

Introduced by Senator Pan

January 27, 2015

An act to add Section 1262.3 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, Pan. Health facilities: patient transporting.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Care Services. A violation of these provisions is a crime.

Existing law requires each hospital to have in effect a written discharge planning policy and process that requires appropriate arrangements for posthospital care and a process that requires that each patient be informed, orally or in writing, of the continuing care requirements following discharge from the hospital, as specified.

Existing law also prohibits a hospital from causing the transfer of homeless patients from one county to another county for the purpose of receiving supportive services from a social service agency, health care service provider, or nonprofit social service agency within the other county, without prior notice and authorization, as specified.

This bill would prohibit a general acute care hospital, acute psychiatric hospital, or special hospital from causing a patient ~~with a blood alcohol content of 0.8% percent or greater~~ *who, in the judgment of the attending physician or other licensed health care professional, acting within the scope of his or her practice, is at risk of serious injury or death as a result of clinical alcohol intoxication*, to be transported to another location except when the patient is either medically stabilized or

appropriately transferred to another health facility pursuant to another provision of law. The bill would make the violation of that provision subject to civil penalties, as specified. The bill would require these civil penalties, upon appropriation, to be used exclusively for the provision of posthospital recuperative beds, transitional housing, and mental health counseling programs for the homeless.

By expanding the scope of an existing crime, this bill would result in 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 1262.3 is added to the Health and Safety
2 Code, to read:
3 1262.3. (a) A general acute care hospital, acute psychiatric
4 hospital, or special hospital shall not cause a patient ~~with a blood~~
5 ~~alcohol content of 0.08 percent or greater~~ *who, in the judgment of*
6 *the attending physician or other licensed health care professional,*
7 *acting within his or her scope of practice, is at risk of serious*
8 *injury or death as a result of clinical alcohol intoxication,* to be
9 transported to another location, including, but not limited to, police
10 custody, a correctional facility, or a county jail, except when the
11 patient is medically ~~stabilized~~ *stabilized, as defined in subdivision*
12 *(j) of section 1317.1,* or appropriately transferred to another
13 licensed health facility pursuant to another law.
14 (b) If the department determines that a hospital has violated
15 subdivision (a), it shall consider, at a minimum, all of the following
16 actions:
17 (1) Assessment of an administrative penalty pursuant to Section
18 1280.1 or 1280.3.
19 (2) Referral to appropriate authorities for consideration of
20 commencing an action for violation of Section 1290.
21 (c) This section shall not apply to any of the following:

1 (1) Patients in state hospitals operated and administered by the
2 State Department of State Hospitals who are civilly or criminally
3 committed and subject to transfer to the ~~State~~ Department of
4 Corrections and Rehabilitation, the Forensic Conditional Release
5 Program, or to a court for further proceedings.

6 (2) Patients who remain under the jurisdiction of the ~~State~~
7 Department of Corrections and Rehabilitation.

8 (3) Residents of state developmental centers operated and
9 administered by the State Department of Developmental Services
10 who are discharged to the community pursuant to the Lanterman
11 Developmental Disabilities Services ~~Act~~, *Act (Division 4.5*
12 *(commencing with Section 4500) of the Welfare and Institutions*
13 *Code)*, and in accordance with an individual program plan, as
14 defined in Section 4646 of the Welfare and Institutions Code,
15 developed specifically for the resident.

16 (d) (1) Upon a second violation of subdivision (a), a general
17 acute care hospital, acute psychiatric hospital, or special hospital,
18 shall be subject to a civil penalty of one hundred fifty thousand
19 dollars (\$150,000). The Attorney General, a district attorney, a
20 city attorney of a city having a population in excess of 750,000,
21 or a city attorney of a city and county, may bring a civil action in
22 the name of the people of the State of California seeking civil
23 penalties, preventive relief, including an application for a
24 permanent or temporary injunction, restraining order, or other
25 order against the health facility.

26 (2) Any general acute care hospital, acute psychiatric hospital,
27 or special hospital criminally convicted of a violation of
28 subdivision (a), that has been previously penalized for two separate
29 violations of subdivision (a) may be subject to civil penalties of
30 no less than three hundred thousand dollars (\$300,000).

31 (3) In determining the civil penalty to be imposed pursuant to
32 this subdivision, the court shall consider all relevant facts,
33 including, but not limited to, all of the following:

34 (A) Whether the violation exposed the patient to a risk of death
35 or serious physical harm.

36 (B) Whether the violation had a direct or immediate relationship
37 to the health, safety, or security of the patient.

38 (C) Evidence, if any, of willfulness.

39 (D) The number of repeated violations.

1 (E) The presence or absence of good faith efforts by the
2 defendant to prevent the violation.

3 (4) Any investigative costs incurred in the enforcement of this
4 subdivision, including, but not limited to, expert’s and attorney’s
5 fees incurred by the Attorney General, district attorney, or city
6 attorney in carrying out this subdivision shall be recoverable from
7 the liable general acute care hospital, acute psychiatric hospital,
8 or special hospital.

9 (5) If the action authorized by this subdivision is brought by the
10 Attorney General, the civil penalty collected shall be paid to the
11 General Fund. If the action is brought by a district attorney, the
12 civil penalty collected shall be paid to the treasurer of the county
13 in which the judgment was entered. If the action is brought by a
14 city attorney, the civil penalty collected shall be paid to the
15 treasurer of the city in which the judgment was entered. The funds
16 described in this paragraph shall, upon appropriation, be used
17 exclusively for the provision of posthospital recuperative beds,
18 transitional housing, and mental health counseling programs for
19 the homeless.

20 (6) Nothing in this subdivision shall preclude criminal
21 prosecution or civil action under any other law. Furthermore,
22 nothing in this subdivision shall limit or abridge the authority of
23 any city or county to adopt an ordinance authorizing investigations
24 or inspections, or implementing and enforcing restrictions dealing
25 with patient transportation.

26 (e) Nothing in this section shall be construed to contradict any
27 other law related to workplace violence prevention, including, but
28 not limited to, workplace violence standards adopted by the
29 Occupational Safety and Health Standards Board.

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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