

AMENDED IN ASSEMBLY MAY 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2611

Introduced by Assembly Member Gallegos

February 25, 2000

An act to add Section 2234.1 to the Business and Professions Code, and to amend ~~Sections 1317.1 and 1368.02~~ *Section 1317.1* of, and to add Section 1317.05 to, the Health and Safety Code, relating to emergency health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as amended, Gallegos. Health facilities: emergency services.

Existing law provides for the licensing of physicians and surgeons by the Medical Board of California. Existing law provides for the discipline of physicians and surgeons for unprofessional conduct, as specified.

This bill would provide that it is unprofessional conduct for a physician and surgeon who is scheduled for date-specific call to refuse to care for a patient or to unnecessarily delay caring for a patient in the emergency department.

Existing law provides for the licensure and regulation of health facilities, including general acute care hospitals.

Existing law requires that any health facility that maintains and operates an emergency department to provide emergency services to the public provide emergency services and care to any person requesting the services and to any person for whom services and care are requested.

This bill would require a general acute care hospital that provides basic emergency services to develop and maintain a date-specific list of physician and surgeon specialists responsible for responding to requests for consultation by telephone or in person at the hospital emergency department. ~~The bill would require these hospitals to clearly post the Emergency Care Hotline toll-free telephone number that would be established under the bill.~~

Existing law defines emergency services and care to mean medical screening, examination, and evaluation by a physician or other appropriate personnel under the supervision of a physician, and the care, treatment, and surgery necessary to relieve or eliminate an existing emergency medical condition.

This bill would define emergency services and care to include a specialist consultation.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans administered by the Department of Managed Care. Willful violation of any of these provisions is a crime.

Existing law requires a health care service plan to reimburse providers for emergency services and care provided to its enrollees until the care results in stabilization of the enrollee, except under certain conditions. For purposes of this provision, emergency services and care is as defined under the provisions governing health facilities.

This bill, as discussed above, would change the definition of emergency care and services. Since the willful violation of the provisions governing a health care service plan is a crime, this bill would impose a state-mandated local program by changing the definition of a crime.

~~Existing law establishes within the department the Office of Patient Advocate to represent the interests of enrollees served by health care service plans by helping them secure health care services to which they are entitled under the law.~~

~~This bill would require the office to establish the Emergency Care Hotline as a toll-free telephone number available to receive reports regarding emergency care or consultation that is inappropriately refused or delayed.~~



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 finds and declares all of
2 the following:

3 (a) Specialist physicians and surgeons have a moral
4 and ethical duty to provide timely emergency call
5 coverage services for hospitals with which they are
6 affiliated, with few exceptions.

7 (b) Health care service plans and insurers should bear
8 responsibility for payment for emergency services,
9 including specialist call coverage, without prior
10 authorization. Health care service plans and insurers
11 should also be responsible for maintaining and providing
12 to hospitals a current list of specialist call panels available
13 to respond to requests for response to an emergency
14 department to care for its enrollees and subscribers.

15 SEC. 2. Section 2234.1 is added to the Business and
16 Professions Code, to read:

17 2234.1. It is unprofessional conduct for a physician and
18 surgeon who is scheduled for date-specific call to refuse
19 to care for a patient, or to unnecessarily delay caring for
20 a patient, in the emergency department.

21 SEC. 3. Section 1317.05 is added to the Health and
22 Safety Code, to read:

23 1317.05. (a) Each general acute care hospital
24 providing basic emergency services shall develop and
25 maintain a date-specific list of physician and surgeon
26 specialists responsible for responding to requests for
27 consultation by telephone or in person at the hospital
28 emergency department.



1 (b) To ensure that specialists are available to respond
2 to requests for emergency consultation, a general acute
3 care hospital may require physicians and surgeons to
4 provide emergency call coverage as a condition of
5 maintaining clinical privileges at that hospital.

6 ~~(e) Each general acute care hospital providing basic
7 emergency services shall clearly post in the hospital
8 emergency department the Emergency Care Hotline
9 toll free telephone number established pursuant to
10 subdivision (d) of Section 1368.02.~~

11 SEC. 4. Section 1317.1 of the Health and Safety Code
12 is amended to read:

13 1317.1. Unless the context otherwise requires, the
14 following definitions shall control the construction of this
15 article and Section 1371.4:

16 (a) (1) "Emergency services and care" means
17 medical screening, examination, and evaluation by a
18 physician, including specialist consultation, or, to the
19 extent permitted by applicable law, by other appropriate
20 personnel under the supervision of a physician, to
21 determine if an emergency medical condition or active
22 labor exists and, if it does, the care, treatment, and
23 surgery by a physician necessary to relieve or eliminate
24 the emergency medical condition, within the capability
25 of the facility.

26 (2) (A) "Emergency services and care" also means an
27 additional screening, examination, and evaluation by a
28 physician, or other personnel to the extent permitted by
29 applicable law and within the scope of their licensure and
30 clinical privileges, to determine if a psychiatric
31 emergency medical condition exists, and the care and
32 treatment necessary to relieve or eliminate the
33 psychiatric emergency medical condition, within the
34 capability of the facility.

35 (B) For the purposes of Section 1371.4, emergency
36 services and care as defined in this paragraph shall not
37 apply to services provided under managed care contracts
38 with the Medi-Cal program to the extent that those
39 services are excluded from coverage under the contract.



1 (C) This paragraph does not expand, restrict, or
2 otherwise affect, the scope of licensure or clinical
3 privileges for clinical psychologists or other medical
4 personnel.

5 (b) “Emergency medical condition” means a medical
6 condition manifesting itself by acute symptoms of
7 sufficient severity (including severe pain) such that the
8 absence of immediate medical attention could reasonably
9 be expected to result in any of the following:

10 (1) Placing the patient’s health in serious jeopardy.

11 (2) Serious impairment to bodily functions.

12 (3) Serious dysfunction of any bodily organ or part.

13 (c) “Active labor” means a labor at a time at which
14 either of the following would occur:

15 (1) There is inadequate time to effect safe transfer to
16 another hospital prior to delivery.

17 (2) A transfer may pose a threat to the health and
18 safety of the patient or the unborn child.

19 (d) “Hospital” means all hospitals with an emergency
20 department licensed by the state department.

21 (e) “State department” means the State Department
22 of Health Services.

23 (f) “Medical hazard” means a material deterioration
24 in medical condition in, or jeopardy to, a patient’s medical
25 condition or expected chances for recovery.

26 (g) “Board” means the Medical Board of California.

27 (h) “Within the capability of the facility” means those
28 capabilities which the hospital is required to have as a
29 condition of its emergency medical services permit and
30 services specified on Services Inventory Form 7041 filed
31 by the hospital with the Office of Statewide Health
32 Planning and Development.

33 (i) “Consultation” means the rendering of an opinion,
34 advice, or prescribing treatment by telephone and, when
35 determined to be medically necessary jointly by the
36 emergency and specialty physicians, includes review of
37 the patient’s medical record, examination, and treatment
38 of the patient in person by a specialty physician who is
39 qualified to give an opinion or render the necessary
40 treatment in order to stabilize the patient.



1 (j) A patient is “stabilized” or “stabilization” has
2 occurred when, in the opinion of the treating provider,
3 the patient’s medical condition is such that, within
4 reasonable medical probability, no material deterioration
5 of the patient’s condition is likely to result from, or occur
6 during, a transfer of the patient as provided for in Section
7 1317.2, Section 1317.2a, or other pertinent statute.

8 ~~SEC. 5. Section 1368.02 of the Health and Safety Code~~
9 ~~is amended to read:~~

10 ~~1368.02. (a) The director shall establish and maintain~~
11 ~~a toll-free telephone number for the purpose of receiving~~
12 ~~complaints regarding health care service plans regulated~~
13 ~~by the director.~~

14 ~~(b) Every health care service plan shall publish the~~
15 ~~department’s toll-free telephone number, the California~~
16 ~~Relay Service’s toll-free telephone numbers for the~~
17 ~~hearing and speech impaired, the plan’s telephone~~
18 ~~number, and the department’s Internet address, on every~~
19 ~~plan contract, on every evidence of coverage, on copies~~
20 ~~of plan grievance procedures, on plan complaint forms,~~
21 ~~and on all written notices to enrollees required under the~~
22 ~~grievance process of the plan, including any written~~
23 ~~communications to an enrollee that offer the enrollee the~~
24 ~~opportunity to participate in the grievance process of the~~
25 ~~plan and on all written responses to grievances. The~~
26 ~~department’s telephone number, the California Relay~~
27 ~~Service’s telephone numbers, the plan’s telephone~~
28 ~~number, and the department’s Internet address shall be~~
29 ~~displayed by the plan in each of these documents in~~
30 ~~12-point boldface type in the following regular type~~
31 ~~statement:~~

32
33 ~~“The California Department of Managed Care is~~
34 ~~responsible for regulating health care service plans. The~~
35 ~~department has a toll-free telephone number~~
36 ~~(1-800-400-0815) to receive complaints regarding health~~
37 ~~plans. The hearing and speech impaired may use the~~
38 ~~California Relay Service’s toll-free telephone numbers~~
39 ~~(1-800-735-2929 (TTY) or 1-888-877-5378 (TTY)) to~~
40 ~~contact the department. The department’s Internet~~



1 website (<http://www.dmc.ca.gov>) has complaint forms
2 and instructions online. If you have a grievance against
3 your health plan, you should first telephone your plan at
4 [plan's telephone number] and use the plan's grievance
5 process before contacting the department. If you need
6 help with a grievance involving an emergency, a
7 grievance that has not been satisfactorily resolved by your
8 plan, or a grievance that has remained unresolved for
9 more than 30 days, you may call the department for
10 assistance. The plan's grievance process and the
11 department's complaint review process are in addition to
12 any other dispute resolution procedures that may be
13 available to you, and your failure to use these processes
14 does not preclude your use of any other remedy provided
15 by law."

16
17 (e) (1) There is within the department an Office of
18 Patient Advocate, which shall be known and may be cited
19 as the Gallegos-Rosenthal Patient Advocate Program, to
20 represent the interests of enrollees served by health care
21 service plans regulated by the department. The goal of
22 the office shall be to help enrollees secure health care
23 services to which they are entitled under the laws
24 administered by the department.

25 (2) The office shall be headed by a patient advocate
26 recommended to the Governor by the Secretary of the
27 Business, Transportation and Housing Agency. The
28 patient advocate shall be appointed by and serve at the
29 pleasure of the Governor.

30 (3) The duties of the office shall be determined by the
31 secretary, in consultation with the director, and shall
32 include, but not be limited to:

33 (A) Developing educational and informational guides
34 for consumers describing enrollee rights and
35 responsibilities, and informing enrollees on effective
36 ways to exercise their rights to secure health care services.
37 The guides shall be easy to read and understand, available
38 in English and other languages, and shall be made
39 available to the public by the department, including



1 access on the department's Internet website and through
2 public outreach and educational programs.

3 (B) Compiling an annual publication, to be made
4 available on the department's Internet website, of a
5 quality of care report card including but not limited to
6 health care service plans.

7 (C) Rendering advice and assistance to enrollees
8 regarding procedures, rights, and responsibilities related
9 to the use of health care service plan grievance systems,
10 the department's system for reviewing unresolved
11 grievances, and the independent review process.

12 (D) Making referrals within the department
13 regarding studies, investigations, audits, or enforcement
14 that may be appropriate to protect the interests of
15 enrollees.

16 (E) Coordinating and working with other
17 government and nongovernment patient assistance
18 programs and health care ombudsprograms.

19 (4) The director, in consultation with the patient
20 advocate, shall provide for the assignment of personnel to
21 the office. The department may employ or contract with
22 experts when necessary to carry out functions of the
23 office. The annual budget for the office shall be separately
24 identified in the annual budget request of the
25 department.

26 (5) The office shall have access to department records
27 including, but not limited to, information related to
28 health care service plan audits, surveys, and enrollee
29 grievances. The department shall assist the office in
30 compelling the production and disclosure of any
31 information the office deems necessary to perform its
32 duties, from entities regulated by the department, if the
33 information is determined by the department's legal
34 counsel to be subject, under existing law, to production or
35 disclosure to the department.

36 (6) The patient advocate shall annually issue a public
37 report on the activities of the office, and shall appear
38 before the appropriate policy and fiscal committees of the
39 Senate and Assembly, if requested, to report and make
40 recommendations on the activities of the office.



1 ~~(d) The Office of the Patient Advocate described in~~
2 ~~subdivision (e), shall establish the Emergency Care~~
3 ~~Hotline, a toll-free hotline that will be available to receive~~
4 ~~reports regarding emergency care or consultation that is~~
5 ~~inappropriately refused or delayed.~~

6 ~~SEC. 6.—~~

7 *SEC. 5.* No reimbursement is required by this act
8 pursuant to Section 6 of Article XIII B of the California
9 Constitution because the only costs that may be incurred
10 by a local agency or school district will be incurred
11 because this act creates a new crime or infraction,
12 eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition
15 of a crime within the meaning of Section 6 of Article
16 XIII B of the California Constitution.

