

AMENDED IN SENATE APRIL 12, 1999

SENATE BILL

No. 1240

Introduced by Senator Burton

February 26, 1999

~~An act to add Section 2725.2 to the Business and Professions Code, and to amend Sections 1279 and 1280 of, and to add Section 1279.1 to, the Health and Safety Code, relating to An act to amend Sections 123280, 123310, and 123315 of the Health and Safety Code, relating to health.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1240, as amended, Burton. ~~Health facilities: registered nurses~~ *Maternal and child health: food program: vendors.*

Existing law authorizes the State Department of Health Services to conduct a statewide program, to be known as the Special Supplemental Food Program for Women, Infants, and Children, for providing nutritional food supplements to low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under 5 years of age, who have been determined to be at nutritional risk by a health professional, based on criteria established by the department.

Existing law requires the department, under any program established pursuant to these provisions, to authorize retail food vendors, by written agreement, to accept nutrition coupons, and requires the department to establish specified criteria to limit the number of retail food vendors with which the department enters into agreements. The specified criteria

includes the prices the vendor charges for foods in relation to other stores in the area.

This bill would instead include among the specified criteria the prices the vendor charges for foods in relation to other peer groups, as defined.

Existing law requires the department to ensure that, at a minimum, an authorized vendor take specified actions with respect to the programs.

This bill would include among these specified actions that a vendor accept up to the maximum allowable department reimbursement as payment in full for the maximum allowable quantity of food listed on the food instrument, and comply with department rules of vendor authorization, reimbursement, and monitoring that control program food costs, maximize participant access, and ensure program integrity.

The bill would also require the department to administer these provisions and to adopt minimum standards and regulations.

~~Existing law provides for the licensure of, and sets forth the scope of practice for, registered nurses:~~

~~This bill would require every registered nurse who manages, supervises, assigns, or delegates care provided by specified health care personnel to ensure that the care is safely delegated.~~

~~Existing law provides for the licensure and regulation of health facilities by the State Department of Health Services. Existing law requires that certain health facilities for which a license or special permit has been issued that are certified to participate either in the Medicare program or in the medicaid program, or both, be periodically inspected by representatives of the department.~~

~~This bill would require the department to ensure that these periodic inspections are not announced in advance of the date of the inspection. The bill would authorize the department to conduct joint inspections with other certifying entities only to the extent that the entities do not inform the facility to be inspected of the expected date of the inspection.~~

~~The bill would require the department to obtain and make available to the public any documents relating to certification~~



~~for participation in the Medicare program or the Medi-Cal program, or both, unless the disclosure of the documents is expressly prohibited by federal law. The bill would require the department to obtain and make available to the public documents demonstrating compliance with regulations regarding adequate staffing of health facilities.~~

~~Existing law requires the department to notify a health facility of all deficiencies in its compliance with provisions governing health facilities and requires the health facility to agree with the department upon a plan of correction that gives the health facility a reasonable time to correct the deficiencies. Existing law authorizes the director to take action to revoke or suspend the license of the health facility if at the end of the allotted time, as revealed by inspection, the health facility has failed to correct the deficiencies.~~

~~Existing law designates specific procedures with regard to a general acute care hospital, an acute psychiatric hospital, or a special hospital that fails to implement a plan of correction that has been agreed upon by both the facility and the department or where a condition in the facility poses an immediate and substantial hazard to the health and safety of patients.~~

~~This bill would revise and recast these provisions regarding the correction of deficiencies at a general acute care hospital, an acute psychiatric hospital, or special hospital.~~

Vote: majority. 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 2725.2 is added to the Business-~~
2 *SECTION 1. Section 123280 of the Health and Safety*
3 *Code is amended to read:*
4 123280. (a) The department may conduct a
5 statewide program for providing nutritional food
6 supplements to low-income pregnant women,
7 low-income postpartum and lactating women, and
8 low-income infants and children under five years of age,
9 who have been determined to be at nutritional risk by a
10 health professional, based on criteria established by the



1 department. Any program established pursuant to this
 2 section shall do all of the following:

3 ~~(a)~~

4 (1) Comply with all the requirements of this article.

5 ~~(b)~~

6 (2) Be conducted only if a special project is authorized
 7 by inclusion in the Budget Act or notification is provided
 8 to the Legislature pursuant to Section 28 of the Budget
 9 Act, and federal funds are appropriated therefor.

10 ~~(c)~~

11 (3) Be known as the California Special Supplemental
 12 Food Program for Women, Infants, and Children.

13 (b) *The department shall administer this article and*
 14 *shall adopt minimum standards and regulations as*
 15 *necessary.*

16 *SEC. 2. Section 123310 of the Health and Safety Code*
 17 *is amended to read:*

18 123310. The department, under any program
 19 established pursuant to this article, shall authorize retail
 20 food vendors, by written agreement, to accept nutrition
 21 coupons. The department shall authorize an appropriate
 22 number and distribution of food vendors in order to
 23 assure adequate participant convenience and access and
 24 to assure that state or local officials can effectively
 25 manage review of authorized food vendors in their
 26 jurisdictions. The department shall establish criteria to
 27 limit the number of retail food vendors with which the
 28 department enters into agreements. The criteria, at a
 29 minimum, shall include:

30 (a) The prices the vendor charges for foods in relation
 31 to other ~~stores in the area.~~ *vendors in its peer group. For*
 32 *purposes of this subdivision, "peer group" means a group*
 33 *of vendors with similar characteristics that may include,*
 34 *but shall not be limited to, any or all of the following:*

35 (1) *Geographic location of the store.*

36 (2) *Store size.*

37 (3) *Type of store.*

38 (4) *Number of cash registers.*

39 (5) *Sales volume relating to any program established*
 40 *pursuant to this article.*



- 1 (6) *Gross sales volume.*
- 2 (7) *Inventory.*
- 3 (8) *Other vendor characteristics established by the*
- 4 *department.*

5 (b) The ability of the department to ensure that
6 authorized supplemental foods will be provided through
7 in-store compliance purchases.

8 (c) The adequacy of the shelf stock of the authorized
9 supplemental foods.

10 (d) Past performance of the vendor in compliance
11 with this article and with the Food Stamp Program.

12 *SEC. 3. Section 123315 of the Health and Safety Code*
13 *is amended to read:*

14 123315. (a) The department, under any program
15 established pursuant to this article, shall ensure that, at a
16 minimum, the authorized vendor shall do all of the
17 following:

18 ~~(a)~~

19 (1) Redeem nutrition coupons only from persons
20 bearing appropriate identification provided by the
21 department.

22 ~~(b)~~

23 (2) Redeem nutrition coupons for only those foods
24 specified thereon.

25 ~~(c)~~

26 (3) Redeem nutrition coupons at an amount that is the
27 same as, or lesser than, that charged other customers for
28 identical foods.

29 ~~(d)~~

30 (4) Redeem and deposit nutrition coupons during
31 specified valid periods.

32 ~~(e)~~

33 (5) Deposit the nutrition coupons directly in the
34 vendor's bank account and not transfer them for cash
35 payment, credit, or any other benefit to any party other
36 than the vendor's bank or the state.

37 ~~(f)~~

38 (6) Maintain for a period of at least three years records;
39 that shall include, but not be limited to, all of the
40 following:



1 ~~(1)~~

2 (A) Inventory records showing all purchases, both
3 wholesale and retail, in the form of invoices that identify
4 the quantity and prices of specified authorized
5 supplemental foods.

6 ~~(2)~~

7 (B) Sales and use tax returns.

8 ~~(3)~~

9 (C) Books of account.

10 ~~(4)~~

11 (D) Other pertinent records that the department
12 determines are necessary to substantiate the volume and
13 prices charged to the state department through the
14 nutrition coupons redeemed by the vendor.

15 *(7) Accept up to the maximum allowable department
16 reimbursement as payment in full for the maximum
17 allowable quantity of food listed on the food instrument.*

18 *(8) Comply with department rules of vendor
19 authorization, reimbursement, and monitoring that
20 control program food costs, maximize participant access,
21 and ensure program integrity. These rules may include,
22 but are not limited to, competitive bidding, negotiated
23 contract prices, and payment schedules based on peer
24 groups, as defined in subdivision (a) of Section 123310.*

25 *(b) The department shall adopt regulations to
26 implement this section and Section 123310 in accordance
27 with the rulemaking provisions of the Administrative
28 Procedure Act (Chapter 3.5 (commencing with Section
29 11340) of Part 1 of Division 3 of Title 2 of the Government
30 Code). The adoption of any emergency regulations on or
31 after January 1, 2000, shall be deemed to be an emergency
32 and necessary for the immediate preservation of the
33 public peace, health and safety, or general welfare.
34 Emergency regulations adopted pursuant to this section
35 shall remain in effect for no more than 180 days.*

36 ~~and Professions Code, to read:~~

37 ~~2725.2. Every registered nurse who manages,
38 supervises, assigns, or delegates care provided by other
39 registered nurses, licensed vocational nurses, certified~~



1 nurse's aides, or any other health care personnel shall
2 ensure that the care is safely delegated.

3 SEC. 2. Section 1279 of the Health and Safety Code is
4 amended to read:

5 1279. (a) Every health facility for which a license or
6 special permit has been issued, except a health facility, as
7 defined in subdivisions (b) to (k), inclusive, of Section
8 1250, that is certified to participate either in the Medicare
9 program under Title XVIII (42 U.S.C. Sec. 1395 et seq.)
10 of the federal Social Security Act, or in the medicaid
11 program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of
12 the federal Social Security Act, or both, shall be
13 periodically inspected by a representative or
14 representatives appointed by the state department,
15 depending upon the type and complexity of the health
16 facility or special service to be inspected. If the health
17 facility is deemed to meet standards for certification to
18 participate in either the Medicare program or the
19 medicaid program, or both, because the health facility
20 meets the standards of an agency other than the Health
21 Care Financing Administration, then, in order for the
22 health facility to qualify for the exemption from periodic
23 inspections provided in this section, the inspection to
24 determine that the health facility meets the standards of
25 an agency other than the Health Care Financing
26 Administration shall include participation by the
27 California Medical Association to the same extent as it
28 participated in inspections as provided in Section 1282
29 prior to the date this section, as amended by S.B. 1779 of
30 the 1991-92 Regular Session, becomes operative.
31 Inspections shall be conducted no less than once every
32 two years and as often as necessary to insure the quality
33 of care being provided. However, for a health facility
34 specified in subdivision (a) or (b) of Section 1250,
35 inspections shall be conducted no less than once every
36 three years, and as often as necessary to insure the quality
37 of care being provided. During the inspection, the
38 representative or representatives shall offer such advice
39 and assistance to the health facility as they deem
40 appropriate.



1 (b) For acute care hospitals of 100 beds or more, the
2 inspection team shall include at least a physician,
3 registered nurse, and persons experienced in hospital
4 administration and sanitary inspections. During the
5 inspection, the team shall offer such advice and assistance
6 to the hospital as it deems appropriate.

7 (c) The department shall ensure that periodic
8 inspections conducted pursuant to this section are not
9 announced in advance of the date of the inspection.
10 Inspections may be conducted jointly with other
11 inspections by other certifying entities only to the extent
12 that the entities do not inform the facility to be inspected
13 of the expected date of the inspection.

14 SEC. 3. Section 1279.1 is added to the Health and
15 Safety Code, to read:

16 1279.1. (a) The state department shall obtain and
17 make available to the public any documents relating to
18 certification for participation in the Medicare program or
19 the Medi-Cal program, or both, unless the disclosure of
20 the documents is expressly prohibited by federal law.

21 (b) The state department shall obtain and make
22 available to the public documents demonstrating
23 compliance with regulations regarding adequate staffing
24 of health facilities.

25 SEC. 4. Section 1280 of the Health and Safety Code is
26 amended to read:

27 1280. (a) The state department may provide
28 consulting services upon request to any health facility to
29 assist in the identification or correction of deficiencies or
30 the upgrading of the quality of care provided by the
31 health facility.

32 (b) The state department shall notify the health
33 facility of all deficiencies in its compliance with this
34 chapter and the rules and regulations adopted
35 hereunder, and the health facility shall agree with the
36 state department upon a plan of correction that shall give
37 the health facility a reasonable time to correct these
38 deficiencies. If at the end of the allotted time, as revealed
39 by inspection, the health facility has failed to correct the



1 deficiencies, the director may take action to revoke or
2 suspend the license.

3 (e) (1) If any condition within a health facility
4 licensed under subdivision (a), (b), or (f) of Section 1250
5 poses an immediate and substantial hazard to the health
6 or safety of patients, the department may order any of the
7 following until the condition is corrected:

8 (A) Reduction in the number of patients.

9 (B) Closure of the unit or units in the facility that pose
10 the risk. If the unit to be closed is an emergency room in
11 a designated facility, as defined in Section 1797.67, the
12 state department shall notify and coordinate with the
13 local emergency medical services agency.

14 (C) Imposition of a plan of correction proposed by the
15 state department.

16 (D) Civil penalties not to exceed fifty dollars (\$50) per
17 patient affected by the hazard for each day that the
18 immediate and substantial hazard continues.

19 (2) The order of the state department pursuant to
20 paragraph (1) shall be in writing and shall contain a
21 statement of the reasons for the order. If the state
22 department fails to take any of these steps, it shall provide
23 a statement of reasons for the failure to act to protect
24 patients. If the licensee disputes the order by the state
25 department regarding this subdivision, the licensee shall
26 deposit an amount equal to the proposed fine, if any, that
27 shall be returned if the licensee prevails and the licensee
28 may, within 10 days, request a hearing pursuant to Section
29 100171. The licensee may also propose a more efficient or
30 effective means of remedying the deficiency and the
31 director shall review the information provided by the
32 facility, the state department, and other interested
33 parties and within a reasonable period of time render a
34 decision on alternatives proposed by the facility.

35 (d) If the deficiencies do not pose an immediate and
36 substantial hazard to the health or safety of patients, a
37 health facility licensed under subdivision (a), (b), or (f)
38 of Section 1250 shall agree with the state department
39 upon a plan of correction that shall give the health facility
40 a reasonable period of time to correct the deficiencies. If



1 at the end of a reasonable period of time, the facility has
2 failed to implement fully a plan of correction that has
3 been agreed upon by both the facility and the state
4 department, the state department may order
5 implementation of the plan of correction previously
6 agreed to by both the facility and the state department.
7 If the facility and the state department fail to agree upon
8 a plan of correction within a reasonable period of time,
9 the state department shall order implementation of a
10 plan of correction devised by the state department. The
11 order shall be in writing and shall contain a statement of
12 reasons for the order.

13 (e) If a health facility licensed under subdivision (a),
14 (b), or (f) of Section 1250 is subject to action pursuant to
15 subdivision (c) or if that facility fails to correct
16 deficiencies as provided in subdivision (d), the director
17 may take action to revoke or suspend the facility's license.

18 (f) Reports on the results of each inspection of a health
19 facility shall be prepared by the inspector or inspector
20 team and shall be kept on file in the state department
21 along with the plan of correction and health facility
22 comments. The inspection report may include a
23 recommendation for reinspection. Inspection reports of
24 an intermediate care facility/developmentally disabled
25 habilitative or an intermediate care
26 facility/developmentally disabled nursing shall be
27 provided by the state department to the appropriate
28 regional center pursuant to Chapter 5 (commencing with
29 Section 4620) of Division 4.5 of the Welfare and
30 Institutions Code.

31 (g) All inspection reports and lists of deficiencies shall
32 be open to public inspection at the state department
33 when the state department has received verification that
34 the health facility has received the report from the state
35 department. All plans of correction shall be open to
36 public inspection upon receipt by the state department.

37 (h) In no event shall the act of providing a plan of
38 correction, the content of the plan of correction, or the
39 execution of a plan of correction, be used in any legal
40 action or administrative proceeding as an admission



1 ~~within the meaning of Sections 1220 to 1227, inclusive, of~~
2 ~~the Evidence Code against the health facility, its licensee,~~
3 ~~or its personnel.~~

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