at anytime with a resident's permission under 42 CFR Section 483.10(j), but California regulations only allow family visits at anytime if a resident is critically ill under Title 22 of the California Code of Regulations (CCR); Section 72527(a)(19). As another example, California

regulations establish weak due process rights regarding evictions under 22 CCR Section 72527(a)(6), while federal regulations provide a very detailed system of rights that include written notice, an opportunity to appeal, and other important protections outlined in 42 CFR Section 483.12).

In other instances, the sponsor contends, federal law and regulations establish a right that exists in California regulations but is not expressed as a right. For example, federal law and regulations expressly provide a resident's right to choose a personal attending physician under 42 CFR Section 483.10(d). California regulations on physician services for skilled nursing facilities under 22 CCR Section 72303 state that a SNF resident shall be under the care of a physician selected by the resident or resident's representative. The regulations cover the same issue, choice of physician, but the state requirement is not

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treated as a right. This distinction is important because both federal and state law require nursing homes to inform and educate residents about their rights. The sponsor states that residents rarely receive information about other statutory or regulatory standards of care or obligations that apply to the facility.

Intersection of federal regulations with California law and regulations

The table below outlines the rights and obligations included in the federal regulations referenced by the bill and excludes a summary of those rights that are associated with Medicare or Medicaid, which are exempt from applicability in the measure. For example, these rights include a mandatory bed hold period for Medicaid residents and the bill would not extend this specific right to non-Medicaid residents.

The table's third column displays the residents rights currently included in state law and regulations, attempting to match subjects to where they intersect with federal law to the closest extent. State law on residents rights in SNFs and ICFs are outlined principally in Sections 1599-1599.4 of the Health and Safety Code. California regulations on residents rights in SNFs and ICFs are included in Sections 72527 and 73523 of Title 22 of the CCR. The language included in the table refers to these sources.

Topic	Summary of Rights Under Federal Regulations	Intersection with State Law and Regs
42 CFR Section 483.10 Resident rights.		
Exercise of rights	To exercise his or her rights as a facility resident and as a citizen or resident of the United States.	Provide that a patient's rights may only be denied or limited if such denial or limitation is otherwise authorized by law. Reasons for denial or limitation of such

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	To be free of interference, coercion, discrimination, and reprisal from the facility in exercising rights.	rights shall be documented in the patient's health record. (CCR)
	If adjudged incompetent, the resident's legal-surrogate may exercise the rights to the extent provided in state law.	Provide that if a patient lacks the ability to understand the rights and the nature and consequences of proposed treatment, the patient's representative shall have the rights specified in this section to the extent the right may devolve to another, unless the

Privacy and confidentiality	To personal privacy and confidentiality of his or her personal and clinical records. This does not require the facility to provide a private room for each resident. To approve or refuse the release of personal and clinical records to any individual outside the facility, with exceptions.	To be assured confidential treatment of financial and health records and to approve or refuse their release, except as authorized by law. (CCR)
Grievances	To voice grievances without discrimination or reprisal. To prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.	To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination or reprisal. (CCR)
Examination of survey results	To examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be readily accessible and the facility must post a notice of their availability.	

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Work	To refuse to perform services for the facility. To perform services for the facility if he or she chooses.	
Mail	To privacy in written communications. To send and properly receive mail that is unopened. Have access to stationery, postage, and writing implements at the resident's own expense.	To associate and communicate privately with persons of the patient's choice, and to send and receive personal mail unopened. (CCR)
Access and visitation rights	Facility must provide access to any resident by any representative of the Secretary, of the State, the resident's individual physician, the State long term care ombudsman, and others as specified.	To have daily visiting hours established. (CCR) To have visits from members of the clergy at any time at the request of the patient or the patient's representative and to have visits from persons of the patient's choosing at any time if the patient is critically ill, unless medically contraindicated. (CCR) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business

		purposes. (CCR)

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STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 12

Telephone	To have reasonable access to the use of a telephone where calls can be made without being overheard.	To have reasonable access to telephones and to make and receive confidential calls. (CCR)
Personal property	To retain and use personal possessions, including some furnishings and appropriate clothing.	To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the patient or other patients. (CCR)
Married couples	To share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.	If married, to be assured privacy for visits by the patient's spouse and if both are patients in the facility, to be permitted to share a room. (CCR)
Self-administration of drugs	To self-administer drugs if the interdisciplinary team has determined that the practice is safe.	
Refusal of certain transfers	To refuse a transfer to another room within the institution under specified circumstances, e.g. relocation from the distinct part of the institution that is a SNF to a distinct part of the institution that is a SNF.	
42 CFR Section 483.12 Admission, transfer, and discharge rights.		
Definition	Transfer and discharge includes movement of a resident to a bed outside	

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STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 13

	of the certified facility whether that bed is in the same physical plant or not. This does not refer to movement of a resident to a bed within the same certified facility.	
Transfer and discharge requirements	Facility must permit each resident to remain in the facility and not transfer or discharge the resident unless specified conditions are met, including that the transfer or discharge is necessary or appropriate.	To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients or for nonpayment for his or her stay and to be given reasonable advance notice to ensure orderly transfer or discharge. Such actions shall be documented in the patient's health record. (CCR)
Documentation	Facility must document a transfer or discharge in the clinical record and the documentation must be made by the resident's physician or another physician, depending on the circumstance.	

Notice before transfer	Facility must notify the resident and, if known, a family member or legal representative of the transfer or discharge and the reasons for the move in writing and in a language and manner that they understand.	
Timing of the notice	Facility must provide notice of the transfer or	

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	discharge at least 30 days before the resident is transferred or discharged. Notice may be made as soon as practicable before transfer or discharge when the safety or health of individuals in the facility is endangered, the resident's health improves sufficiently to allow a more immediate transfer or discharge, an immediate transfer or discharge is required by the resident's urgent medical needs, or a resident has not resided in the facility for 30 days.	
Contents of the notice	Written notice must include the reasons for transfer or discharge, effective date, location to which the resident is transferred or discharged, a statement concerning the right to appeal, contact information for the State long term care ombudsman, and, depending on the type of facility, other advocacy contact information.	The resident may appeal a facility's refusal to readmit him or her if that resident has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions, with related provisions specific to Medi-Cal and non-Medi-Cal residents. (Code)
Orientation for transfer or discharge	Facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.	
Room	Facility must limit room	

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Changes in a composite distinct part	changes to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.	
Notice of bed-hold policy and readmission	To receive a written notice before transfer that specifies the duration of the bed-hold policy and the facility's policies regarding bed-hold periods. Upon transfer, a facility must provide written notice that specifies the duration of the bed-hold policy.	

Readmission to a composite distinct part	Upon readmission to a composite distinct part, the resident must be permitted to return to an available bed in the particular location in which he or she resided previously, and if a bed is not available, the resident must be given the option to return to that location upon the first availability of a bed there.	
Equal access to quality care	Facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirements describing the changes.	

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STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 16

Admissions policies	Facility must not require residents or potential residents to waive their rights to Medicare or Medicaid or to provide oral or written assurance that they are not eligible for, or will not apply for, Medicare and Medicaid benefits.	
	Facility must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. Facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign	a contract to provide
	facility payment from the resident's income or resources.	
42 CFR Section 483.13 Resident behavior and facility practices.		
Restraints	To be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.	To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure, including the use of psychotherapeutic drugs, physical restraints, or the

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STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 17

		prolonged use of a device that may lead to the inability to regain use of a normal bodily function. (CCR)
		To be free from psychotherapeutic drugs and physical restraints used for the purpose of patient discipline or staff convenience and to

		be free from psychotherapeutic drugs used as a chemical restraint except in an emergency which threatens to bring immediate injury to the patient or others. (CCR)	
		Provide requirements for patients' rights under policies and procedures concerning consent, informed consent and refusal of treatments or procedures under specified circumstances, including the use of psychotherapeutic drugs or physical restraints and when an incapacitated patient has no conservator or attorney in fact. (CCR)	
Abuse	To be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.	To be free from mental and physical abuse. (CCR)	
Staff	Facility must develop and		

Continued---

treatment of residents	implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property. In accordance with this:		
	Facility must not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion and must not employ individuals who have been found guilty or abuse, neglect, or mistreatment or who have had a finding entered into the state nurse aide registry concerning this behavior.		
	Facility must report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.		
	Facility must ensure that all alleged, aforementioned violations are reported immediately to the administrator of the facility and to other officials in accordance with State law, including to the State survey and certification agency.		

Continued---

	Facility must have		

	evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress. Investigation results must be reported to the administrator or his designee and to other officials in accordance with State law, including the survey and certification agency, within five working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.		
42 CFR Section 483.15 Quality of life.			
General provisions	Facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.		
Dignity	Facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full	To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and	

Continued---

	recognition of his or her individuality.	in care of personal needs. (CCR)	
Self-determination and participation	To choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care, interact with members of the community inside and outside of the facility, and make choices about aspects of his or her life in the facility that are significant to the resident.		
Participation in resident and family groups	To organize and participate in resident groups in the facility and to meet in the facility, with the facility providing private space, with the families of other residents in the facility. Staff or visitors may attend meetings at the group's invitation. Facility must provide a designated staff person responsible for providing assistance and responding to written requests of the group and the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decision affecting resident care and life in the facility.	To meet with others and participate in activities of social, religious and community groups. (CCR)	

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STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 21

Participation in other activities	To participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.		
Accommodation of needs	To reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered, and receive notice before the resident's room or roommate is changed.		
Activities	Facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident. The activities program must be directed by a qualified professional, as outlined.	The facility shall provide a staffed and equipped activity program to meet the needs and interests of each patient. (Code)	
Social Services	Facility must provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial		

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STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 22

	well-being of each resident. A facility with more than 120 beds must employ a qualified social worker on a full-time basis.		
Qualifications of a social worker	Sets out the qualifications of a social worker, including a BA in social work or in a human services field and one year of supervised social work experiences in a health care setting working directly with individuals.	The facility shall employ an adequate number of qualified personnel. (Code)	
Environment	Facility must provide a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible, housekeeping and maintenance services, clean bed and bath linens in good condition, private closet space in each resident room, adequate and comfortable lighting levels in all areas, comfortable and safe temperature levels, and maintenance of comfortable sound levels.	The facility shall be clean, sanitary, an in good repair at all times. (Code)	

No intersection with these federal regulations		Each patient shall show evidence of good personal hygiene and be given care to prevent bedsores and prevent or reduce incontinence. (Code) Continued---

STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 23

		The facility shall provide food of the quality and quantity to meet patient needs in accordance with physician orders. (Code)
		A nurses call system shall be maintained and provide visual and audible signal communication between nurses and patients. (Code)
		If a facility has a significant beneficial interest in an ancillary health service provider or facility or if a facility knows that such a provider or facility has the same interest in a facility, that the patient may c select this provider or service ordered by a member of the medical staff of the facility. (Code)

Issues and comments

Exclusion of applicability of federal rights related to notice of Medicaid or Medicare benefits, covered services, or eligibility procedures. The bill states that Medicare and Medicaid notice rights contained in the federal regulations do not apply to non - certified facilities, which is appropriate because non - certified facilities do not participate in these coverage programs . The sponsor indicates that t he bill does not prohibit noncertified Continued---

STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 24

facilities from voluntarily offering Medicare or Medicaid information to residents that may be of interest to them.

Liability Concerns. In response to questions raised by the opposition and providers about the creation of liability exposure through the bill, the sponsor states that S B 1248 does not establish a new cause of action. The sponsor states that current California law already gives nursing home residents a private right of action to seek enforcement of both state and federal rights. They contend that v ery few cases are ever filed for rights violations because attorneys will not represent residents due to the extraordinarily low liability limit of $500.

Related legislation
SB 1312 (Alquist) in the current session seeks to change licensing inspections for long-term health care facilities certified by the Medicare and Medicaid programs in the state and require the proactive enforcement of compliance with state statutes and regulations governing these facilities. The bill is set to be heard in the Senate Health Committee on April 19, 2006.

Arguments in support
The sponsor of the meesure, California Advocates for Nursing Home Reform (CANHR), states that currently, not all residents of California nursing homes have the same rights.

Residents of nursing homes that do not participate in the Medicare of Medi-Cal programs have rights established by California law but are not protected by important rights established under federal law. CANHR states that, as a result, thousands of California nursing home residents, almost all of whom are paying privately for their care at very expensive rates lack important due process rights related to evictions and other important rights. Proponents argue that this bill will guarantee equal rights for all California nursing home residents by requiring all nursing homes to comply with residents' rights established under federal law. The federal rights were established more than a dozen years ago and contain fundamental rights that should apply to all nursing home residents.

CANHR states that a central benefit of the bill is that it would establishing uniform rights will ensure fair

Continued---

STAFF ANALYSIS OF SENATE BILL 1248 (Alquist) Page 25

treatment of all residents and make it easier to educate residents and their representatives about their rights.

Continued---

Arguments in opposition
The California Association of Homes and Services for the Aging (CAHSA) writes with an oppose unless amended position and states that it objects to the wholesale incorporation of sections of the Code of Federal Regulations (CFR). CAHSA states that it is not prudent to legislate matters that must be defined by regulations that the state cannot control and that much of what is included in the CFR to be incorporated by way of this bill speaks to issues that California law already addresses. The result of this whole incorporation would be multiple conflicting laws on many issues. CAHSA states its willingness to work with the author to identify ideas in the specified federal regulations that would enhance California law and to draft appropriate language to amend California law accordingly.

POSITIONS

Support: California Advocates for Nursing Home Reform (sponsor)
AARP California
Alzheimer's Association
California Alliance for Retired Americans
California Alliance to Advance Nursing Home Care
California Catholic Conference
California Seniors Coalition
Consumer Attorneys of California
Gray Panthers California
National Multiple Sclerosis Society
Older Women's League
Protection and Advocacy, Inc.

Oppose: California Association of Homes and Services for the Aging (unless amended)

-- END --

Continued---

Resident Name: _____

Admission Date: _____ **Resident Number:** _____

Facility Name: _____

CALIFORNIA STANDARD ADMISSION AGREEMENT FOR SKILLED NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES

I. Preamble

The California Standard Admission Agreement is an admission contract that this Facility is required by state law and regulation to use. It is a legally binding agreement that defines the rights and obligations of each person (or party) signing the contract. Please read this Agreement carefully before you sign it. If you have any questions, please discuss them with Facility staff before you sign the agreement. You are encouraged to have this contract reviewed by your legal representative, or by any other advisor of your choice, before you sign it.

You may also call the Office of the State Long Term Care Ombudsman at 1-800-231-4024, for more information about this Facility. The report of the most recent state licensing visit to our facility is posted _____, and a copy of it or of reports of prior inspections may be obtained from the local office of the California Department of Public Health (CDPH), Licensing and Certification Division

_____.
(Location of District Office)

If our facility participates in the Medi-Cal or Medicare programs, we will keep survey, certification and complaint investigation reports for the past three years and will make these reports available for anyone to review upon request.

If you are able to do so, you are required to sign this Agreement in order to be admitted to this Facility. If you are not able to sign this Agreement, your representative may sign it for you. You shall not be required to sign any other document at the time of, or as a condition of, admission to this Facility.

II. Identification of Parties to this Agreement

DEFINITIONS

In order to make this Agreement more easily understood, references to "we," "our," "us," "the Facility," or "our Facility" are references to:

_____
(Insert the Name of the Facility as it appears on its License)

Attachment A provides you with the name of the owner and licensee of this facility, and the name and contact information of a single entity responsible for all aspects of patient care and operation at this facility.

References to "you," "your," "Patient," or "Resident" are references to _____, the person who will be receiving care in this Facility. For purposes of this Agreement, "Resident" has the same meaning as "Patient."

The parties to this agreement are the Resident, the Facility, and the Resident's Representative. References to the "Resident's Representative" are references to: _____, the person who will sign on your behalf to admit you to this Facility, and/or who is authorized to make decisions for you in the event that you are unable to. To the extent permitted by law, you may designate a person as your Representative at any time.

Note: the person indicated as your "**Resident's Representative**" may be a family member, or by law, any of the following: a conservator, a person designated under the Resident's Advance Health Care Directive or Power of Attorney for Health Care, the Resident's next of kin, any other person designated by the Resident consistent with State law, a person authorized by a court, or, if the Resident is a minor, a person authorized by law to represent the minor.

Signing this Agreement as a Resident's Representative does not, in and of itself, make the Resident's Representative liable for the Resident's debts. However, a Resident's Representative acting as the Resident's financial conservator or otherwise responsible for distribution of the Resident's monies shall provide reimbursements from the Resident's assets to the Facility in compliance with Section V. of the agreement.

IF OUR FACILITY PARTICIPATES IN THE MEDI-CAL OR MEDICARE PROGRAM, OUR FACILITY DOES NOT REQUIRE THAT YOU HAVE ANYONE GUARANTEE PAYMENT FOR YOUR CARE BY SIGNING OR COSIGNING THIS ADMISSION AGREEMENT AS A CONDITION OF ADMISSION.

The Parties to this Agreement are:

Resident: _____
(Type or Print Resident's Name Here)

Resident's Representative: _____
(Type or Print Representative's Name Here)

Relationship: _____

Facility: _____
(Type or Print the Facility's Name as it appears on the License)

III. Consent to Treatment

The Resident hereby consents to routine nursing care provided by this Facility, as well as emergency care that may be required.

However, you have the right, to the extent permitted by law, to refuse any treatment and the right to be informed of potential medical consequences should you refuse treatment. We will keep you informed about the routine nursing and emergency care we provide to you, and we will answer your questions about the care and services we provide you.

If you are, or become, incapable of making your own medical decisions, we will follow the direction of a person with legal authority to make medical treatment decisions on your behalf, such as a guardian, conservator, next of kin, or a person designated in an Advance Health Care Directive or Power of Attorney for Health Care.

Following admission, we encourage you to provide us with an Advance Health Care Directive specifying your wishes as to the care and services you want to receive in certain circumstances. However, you are not required to prepare one, or to provide us a copy of one, as a condition of admission to our Facility. If you already have an Advance Health Care Directive, it is important that you provide us with a copy so that we may inform our staff.

If you do not know how to prepare an Advance Health Care Directive and wish to prepare one, we will help you find someone to assist you in doing so.

IV. Your Rights as a Resident

Residents of this Facility keep all their basic rights and liberties as a citizen or resident of the United States when, and after, they are admitted. Because these rights are so important, both federal and state laws and regulations describe them in detail, and state law requires that a comprehensive Resident Bill of Rights be attached to this Agreement.

Attachment F, entitled "Resident Bill of Rights," lists your rights, as set forth in State and Federal law. For your information, the attachment also provides the location of your rights in statute.

Violations of state laws and regulations identified above may subject our Facility and our staff to civil or criminal proceedings. You have the right to voice grievances to us without fear of any reprisal, and you may submit complaints or any questions or concerns you may have about our services or your rights to the local office of the California Department of Public Health, Licensing and Certification District Office _____, or to the State Long-Term Care Ombudsman (see page 1 for contact information).

You should review the attached "Resident Bill of Rights" very carefully. To acknowledge that you have been informed of the "Resident Bill of Rights," please sign here:

_____

V. Financial Arrangements

Beginning on _____ (date), we will provide routine nursing and emergency care and other services to you in exchange for payment.

Our Facility has been approved to receive payment from the following government insurance programs: _____ **Medi-Cal** _____ **Medicare**

At the time of admission, payment for the care we provide to you will be made by:

_____ **Resident (Private Pay)**
_____ **Medi-Cal**
_____ **Medicare Part A** **Medicare Part B:** _____
_____ **Private Insurance:** _____
(Enter Insurance Company Name and Policy Number)
_____ **Managed Care Organization:** _____
_____ **Other:** _____

Resident's Share of Cost. Medi-Cal, Medicare, or a private payor may require that the Resident pay a co-payment, co-insurance, or a deductible, all of which the Facility considers to be the Resident's share of cost. Failure by the Resident to pay his or her share of cost is grounds for involuntary discharge of the Resident.

If you do not know whether your care in our Facility can be covered by Medi-Cal or Medicare, we will help you get the information you need. You should note that, if our Facility does not participate in Medi-Cal or Medicare and you later want these programs to cover the cost of your care, you may be required to leave our Facility.

[APPLICABLE ONLY IF DATE IS ENTERED:] On _____ (date) our Facility notified the California Department of Health Care Services of our intent to withdraw from the Medi-Cal Program. If you are admitted after that date, we cannot accept Medi-Cal reimbursement on your behalf, and we will not be required to retain you as a Resident if you convert to Medi-Cal reimbursement during your stay here. If, on the other hand, you were a Resident here on that date, we are required to accept Medi-Cal reimbursement on your behalf, even if you become eligible for Medi-Cal reimbursement after that date.

YOU SHOULD BE AWARE THAT NO FACILITY THAT PARTICIPATES IN THE MEDI-CAL PROGRAM MAY REQUIRE ANY RESIDENT TO REMAIN IN PRIVATE PAY STATUS FOR ANY PERIOD OF TIME BEFORE CONVERTING TO MEDI-CAL COVERAGE. NOR, AS A CONDITION OF ADMISSION OR CONTINUED STAY IN SUCH A FACILITY, MAY THE FACILITY REQUIRE ORAL OR WRITTEN ASSURANCE FROM A RESIDENT THAT HE OR SHE IS NOT ELIGIBLE FOR, OR WILL NOT APPLY FOR, MEDICARE OR MEDI-CAL BENEFITS.

A. Charges for Private Pay Residents

Our Facility charges the following basic daily rates:

$_____ for a private, single bed room

$_____ for a room with two beds

$_____ for a room with three beds

$_____ for _____
(Specify any other accommodation here)

The basic daily rate for private pay and privately insured Residents includes payment for the services and supplies described in **Attachment B-1.**

The basic daily rate will be charged for the day of admission, but not for any day beyond the day of discharge or death. However, if you are voluntarily discharged from the Facility less than 3 days after the date of admission, we may charge you for a maximum of 3 days at the basic daily rate.

We will provide you with a 30-day written notice before increasing the basic daily rate, unless the increase is required because the State increases the Medi-Cal rate to a level higher than our regular rate. In this case, state law waives the 30-day notification.

Attachment B-2 lists for private pay and privately insured Residents optional supplies and services not included in our basic daily rate, and our charges for those supplies and services. We will only charge you for optional supplies and services that you specifically request, unless the supply or service was required in an emergency. We will provide you a 30-day written notice before any increase in charges for optional supplies and services.

If you become eligible for Medi-Cal at any time after your admission, the services and supplies included in the daily rate may change, and also the list of optional supplies and services. At the time Medi-Cal confirms it will pay for your stay in this Facility, we will review and explain any changes in coverage.

B. Security Deposits

If you are a private pay or privately insured Resident, we require a security deposit of $_____.

We will return the security deposit to you, with no deduction for administration or handling charges, within 14 days after you close your private account or we receive payment from Medi-Cal, whichever is later.

If your care in our Facility is covered by Medi-Cal or Medicare, no security deposit is required.

C. Charges for Medi-Cal, Medicare, or Insured Residents

IF YOU ARE APPROVED FOR MEDI-CAL COVERAGE AFTER YOU ARE ADMITTED TO OUR FACILITY, YOU MAY BE ENTITLED TO A REFUND. WE WILL REFUND TO YOU ANY PAYMENTS YOU MADE FOR SERVICES AND SUPPLIES THAT ARE LATER PAID FOR BY MEDI-CAL, LESS ANY DEDUCTIBLE OR SHARE OF COST. WHEN OUR FACILITY RECEIVES PAYMENT FROM THE MEDI-CAL PROGRAM, WE WILL ISSUE A REFUND TO YOU.

If you are entitled to benefits under Medi-Cal, Medicare, or private insurance, and if we are a participating Provider, we agree to accept payment from them for our basic daily rate. **NEITHER YOU NOR YOUR REPRESENTATIVE SHALL BE REQUIRED TO PAY PRIVATELY FOR ANY MEDI-CAL COVERED SERVICES PROVIDED TO YOU DURING THE TIME YOUR STAY HAS BEEN APPROVED FOR PAYMENT BY MEDI-CAL. UPON PRESENTATION OF THE MEDI-CAL CARD OR OTHER PROOF OF ELIGIBILITY, THE FACILITY SHALL SUBMIT A MEDI-CAL CLAIM FOR REIMBURSEMENT.** However, you are still responsible for paying all deductibles, copayments, coinsurance, and charges for services and supplies that are not covered by Medi-Cal, Medicare, or your insurance. Please note that our Facility does not determine the amount of any deductible, copayment, or coinsurance you may be required to pay: rather, Medi-Cal, Medicare, or your insurance carrier determines these amounts.

Attachments C-1, C-2, and C-3 describe the services covered by the Medi-Cal daily rate, services that are covered by Medi-Cal but are not included in the daily rate, and services that are not covered by Medi-Cal but are available if you wish to pay for them.

Attachments D-1 and D-2 describe the services covered by Medicare, and services that are not covered by Medicare but are available if you wish to pay for them.

You should note that Medi-Cal will only pay for covered supplies and services if they are medically necessary. If Medi-Cal determines that a supply or service is not medically necessary, we will ask whether you still want that supply or service and if you are willing to pay for it yourself.

We will only charge you for optional supplies and services that you specifically request, unless the supply or service was required in an emergency. We will provide you a 30-day written notice before any increase in charges for optional supplies and services.

D. Billing and Payment

We will provide to you an itemized statement of charges that you must pay every month. You agree to pay the account monthly on _____ (enter day of month).

Payment is overdue _____ days after the due date. A late charge at an interest rate of _____% is charged on past due accounts and is calculated as follows:

_____

_____

E. Payment of Other Refunds Due To You

As indicated in **Section C.** above, refunds may be due to you as a result of Medi-Cal paying for services and supplies you had purchased before your eligibility for Medi-Cal was approved or for any security deposit you may have made. At the time of your discharge, you may also be due other refunds, such as unused advance payments you may have made for optional services not covered by the daily rate. We will refund any money due to you within 14 days of your leaving our Facility. We will not deduct any administration or handling charges from any refund due to you.

VI. Transfers and Discharges

We will help arrange for your voluntary discharge or transfer to another facility.

Except in an emergency, we will not transfer you to another room within our Facility against your wishes, unless we give prior reasonable written notice to you, determined on a case by case basis, in accord with applicable state and federal requirements. For example, you have a right to refuse the transfer if the purpose of the transfer is to move you to or from a Medicare-certified bed.

Our written notice of transfer to another facility or discharge against your wishes will be provided 30 days in advance. However, we may provide less than 30 days notice if the reason for the transfer or discharge is to protect your health and safety or the health and safety of other individuals, if your improved health allows for a shorter notice, or if you have been in our Facility for less than 30 days. Our written notice will include the effective date, the location to which you will be transferred or discharged, and the reason the action is necessary.

The only reasons that we can transfer you to another facility or discharge you against your wishes are:

1) It is required to protect your well-being, because your needs cannot be met in our Facility;

2) It is appropriate because your health has improved enough that you no longer need the services of our Facility;

3) Your presence in our Facility endangers the health and safety of other individuals;

4) You have not paid for your stay in our Facility or have not arranged to have payment made under Medicare, Medi-Cal, or private insurance;

5) Our Facility ceases to operate.

6) Material or fraudulent misrepresentation of your finances to us.

If we participate in Medi-Cal or Medicare, we will not transfer you from the Facility or discharge you solely because you change from private pay or Medicare to Medi-Cal payment.

In our written notice, we will advise you that you have the right to appeal the transfer or discharge to the California Department of Health Care Services and we will also provide the name, address, and telephone number of the State Long-Term Care Ombudsman.

If you are transferred or discharged against your wishes, we will provide transfer and discharge planning as required by law.

VII. Bed Holds and Readmission

If you must be transferred to an acute hospital for seven days or less, we will notify you or your representative that we are willing to hold your bed. You or your representative have 24 hours after receiving this notice to let us know whether you want us to hold your bed for you.

If Medi-Cal is paying for your care, then Medi-Cal will pay for up to seven days for us to hold the bed for you. If you are not eligible for Medi-Cal and the daily rate is not covered by your insurance, then you are responsible for paying $_____ for each day we hold the bed for you. You should be aware that Medicare does not cover costs related to holding a bed for you in these situations.

If we do not follow the notification procedure described above, we are required by law (Title 22 California Code of Regulations Sections 72520(c) and 73504(c)) to offer you the next available appropriate bed in our Facility.

You should also note that, if our Facility participates in Medi-Cal and you are eligible for Medi-Cal, if you are away from our Facility for more than seven days due to hospitalization or other medical treatment, we will readmit you to the first available bed in a semi-private room if you need the care provided by our Facility and wish to be readmitted.

VIII. Personal Property and Funds

Our Facility has a theft and loss prevention program as required by state law. At the time you are admitted, we will give you a copy of our policies and procedures regarding protection of your personal property, as well as copies of the state laws that require us to have these policies and procedures.

If our Facility participates in Medi-Cal or Medicare and you give us your written authorization, we will agree to hold personal funds for you in a manner consistent with all federal and state laws and regulations. If we are not certified for Medi-Cal or Medicare, we may offer these services but are not required to. You are not required to allow us to hold your personal funds for you as a condition of admission to our Facility. At your request, we will provide you with our policies, procedures, and authorization forms related to our holding your personal funds for you.

IX. Photographs

You agree that we may take photographs of you for identification and health care purposes. We will not take a photograph of you for any other purpose, unless you give us your prior written permission to do so.

X. Confidentiality of Your Medical Information

You have a right to confidential treatment of your medical information.
You may authorize us to disclose medical information about you to a family member or other person by completing the "Authorization for Disclosure of Medical Information" form in **Attachment E**.

XI. Facility Rules and Grievance Procedure

You agree to comply with reasonable rules, policies and procedures that we establish. When you are admitted, we will give you a copy of those rules, policies, and procedures, including a procedure for you to suggest changes to them.

A copy of the Facility grievance procedure, for resolution of resident complaints about Facility practices, is available; we will also give you a copy of our grievance procedure for resolution of any complaints you may have about our Facility. You may also contact the following agencies about any grievance or complaint you may have:

California Department of Public Health
_____ Licensing and Certification District Office

Phone number: _____

(OR)

State Long-Term Care Ombudsman Program

Phone number: _____

XII. Entire Agreement

This Agreement and the Attachments to it constitute the entire Agreement between you and us for the purposes of your admission to our Facility. There are no other agreements, understandings, restrictions, warranties, or representations between you and us as a condition of your admission to our Facility. This Agreement supersedes any prior agreements or understandings regarding your admission to our Facility.

All captions and headings are for convenience purposes only, and have no independent meaning.

If any provision of this Agreement becomes invalid, the remaining provisions shall remain in full force and effect.

The Facility's acceptance of a partial payment on any occasion does not constitute a continuing waiver of the payment requirements of the Agreement, or otherwise limit the Facility's rights under the Agreement.

This Agreement shall be construed according to the laws of the State of California.

Other than as noted for a duly authorized Resident's Representative, the Resident may not assign or otherwise transfer his or her interests in this Agreement.

Upon your request, we shall provide you or your legal representative with a copy of the signed agreement, all attachments and any other documents you sign at admission and shall provide you with a receipt for any payments you make at admission.

By signing below, the Resident and the Facility agree to the terms of this Admission Agreement:

Representative of the Facility	Date
Resident	Date
Resident's Representative – if applicable	Date

ATTACHMENT F

RESIDENT BILL OF RIGHTS

The State of California Department of Public Health (CDPH) has prepared this comprehensive Resident Bill of Rights for people who are receiving care in skilled nursing or intermediate care facilities.

If you have any questions about what the statements in this Resident Bill of Rights mean, you may look them up in the laws or regulations. The rights are found in state laws and regulations under California Health and Safety Code Section 1599; Title 22 of the California Code of Regulations, Section 72527 for Skilled Nursing Facilities, and Section 73523 for Intermediate Care Facilities; and Chapter 42 of the Code of Federal Regulations, Chapter IV, Part 483.10 et seq. The California Health and Safety Code is abbreviated as "HSC," Title 22 of the California Code of Regulations is abbreviated as "22CCR," and Title 42 of the Code of Federal Regulations is abbreviated as "42CFR."

You may also contact the Office of the State Long-Term Care Ombudsman at 1-800-231- 4024, or the local District Office of the CDPH Licensing and Certification Division _____ if you have any questions about the meaning of these rights.

RESIDENT BILL OF RIGHTS

California Code of Regulations Title 22

Section 72527. Skilled Nursing Facilities

(a) Patients have the rights enumerated in this section and the facility shall ensure that these rights are not violated. The facility shall establish and implement written policies and procedures which include these rights and shall make a copy of these policies available to the patient and to any representative of the patient. The policies shall be accessible to the public upon request. Patients shall have the right:

(1) To be fully informed, as evidenced by the patient's written acknowledgement prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct.

(2) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care including the identification of medical, nursing and psychosocial needs and the planning of related services.

(4) To consent to or to refuse any treatment or procedure or participation in experimental research.

(5) To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure. The disclosure of material information for administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability to regain

use of a normal bodily function shall include the disclosure of information listed in Section 72528(b) .

(6) To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients or for nonpayment for his or her stay and to be given reasonable advance notice to ensure orderly transfer or discharge. Such actions shall be documented in the patient's health record.

(7) To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination or reprisal.

(8) To be free from discrimination based on sex, race, color, religion, ancestry, national origin, sexual orientation, disability, medical condition, marital status, or registered domestic partner status.

(9) To manage personal financial affairs, or to be given at least a quarterly accounting of financial transactions made on the patient's behalf should the facility accept written delegation of this responsibility subject to the provisions of Section 72529.

(10) To be free from mental and physical abuse.

(11) To be assured confidential treatment of financial and health records and to approve or refuse their release, except as authorized by law.

(12) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs.

(13) Not to be required to perform services for the facility that are not included for therapeutic purposes in the patient's plan of care.

(14) To associate and communicate privately with persons of the patient's choice, and to send and receive personal mail unopened.

(15) To meet with others and participate in activities of social, religious and community groups.

(16) To retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the patient or other patients.

(17) If married or registered as a domestic partner, to be assured privacy for visits by the patient's spouse or registered domestic partner and if both are patients in the facility, to be permitted to share a room.

(18) To have daily visiting hours established.

(19) To have visits from members of the clergy at any time at the request of the patient or the patient's representative.

(20) To have visits from persons of the patient's choosing at any time if the patient is critically ill, unless medically contraindicated.

(21) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.

(22) To have reasonable access to telephones and to make and receive confidential calls.

(23) To be free from any requirement to purchase drugs or rent or purchase medical supplies or equipment from any particular source in accordance with the provisions of Section 1320 of the Health and Safety Code.

(24) To be free from psychotherapeutic drugs and physical restraints used for the purpose of patient discipline or staff convenience and to be free from psychotherapeutic drugs used as a chemical restraint as defined in Section 72018, except in an emergency which threatens to bring immediate injury to the patient or others. If a chemical restraint is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient and used only for a specified and limited period of time.

(25) Other rights as specified in Health and Safety Code, Section 1599.1.

(26) Other rights as specified in Welfare and Institutions Code, Sections 5325 and 5325.1, for persons admitted for psychiatric evaluations or treatment.

(27) Other rights as specified in Welfare and Institutions Code Sections 4502, 4503 and 4505 for patients who are developmentally disabled as defined in Section 4512 of the Welfare and Institutions Code.

(b) A patient's rights, as set forth above, may only be denied or limited if such denial or limitation is otherwise authorized by law. Reasons for denial or limitation of such rights shall be documented in the patient's health record.

(c) If a patient lacks the ability to understand these rights and the nature and consequences of proposed treatment, the patient's representative shall have the rights specified in this section to the extent the right may devolve to another, unless the representative's authority is otherwise limited. The patient's incapacity shall be determined by a court in accordance with state law or by the patient's physician unless the physician's determination is disputed by the patient or patient's representative.

(d) Persons who may act as the patient's representative include a conservator, as authorized by Parts 3 and 4 of Division 4 of the Probate Code (commencing with Section 1800), a person designated as attorney in fact in the patient's valid Durable Power of Attorney for Health Care, patient's next of kin, other appropriate surrogate decisionmaker designated consistent with statutory and case law, a person appointed by a court authorizing treatment pursuant to Part 7 (commencing with Section 3200) of Division 4 of the Probate Code, or, if the patient is a minor, a person lawfully authorized to represent the minor.

(e) Patients' rights policies and procedures established under this section concerning consent, informed consent and refusal of treatments or procedures shall include, but not be limited to the following:

(1) How the facility will verify that informed consent was obtained or a treatment or procedure was refused pertaining to the administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability of the patient to regain the use of a normal bodily function.

(2) How the facility, in consultation with the patient's physician, will identify consistent with current statutory case law, who may serve as a patient's representative when an incapacitated patient has no conservator or attorney in fact under a valid Durable Power of Attorney for Health Care.

Section 73523. Intermediate Care Facilities

(a) Patients have the rights enumerated in this section and the facility shall ensure that these rights are not violated. The facility shall establish and implement written policies and procedures which include these rights and shall make a copy of these policies available to the patient and to any representative of the patient. The policies shall be accessible to the public upon request. Patients shall have the right:

(1) To be fully informed, as evidenced by the patient's written acknowledgment prior to or at the time of admission and during stay, of these rights and of all rules and regulations governing patient conduct.

(2) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facilities' basic per diem rate or not covered under Title XVIII or XIX of the Social Security Act.

(3) To be fully informed by a physician of his or her total health status and to be afforded the opportunity to participate on an immediate and ongoing basis in the total plan of care including the identification of medical, nursing, and psychosocial needs and the planning of related services.

(4) To consent to or to refuse any treatment or procedure or participation in experimental research.

(5) To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure. The disclosure of material information for administration of psychotherapeutic drugs or physical restraints, or the prolonged use of a device that may lead to the inability to regain use of a normal bodily function shall include the disclosure of information listed in Section 73524(c).

(6) To be transferred or discharged only for medical reasons, or the patient's welfare or that of other patients or for nonpayment for his or her stay and to be given reasonable advance notice to ensure orderly transfer or discharge. Such actions shall be documented in the patient's health record.

(7) To be encouraged and assisted throughout the period of stay to exercise rights as a patient and as a citizen, and to this end to voice grievances and recommend changes in policies and services to facility staff and/or outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination or reprisal.

(8) To manage personal financial affairs, or to be given at least a quarterly accounting of financial transactions made on the patient's behalf should the facility accept his or her written delegation of this responsibility subject to the provisions of Section 73557.

(9) To be free from mental and physical abuse.

(10) To be assured confidential treatment of financial and health records and to approve or refuse their release, except as authorized by law.

(11) To be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs.

(12) To be free from discrimination based on sex, race, color, religion, ancestry, national origin, sexual orientation, disability, medical condition, marital status, or registered domestic partner status.

(13) Not to be required to perform services for the facility that are not included for therapeutic purposes in the patient's plan of care.

(14) To associate and communicate privately with persons of the patient's choice, and to send and receive his or her personal mail unopened.

(15) To meet with and participate in activities of social, religious and community groups at the patient's discretion.

(16) To retain and use his or her personal clothing and possessions as space permits, unless to do so would infringe upon the health, safety or rights of the patient or other patients.

(17) If married or registered as a domestic partner, to be assured privacy for visits by the patient's spouse or registered domestic partner and if both are patients in the facility, to be permitted to share a room.

(18) To have daily visiting hours established.

(19) To have visits from members of the clergy at the request of the patient or the patient's representative.

(20) To have visits from persons of the patient's choosing at any time if the patient is critically ill, unless medically contraindicated.

(21) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.

(22) To have reasonable access to telephones both to make and receive confidential calls.

(23) To be free from any requirement to purchase drugs or rent or purchase medical supplies or equipment from any particular source in accordance with the provisions of Section 1320 of the Health and Safety Code.

(24) To be free from psychotherapeutic and/or physical restraints used for the purpose of patient discipline or staff convenience and to be

free from psychotherapeutic drugs used as a chemical restraint as defined in Section 73012, except in an emergency which threatens to bring immediate injury to the patient or others. If a chemical restraint is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient and used only for a specified and limited period of time.

(25) Other rights as specified in Health and Safety Code Section 1599.1.

(26) Other rights as specified in Welfare and Institutions Code Sections 5325 and 5325.1 for persons admitted for psychiatric evaluations or treatment.

(27) Other rights as specified in Welfare and Institutions Code, Sections 4502, 4503 and 4505 for patients who are developmentally disabled as defined in Section 4512 of the Welfare and Institutions Code.

(b) A patient's rights as set forth above may only be denied or limited if such denial or limitation is otherwise authorized by law. Reasons for denial or limitation of such rights shall be documented in the patient's health record.

(c) If a patient lacks the ability to understand these rights and the nature and consequences of proposed treatment, the patient's representative shall have the rights specified in this section to the extent the right may devolve to another, unless the representative's authority is otherwise limited. The patient's incapacity shall be determined by a court in accordance with state law or by the patient's licensed healthcare practitioner acting within the scope of his or her professional licensure unless the determination of the licensed healthcare practitioner acting within the scope of his or her professional licensure is disputed by the patient or patient's representative.

(d) Persons who may act as the patient's representative include a conservator, as authorized by Parts 3 and 4 of Division 4 of the Probate Code (commencing with Section 1800), a person designated as attorney in fact in the patient's valid Durable Power of Attorney for Health Care, patient's next of kin, other appropriate surrogate decisionmaker, designated consistent with statutory and case law, a person appointed by a court

authorizing treatment pursuant to Part 7 (commencing with Section 3200) of Division 4 of the Probate Code, or, if the patient is a minor, informed consent must be obtained from a person lawfully authorized to represent the minor.

(e) Patients' rights policies and procedures established under this section concerning consent, informed consent and refusal of treatments or procedures shall include, but not be limited to the following:

(1) How the facility will verify that informed consent was obtained pertaining to the administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability of the patient to regain the use of a normal bodily function.

(2) How the facility, in consultation with the patient's licensed healthcare practitioner acting within the scope of his or her professional licensure, will identify, consistent with current statutory and case law, who may serve as a patient's representative when an incapacitated patient has no conservator or attorney in fact under a valid Durable Power of Attorney for Health Care.

California Health & Safety Code Section 1599

1599.1. Written policies; rights of patients and facility obligations

Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.

(b) Each patient shall show evidence of good personal hygiene, be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.

(c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

(d) The facility shall provide an activity program staffed and equipped to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities. Patients shall be encouraged to participate in activities suited to their individual needs.

(e) The facility shall be clean, sanitary, and in good repair at all times.

(f) A nurses' call system shall be maintained in operating order in all nursing units and provide visible and audible signal communication between nursing personnel and patients. Extension cords to each patient's bed shall be readily accessible to patients at all times.

(g)(1) If a facility has a significant beneficial interest in an ancillary health service provider or if a facility knows that an ancillary health service provider has a significant beneficial interest in the facility, as provided by subdivision (a) of Section 1323 (see below), or if the facility has a significant beneficial interest in another facility, as provided by subdivision (c) of Section 1323 (see below), the facility shall disclose that interest in writing to the patient, or his or her representative, and advise the patient, or his or her representative, that the patient may choose to have another ancillary health service provider, or facility, as the case may be, provide any supplies or services ordered by a member of the medical staff of the facility.

(2) A facility is not required to make any disclosures required by this subdivision to any patient, or his or her representative, if the patient is enrolled in an organization or entity which provides or arranges for the provision of health care services in exchange for a prepaid capitation payment or premium.

(h)(1) If a resident of a long-term health care facility has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions or readmission rights of either state or

federal law and the facility refuses to readmit him or her, the resident may appeal the facility's refusal.

(2) The refusal of the facility as described in this subdivision shall be treated as if it were an involuntary transfer under federal law and the rights and procedures that apply to appeals of transfers and discharges of nursing facility residents shall apply to the resident's appeal under this subdivision.

(3) If the resident appeals pursuant to this subdivision, and the resident is eligible under the Medi-Cal program, the resident shall remain in the hospital and the hospital may be reimbursed at the administrative day rate, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(4) If the resident appeals pursuant to this subdivision, and the resident is not eligible under the Medi-Cal program, the resident shall remain in the hospital if other payment is available, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(5) If the resident is not eligible for participation in the Medi-Cal program and has no other source of payment, the hearing and final determination shall be made within 48 hours.

(i) Effective July 1, 2007, Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations in effect on July 1, 2006, shall apply to each skilled nursing facility and intermediate care facility, regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the skilled nursing facility or intermediate care facility in which the resident resides, except that a noncertified facility is not obligated to provide notice of Medicaid or Medicare benefits, covered services, or eligibility procedures.

1599.2. Preamble or preliminary statement; form

Written information informing patients of their rights shall include a preamble or preliminary statement in substantial form as follows:

(a) Further facility requirements are set forth in the Health and Safety Code, and in Title 22 of the California Administrative Code [California Code of Regulations].

(b) Willful or repeated violations of either code may subject a facility and its personnel to civil or criminal proceedings.

(c) Patients have the right to voice grievances to facility personnel free from reprisal and can submit complaints to the State [Department of Public Health] or its representative.

1599.3. Representative of patient; devolution of rights

Any rights under this chapter of a patient judicially determined to be incompetent, or who is found by his physician to be medically incapable of understanding such information, or who exhibits a communication barrier, shall devolve to such patient's guardian, conservator, next of kin, sponsoring agency, or representative payer, except when the facility itself is the representative payer.

1599.4. Construction and application of chapter

In no event shall this chapter be construed or applied in a manner which imposes new or additional obligations or standards on skilled nursing or intermediate care facilities or their personnel, other than in regard to the notification and explanation of patient's rights or unreasonable costs.

California Welfare and Institutions Code Sections 4502-4505, 4512

4502. Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied

the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

(b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

(c) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to social interaction and participation in community activities.

(g) A right to physical exercise and recreational opportunities.

(h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect.

(i) A right to be free from hazardous procedures.

(j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

4502.1. The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decision-making skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

4503. Each person with developmental disabilities who has been admitted or committed to a state hospital, community care facility as defined in Section 1502 of the Health and Safety Code, or a health facility as defined in Section 1250 of the Health and Safety Code shall have the following rights, a list of which shall be prominently posted in English, Spanish, and other appropriate languages, in all facilities providing those services and otherwise brought to his or her attention by any additional means as the Director of Developmental Services may designate by regulation:

(a) To wear his or her own clothes, to keep and use his or her own personal possessions including his or her toilet articles, and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls.

(e) To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse electroconvulsive therapy.

(g) To refuse behavior modification techniques which cause pain or trauma.

(h) To refuse psychosurgery notwithstanding the provisions of Sections 5325, 5326, and 5326.3. Psychosurgery means those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for any of the following purposes:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.
(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, action, or behavior.
(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

(i) To make choices in areas including, but not limited to, his or her daily living routines, choice of companions, leisure and social activities, and program planning and implementation.

(j) Other rights, as specified by regulation.

4505. For the purposes of subdivisions (f) and (g) of Section 4503, if the patient is a minor age 15 years or over, the right to refuse may be exercised either by the minor or his parent, guardian, conservator, or other person entitled to his custody.

If the patient or his parent, guardian, conservator, or other person responsible for his custody do not refuse the forms of treatment or behavior modification described in subdivisions (f) and (g) of Section 4503, such treatment and behavior modification may be provided only after review and approval by a peer review committee. The Director of Developmental Services shall, by March 1, 1977, adopt regulations establishing peer review procedures for this purpose.

California Welfare and Institutions Code Sections 5325-5326

5325. Each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital pursuant to Article 5 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing such services and otherwise brought to his or her attention by such additional means as the Director of Mental Health may designate by regulation:

(a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.

(e) To have ready access to letter writing materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment.

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.
(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.
(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior. Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Mental Health shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

(i) Other rights, as specified by regulation.
Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Mental Health to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient shall immediately be given a copy of a State Department of Mental Health prepared patients' rights handbook. The State Department of Mental Health shall prepare and provide the forms specified in this section and in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

5325.1. Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the

benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

(a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.

(b) A right to dignity, privacy, and humane care.

(c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to participate in appropriate programs of publicly supported education.

(g) A right to social interaction and participation in community activities.

(h) A right to physical exercise and recreational opportunities.

(i) A right to be free from hazardous procedures.

5325.2. Any person who is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth in this chapter.

5326. The professional person in charge of the facility or his or her designee may, for good cause, deny a person any of the rights under Section 5325, except under subdivisions (g) and (h) and the rights under subdivision (f) may be denied only under the conditions specified in Section 5326.7. To ensure that these rights are denied only for good cause, the

Director of Mental Health shall adopt regulations specifying the conditions under which they may be denied.

Denial of a person's rights shall in all cases be entered into the person's treatment record.

Code of Federal Regulations—Title 42—Public Health

Chapter IV--Centers For Medicare & Medicaid Services, Department Of Health And Human Services

Part 483--Requirements For States And Long Term Care Facilities
Subpart B--Requirements for Long Term Care Facilities

Sec. 483.10 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) Exercise of rights.

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by the State court, any legal -surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) Notice of rights and services.

(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident or his or her legal representative has the right--

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and
(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(4) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (8) of this section; and

(5) The facility must--

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of--

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i)(A) and (B) of this section.

(6) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes--

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

(8) The facility must comply with the requirements specified in subpart I of part 489 of this chapter relating to maintaining written policies and procedures regarding advance directives. These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met. If an adult individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating condition or a mental disorder) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(9) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(10) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(11) Notification of changes.

(i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is--

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in Sec. 483.12(a).

(ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is--

(A) A change in room or roommate assignment as specified in Sec. 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(12) Admission to a composite distinct part. A facility that is a composite distinct part (as defined in Sec. 483.5(c) of this subpart) must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under Sec. 483.12(a)(8).

(c) Protection of resident funds.

(1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Management of personal funds. Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)-(8) of this section.

(3) Deposit of funds.

(i) Funds in excess of $50. The facility must deposit any residents' personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) Funds less than $50. The facility must maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(4) Accounting and records. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii)The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.

(5) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits—

(i) When the amount in the resident's account reaches $200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(6) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(7) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(8) Limitation on charges to personal funds. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with Sec. 489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See Sec. 447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

(i) Services included in Medicare or Medicaid payment. During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:

(A) Nursing services as required at Sec. 483.30 of this subpart.

(B) Dietary services as required at Sec. 483.35 of this subpart.

(C) An activities program as required at Sec. 483.15(f) of this subpart.

(D) Room/bed maintenance services.

(E) Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing, and basic personal laundry.

(F) Medically-related social services as required at Sec. 483.15(g) of this subpart.

(ii) Items and services that may be charged to residents' funds. Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(A)Telephone.

(B) Television/radio for personal use.

(C) Personal comfort items, including smoking materials, notions and novelties, and confections.

(D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.

(E) Personal clothing.

(F) Personal reading matter.

(G) Gifts purchased on behalf of a resident.

(H) Flowers and plants.

(I) Social events and entertainment offered outside the scope of the activities program, provided under Sec. 483.15(f) of this subpart.

(J) Noncovered special care services such as privately hired nurses or aides.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by Sec. 483.35 of this subpart.

(iii) Requests for items and services.

(A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.

(B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.

(C) The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(d) Free choice. The resident has the right to—

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when--

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(f) Grievances. A resident has the right to--

(1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) Examination of survey results. A resident has the right to--

(1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(h) Work. The resident has the right to--

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when--

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) Mail. The resident has the right to privacy in written communications, including the right to--

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage, and writing implements at the resident's own expense.

(j) Access and visitation rights. (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary;

(ii) Any representative of the State:

(iii) The resident's individual physician;

(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at anytime.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(k) Telephone. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(l) Personal property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(m) Married couples. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(n) Self-Administration of Drugs. An individual resident may self-administer drugs if the interdisciplinary team, as defined by Sec. 483.20(d)(2)(ii), has determined that this practice is safe.

(o) Refusal of certain transfers.

(1) An individual has the right to refuse a transfer to another room within the institution, if the purpose of the transfer is to relocate --

(i) A resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or

(ii) A resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

(2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.

PART 483 REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B -- Requirements for Long Term Care Facilities Sec. 483.12 Admission, transfer and discharge rights.

(a) Transfer and discharge—

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless--

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by--

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must--

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) Timing of the notice. (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when--

(A) The safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (a)(2)(iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(2)(ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(2)(i) of this section; or

(E) A resident has not resided in the facility for 30 days.

(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;

(vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(8) Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in Sec.483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

(b) Notice of bed-hold policy and readmission—

(1) Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies—

(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the nursing facility; and

(ii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.

(3) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident-

(i) Requires the services provided by the facility; and

(ii) Is eligible for Medicaid nursing facility services.

(4) Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part as defined in Sec. 483.5(c) of this subpart), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

(c) Equal access to quality care.

(1) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment;

(2) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in Sec. 483.10(b)(5)(i) and (b)(6) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(d) Admissions policy.

(1) The facility must--

(i) Not require residents or potential residents to waive their rights to Medicare or Medicaid; and

(ii) Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(2) The facility must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(3) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,--

(i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and

(ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(4) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

PART 483 REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B -- Requirements for Long Term Care Facilities Sec. 483.13 -- Resident behavior and facility practices.

(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

PART 483 REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

Subpart B -- Requirements for Long Term Care Facilities Sec. 483.15 Quality of life.

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) Dignity. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) Self-determination and participation. The resident has the right to--

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) Participation in resident and family groups.

(1) A resident has the right to organize and participate in resident groups in the facility;

(2) A resident's family has the right to meet in the facility with the families of other residents in the facility;

(3) The facility must provide a resident or family group, if one exists, with private space;

(4) Staff or visitors may attend meetings at the group's invitation;

(5) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(6) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(d) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(e) Accommodation of needs. A resident has the right to--

(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(2) Receive notice before the resident's room or roommate in the facility is changed.

PROOF OF SERVICE

I, Carlyn Falls, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On **September 22, 2017**, I served the within: **HCR MANORCARE, INC. AND MANOR CARE OF HEMET CA, LLC'S MOTION FOR JUDICIAL NOTICE** on the interested parties in this action addressed as follows:

Anthony C. Lanzone
Lanzone Morgan, LLP
5001 Airport Plaza Drive, Suite 210
Long Beach, CA 90815

Counsel for Plaintiff/Appellant/Cross-Appeal Respondent JOHN L. JARMAN

Holly N. Boyer
Esner, Chang & Boyer
234 E. Colorado Boulevard
Pasadena, CA 91101

☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that the foregoing is true and correct. Executed on **September 22, 2017**, at Los Angeles, California.

/s/ Carlyn Falls
Carlyn Falls