

AMENDED IN ASSEMBLY AUGUST 15, 2002

AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN ASSEMBLY JUNE 30, 2001

AMENDED IN SENATE MARCH 29, 2001

SENATE BILL

No. 339

Introduced by Senator ~~Dunn~~-Ortiz

February 20, 2001

~~An act relating to state government.~~ *An act to amend Section 1336.2 of the Health and Safety Code, relating to care facilities.*

LEGISLATIVE COUNSEL'S DIGEST

SB 339, as amended, ~~Dunn~~-Ortiz. ~~State government~~ *Long-term health care facilities: status changes and patient transfers.*

Existing law requires the State Department of Health Services to administer provisions relating to the licensing of health facilities, including long-term health care facilities. Existing law imposes various requirements upon long-term health care facilities when the facility transfers patients due to a change in the status of the license or operation of the facility, including a requirement for written notification to the affected patients or their guardians. Under existing law, these requirements include taking reasonable steps to medically assess the patient prior to the transfer, and, when 10 or more patients are likely to be transferred, the preparation and submission of a proposed relocation plan to the department for comment, if any.

Existing law also authorizes the department to provide or arrange for the provision of patient relocation and related services, under specified circumstances.

Under existing law, the willful or repeated violation by any person of the provisions regulating long-term health care facilities is a misdemeanor.

This bill would revise the above provisions relating to the transfer of long-term health care facility patients, by, among other things, replacing references to a “patient” in these facilities with the term “resident.” The bill would also require the facility to obtain a social and physical functioning assessment, as well as a medical assessment, of each patient prior to giving the patient notice of the transfer. This bill would give a resident the right to remain in the facility for up to 60 days after notification of the intent to transfer, if an appropriate placement has not been made, and would impose staffing requirements upon facilities under these conditions. This bill would revise the procedures for submission by a facility, and review and approval by the department, of relocation plans for 10 or more residents. By changing the definition of an existing crime, this bill would create a state-mandated local program.

This bill would require the department to request that the Attorney General seek injunctive relief and damages against a facility that fails to provide the specified relocation services, under specified conditions.

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.

~~This bill would declare that it is the intent of the Legislature to provide adequate funding for the operation of state government.~~

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

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

1 ~~SECTION 1. It is the intent of the Legislature to provide~~
2 ~~adequate funding for the operation of state government.~~

3 *SECTION 1. Section 1336.2 of the Health and Safety Code is*
4 *amended to read:*

5 1336.2. (a) ~~When patients~~ *Before residents* are transferred
6 due to any change in the status of the license or operation of a
7 facility, including voluntary or involuntary termination of a



1 facility's Medi-Cal or Medicare certification, the facility shall take
2 reasonable steps to transfer affected ~~patients~~ *residents* safely and
3 minimize possible transfer trauma by, at a minimum, doing all of
4 the following:

5 ~~(1) Medically assess, prior to transfer, the patient's~~ *Be*
6 *responsible for ensuring that the resident's attending physician or*
7 *a facility medical director completes the medical assessment of the*
8 *resident's condition and susceptibility to adverse health*
9 *consequences, including psychosocial effects, in the event of*
10 ~~transfer. The patient's physician and surgeon, if available, shall~~
11 ~~undertake this assessment prior to written notice of transfer being~~
12 ~~given to the resident. The assessment shall provide~~
13 ~~recommendations, including counseling and followup visits, not~~
14 ~~be considered complete unless it provides, in accordance with~~
15 ~~these assessments, recommendations for counseling, followup~~
16 ~~visits, and other recommended services, by designated health~~
17 ~~professionals, and for preventing or ameliorating potential~~
18 ~~adverse health consequences in the event of transfer.~~

19 ~~(2) Provide, in accordance with these assessments, counseling,~~
20 ~~and other recommended services, prior to transfer, to any affected~~
21 ~~patient who may suffer~~ *Be responsible for ensuring that the facility*
22 *nursing staff and activity director complete an assessment of the*
23 *social and physical functioning of the resident based on the*
24 *relevant portions of the minimum data set, as described in Section*
25 *14110.15 of the Welfare and Institutions Code, before written*
26 *notice of transfer is given to the resident. The assessment shall not*
27 *be considered complete unless it provides recommendations for*
28 *preventing or ameliorating potential adverse health consequences*
29 ~~due to transfer.~~

30 ~~(3) Evaluate, prior to transfer, in the event of transfer. The~~
31 ~~assessment may be amended because of a change in the resident's~~
32 ~~health care needs. The assessment shall also include a~~
33 ~~recommendation for the type of facility that would best meet the~~
34 ~~resident's needs.~~

35 ~~(3) Be responsible for evaluating the relocation needs of the~~
36 ~~patient resident and the patient's family~~ *resident's representative*
37 *and determine the most appropriate and available type of future*
38 *care and services for the* ~~patient~~ *resident before written notice of*
39 *transfer is given to the resident or the resident's representative. The*
40 *health facility shall discuss the evaluation and medical assessment*



1 with the ~~patient or the patient's guardian, agent, or responsible~~
2 ~~party~~ *resident or the resident's representative* and make the
3 evaluation and assessment part of the medical records for transfer.

4 ~~(4) Inform, at~~ *If the resident or resident's representative*
5 *chooses to make a transfer prior to completion of assessments, the*
6 *facility shall inform the resident or the resident's representative, in*
7 *writing, of the importance of obtaining the assessments and*
8 *followup consultation.*

9 ~~(4) At least 30 days in advance of the transfer, the patient or~~
10 ~~patient's guardian, agent, or responsible party~~ *inform the resident*
11 *or the resident's representative of alternative facilities that are*
12 *available and adequate to meet ~~patient~~ resident and family needs.*

13 (5) Arrange for appropriate, future medical care and services,
14 unless the ~~patient or patient's guardian~~ *resident or resident's*
15 *representative* has otherwise made these arrangements. This
16 requirement does not obligate a facility to pay for future care and
17 services.

18 (b) The facility shall provide an appropriate team of
19 professional staff to perform the services required in subdivision
20 (a).

21 (c) The facility shall also give written notice to affected ~~patients~~
22 ~~or their guardians, agents, or responsible parties~~ *residents or their*
23 *representatives*, advising them of the requirements in subdivision
24 (a) at least 30 days in advance of transfer. If a facility is required
25 to give written notice pursuant to Section 1336, then the notice
26 shall advise the affected ~~patient or the patient's guardian, agent, or~~
27 ~~responsible party~~ *resident or resident's representative* of the
28 requirements in subdivision (a). If the transfer is made pursuant to
29 subdivision ~~(f)~~ (g), the notice shall include notification to the
30 ~~patient~~ *resident or resident's representative* that the transfer plan
31 is available to the ~~patient or patient's~~ *resident or resident's*
32 *representative* free of charge upon request.

33 (d) In the event of a temporary suspension of a facility's license
34 pursuant to Section 1296, the 30-day notice requirement in
35 subdivision (c) shall not apply, but the facility shall provide the
36 relocation services required in subdivision (a) unless the ~~state~~
37 ~~department~~ provides the services pursuant to subdivision ~~(e)~~.

38 ~~(e) The state~~ (f).

39 (e) *The department may make available assistance for the*
40 *replacement of hard-to-place residents based on the department's*



1 *determination of the benefit and necessity of that assistance. A*
2 *hard-to-place resident is a resident whose level of care, physical*
3 *malady, or behavioral management needs are substantially*
4 *beyond the norm. In no case shall this assistance impose*
5 *additional costs on the department.*

6 (f) *The department may provide, or arrange for the provision*
7 *of, necessary relocation services at a facility, including medical*
8 *assessments, counseling, and placement of patients, if the state*
9 *department determines that these services are needed promptly to*
10 *prevent adverse health consequences to patients, and the facility*
11 *refuses, or does not have adequate staffing, to provide the services.*
12 *In these cases, the facility or the licensee shall reimburse the state*
13 *department for the cost of providing the relocation services. ~~If a~~*
14 *~~facility's refusal~~ The department's participation shall not relieve*
15 *the facility of any responsibility under this section. If the*
16 *department does not provide or arrange for the provision of the*
17 *necessary relocation services, and the facility refuses to provide*
18 *the relocation services required in subdivision (a) endangers the*
19 *health and safety of patients to be transferred, then the state*
20 *department may also, then the department shall request that the*
21 *Attorney General's office or the local district attorney's office seek*
22 *injunctive relief and damages in the same manner as provided for*
23 *in Chapter 5 (commencing with Section 17200) of Part 2 of*
24 *Division 7 of the Business and Professions Code.*

25 ~~(f)~~
26 (g) *If 10 or more ~~patients~~ residents are likely to be transferred*
27 *due to any voluntary or involuntary change in the status of the*
28 *license or operation of a facility, including voluntary or*
29 *involuntary termination of a facility's Medi-Cal or Medicare*
30 *certification, the facility shall submit a proposed relocation plan*
31 *for the affected ~~patients~~ residents to the state department for*
32 *comment, if any, approval at least ~~45~~ 15 days prior to the written*
33 *transfer of any patient notification given to any resident or*
34 *resident's representative. The plan shall provide for*
35 *implementation of the relocation services in subdivision (a) and*
36 *shall describe the availability of beds in the area for ~~patients~~*
37 *residents to be transferred, the proposed discharge process, and the*
38 *staffing available to assist in the transfers. The plan shall become*
39 *effective upon the date the department grants its approval. The*
40 *department shall base its approval of a relocation plan on the*



1 standards specified in this section. The department shall promptly
2 either approve or reject the plan within 10 working days of receipt
3 from the facility. If the department rejects the plan, the facility may
4 resubmit amended relocation plans, each of which the department
5 shall promptly either approve or reject within 10 working days of
6 receipt from the facility. Until one plan has been approved by the
7 department, and until the facility complies with the requirements
8 in subdivision (a), the facility may not issue a notice of transfer.
9 The facility shall submit ~~its final~~ the relocation plan to the local
10 ombudsperson, and if different from the proposed plan, to the state
11 department, long-term care ombudsman at least 30 days prior to
12 the transfer of any patient written transfer notification being given
13 to any patient.

14 (h) The resident shall have the right to remain in the facility for
15 up to 60 days after the approved written notice of the facility's
16 intent to transfer the resident if an appropriate placement based on
17 the relocation assessment and relocation recommendations has
18 not been made. The facility shall be required to maintain an
19 appropriate level of staffing in order to ensure the well-being of all
20 the residents as they continue to reside in the facility. The
21 department shall monitor the facility's staging of transfers, and, if
22 it determines that the facility's staging of placements is causing a
23 detrimental impact on those residents being transferred, then the
24 department shall limit the number of residents being transferred
25 per day until the department determines that it would be safe to
26 increase the numbers.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

