

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 14, 2012

AMENDED IN SENATE MAY 25, 2012

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1318

**Introduced by Senator Wolk
(Coauthor: Senator Anderson)**

February 23, 2012

An act to ~~amend, repeal, and add Section 1288.7 of, and to add Sections 1228.3, 1228.5, and 1288.65 to, and to repeal and add Section 1288.7 of,~~ the Health and Safety Code, relating to infectious diseases.

LEGISLATIVE COUNSEL'S DIGEST

SB 1318, as amended, Wolk. Health facilities: influenza vaccinations.

Existing law imposes on the State Department of Public Health various duties and responsibilities regarding the regulation of clinics and health facilities, including general acute care hospitals, as defined.

Existing law requires a general acute care hospital to annually offer onsite influenza vaccinations, if available, to all hospital employees. Existing law requires a general acute care hospital to require its employees to be vaccinated, or if the employee elects not to be vaccinated, to declare in writing that he or she declined the vaccination. A violation of these provisions is punishable as a misdemeanor.

This bill would require licensed clinics and health facilities to institute measures, including aerosol transmissible diseases training, designed to maximize influenza vaccination rates and to prevent onsite health care workers affiliated with the clinic or health facility and persons with

privileges on the medical staff from contracting, and transmitting to patients, the influenza virus.

This bill would require, ~~commencing January 1, 2015~~, each clinic and health facility to annually offer onsite influenza vaccinations to its employees and to require its onsite health care workers affiliated with the clinic or health facility, as defined, and persons with privileges on the medical staff, as defined, to be vaccinated. This bill would require licensed clinics and health facilities to maintain vaccination records of their employees and permit licensed clinics and health facilities to require documentation of vaccination or vaccination refusal from an onsite health care worker or person with privileges on the medical staff. ~~By expanding increasing the responsibilities of clinics and health facilities, this bill would expand the definition of a crime, this bill and~~ would impose a state-mandated local program.

This bill would also require, ~~on and after January 1, 2015~~, each clinic and health facility to develop policies to implement these provisions and to ensure nonmedical staff, as defined, compliance with vaccination requirements. This bill would require, ~~on and after that date~~, the medical staff to develop separate policies to ensure compliance with vaccination requirements imposed by the clinic or health facility. This bill would require clinics and health facilities to report their percentage of employees and medical staff and of medical staff who have been vaccinated for that year to the State Department of Public Health. This bill would provide that a clinic or health facility that reports, *by January 1, 2015*, a combined average of 90% or higher vaccination rate for its employees and medical staff shall not be subject to specified implementation and compliance requirements. *This bill would require the department, by January 1, 2016, to develop a model mandatory vaccination policy, as specified, and would require clinics and health facilities which fail to reach the 90% compliance rate requirement to be subject to the model mandatory vaccination policy.*

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. The Legislature hereby declares that mandatory
2 ~~mask-wearing policies for health care workers who have not been~~
3 ~~immunized have proven effective to increase vaccination rates in~~
4 ~~health care workers. While studies have not yet proven that~~
5 ~~masking is effective to protect transmission of influenza in the~~
6 ~~asymptomatic phase of the influenza illness, wearing a mask has~~
7 ~~proven effective in preventing the transmission of other respiratory~~
8 ~~pathogens~~ *declares that influenza can be a serious disease that*
9 *can lead to hospitalization and even death, and that increased*
10 *access to vaccinations is a critical component in the promotion of*
11 *health and wellness. Because of their contact with patients, many*
12 *health care workers are at risk for exposure to, and possible*
13 *transmission of, vaccine-preventable diseases. By getting*
14 *vaccinated, health care workers can protect themselves, their*
15 *families, and patients from contracting the flu. It is the intent of*
16 *the Legislature in enacting this statute to protect the health, safety,*
17 *and welfare of health care workers and patients who enter a clinic*
18 *or health care facility. It is also the intent of the Legislature that*
19 *health care facilities and clinics institute measures designed to*
20 *maximize influenza vaccination rates and increase vaccination*
21 *among health care workers. It is also the intent of the Legislature*
22 *that the State Department of Public Health develop a model*
23 *mandatory vaccination policy through a stakeholder process to*
24 *achieve a 90-percent influenza vaccination compliance rate*
25 *requirement for health care workers.*

26 SEC. 2. Section 1228.3 is added to the Health and Safety Code,
27 to read:

28 1228.3. (a) A licensed clinic shall institute measures designed
29 to maximize influenza vaccination rates and to prevent persons
30 with privileges on the medical staff and onsite health care workers
31 affiliated with the clinic from contracting, and transmitting to
32 patients, the influenza virus to patients. These measures shall
33 include, but not be limited to, aerosol transmissible diseases
34 training as described in Section 5199(i) of Title 8 of the California
35 Code of Regulations, as in effect on January 1, 2013.

36 (b) For purposes of this section, the following definitions shall
37 apply:

1 (1) “Medical staff” shall have the same meaning provided in
2 Section 1228.5.

3 (2) “Onsite health care worker affiliated with the clinic” shall
4 have the same meaning provided in Section 1228.5.

5 (c) Notwithstanding Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
7 the department may implement this section by sending letters or
8 similar instruction to all applicable facilities without taking
9 regulatory action.

10 SEC. 3. Section 1228.5 is added to the Health and Safety Code,
11 to read:

12 1228.5. (a) A licensed clinic shall annually offer its employees
13 onsite influenza vaccinations, if available, at no cost to the
14 employee.

15 (b) A licensed clinic shall require all onsite health care workers
16 affiliated with the clinic and persons with privileges on the medical
17 staff to either annually receive an influenza vaccination or, as an
18 alternative to the annual influenza vaccination, ~~wear a~~
19 ~~clinic-provided surgical or procedural mask, or other mask that~~
20 ~~covers the mouth and nose area of the face, while this person is~~
21 ~~performing his or her duties in any patient care area of the clinic~~
22 ~~during the influenza season, as defined by the State Health Officer~~
23 ~~or a local health officer, or both if an onsite health care worker~~
24 ~~affiliated with the clinic or person with privileges on the medical~~
25 ~~staff elects not to be vaccinated, he or she shall agree, in writing,~~
26 ~~to adhere to the most effective measures determined by the clinic~~
27 ~~in preventing health care workers from contracting and~~
28 ~~transmitting the influenza virus.~~

29 (c) (1) In meeting the requirements of subdivision (b), the clinic
30 shall maintain influenza vaccination records of employees and
31 may maintain influenza vaccination records of the other onsite
32 health care workers affiliated with, but not an employee of, the
33 clinic and of persons with privileges on the medical staff. If the
34 clinic does not have records of an onsite health care worker or
35 person with privileges on the medical staff being vaccinated onsite,
36 the clinic may require the worker or medical staff person to either
37 provide documentation of vaccination or documentation that he
38 or she refused the vaccination.

39 (2) The clinic may include language in its business contracts to
40 require a contract worker to maintain records of the verification

1 of offsite vaccination or documentation that he or she refused the
2 vaccination, which shall be available to the clinic upon request.
3 Nothing in this section shall be construed to require a clinic to
4 maintain separate vaccination records or to provide vaccinations
5 at no cost to a contract worker who is not an employee of the clinic.

6 (d) Each licensed clinic shall develop policies to implement this
7 section and to ensure its onsite health care workers affiliated with
8 the clinic are in compliance with the vaccination requirements
9 imposed by this section. The medical staff shall also develop
10 policies to ensure that persons who have privileges on the medical
11 staff are in compliance with the vaccination requirements of this
12 section that have been implemented by the clinic.

13 (e) For purposes of this section, the following definitions shall
14 apply:

15 (1) “Employee” means an individual who works for the clinic,
16 is listed on the clinic’s payroll records, and is under the clinic’s
17 direction and control.

18 (2) “Medical staff” means professional medical personnel who
19 are approved and given privileges to provide health care to patients
20 while onsite in a clinic and who are responsible for the adequacy
21 and quality of care rendered to patients. Medical staff includes,
22 but is not limited to, physicians and surgeons, and, if dental or
23 podiatric services are provided, dentists or podiatrists.

24 (3) “Onsite health care worker affiliated with the clinic” means
25 a person who is either a volunteer or is employed by, paid by, or
26 receives credit or any other form of compensation from the clinic,
27 who performs some or all of his or her duties in a patient care area
28 of the facility. The patient care area of the facility shall be
29 determined by the clinic and is where onsite health care workers
30 and medical staff are within close proximity to patients receiving
31 care. An onsite health care worker affiliated with the clinic
32 includes, but is not limited to, employees, physicians, nurses,
33 nursing assistants, therapists, technicians, emergency medical
34 service personnel, dental personnel, pharmacists, laboratory
35 personnel, autopsy personnel, students and trainees, contractual
36 staff, and registry staff who perform direct patient care duties but
37 are not employed by the clinic.

38 (f) Notwithstanding Chapter 3.5 (commencing with Section
39 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
40 the department may implement this section by sending letters or

1 similar instruction to all applicable facilities without taking
2 regulatory action.

3 (g) A clinic shall annually report its average vaccination
4 compliance rate for onsite health care workers who are employees
5 and of medical staff who have been vaccinated for that year to the
6 State Department of Public Health.

7 (h) This section, with the exception of subdivision (a) and the
8 reporting requirement of subdivision (g), shall not apply to a clinic
9 that ~~have~~ has a combined average vaccination compliance rate of
10 90 percent or higher, *by January 1, 2015*, for its onsite health care
11 workers who are employees and medical staff. *For clinics that fail*
12 *to reach the 90-percent compliance rate requirement, the clinic*
13 *shall adopt the model mandatory vaccination policy as determined*
14 *by the State Department of Public Health to achieve the 90-percent*
15 *or higher goal. The department shall develop a model mandatory*
16 *vaccination policy through a stakeholder process to be issued*
17 *through an all facilities letter no later than January 1, 2016. The*
18 *department may waive the 90-percent compliance rate requirement*
19 *for a clinic that is in substantial compliance. Implementation of*
20 *this section shall be exempt from the Administrative Procedure*
21 *Act.*

22 ~~(i) This section shall become operative on January 1, 2015.~~

23 SEC. 4. Section 1288.65 is added to the Health and Safety
24 Code, to read:

25 1288.65. (a) A licensed health facility shall institute measures
26 designed to maximize influenza vaccination rates and to prevent
27 persons with privileges on the medical staff and onsite health care
28 workers affiliated with the health facility from contracting, and
29 transmitting to patients, the influenza virus. These measures shall
30 include, but not be limited to, aerosol transmissible diseases
31 training, as described in Section 5199(i) of Title 8 of the California
32 Code of Regulations, as in effect January 1, 2013.

33 (b) For purposes of this section, the following definitions shall
34 apply:

35 (1) “Medical staff” means professional medical personnel who
36 are approved and given privileges to provide health care to patients
37 in a health facility and who are responsible for the adequacy and
38 quality of care rendered to patients. Medical staff includes, but is
39 not limited to, physicians and surgeons, and, if dental or podiatric
40 services are provided, dentists or podiatrists.

1 (2) “Onsite health care worker affiliated with the health facility”
2 means a person who is either a volunteer or is employed by, paid
3 by, or receives credit or any other form of compensation from the
4 health facility, who performs some or all of his or her duties in a
5 patient care area of the facility. The patient care area of the facility
6 shall be determined by the health facility and is where onsite health
7 care workers and medical staff are within close proximity to
8 patients receiving care. An onsite health care worker affiliated
9 with the health facility includes, but is not limited to, employees,
10 physicians, nurses, nursing assistants, therapists, technicians,
11 emergency medical service personnel, dental personnel,
12 pharmacists, laboratory personnel, autopsy personnel, students
13 and trainees, contractual staff, and registry staff who perform direct
14 patient care duties but are not employed by the health facility.

15 (c) Notwithstanding Chapter 3.5 (commencing with Section
16 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
17 the department may implement this section by sending letters or
18 similar instruction to all applicable facilities without taking
19 regulatory action.

20 ~~SEC. 5. Section 1288.7 of the Health and Safety Code is~~
21 ~~amended to read:~~

22 ~~1288.7. By July 1, 2007, the department shall require that each~~
23 ~~general acute care hospital, in accordance with the Centers for~~
24 ~~Disease Control and Prevention guidelines, take all of the following~~
25 ~~actions:~~

26 ~~(a) Annually offer onsite influenza vaccinations, if available,~~
27 ~~to all hospital employees at no cost to the employee. Each general~~
28 ~~acute care hospital shall require its employees to be vaccinated,~~
29 ~~or if the employee elects not to be vaccinated, to declare in writing~~
30 ~~that he or she has declined the vaccination.~~

31 ~~(b) Institute respiratory hygiene and cough etiquette protocols,~~
32 ~~develop and implement procedures for the isolation of patients~~
33 ~~with influenza, and adopt a seasonal influenza plan.~~

34 ~~(c) Revise an existing or develop a new disaster plan that~~
35 ~~includes a pandemic influenza component. The plan shall also~~
36 ~~document any actual or recommended collaboration with local,~~
37 ~~regional, and state public health agencies or officials in the event~~
38 ~~of an influenza pandemic.~~

1 ~~(d) This section shall remain in effect only until January 1, 2015,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2015, deletes or extends that date.~~

4 *SEC. 5. Section 1288.7 of the Health and Safety Code is*
5 *repealed.*

6 ~~1288.7. By July 1, 2007, the department shall require that each~~
7 ~~general acute care hospital, in accordance with the Centers for~~
8 ~~Disease Control guidelines, take all of the following actions:~~

9 ~~(a) Annually offer onsite influenza vaccinations, if available,~~
10 ~~to all hospital employees at no cost to the employee. Each general~~
11 ~~acute care hospital shall require its employees to be vaccinated,~~
12 ~~or if the employee elects not to be vaccinated, to declare in writing~~
13 ~~that he or she has declined the vaccination.~~

14 ~~(b) Institute respiratory hygiene and cough etiquette protocols,~~
15 ~~develop and implement procedures for the isolation of patients~~
16 ~~with influenza, and adopt a seasonal influenza plan.~~

17 ~~(c) Revise an existing or develop a new disaster plan that~~
18 ~~includes a pandemic influenza component. The plan shall also~~
19 ~~document any actual or recommended collaboration with local,~~
20 ~~regional, and state public health agencies or officials in the event~~
21 ~~of an influenza pandemic.~~

22 *SEC. 6. Section 1288.7 is added to the Health and Safety Code,*
23 *to read:*

24 ~~1288.7. (a) A licensed health facility shall annually offer its~~
25 ~~employees onsite influenza vaccinations, if available, at no cost~~
26 ~~to the employee.~~

27 ~~(b) A licensed health facility shall require all onsite health care~~
28 ~~workers affiliated with the health facility and persons with~~
29 ~~privileges on the medical staff to either annually receive an~~
30 ~~influenza vaccination or, as an alternative to the annual influenza~~
31 ~~vaccination, wear a health facility-provided surgical or procedural~~
32 ~~mask, or other mask that covers the mouth and nose area of the~~
33 ~~face while this person is performing his or her duties in any patient~~
34 ~~care area of the health facility during the influenza season, as~~
35 ~~defined by the State Health Officer or a local health officer, or~~
36 ~~both if the onsite health care worker affiliated with the health~~
37 ~~facility or person with privileges on the medical staff elects not to~~
38 ~~be vaccinated, he or she shall agree, in writing, to adhere to the~~
39 ~~most effective measures determined by the health facility in~~

1 *preventing health care workers from contracting and transmitting*
2 *the influenza virus.*

3 (c) (1) In meeting the requirements of subdivision (b), the health
4 facility shall maintain influenza vaccination records of employees
5 and may maintain influenza vaccination records of the other onsite
6 health care workers who are affiliated with, but are not employees
7 of, the health facilities and of persons with privileges on the
8 medical staff. If the health facility does not have records of an
9 onsite health care worker or person with privileges on the medical
10 staff being vaccinated, the health facility may require the worker
11 or medical staff person to either provide documentation of
12 vaccination or documentation that he or she refused the vaccination.

13 (2) The health facility may include language in its business
14 contracts to require a contract worker to maintain records of the
15 verification of offsite vaccination or documentation that he or she
16 refused the vaccination, which shall be available to the health
17 facility upon request. Nothing in this section shall be construed to
18 require a health facility to maintain separate vaccination records
19 or to provide vaccinations at no cost to a contract worker who is
20 not an employee of the health facility.

21 (d) Each licensed health facility shall develop policies to
22 implement this section and to ensure its onsite health care workers
23 affiliated with the health facility are in compliance with the
24 vaccination requirements imposed by this section. The medical
25 staff shall develop policies to ensure that persons who have
26 privileges on the medical staff are in compliance with the
27 vaccination requirements of this section that have been
28 implemented by the health facility.

29 (e) In addition to other requirements of this section, general
30 acute care hospitals shall take all of the following actions:

31 (1) Institute respiratory hygiene and cough etiquette protocols,
32 develop and implement procedures for the isolation of patients
33 with influenza, and adopt a seasonal influenza plan.

34 (2) Revise an existing or develop a new disaster plan that
35 includes a pandemic influenza component. The plan shall also
36 document any actual or recommended collaboration with local,
37 regional, and state public health agencies or officials in the event
38 of an influenza pandemic.

39 (f) For purposes of this section, the following definitions shall
40 apply:

1 (1) “Employee” means an individual who works for the health
2 facility, is listed on the health facility’s payroll records, and is
3 under the health facility’s direction and control.

4 (2) “Medical staff” means professional medical personnel who
5 are approved and given privileges to provide health care to patients
6 in a health facility and who are responsible for the adequacy and
7 quality of care rendered to patients. Medical staff include
8 physicians and if dental or podiatric services are provided, dentists
9 or podiatrists.

10 (3) “Onsite health care worker affiliated with the health facility”
11 means a person who is either a volunteer or is employed by, paid
12 by, or receives credit or any other form of compensation from the
13 health facility, who performs some or all of his or her duties in a
14 patient care area of the facility. The patient care area of the facility
15 shall be determined by the health facility and is where onsite health
16 care workers and medical staff are within close proximity to
17 patients receiving care. An onsite health care worker affiliated
18 with the health facility includes, but is not limited to, physicians,
19 nurses, nursing assistants, therapists, technicians, emergency
20 medical service personnel, dental personnel, pharmacists,
21 laboratory personnel, autopsy personnel, students and trainees,
22 contractual staff and registry staff performing direct patient care
23 duties but are not employed by the health facility.

24 (g) Notwithstanding Chapter 3.5 (commencing with Section
25 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
26 the department may implement this section by sending letters or
27 similar instruction to all applicable facilities without taking
28 regulatory action.

29 (h) A health facility shall annually report its average vaccination
30 compliance rate of onsite health care workers that are employees
31 and of medical staff who have been vaccinated for that year to the
32 State Department of Public Health.

33 (i) This section, with the exception of subdivisions (a) and (e),
34 and the reporting requirement of subdivision (h), shall not apply
35 to health facilities that have a combined average vaccination
36 compliance rate of 90 percent or higher *by January 1, 2015*, for
37 its onsite health care workers that are employees and medical staff.
38 *For health facilities that fail to reach the 90-percent compliance*
39 *rate requirement, the health facility shall adopt the model*
40 *mandatory vaccination policy as determined by the State*

1 *Department of Public Health to achieve the 90-percent or higher*
2 *goal. The department shall develop a model mandatory vaccination*
3 *policy through a stakeholder process to be issued through an all*
4 *facilities letter later no later than January 1, 2016. The department*
5 *may waive the 90-percent compliance rate requirement for a health*
6 *facility that is in substantial compliance. Implementation of this*
7 *section shall be exempt from the Administrative Procedure Act.*

8 ~~(j) This section shall become operative on January 1, 2015.~~

9 SEC. 7. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.