

Introduced by Senators Romero and Escutia
(Coauthor: Assembly Member Laird)

February 20, 2004

An act to add Section 1418.92 to the Health and Safety Code, and to amend Sections 15630 and 15631 of the Welfare and Institutions Code, relating to long-term health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1644, as introduced, Romero. Long-term health care: deaths of residents: reporting requirements.

(1) The Long-Term Care, Health, Safety, and Security Act of 1973 establishes a citation system for the imposition of civil sanctions against long-term health care facilities in violation of federal and state laws and regulations relating to patient care. That act also establishes an inspection and reporting system to ensure that long-term health care facilities are in compliance with state statutes and regulations pertaining to patient care, and a provisional licensing mechanism to ensure that full-term licenses are issued only to those long-term health care facilities that meet state standards relating to patient care. A violation of the act is a misdemeanor.

This bill would require a long-term health care facility to report the death of any resident of the facility to the county medical examiner or coroner.

(2) The Elder Abuse and Dependent Adult Civil Protection Act defines mandated reporters and establishes various procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. The act requires a mandated reporter, as defined, to report known or suspected physical abuse, abandonment, abduction, isolation,

financial abuse, or neglect of elder or dependent adults in long-term health care facilities.

This bill, in addition, would require a mandated reporter to report to the county coroner or medical examiner a death of a resident of a long-term health care facility if the resident was the subject of a report described above.

This bill would also authorize persons who are not mandated reporters to report to the county medical examiner or coroner instances of abuse and death of residents in long-term health care facilities, and would require the medical examiner or coroner to acknowledge receipt of the report.

By increasing the duties of county medical examiners and coroners, and by expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(3) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 1418.92 is added to the Health and
- 2 Safety Code, to read:
- 3 1418.92. (a) A long-term health care facility shall report the
- 4 death of any resident of the facility to the medical examiner or
- 5 coroner of the county in which the death occurred.
- 6 (b) The report required by subdivision (a) shall be made by the
- 7 facility immediately upon the death of the resident, or within 24
- 8 hours of the death and prior to any changes to the body by the



1 facility, and before the facility discharges the body to a funeral
2 home or to any other entity or facility.

3 (c) A failure to comply with this section shall be a class “B”
4 violation.

5 SEC. 2. Section 15630 of the Welfare and Institutions Code
6 is amended to read:

7 15630. (a) Any person who has assumed full or intermittent
8 responsibility for care or custody of an elder or dependent adult,
9 whether or not that person receives compensation, including
10 administrators, supervisors, and any licensed staff of a public or
11 private facility that provides care or services for elder or dependent
12 adults, or any elder or dependent adult care custodian, health
13 practitioner, clergy member, or employee of a county adult
14 protective services agency or a local law enforcement agency, is
15 a mandated reporter.

16 (b) (1) Any mandated reporter who, in his or her professional
17 capacity, or within the scope of his or her employment, has
18 observed or has knowledge of an incident that reasonably appears
19 to be physical abuse, abandonment, abduction, isolation, financial
20 abuse, or neglect, or is told by an elder or dependent adult that he
21 or she has experienced behavior, including an act or omission,
22 constituting physical abuse, abandonment, abduction, isolation,
23 financial abuse, or neglect, or reasonably suspects that abuse, shall
24 report the known or suspected instance of abuse by telephone
25 immediately or as soon as practicably possible, and by written
26 report sent within two working days, as follows:

27 (A) If the abuse has occurred in a long-term care facility, except
28 a state mental health hospital or a state developmental center, the
29 report shall be made to the local ombudsman or the local law
30 enforcement agency.

31 Except in an emergency, the local ombudsman and the local law
32 enforcement agency shall, as soon as practicable, do all of the
33 following:

34 (i) Report to the State Department of Health Services any case
35 of known or suspected abuse occurring in a long-term health care
36 facility, as defined in subdivision (a) of Section 1418 of the Health
37 and Safety Code.

38 (ii) Report to the State Department of Social Services any case
39 of known or suspected abuse occurring in a residential care facility
40 for the elderly, as defined in Section 1569.2 of the Health and

1 Safety Code, or in an adult day care facility, as defined in
2 paragraph (2) of subdivision (a) of Section 1502.

3 (iii) Report to the State Department of Health Services and the
4 California Department of Aging any case of known or suspected
5 abuse occurring in an adult day health care center, as defined in
6 subdivision (b) of Section 1570.7 of the Health and Safety Code.

7 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
8 any case of known or suspected criminal activity.

9 (B) If the suspected or alleged abuse occurred in a state mental
10 hospital or a state developmental center, the report shall be made
11 to designated investigators of the State Department of Mental
12 Health or the State Department of Developmental Services, or to
13 the local law enforcement agency.

14 Except in an emergency, the local law enforcement agency
15 shall, as soon as practicable, report any case of known or suspected
16 criminal activity to the Bureau of Medi-Cal Fraud and Elder
17 Abuse.

18 (C) If the abuse has occurred any place other than one described
19 in subparagraph (A), the report shall be made to the adult
20 protective services agency or the local law enforcement agency.

21 (2) *A mandated reporter, who is required to report an incident*
22 *pursuant to paragraph (1) that involves a resident in a long-term*
23 *health care facility, as defined in Section 1418 of the Health and*
24 *Safety Code, and the resident who is the subject of the report dies,*
25 *shall immediately upon the resident's death, or within 24 hours of*
26 *learning of the death if the mandated reporter is not aware of the*
27 *death when it occurs, report the death and the incident to the*
28 *medical examiner or coroner of the county in which the death*
29 *occurred.*

30 (3) (A) A mandated reporter who is a clergy member who
31 acquires knowledge or reasonable suspicion of elder or dependent
32 adult abuse during a penitential communication is not subject to
33 paragraph (1). For purposes of this subdivision, "penitential
34 communication" means a communication that is intended to be in
35 confidence, including, but not limited to, a sacramental confession
36 made to a clergy member who, in the course of the discipline or
37 practice of his or her church, denomination, or organization is
38 authorized or accustomed to hear those communications and under
39 the discipline tenets, customs, or practices of his or her church,



denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

~~(3)~~

(4) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

~~(4)~~

(5) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services

1 or to a local law enforcement agency or to the local ombudsman.
2 Except in an emergency, the local ombudsman and the local law
3 enforcement agency shall report any case of known or suspected
4 criminal activity to the Bureau of Medi-Cal Fraud and Elder
5 Abuse, as soon as is practicable.

6 (4) If the suspected or alleged abuse occurred in a place other
7 than a place described in paragraph (2) or (3), the report may be
8 made to the county adult protective services agency.

9 (5) If the conduct involves criminal activity not covered in
10 subdivision (b), it may be immediately reported to the appropriate
11 law enforcement agency.

12 (d) When two or more mandated reporters are present and
13 jointly have knowledge or reasonably suspect that types of abuse
14 of an elder or a dependent adult for which a report is or is not
15 mandated have occurred, and when there is agreement among
16 them, the telephone report may be made by a member of the team
17 selected by mutual agreement, and a single report may be made
18 and signed by the selected member of the reporting team. Any
19 member who has knowledge that the member designated to report
20 has failed to do so shall thereafter make the report.

21 (e) A telephone report of a known or suspected instance of elder
22 or dependent adult abuse shall include, if known, the name of the
23 person making the report, the name and age of the elder or
24 dependent adult, the present location of the elder or dependent
25 adult, the names and addresses of family members or any other
26 person responsible for the elder or dependent adult's care, the
27 nature and extent of the elder or dependent adult's condition, the
28 date of the incident, and any other information, including
29 information that led that person to suspect elder or dependent adult
30 abuse, as requested by the agency receiving the report.

31 (f) The reporting duties under this section are individual, and
32 no supervisor or administrator shall impede or inhibit the reporting
33 duties, and no person making the report shall be subject to any
34 sanction for making the report. However, internal procedures to
35 facilitate reporting, ensure confidentiality, and apprise supervisors
36 and administrators of reports may be established, provided they
37 are not inconsistent with this chapter.

38 (g) (1) Whenever this section requires a county adult
39 protective services agency to report to a law enforcement agency,
40 the law enforcement agency shall, immediately upon request,

1 provide a copy of its investigative report concerning the reported
2 matter to that county adult protective services agency.

3 (2) Whenever this section requires a law enforcement agency
4 to report to a county adult protective services agency, the county
5 adult protective services agency shall, immediately upon request,
6 provide to that law enforcement agency a copy of its investigative
7 report concerning the reported matter.

8 (3) The requirement to disclose investigative reports pursuant
9 to this subdivision shall not include the disclosure of social
10 services records or case files that are confidential, nor shall this
11 subdivision be construed to allow disclosure of any reports or
12 records if the disclosure would be prohibited by any other
13 provision of state or federal law.

14 (h) Failure to report physical abuse, abandonment, abduction,
15 isolation, financial abuse, or neglect of an elder or dependent adult,
16 in violation of this section, is a misdemeanor, punishable by not
17 more than six months in the county jail, by a fine of not more than
18 one thousand dollars (\$1,000), or by both that fine and
19 imprisonment. Any mandated reporter who willfully fails to report
20 physical abuse, abandonment, abduction, isolation, financial
21 abuse, or neglect of an elder or dependent adult, in violation of this
22 section, where that abuse results in death or great bodily injury,
23 shall be punished by not more than one year in a county jail, by a
24 fine of not more than five thousand dollars (\$5,000), or by both
25 that fine and imprisonment.

26 SEC. 3. Section 15631 of the Welfare and Institutions Code
27 is amended to read:

28 15631. (a) Any person who is not a mandated reporter under
29 Section 15630, who knows, or reasonably suspects, that an elder
30 or a dependent adult has been the victim of abuse may report that
31 abuse to a long-term care ombudsman program or local law
32 enforcement agency when the abuse is alleged to have occurred in
33 a long-term care facility.

34 (b) Any person who is not a mandated reporter under Section
35 15630, who knows, or reasonably suspects, that an elder or a
36 dependent adult has been the victim of abuse in any place other
37 than a long-term care facility may report the abuse to the county
38 adult protective services agency or local law enforcement agency.

39 (c) *Any person who is not a mandated reporter under Section*
40 *15630, who knows, or reasonably suspects, that an elder or a*

1 *dependent adult has been the victim of abuse in a long-term health*
2 *care facility, as defined in Section 1418 of the Health and Safety*
3 *Code, and knows that the victim has died, may report the abuse and*
4 *the death to the medical examiner or coroner of the county in which*
5 *the death occurred. The person may communicate the report by*
6 *telephone, facsimile, or electronic mail. The medical examiner or*
7 *coroner to whom the report is made shall provide*
8 *acknowledgement of receipt of the report to the person who made*
9 *the report.*

10 SEC. 4. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution for
12 certain costs that may be incurred by a local agency or school
13 district because in that regard this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

19 However, notwithstanding Section 17610 of the Government
20 Code, if the Commission on State Mandates determines that this
21 act contains other costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code. If the statewide cost of the
25 claim for reimbursement does not exceed one million dollars
26 (\$1,000,000), reimbursement shall be made from the State
27 Mandates Claims Fund.

