

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 927

Introduced by Assembly Member McCarty
(~~Coauthor:~~ (Coauthors: Assembly Member Members Brown and
Rodriguez))

February 26, 2015

An act to amend Sections 1265, 1265.3, 1267.5, and 1422.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 927, as amended, McCarty. Health facilities: nursing homes.

Existing law provides for the licensure and regulation of health facilities, as defined. A violation of those provisions is a crime. Existing law requires any person or government entity desiring a license for a health facility, approval for a special service, or approval to manage a health facility currently licensed as a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, or special hospital, that has not filed an application for a license to operate that facility, to file with the department a verified application containing specific information.

This bill would require the denial of an application under those provisions if the applicant fails to provide the requisite information or provide it in the form requested.

Existing law requires each applicant for a license to operate a skilled nursing facility or intermediate care facility to make certain disclosures regarding corporate governance and ownership to the State Department of Public Health. Existing law prohibits certain persons, as defined, from governing or owning a beneficial interest of 5% or more of a

skilled nursing facility or intermediate care facility, as specified, without approval of the department.

This bill would expand those disclosure requirements and the provisions that prohibit certain persons from governing or owning a beneficial interest in a skilled nursing facility or intermediate care facility, as specified. The bill would establish provisions for the denial of an application under circumstances in which a person named in an application has governed or owned a facility that has violated the law during a certain timeframe, as specified.

Existing law requires the department to implement a consumer information service system regarding long-term care facilities.

This bill would revise the information the system is required to contain and would require it to be available on the Internet by March 1, 2016.

Because this bill would require additional disclosures, of which a failure to disclose or a false disclosure would be a crime, the 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. This act shall be known as the Nursing Home
- 2 Ownership Disclosure Act of 2015.
- 3 SEC. 2. Section 1265 of the Health and Safety Code is amended
- 4 to read:
- 5 1265. (a) Any person, political subdivision of the state, or
- 6 governmental agency desiring a license for a health facility,
- 7 approval for a special service under this chapter, or approval to
- 8 manage a health facility currently licensed as a health facility, as
- 9 defined in subdivision (a), (b), (c), (d), or (f) of Section 1250, that
- 10 has not filed an application for a license to operate that facility
- 11 shall file with the department a verified application on forms
- 12 prescribed and furnished by the department, containing all of the
- 13 following:

- 1 (1) The name of the applicant and, if an individual, whether the
2 applicant has attained the age of 18 years.
- 3 (2) The type of facility or health facility.
- 4 (3) The location thereof.
- 5 (4) The name of the person in charge thereof.
- 6 (5) Evidence satisfactory to the department that the applicant
7 is of reputable and responsible character. If the applicant is a firm,
8 association, organization, partnership, business trust, corporation,
9 or company, like evidence shall be submitted as to the members
10 or shareholders thereof, and the person in charge of the health
11 facility for which application for license is made. If the applicant
12 is a political subdivision of the state or other governmental agency,
13 like evidence shall be submitted as to the person in charge of the
14 health facility for which application for license is made.
- 15 (6) Evidence satisfactory to the department of the ability of the
16 applicant to comply with this chapter and of rules and regulations
17 promulgated under this chapter by the department.
- 18 (7) Evidence satisfactory to the department that the applicant
19 to operate a skilled nursing facility or intermediate care facility
20 possesses financial resources sufficient to operate the facility for
21 a period of at least 45 days. A management company shall not be
22 required to submit this information.
- 23 (8) Each applicant for a license to operate a skilled nursing
24 facility or intermediate care facility shall disclose to the department
25 evidence of the right to possession of the facility at the time the
26 application will be granted, which may be satisfied by the
27 submission of a copy of applicable portions of a lease agreement
28 or deed of trust. The names and addresses of any persons or
29 organizations listed as owner of record in the real estate, including
30 the buildings and the grounds appurtenant to the buildings, shall
31 be disclosed to the department.
- 32 (9) Any other information as may be required by the department
33 for the proper administration and enforcement of this chapter.
- 34 (10) Upon submission of an application to the department by
35 an intermediate care facility/developmentally disabled habilitative
36 or an intermediate care facility/developmentally disabled-nursing,
37 the application shall include a statement of need signed by the
38 chairperson of the area board pursuant to Chapter 4 (commencing
39 with Section 4570) of Division 4.5 of the Welfare and Institutions
40 Code. In the event the area board has not provided the statement

1 of need within 30 days of receipt of the request from the applicant,
2 the department may process the application for license without the
3 statement.

4 (b) The information required pursuant to this section, other than
5 individuals' social security numbers, shall be made available to
6 the public upon request, and shall be included in the department's
7 public file regarding the facility.

8 (c) With respect to a facility licensed as a health facility, as
9 defined in subdivision (a), (b), ~~(e), (d)~~, or (f) of Section 1250, for
10 purposes of this section, "manage" means to assume operational
11 control of the facility.

12 (d) Failure of an applicant to cooperate with the licensing agency
13 in the completion of an application pursuant to this section shall
14 result in the denial of the application. "Failure of an applicant to
15 cooperate" means that the information required pursuant to this
16 chapter and by regulations of the department has not been provided,
17 or has not been provided in the form requested by the licensing
18 agency, or both.

19 SEC. 3. Section 1265.3 of the Health and Safety Code is
20 amended to read:

21 1265.3. (a) For any individual or entity that seeks approval to
22 operate or manage a health facility licensed pursuant to subdivision
23 (a), (b), (c), (d), or (f) of Section 1250 and is subject to Section
24 1265, the department shall consider the following:

25 (1) To determine whether the applicant is of reputable and
26 responsible character, the department shall consider any available
27 information that the applicant has demonstrated a pattern and
28 practice of violations of state or federal laws and regulations. The
29 department shall give particular consideration to those violations
30 that affect the applicant's ability to deliver safe patient or resident
31 care.

32 (2) To determine whether the applicant has the ability to comply
33 with this chapter and the rules and regulations adopted under this
34 chapter, the department shall consider evidence that shall include
35 all of the following:

36 (A) If any, prior history of operating in this state any other
37 facility licensed pursuant to Section 1250, and the applicant's
38 history of substantial compliance with the requirements imposed
39 under that license, applicable federal laws and regulations, and
40 requirements governing the operators of those facilities.

1 (B) If any, prior history of operating in any other state any
2 facility authorized to receive Medicare Program reimbursement
3 or Medicaid Program reimbursement, and the applicant's history
4 of substantial compliance with that state's requirements, and
5 applicable federal laws, regulations, and requirements.

6 (C) If any, prior history of providing health services as a licensed
7 health professional or an individual or entity contracting with a
8 health care service plan or insurer, and the applicant's history of
9 substantial compliance with state requirements, and applicable
10 federal-law, laws, regulations, and requirements.

11 (b) The department may also require the entity described in
12 subdivision (a) to furnish other information or documents for the
13 proper administration and enforcement of the licensing laws.

14 SEC. 4. Section 1267.5 of the Health and Safety Code is
15 amended to read:

16 1267.5. (a) (1) Each applicant for a license to operate a skilled
17 nursing facility or intermediate care facility shall disclose to the
18 state department the name and business address of each general
19 partner if the applicant is a partnership, or each director and officer
20 if the applicant is a corporation, and each person having a beneficial
21 ownership interest of 5 percent or more in the applicant corporation
22 or partnership.

23 (2) If any person described in paragraph (1) has served or
24 currently serves as an administrator, general partner, trustee or
25 trust applicant, sole proprietor of any applicant or licensee who is
26 a sole proprietorship, executor, or corporate officer or director of,
27 or has held a direct or indirect beneficial ownership interest of 5
28 percent or more in, any other skilled nursing facility or intermediate
29 care facility in this state or any other state, in any community care
30 facility licensed pursuant to Chapter 3 (commencing with Section
31 1500), or in any residential care facility for the elderly licensed
32 pursuant to Chapter 3.2 (commencing with Section 1569), the
33 applicant shall disclose the relationship to the state department,
34 including the name and current or last address of the health facility,
35 community care facility, or residential care facility for the elderly,
36 and the date the relationship commenced and, if applicable, the
37 date it was terminated.

38 (3) (A) If the facility is operated by, or proposed to be operated
39 in whole or part under, a management contract, the names and
40 addresses of any person or organization, or both, having an

1 ownership or control interest of 5 percent or more in the
2 management company shall be disclosed to the state department.
3 This provision shall not apply if the management company has
4 submitted an application for licensure with the state department
5 and has complied with paragraph (1).

6 (B) If the management company is a subsidiary of one or more
7 other organizations, the information shall include the names and
8 addresses of the parent organizations of the management company
9 and the names and addresses of any officer or director of the parent
10 organizations. The failure to comply with this subparagraph may
11 result in action to revoke or deny a license. However, once the
12 information that is required under this subparagraph is provided,
13 the action to revoke the license shall terminate.

14 (C) If the management company or parent organizations of the
15 management company manage or previously managed any other
16 skilled nursing facility or intermediate care facility in this state or
17 any other state, any community care facility licensed pursuant to
18 Chapter 3 (commencing with Section 1500), or any residential
19 care facility for the elderly licensed pursuant to Chapter 3.2
20 (commencing with Section 1569), the applicant shall disclose the
21 name and current or last address of the health facility, community
22 care facility, or residential care facility for the elderly, and the date
23 the management commenced and, if applicable, the date it was
24 terminated.

25 (4) (A) If the applicant or licensee is a subsidiary of one or
26 more other organizations, the information shall include the names
27 and addresses of the parent organizations of the subsidiary and the
28 names and addresses of any officer or director of the parent
29 organizations.

30 (B) If the parent organizations of the subsidiary or applicant
31 own or manage, or previously owned or managed, any other skilled
32 nursing facility or intermediate care facility in this state or any
33 other state, any community care facility licensed pursuant to
34 Chapter 3 (commencing with Section 1500), or any residential
35 care facility for the elderly licensed pursuant to Chapter 3.2
36 (commencing with Section 1569), the applicant shall disclose the
37 relationship to the state department, including the name and current
38 or last address of the health facility, community care facility, or
39 residential care facility for the elderly, and the date the relationship
40 commenced and, if applicable, the date it was terminated.

1 (5) The applicant shall disclose the history of compliance and
2 any history of noncompliance with any applicable state or federal
3 law or regulation for each facility described in paragraph (2),
4 subparagraph (C) of paragraph (3), and subparagraph (B) of
5 paragraph (4) during the period in which any of the following
6 apply:

7 (A) Any person described in paragraph (1) had a relationship
8 to the facility.

9 (B) Any management company described in paragraph (3)
10 managed the facility.

11 (C) Any parent organizations described in paragraph (4) had a
12 relationship to the facility.

13 (6) The information required by this subdivision shall be
14 provided to the state department upon initial application for
15 licensure, and any change in the information shall be provided to
16 the state department within 30 calendar days of that change.

17 (7) Except as provided in subparagraph (B) of paragraph (3),
18 the failure to comply with this section may result in action to
19 revoke or deny a license.

20 (8) The information required by this section shall be made
21 available to the public upon request, shall be included in the public
22 file of the facility, and by July 1, 2002, shall be included in the
23 department's automated certification licensing administration
24 information management system.

25 (b) (1) On and after January 1, 1990, no person may acquire a
26 direct or indirect beneficial interest of 5 percent or more in any
27 corporation, partnership, or limited liability company licensed to
28 operate a skilled nursing facility or intermediate care facility, in
29 any parent organizations of a corporation, partnership, or limited
30 liability company licensed to operate a skilled nursing facility or
31 intermediate care facility, in any management company under
32 contract with a licensee of a skilled nursing facility or intermediate
33 care facility, or in any parent organizations of a management
34 company under contract with a licensee of a skilled nursing facility
35 or intermediate care facility, nor may any person become an officer
36 or director of, or general partner in, a corporation, partnership,
37 limited liability company, or management company of this type
38 without the prior written approval of the state department. Each
39 application for departmental approval pursuant to this subdivision

1 shall include the information specified in subdivision (a) as regards
2 the person for whom the application is made.

3 (2) The state department shall approve or disapprove the
4 application within 30 days after receipt thereof, unless the state
5 department, with just cause, extends the application review period
6 beyond 30 days.

7 (c) The state department shall deny approval of a license
8 application or of an application for approval under subdivision (b)
9 if a person named in the application, as required by this section,
10 was an officer, director, general partner, or owner of a 5-percent
11 or greater direct or indirect beneficial interest in a licensee or in
12 any parent organizations of a licensee of, or in a management
13 company under contract with a licensee of, a skilled nursing
14 facility, intermediate care facility, community care facility, or
15 residential care facility for the elderly at a time during the
16 seven-year period prior to the application in which that facility
17 committed one or more violations of law or regulatory requirements
18 that resulted in any of the following:

19 (1) Immediate jeopardy to the health, safety, or welfare of one
20 or more residents.

21 (2) Suspension or revocation of a facility's license.

22 (3) Termination of a facility's Medicare or Medi-Cal
23 certification.

24 (4) Appointment of a court-ordered receiver pursuant to Section
25 1327.

26 (d) The state department may deny approval of a license
27 application or of an application for approval under subdivision (b)
28 if a person named in the application, as required by this section,
29 was an officer, director, general partner, or owner of a 5-percent
30 or greater beneficial interest in a licensee or in any parent
31 organizations of a licensee of, or in a management company under
32 contract with a licensee of, a skilled nursing facility, intermediate
33 care facility, community care facility, or residential care facility
34 for the elderly at a time during the seven-year period prior to the
35 application in which any of the following occurred:

36 (1) The department revoked, suspended, or denied a nursing
37 home administrator's license held or sought by the person.

38 (2) The State Department of Social Services revoked, suspended,
39 or denied a residential care facility for the elderly administrator's

1 certificate held or sought by the person pursuant to Chapter 3.2
2 (commencing with Section 1569).

3 (3) The person prevented or attempted to impede the work of
4 any authorized representative of the department.

5 (4) The person failed to demonstrate competence in operating
6 a facility.

7 (5) The person failed to report abuse of residents in accordance
8 with any state or federal requirement.

9 (6) The facility committed one or more violations of law or
10 regulatory requirements that resulted in any of the following:

11 (A) A settlement agreement to resolve proceedings to suspend,
12 deny, or revoke the license of a facility or to terminate a facility's
13 Medicare or Medi-Cal certification.

14 (B) Appointment of a temporary manager pursuant to Section
15 1325.5.

16 (C) One or more class "A" or class "AA" citations pursuant to
17 Section 1424 or 1424.5.

18 (D) A court order or judgment granting damages or any form
19 of equitable relief, including an injunction, resulting from an action
20 filed by the Attorney General.

21 (e) No application shall be denied pursuant to this section until
22 the state department first (1) provides the applicant with notice in
23 writing of grounds for the proposed denial of application, and (2)
24 affords the applicant an opportunity to submit additional
25 documentary evidence in opposition to the proposed denial.

26 (f) Nothing in this section shall cause any individual to be
27 personally liable for any civil penalty assessed pursuant to Chapter
28 2.4 (commencing with Section 1417) or create any new criminal
29 or civil liability contrary to general laws limiting that liability.

30 (g) This section shall not apply to a bank, trust company,
31 financial institution, title insurer, controlled escrow company, or
32 underwritten title company to which a license is issued in a
33 fiduciary capacity.

34 (h) This section shall not apply to the directors of a nonprofit
35 corporation exempt from taxation under Section 23701d of the
36 Revenue and Taxation Code that operates a skilled nursing facility
37 or intermediate care facility in conjunction with a licensed
38 residential facility, where the directors serve without financial
39 compensation and are not compensated by the nonprofit corporation
40 in any other capacity.

1 (i) For purposes of this section:

2 (1) “Beneficial interest” means the interest held by any person,
 3 including a private equity firm and real estate investment trust,
 4 that acquires an interest in any entity, including, but not limited
 5 to, any firm, association, organization, partnership, business trust,
 6 investment trust, corporation, or limited liability ~~corporation,~~
 7 *company*, that is licensed to operate a facility, as defined in
 8 subdivision (c) or (d) of Section 1250, by assuming that entity’s
 9 debt.

10 (2) “Indirect beneficial interest” means the ~~internet~~ *interest* held
 11 by any person, including a private equity firm and real estate
 12 investment trust, that provides capital or assets to a facility, as
 13 defined in subdivision (c) or (d) of Section 1250, in exchange for
 14 a share of 5 percent or more of the facility’s gross income or
 15 profits.

16 (3) “Management company” means any company or entity that
 17 has assumed operational or managerial control over the facility or
 18 who directly or indirectly conducts the day-to-day operations of
 19 the facility either under contract or through some other
 20 arrangement.

21 (4) “Person” has the same meaning as specified in Section 19.

22 SEC. 5. Section 1422.5 of the Health and Safety Code is
 23 amended to read:

24 1422.5. (a) The department shall develop and establish a
 25 statewide consumer information service system to provide current
 26 and accurate information to the general public and consumers
 27 regarding long-term care facilities in their communities. The
 28 consumer information service system shall include, but need not
 29 be limited to, all of the following elements:

30 (1) An online information system available on the Internet
 31 through an accessible Internet Web site. The Internet Web site
 32 created pursuant to this paragraph shall be operational and made
 33 available to the public by March 1, 2016, and shall include the
 34 information elements specified in paragraph (2).

35 (2) Long-term health care facility profiles, with data on services
 36 provided, a history of all deficiencies, citations, and complaints
 37 for the last three full survey cycles, and current ownership
 38 information. The profile for each facility shall include, but not be
 39 limited to, all of the following:

40 (A) The name, address, and telephone number of the facility.

- 1 (B) The name of the current administrator, director of nursing,
2 and medical director.
- 3 (C) Current and accurate ownership information pursuant to
4 Sections 1265, 1267.5, 1599.64, and 1599.645, including, but not
5 limited to, all of the following:
- 6 (i) Whether the facility is a for-profit or not-for-profit provider.
7 (ii) The name, address, and telephone number of the licensee.
8 (iii) The name and contact information of a single entity that is
9 responsible for all aspects of patient care and the operation of the
10 facility.
- 11 (iv) Whether the facility is part of a multifacility organization
12 and, if so, the name, address, and telephone number of the
13 organization and, if applicable, of any parent organizations.
- 14 (v) Whether the facility is operated by a management company
15 and, if so, the name, address, and telephone number of the
16 management company and, if applicable, of any parent
17 organizations of the management company.
- 18 (vi) The names and addresses of each person who is an officer
19 or director of the licensee, parent organizations, and management
20 company, if applicable.
- 21 (vii) The names and addresses of any person or organization,
22 or both, having an ownership or control interest of 5 percent or
23 more in the licensee, parent organizations, and management
24 company, if applicable.
- 25 (viii) The names and addresses of all long-term health care
26 facilities owned, leased, managed, or operated by any person,
27 corporation, management company, parent organization, or other
28 entity described in clauses (ii) to (vii), inclusive.
- 29 (ix) The names and addresses of the property owners.
- 30 (D) The number of licensed beds in the facility.
- 31 (E) Whether the facility accepts Medicare or Medi-Cal patients.
- 32 (F) Whether the facility has filed a notice of intent to withdraw
33 from the Medi-Cal program, and the date that the notice of intent
34 to withdraw was filed with the department.
- 35 (G) Whether the facility has a special care unit or program for
36 people with Alzheimer's disease and other dementias, and whether
37 the facility participates in the voluntary disclosure program for
38 special care units.
- 39 (H) Information regarding all complaints, along with any
40 outcome, including, but not limited to, the date of the complaint,

1 the nature of the complaint, the date the complaint was investigated,
2 the action taken, and the date of the action taken.

3 (I) Information describing all state and federal deficiencies
4 issued to the facility, including, but not limited to, the date of the
5 deficiency, the nature of the deficiency, the scope and severity of
6 the deficiency, and a statement that the facility’s plan of correction
7 is available upon request through the department’s district offices.

8 (J) Information describing all state citations assessed, including,
9 but not limited to, the date of the citation, the nature of the citation,
10 the class of the citation, the amount of the penalty assessed, and
11 the status of the citation.

12 (K) Updated information, on a regular and timely basis,
13 regarding any appeal resolution pertaining to a citation or
14 complaint.

15 (L) Information describing state enforcement actions imposed,
16 including, but not limited to, license suspensions, revocations, and
17 the appointment of temporary managers and receiverships.

18 (M) Information describing federal enforcement sanctions
19 imposed, including, but not limited to, any denial of payment,
20 temporary management, termination, or any civil monetary penalty
21 imposed.

22 (N) Information on compliance with staffing ratio requirements.

23 (O) Any information or data the department deems beneficial
24 to the public and consumers.

25 (b) It is the intent of the Legislature that the department, in
26 developing and establishing the system pursuant to subdivision
27 (a), maximize the use of available federal funds.

28 (c) In implementing this section, the department shall ensure
29 the confidentiality of personal and identifying information of
30 residents and employees and shall not disclose this information
31 through the consumer information service system developed
32 pursuant to this section.

33 (d) The department shall make current written copies of the
34 long-term health care facility profiles available to the public
35 through its district offices.

36 SEC. 6. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

O