

AMENDED IN ASSEMBLY MAY 20, 2004

AMENDED IN ASSEMBLY APRIL 28, 2004

AMENDED IN ASSEMBLY APRIL 15, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2742

Introduced by Assembly Member Mountjoy
(Coauthors: Assembly Members Berg and Goldberg)
(Coauthor: Senator Vasconcellos)

February 20, 2004

An act to amend Section 2653 of the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

AB 2742, as amended, Mountjoy. Prisons: medical treatment.

Existing law provides that the order of a physician for specified medical treatment may not be modified or canceled by any employee of the department without the approval of the chief medical officer of the institution or the physician in attendance except as specified. A person violating this provision is subject to appropriate disciplinary action by the Department of Corrections or the Youth Authority.

This bill would provide that, if an inmate is given a diagnosis and recommendation for treatment by a physician outside the facility who is a specialist or consulting physician, and that treatment is available at the institution or contract medical facility, and that treatment does not exceed the range of benefits provided by the ~~Medi-Cal program, no~~ ~~physician may interfere with the delivery of that treatment, except as~~ ~~specified.~~ *department, if a decision is made to deny or modify the recommended treatment, that decision shall be communicated in*

writing to the physician recommending the treatment and to the patient. This bill would also bar prison staff other than a physician from interfering with the delivery of a treatment prescribed by a physician *unless immediate security needs require alternate or modified procedures.* A person violating any of these provisions would be subject to appropriate disciplinary action by the department, and is guilty of an infraction punishable by a fine of up to \$1,000. A 2nd or subsequent conviction for this offense would be punishable by a fine of up to \$2,000. This bill would also require any action taken against a physician under these provisions to be reported by the employing department to the Medical Board of California within 30 days of that action.

By defining a new crime, this bill would impose a state-mandated local program.

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:

1 SECTION 1. Section 2653 of the Penal Code is amended to
 2 read:
 3 2653. (a) If a physician employed by the Department of
 4 Corrections or the Department of the Youth Authority certifies in
 5 writing that a particular medical treatment is required to prevent
 6 a violation of Section 147, 673, 2650, or 2652, or is required to
 7 prevent serious and imminent harm to the health of a prisoner, the
 8 order for that particular medical treatment may not be modified or
 9 canceled by any employee of the department without the approval
 10 of the chief medical officer of the institution or the physician in
 11 attendance unless an inmate or ward has a known history of violent
 12 or otherwise disruptive behavior that requires additional measures
 13 to protect the safety and security of the institution specified in
 14 writing by the warden or superintendent, or unless immediate
 15 security needs require alternate or modified procedures.
 16 Following any necessary modified or alternate security



1 procedures, treatment of the inmate or ward shall be effected as
2 expeditiously as possible.

3 Nothing in this section shall be construed to prevent a registered
4 nurse from questioning, or seeking clarification of, an order from
5 a physician that in the professional judgment of that nurse
6 endangers patient health or safety, or otherwise is contrary to the
7 professional ethics of the registered nurse.

8 (b) For any institution, if an inmate is given a diagnosis and
9 recommendation for treatment by a physician outside the facility
10 who is a specialist or a consulting physician, and that treatment is
11 available at the institution or contract medical facility, and that
12 treatment does not exceed the range of benefits provided by the
13 ~~Medi-Cal program, no physician may interfere with the delivery~~
14 ~~of that treatment unless the facility physician has performed a good~~
15 ~~faith examination of the inmate subsequent to the examination~~
16 ~~performed by the contract physician and has determined that there~~
17 ~~is a medical indication to alter that treatment. For purposes of~~
18 ~~compliance with this section, no examination is required if the~~
19 ~~modification is limited to substituting a medication that is on the~~
20 ~~department formulary for one that is not, provided the substituted~~
21 ~~medication is comparable to the medication prescribed by the~~
22 ~~contract physician.~~ *department, if a decision is made to deny or*
23 *modify the recommended treatment, that decision shall be*
24 *communicated in writing to the physician recommending the*
25 *treatment and to the patient.*

26 (c) If an inmate is given a diagnosis and recommendation for
27 treatment by a physician, no prison staff other than a physician
28 may interfere with the delivery of that treatment *unless immediate*
29 *security needs require alternate or modified procedures.*

30 (d) Any person who violates this section shall be subject to
31 appropriate disciplinary action by the department. In addition, a
32 violation of subdivision (b) is an infraction punishable by a fine of
33 up to one thousand dollars (\$1,000). A second or subsequent
34 violation of subdivision (b) is punishable by a fine of up to two
35 thousand dollars (\$2,000).

36 (e) Any action taken against a physician pursuant to this section
37 shall be reported by the employing department to the Medical
38 Board of California within 30 days of that action.

39 SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because



1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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