

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1147**

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**Introduced by Assembly Member Maienschein**

February 27, 2015

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An act to amend Sections 1760.2 and 1760.4 of, and to add Sections 1760.7, 1760.9, 1761.85, 1762, 1762.2, 1762.4, 1762.6, 1762.8, 1763, 1763.2, and 1763.4 to, the Health and Safety Code, relating to health ~~facilities~~ *facilities, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Maienschein. Health facilities: pediatric day health and respite care facilities.

Under existing law, the State Department of Public Health licenses and regulates health facilities, including, among others, pediatric day health and respite care facilities. Existing law defines “pediatric day health and respite care facility” as a facility that provides an organized program of therapeutic social and day health activities and services and limited 24-hour inpatient respite care to medically fragile children 21 years of age or younger, including terminally ill and technology dependent children.

This bill would authorize an individual who is 22 years of age or older to continue to receive care in a pediatric day health and respite care facility, if the facility receives approval from the department for a Transitional Health Care Needs Optional Service Unit. The bill would establish a licensing process for a pediatric day health and respite care facility to operate an optional service unit, and would impose certain requirements on those optional service units, including, among others,

that the optional service unit provide care for clients who are 22 years of age or older in a distinct part of the pediatric day health and respite care facility or optional service unit, separate from the area where care is provided to younger clients.

This bill would authorize a pediatric day health and respite care facility to implement policies and procedures that prohibit smoking by clients, parents, staff, visitors, or consultants within the facility or on the premises, if the prohibition is clearly stated in the admission agreement, and notices are posted at the facility.

This bill would establish procedures for the issuance of a provisional license to a pediatric day health and respite care facility. The bill would specify additional procedures relating to the licensure of a pediatric day health and respite care facility, and renewals of those licenses, including, among others, requiring the department to initiate an initial licensing inspection within 60 days of receipt of a pediatric day health and respite care facility's completed application and requiring periodic inspections by a duly authorized representative of the department and specified reports related to those inspections. The bill would authorize the department to make reasonable accommodation for exceptions to the licensing standards if the health, safety, and quality of patient care is not compromised. The bill would also specify the grounds upon which those licenses may be revoked, including, among others, willful omission or falsification of a material fact in the application for a license. The bill would require proceedings for the denial, suspension, or revocation of licenses, or denial or withdrawal of approval, to be conducted in accordance with specified provisions of law.

Existing law requires facilities serving persons who are terminally ill, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, to comply with specified provisions of the California Code of Regulations, and exempts those facilities from certain requirements of that code relating to required services for skilled nursing facilities.

This bill would provide additional exemptions from that code for a pediatric day health and respite care facility.

Existing law specifies the services that a pediatric day health and respite care facility is required to provide, including, among others, pharmacy services.

This bill would require that pharmacy services by a pediatric day health and respite care facility satisfy certain requirements, including,

among others, that medications be administered only upon written and signed orders of the child’s attending physician.

This bill would require a pediatric day health and respite care facility to have a patient care committee to address quality of care provided in the facility, including, but not limited to, patient care policies, pharmacy services, and infection control. The bill would specify the composition of the committee, impose specified meeting requirements, and outline the committee’s responsibilities.

Existing law requires pediatric day health and respite care facilities to meet the same fire safety standards adopted by the State Fire Marshal and the same seismic safety standards that apply to community care facilities. Existing law provides that a pediatric day health and respite care is not subject to architectural plan review or field inspection by the Office of Statewide Health Planning and Development, and requires, as part of the application for licensure, an applicant to submit evidence of compliance with local building code requirements and that the physical environment is adequate to provide the level of care and service required by the clients of the facility as determined by the department.

This bill would provide that those provisions do not prohibit the use of alternate space utilization, new concepts of design, treatment techniques, equipment and alternate finish materials, or other flexibility, if written approval is granted by the local building authority.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 1760.2 of the Health and Safety Code is
- 2 amended to read:
- 3 1760.2. As used in this chapter, the following definitions shall
- 4 apply:
- 5 (a) (1) “Pediatric day health and respite care facility” means
- 6 a facility that provides an organized program of therapeutic social
- 7 and day health activities and services and limited 24-hour inpatient
- 8 respite care to medically fragile children 21 years of age or
- 9 younger, including terminally ill and ~~technology-dependent~~
- 10 *technology-dependent* children.

1 (2) An individual who is 22 years of age or older may continue  
2 to receive care in a pediatric day health and respite care facility if  
3 the facility receives approval from the state department for a  
4 Transitional Health Care Needs Optional Service Unit pursuant to  
5 Section 1763.4.

6 (b) “Medically fragile” means having an acute or chronic health  
7 problem that requires therapeutic intervention and skilled nursing  
8 care during all or part of the day. Medically fragile problems  
9 include, but are not limited to, HIV disease, severe lung disease  
10 requiring oxygen, severe lung disease requiring ventilator or  
11 tracheostomy care, complicated spina bifida, heart disease,  
12 malignancy, asthmatic exacerbations, cystic fibrosis exacerbations,  
13 neuromuscular disease, encephalopathies, and seizure disorders.

14 (c) “Technology-dependent child” means a person from birth  
15 through 21 years of age who has a chronic disability, requires the  
16 routine use of a specific medical device to compensate for the loss  
17 of use of a life sustaining body function, and requires daily,  
18 ongoing care or monitoring by trained personnel.

19 (d) “Respite care” means day and 24-hour relief for the parent  
20 or guardian and care for the child. 24-hour inpatient respite care  
21 includes, but is not limited to, 24-hour nursing care, meals,  
22 socialization, and developmentally appropriate activities. As used  
23 in this chapter, “24-hour inpatient respite care” is limited to no  
24 more than 30 intermittent or continuous whole calendar days per  
25 patient per calendar year.

26 (e) “Comprehensive case management” means locating,  
27 coordinating, and monitoring services for the eligible client  
28 population and includes all of the following:

29 (1) Screening of client referrals to identify those persons who  
30 can benefit from the available services.

31 (2) Comprehensive client assessment to determine the services  
32 needed.

33 (3) Coordinating the development of an interdisciplinary  
34 comprehensive care plan.

35 (4) Determining individual case cost effectiveness and available  
36 sources of funding.

37 (5) Identifying and maximizing informal sources of care.

38 (6) Ongoing monitoring of service delivery to determine the  
39 optimum type, amount, and duration of services provided.

1 (f) “License” means a basic permit to operate a pediatric day  
2 health and respite care facility. With respect to a health facility  
3 licensed pursuant to Chapter 2 (commencing with Section 1250),  
4 “license” means a special permit authorizing the health facility to  
5 provide pediatric day health and respite care services as a separate  
6 program in a distinct part of the facility.

7 (g) “State department” means the State Department of Public  
8 Health.

9 SEC. 2. Section 1760.4 of the Health and Safety Code is  
10 amended to read:

11 1760.4. (a) The state department shall develop and adopt  
12 regulations for the licensure of, and shall license, pediatric day  
13 health and respite care facilities. The regulations shall include  
14 minimum standards for the following:

15 (1) Adequacy, safety, and sanitation of the physical plant and  
16 equipment.

17 (2) Staffing with duly qualified personnel.

18 (3) Training of the staff.

19 (4) Providing the services offered.

20 These regulations shall be filed with the Secretary of State no  
21 later than July 1, 1993.

22 (b) The state department shall establish within the state  
23 department an advisory committee of experts to assist in the  
24 development of the regulations required pursuant to this section.  
25 A representative of the state department shall act as chairperson  
26 of the committee. The members of the committee shall serve  
27 without compensation, but shall be reimbursed by the state  
28 department for all necessary expenses incurred in the actual  
29 performance of their duties. To the extent sufficient funds have  
30 been appropriated in the Budget Act, the state department may  
31 provide staff support to the committee as the state department  
32 deems is necessary for the conduct of the committee’s business.  
33 The committee shall meet at the state director’s pleasure until the  
34 time that the proposed regulations are presented for adoption at  
35 the public hearing.

36 (c) Pending adoption of the regulations pursuant to subdivision  
37 (b), an entity may be licensed as a pediatric day health and respite  
38 care facility if it meets interim regulations administered by the  
39 state department for congregate living health facilities pursuant to  
40 Section 1267.13.

1 (d) (1) In addition to the exceptions from regulations described  
2 in subdivision (n) of Section 1267.13, a pediatric day health and  
3 respite care facility shall not be required to conform to the  
4 following regulations contained in Chapter 3 of Division 5 of Title  
5 22 of the California Code of Regulations: 72329.1, 72353, 72359,  
6 72363, 72365, 72371, subdivisions (b) and (c) of Section 72375,  
7 subdivision (b) of Section 72377, 72516, 72525, and 72531.

8 (2) A pediatric day health and respite care facility shall not be  
9 required to meet the requirements of Section 72367 of Article 3  
10 of Chapter 3 of Division 5 of Title 22 of the California Code of  
11 Regulations, except that medications brought by or with the patient  
12 on admission to the facility shall not be used unless, after admission  
13 by the facility, the contents of the containers have been examined  
14 and positively identified.

15 (e) A pediatric day health and respite care facility shall have a  
16 patient care committee to address quality of care provided in the  
17 facility, including, but not limited to, patient care policies,  
18 pharmacy services, and infection control.

19 (1) The pediatric day health and respite care facility shall  
20 maintain minutes of every committee meeting and indicate the  
21 names of members present, the date, the length of the meeting, the  
22 subject matter discussed, and any action taken.

23 (2) The patient care committee shall include the medical director,  
24 dietician, pharmacist, nursing staff, nurse supervisor, center  
25 administrator or director, and other staff as may be required by  
26 facility policies and procedures.

27 (3) The patient care committee shall meet at least twice per year,  
28 or more often if a need or problem is identified by the committee.

29 (4) The patient care committee shall be responsible for all of  
30 the following:

31 (A) Reviewing and approving all policies relating to patient  
32 care. Based on reports received from the pediatric day health and  
33 respite care facility's administrator, the committee shall review  
34 the effectiveness of policy implementation and shall make  
35 recommendations to the administrator of the facility for the  
36 improvement of patient care. The committee shall review patient  
37 care policies annually and revise the policies as necessary. The  
38 committee's minutes shall list the policies the committee reviewed.

39 (B) Infection control in the facility, which shall include, but not  
40 be limited to, establishing, reviewing, monitoring, and approving

1 policies and procedures for investigating, controlling, and  
2 preventing infections in the facility, and maintaining, reviewing,  
3 and reporting statistics of the number, types, sources, and locations  
4 of infections within the pediatric day health and respite care  
5 facility.

6 (C) Establishing, reviewing, and monitoring the storage and  
7 administration of drugs and biologicals, reviewing and taking  
8 appropriate action based on any findings from a pharmacist hired  
9 to consult with the committee and internal quality assurance  
10 reviews, and recommending improvements of services to the  
11 administrator of the facility.

12 (f) (1) A pediatric day health and respite care facility shall  
13 comply with licensing requirements. The state department may,  
14 upon written request of an applicant or licensee, approve the use  
15 of alternate concepts, methods, procedures, techniques, equipment,  
16 personnel qualifications, or conducting pilot projects, provided  
17 those alternatives are carried out with safe and adequate care for  
18 the patients and with the prior written approval of the state  
19 department. The state department's approval shall provide for the  
20 terms and conditions under which the alternatives are granted. An  
21 applicant's or licensee's written request shall be accompanied by  
22 substantiating evidence supporting the request pursuant to this  
23 paragraph.

24 (2) The state department's review of written requests submitted  
25 under this subdivision shall consider the unique nature of services  
26 provided to individuals served by the pediatric day health and  
27 respite care facility when compared to the requirements for  
28 congregate living health facilities for individuals requiring inpatient  
29 care.

30 (3) If the state department grants an approval under this  
31 subdivision, a pediatric day health and respite care facility shall  
32 immediately post that approval, or a true copy of that approval,  
33 adjacent to the facility's license.

34 SEC. 3. Section 1760.7 is added to the Health and Safety Code,  
35 to read:

36 1760.7. A pediatric day health and respite care facility shall  
37 provide pharmacy services that satisfy all of the following:

38 (a) (1) Medications shall be supplied to the licensed nursing  
39 personnel of the pediatric day health and respite care facility by

1 the child's parent, foster parent, or legal guardian in the original  
2 dispensing container that specifies administration instructions.

3 (2) Medications shall be administered only upon written and  
4 signed orders of the child's attending physician.

5 (3) The pediatric day health and respite care facility shall not  
6 order medications from a pharmacy or take delivery of medications  
7 from a pharmacy.

8 (4) The pediatric day health and respite care facility shall not  
9 accept a child into the facility if the child's medications have  
10 expired or are scheduled to expire during the child's stay at the  
11 facility.

12 (b) (1) Physician orders shall be current and maintained in the  
13 child's medical record at the pediatric day health and respite care  
14 facility. Verbal orders from the attending physician for services  
15 to be rendered at the facility may be received and recorded by  
16 licensed nursing personnel in the child's medical record at the  
17 facility and shall be signed by the attending physician within 30  
18 working days.

19 (2) Medications shall not be administered to a child unless the  
20 facility first verifies that the medication was ordered by a physician.  
21 Verification may be obtained by contacting the physician's office  
22 or by being provided with a copy of the physician's order for the  
23 medication.

24 (c) The pediatric day health and respite care facility shall  
25 maintain records of medication administered for at least one year,  
26 unless a longer period is required by state or federal law. The  
27 records of medication administered shall be a part of the child's  
28 plan of care.

29 (d) The pediatric day health and respite care facility may treat  
30 changes in the child's condition, such as new onset pain, nausea,  
31 diarrhea, infections, or other similar changes, in accordance with  
32 the child's plan of care if the child has been prescribed medications  
33 to treat these anticipated symptoms, and does not present a risk to  
34 the health and safety of themselves, other children, staff, or other  
35 individuals with whom the child may come into contact. Children  
36 who present with symptoms that are not anticipated or planned for  
37 in the plan of care shall not remain in the facility.

38 (e) Other requirements as specified in subdivision (a) of Section  
39 72375, and subdivision (a) of Section 72377, of Article 3 of

1 Chapter 3 of Division 5 of Title 22 of the California Code of  
2 Regulations.

3 SEC. 4. Section 1760.9 is added to the Health and Safety Code,  
4 to read:

5 1760.9. A pediatric day health and respite care facility may  
6 implement policies and procedures that prohibit smoking by clients,  
7 parents, staff, visitors, or consultants within the facility or on the  
8 premises, if the prohibition is clearly stated in the admission  
9 agreement, and notices are posted at the facility.

10 SEC. 5. Section 1761.85 is added to the Health and Safety  
11 Code, to read:

12 1761.85. Sections 1761.2, 1761.4, and 1761.8 do not prohibit  
13 the use of alternate space utilization, new concepts of design,  
14 treatment techniques, equipment and alternate finish materials, or  
15 other flexibility, if written approval is granted by the local building  
16 authority.

17 SEC. 6. Section 1762 is added to the Health and Safety Code,  
18 to read:

19 1762. (a) In order to obtain a license under the provisions of  
20 this chapter to establish, conduct, or maintain a pediatric day health  
21 and respite care facility, a person, entity, political subdivision of  
22 the state, or governmental agency shall file with the state  
23 department a verified application on a form prescribed, prepared,  
24 and furnished by the state department, containing information as  
25 may be required by the state department for the proper  
26 administration and enforcement of this chapter.

27 (b) The state department shall initiate an initial licensing  
28 inspection within 60 days of receipt of a completed application.

29 SEC. 7. Section 1762.2 is added to the Health and Safety Code,  
30 to read:

31 1762.2. (a) If a pediatric day health and respite care facility  
32 or an applicant for a license has not been previously licensed, the  
33 state department shall issue a provisional license to the facility  
34 only as provided in this section.

35 (b) A provisional license to operate a pediatric day health and  
36 respite care facility shall terminate six months from the date of  
37 issuance, or the date that the state department is able to conduct a  
38 full and complete inspection, whichever is later.

39 (c) Within 30 days prior to the termination of a provisional  
40 license, the state department shall give the facility a full and

1 complete inspection, and, if the facility meets all applicable  
2 requirements for licensure, a regular license shall be issued. If the  
3 facility does not meet the requirements for licensure but has made  
4 substantial progress towards meeting the requirements, as  
5 determined by the state department, the initial provisional license  
6 shall be renewed for six months.

7 (d) If the state department determines that there has not been  
8 substantial progress towards meeting licensure requirements at the  
9 time of the first full inspection provided by this section, or, if the  
10 state department determines upon its inspection made within 30  
11 days of the termination of a renewed provisional license that there  
12 is lack of full compliance with the requirements, the state  
13 department shall not issue a further license.

14 (e) If an applicant for a provisional license to operate a pediatric  
15 day health and respite care facility has been denied provisional  
16 licensing by the state department, the applicant may contest the  
17 denial by filing a request for a hearing pursuant to Section 131071.

18 (f) The state department shall not apply less stringent criteria  
19 when granting a provisional license pursuant to this section than  
20 it applies when granting a permanent license.

21 SEC. 8. Section 1762.4 is added to the Health and Safety Code,  
22 to read:

23 1762.4. (a) A license issued under this chapter shall expire 12  
24 months from the date of its issuance. The licensee shall pay a fee,  
25 not to exceed the reasonable regulatory cost to the state department,  
26 to the state department annually, not less than 30 days prior to  
27 expiration date, subject to the state department mailing the notice  
28 of renewal in accordance with subdivision (b).

29 (b) (1) At least 45 days prior to the expiration of a license issued  
30 pursuant to this chapter, the state department shall mail a notice  
31 for renewal to the licensee.

32 (2) A license renewal shall be submitted with the necessary fee  
33 in accordance with subdivision (a). A license shall be deemed  
34 renewed upon payment of the necessary fee, commencing from  
35 the license's expiration date. If the requirements of this section  
36 are satisfied, the state department shall issue a license to the facility  
37 by the expiration date of the license to ensure the provider remains  
38 in good standing. The facility's license shall be mailed within 15  
39 calendar days after the date the state department receives the  
40 renewal fee.

1 SEC. 9. Section 1762.6 is added to the Health and Safety Code,  
2 to read:

3 1762.6. Every pediatric day health and respite care facility for  
4 which a license has been issued shall be periodically inspected by  
5 a duly authorized representative of the state department. Reports  
6 of each inspection shall be prepared by the representative upon  
7 forms prepared and furnished by the state department and filed  
8 with the state department. The inspection shall be for the purpose  
9 of ensuring that the pediatric day health and respite care facility  
10 is complying with the provisions of this chapter and the rules and  
11 regulations of the state department.

12 SEC. 10. Section 1762.8 is added to the Health and Safety  
13 Code, to read:

14 1762.8. The state department may deny an application for, or  
15 suspend or revoke a license issued under the provisions of this  
16 chapter in the manner provided in Section 1763 upon any of the  
17 following grounds:

18 (a) A serious violation by the licensee of any of the provisions  
19 of this chapter, of any other law, or of the rules and regulations  
20 promulgated under this chapter that jeopardizes the health and  
21 safety of clients.

22 (b) Aiding, abetting, or permitting the commission of any illegal  
23 act.

24 (c) Willful omission or falsification of a material fact in the  
25 application for a license.

26 SEC. 11. Section 1763 is added to the Health and Safety Code,  
27 to read:

28 1763. Proceedings for the denial, suspension, or revocation of  
29 licenses, or denial or withdrawal of approval under this chapter  
30 shall be conducted in accordance with Section 131071. The  
31 suspension, expiration, or forfeiture by operation of law of a license  
32 issued by the state department, its suspension, forfeiture, or  
33 cancellation by order of the state department or by order of a court,  
34 or its surrender without the written consent of the state department,  
35 shall not deprive the state department of its authority to institute  
36 or continue a disciplinary proceeding against the licensee upon  
37 any ground provided by law or to enter an order suspending or  
38 revoking the license or otherwise taking disciplinary action against  
39 the licensee on any of those grounds.

1 SEC. 12. Section 1763.2 is added to the Health and Safety  
2 Code, to read:

3 1763.2. The state department has authority to make reasonable  
4 accommodation for exceptions to the standards in this chapter if  
5 the health, safety, and quality of patient care is not compromised.  
6 Prior written approval communicating the terms and conditions  
7 under which the exception is granted shall be required. An  
8 applicant shall request an exception in writing accompanied by  
9 detailed supporting documentation.

10 SEC. 13. Section 1763.4 is added to the Health and Safety  
11 Code, to read:

12 1763.4. (a) For purposes of this chapter, “Transitional Health  
13 Care Needs Optional Service Unit” or “optional service unit”  
14 means a functional unit of a pediatric day health and respite care  
15 facility that is organized, staffed, and equipped to provide care to  
16 individuals who are 22 years of age or older.

17 (1) ~~The age of older clients~~ *Clients* receiving care in the optional  
18 service unit shall be in age-appropriate groupings as provided for  
19 in the pediatric day health and respite care facility’s policies and  
20 procedures. Older adolescents under the age of 22 are not precluded  
21 from being cared for in the same optional service unit as the  
22 younger adults. A pediatric day health and respite care facility is  
23 not required to operate an optional service unit.

24 (2) In order to continue receiving care in the pediatric day health  
25 and respite care facility, participants who are 22 years of age or  
26 older shall have a developmental age of 18 years of age or younger,  
27 as evidenced by the client’s Individual Education Plan (IEP),  
28 Regional Center Assessment, physician’s assessment, or other  
29 assessment using a standardized assessment tool that is  
30 ~~nationally-recognized~~ *nationally recognized* in the field.

31 (b) An optional service unit shall be approved by the state  
32 department. A pediatric day health and respite care facility desiring  
33 approval for an optional service unit shall file an application on  
34 forms furnished by the state department. The state department shall  
35 list on the facility license each optional service for which approval  
36 is granted.

37 (c) Care for clients who are 22 years of age or older shall be  
38 provided in a distinct part of the pediatric day health and respite  
39 care facility or optional service unit, separate from the area where  
40 care is provided to younger clients. The facility shall establish and

1 implement policies and procedures for determining the age ranges  
2 of clients who are cared for in the optional service unit. These  
3 policies and procedures shall include, but not be limited to,  
4 consideration of the client’s chronological age, developmental age,  
5 and size.

6 (d) The pediatric day health and respite care facility shall ensure  
7 that its staffing and equipment are sufficient to provide services  
8 to clients who are 22 years of age or older.

9 (e) A Transitional Health Care Needs Optional Service Unit  
10 shall have written policies and procedures for the management of  
11 the service. The policies and procedures shall be established and  
12 implemented by the patient care policy committee described in  
13 Section 1760.4

14 *SEC. 14. This act is an urgency statute necessary for the*  
15 *immediate preservation of the public peace, health, or safety within*  
16 *the meaning of Article IV of the Constitution and shall go into*  
17 *immediate effect. The facts constituting the necessity are:*

18 *In order to protect, at the earliest possible time, the health and*  
19 *safety of medically fragile adults who are at imminent risk of aging*  
20 *out of pediatric day health and respite facilities, it is necessary*  
21 *that this act take effect immediately.*