

AMENDED IN SENATE FEBRUARY 26, 2004
AMENDED IN SENATE SEPTEMBER 3, 2003
AMENDED IN SENATE JULY 1, 2003
AMENDED IN ASSEMBLY MAY 27, 2003
AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 691

**Introduced by Assembly Member Daucher
(Coauthors: Assembly Members Chu and Lieber)**

February 19, 2003

An act to add Chapter 1.6 (commencing with Section 120392) to Part 2 of Division 105 of the Health and Safety Code, relating to immunizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Daucher. Nursing facilities: vaccines.

Under existing law, the State Department of Health Services is responsible for the licensure and regulation of health facilities, including skilled nursing facilities and intermediate care facilities, as defined.

Under existing law, the department also has ~~specified~~ responsibilities relating to the prevention and control of communicable diseases by various means, including requiring ~~specified~~ immunization by vaccine for various populations.

This bill would require a skilled nursing facility, an intermediate care facility, or a nursing facility, as defined, to offer immunizations for influenza and pneumococcal disease to its residents, aged 65 years or older, between October 1 and April 1 of each year, and to offer pneumococcal vaccine to all new admittees. The bill would require that the facility be reimbursed the standard Medi-Cal rate for vaccines provided to Medi-Cal recipients, except under specified circumstances. The bill would require the facility to obtain informed consent for the immunization services from the resident or, if the person lacks the capacity to make medical decisions, for the person legally authorized to make medical decisions on the resident’s behalf.

This bill would specify circumstances under which the immunizations may not be administered to a resident, and circumstances under which the facility shall not be required to provide the immunization services required by the bill. The bill would provide that if a health care facility fails to offer an immunization pursuant to the bill due to ~~specified circumstances~~ *lack of availability of vaccine, or due to the physician’s or resident’s refusal or lack of cooperation*, the failure shall not be the basis for issuing a deficiency or citation against the facility’s license. *The bill would authorize the department to issue a deficiency or citation for failure to comply with provisions of the bill relation to resident evaluation and consent procedures.*

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

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

1 SECTION 1. Chapter 1.6 (commencing with Section
2 120392) is added to Part 2 of Division 105 of the Health and Safety
3 Code, to read:

4
5 CHAPTER 1.6. INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS

6
7 120392. For purposes of this chapter, the following
8 definitions apply:

9 (a) “Health care facility” means a skilled nursing facility as
10 defined in subdivision (c) of Section 1250, an intermediate care
11 facility as defined in subdivision (d) of Section 1250, or a nursing
12 facility as defined in subdivision (k) of Section 1250. This chapter
13 shall not apply to hospital-based skilled nursing facilities.



1 (b) “Medically contraindicated” means that the administration
2 of the influenza or pneumococcal vaccines to a person, because of
3 a medical condition of that person, would be detrimental to the
4 person’s health if the person receives either or both of the vaccines.

5 120392.2. (a) Each year, commencing October 1 to the
6 following April 1, inclusive, every health care facility, as defined
7 in subdivision (a) of Section 120392, shall offer, *pursuant to*
8 *Section 120392.4*, immunizations for influenza and
9 pneumococcal disease to residents, aged 65 years or older,
10 receiving services at the facility, based upon the latest
11 recommendations of the Advisory Committee on Immunization
12 Practices (ACIP) of the Centers for Disease Control and
13 Prevention, and the latest recommendations of appropriate entities
14 for the prevention, detection, and control of influenza outbreaks
15 in California long-term care facilities.

16 (b) Each health care facility, as defined in subdivision (a) of
17 Section 120392, shall offer, *pursuant to Section 120392.4*,
18 pneumococcal vaccine to all new admittees to the health care
19 facility, based on the latest recommendations of the ACIP.

20 (c) The facility shall be reimbursed the standard Medi-Cal rate
21 for an immunization provided to a Medi-Cal recipient, unless he
22 or she is also a Medicare recipient whose coverage includes
23 reimbursement for the immunization.

24 120392.4. (a) A resident who receives services at a health
25 care facility during the period of October 1 to April 1 shall have
26 his or her status for influenza and pneumococcal immunization
27 determined by his or her physician *or facility medical director*,
28 and, if appropriate, the facility shall offer to make the
29 immunizations available, unless the facility, through written
30 policies and procedures and using standardized nursing
31 procedures, offers to make the immunizations available without
32 limitation as to the period when the residents receive services at the
33 facility.

34 (b) A health care facility shall obtain from a resident who
35 requests immunization services, or, if the person lacks the capacity
36 to make medical decisions, from the person legally authorized to
37 make medical decisions on the resident’s behalf, informed consent
38 for the resident to be immunized by vaccination against influenza
39 or pneumococcal disease, or both, to be conducted by the facility
40 while the resident is receiving services at the facility.



1 (c) A health care facility shall comply with Section 1418.8 with
2 respect to a resident who lacks the capacity to make health care
3 decisions, and there is no person with legal authority to make these
4 decisions on behalf of the resident.

5 (d) The health care facility shall document in a resident's
6 medical record whether the resident has been offered the influenza
7 vaccine or the pneumococcal vaccine.

8 120392.6. No person who has been offered the vaccine as
9 required under this chapter may receive either an influenza vaccine
10 or pneumococcal vaccine pursuant to this chapter if any of the
11 following conditions exists:

12 (a) The vaccine is medically contraindicated, as described in
13 the product labeling approved by the federal Food and Drug
14 Administration or by the recommendations established by the
15 Advisory Committee on Immunization Practice (ACIP) of the
16 Centers for Disease Control and Prevention that are in effect at the
17 time of vaccination.

18 (b) Receipt of the vaccine is against the resident's personal
19 beliefs.

20 (c) Receipt of the vaccine is against the resident's wishes, or, if
21 the person lacks the capacity to make medical decisions, is against
22 the wishes of the person legally authorized to make medical
23 decisions on the resident's behalf.

24 120392.8. (a) Notwithstanding any other provision of this
25 chapter, a health care facility shall not be required to offer
26 immunizations for influenza and pneumococcal disease under
27 either of the following circumstances:

28 (1) The facility is unable to obtain the vaccine due to a shortage
29 of the supply of vaccine.

30 (2) The resident refuses to pay for the vaccine and there is no
31 other funding source available to pay for the cost of the vaccine.

32 (b) If a health care facility, as defined in subdivision (a) of
33 Section 120392, fails to offer an immunization pursuant to this
34 chapter due to lack of availability of vaccine, a physician's refusal
35 to assess the resident or cooperate with the recommendations of the
36 provisions of this chapter, or lack of resident cooperation, the
37 failure shall not be the basis for issuing a deficiency or citation
38 against the facility's license.

39 (c) *This chapter is intended to encourage immunizations for*
40 *residents in health care facilities, and the department shall*



1 *consider a facility's efforts to prevent a violation of this chapter*
2 *prior to issuing a deficiency or citation. The department may not*
3 *issue a deficiency or citation for failure to offer an immunization*
4 *if a health care facility provides evidence that it made the offer,*
5 *even if the evidence does not include the documentation that is*
6 *required to be in a resident's medical record pursuant to*
7 *subdivision (d) of Section 120392.4. comply with Section*
8 *120392.4.*

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