AMENDED IN SENATE APRIL 12, 2004

AMENDED IN SENATE MARCH 22, 2004

SENATE BILL No. 1644

Introduced by Senator Romero
(Principal coauthors: Senators Escutia and Kuehl)
(Coauthor: Senator Machado)
~~(Coauthor: Assembly Member Pavley)~~ *(Coauthors: Assembly Members Laird and Pavley)*

February 20, 2004

An act to add Section ~~1418.92~~ *102800.1* 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 amended, 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 make a written report of the death of any resident of the facility to the county~~

~~medical examiner or coroner and would require the medical examiner or coroner to acknowledge receipt of the report.~~

(1) Existing law requires each death to be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found. Existing law prescribes the contents of the certificate of death, including medical and health section data, as well as personal data and other information necessary to establish the fact of the death. Under existing law, the attending physician is required to complete the medical and health section data within 15 hours after the death, and to deposit the certificate at the place of death or deliver it to the attending funeral director, who is then required to obtain the required information, other than medical and health section data, from the person or source best qualified to supply this information. Under existing law, the refusal or failure to furnish correctly any information that is required for the certificate of death, or the furnishing of false information, by a person who is responsible for supplying that information is a misdemeanor.

This bill would require, upon the suspected identification of a deceased resident in a long-term health care facility, as defined, that the facility notify the attending physician and surgeon or his or her designated medical professional, and that the physician and surgeon or designated medical professional complete the medical and health data section of the certificate of death, as well as the name of the resident, the name and address of the facility, and the date and time of death. The bill would require the physician and surgeon or designated medical professional to deposit a copy of the certificate of death at the office of the local coroner or medical examiner within 15 hours of the death or discovery of the death. The bill would require the coroner or medical examiner to acknowledge receipt of the certificate.

This bill would provide that the failure of a physician or designated medical professional to comply with the bill may result in the imposition of a civil penalty. In addition, by expanding the definition of an existing crime, this bill would impose a state-mandated local program.

(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, with the exception of the State Department of Health Services, 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 and would require the medical examiner or coroner to acknowledge receipt of the report.

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) *This bill would deem the information required by the bill, that is provided on the certificate of death, or by a mandated or nonmandated reporter of elder and dependent adult abuse, to be a public record under the California Public Records Act. The bill would prohibit the disclosure of the name of the deceased and any previous address unless, under the facts of the particular case, the custodian of the records finds that the public interest in disclosure of that information clearly outweighs the public interest in nondisclosure.*

(4) 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:

~~SECTION 1. Section 1418.92 is added to the Health and Safety Code, to read:~~

~~1418.92. (a) A long-term health care facility shall report the death of any resident of the facility to the medical examiner or coroner of the county in which the death occurred. The report shall be in writing and shall include the pertinent identifying information that the local coroner or medical examiner deems appropriate. The medical examiner or coroner to whom the report is made shall provide acknowledgement of receipt of the report to the person who made the report.~~

~~(b) The report required by subdivision (a) shall be made by the facility immediately upon the death of the resident, or within 24 hours of the death and prior to any changes to the body by the facility, and before the facility discharges the body to a funeral home or to any other entity or facility.~~

~~(c) A failure to comply with this section shall be a class "B" violation, as described in subdivision (c) of Section 1424.~~

SECTION 1. Section 102800.1 is added to the Health and Safety Code, to read:

102800.1. (a) (1) Upon the suspected identification of a deceased resident in a long-term care health facility, as defined in Section 1418, the facility shall immediately notify the physician and surgeon last in attendance, or the physician and surgeon's designated medical professional, who shall certify the death in accordance with this chapter. Notwithstanding any other provision of law, in addition to the medical and health section data, the physician and surgeon or designated medical professional shall indicate on the certificate of death the name of the resident, the name and address of the facility, and the date and time of death, as well as any other pertinent identifying information that the local coroner or medical examiner deems appropriate.

(2) Within 15 hours of the death or discovery of the death, the physician and surgeon or designated medical professional shall deposit a copy of the certificate of death at the office of the local coroner or medical examiner. The coroner or medical examiner to whom the report is made shall provide acknowledgement of receipt of the report to the person who made the report.

(b) Failure by a physician and surgeon or designated medical professional to comply with this section may result in the imposition of a civil penalty in an amount not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000) for each failure to comply.

(c) Notwithstanding any other provision of law, the information required to be reported under this section shall be considered a public record for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). However, the name of the deceased resident and any previous address may not be disclosed unless, under the facts of the particular case, the custodian of the records finds that the public interest in disclosure of that information clearly outweighs the public interest in nondisclosure. The name of the facility, the date, and the time and cause of death shall be made available to the public upon request, in accordance with the act.

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

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

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

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

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

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

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

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

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

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

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

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

(2) *(A)* A mandated reporter, with the exception of the State Department of Health Services, who is required to report an incident pursuant to paragraph (1) that involves a resident in a long-term health care facility, as defined in Section 1418 of the Health and Safety Code, *who makes a report in accordance with subparagraph (B)*, and the resident who is the subject of the report

dies, shall immediately upon the resident's death, or within 24 hours of learning of the death if the mandated reporter is not aware of the death when it occurs, report the death and the incident to the medical examiner or coroner of the county in which the death occurred. The mandated reporter may communicate the report by telephone, facsimile, or electronic mail. The medical examiner or coroner to whom the report is made shall provide acknowledgement of receipt of the report to the mandated reporter who made the report.

(B) This paragraph shall apply when the mandated reporter has observed or has knowledge of an incident that reasonably appears to be, or is told by an elder or dependent adult that he or she has experienced, behavior, including an act or omission, that constitutes physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or when the mandated reporter reasonably suspects that abuse, and has made a report based on that information.

(C) Notwithstanding any other provision of law, the information required to be reported under this paragraph shall be considered a public record for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). However, the name of the deceased resident and any previous address may not be disclosed unless, under the facts of the particular case, the custodian of the records finds that the public interest in disclosure of that information clearly outweighs the public interest in nondisclosure. The name of the facility, the date, and the time and cause of death shall be made available to the public upon request, in accordance with the act.

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

(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.

(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 or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law

enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

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

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

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

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

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

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

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

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

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

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

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

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

(c) *(1)* Any person who is not a mandated reporter under Section 15630, who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse in a long-term health care facility, as defined in Section 1418 of the Health and

Safety Code, and knows that the victim has died, may report the abuse and the death to the medical examiner or coroner of the county in which the death occurred. The person may communicate the report by telephone, facsimile, or electronic mail. The medical examiner or coroner to whom the report is made shall provide acknowledgement of receipt of the report to the person who made the report.

(2) Notwithstanding any other provision of law, the information required to be reported under this subdivision shall be considered a public record for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). However, the name of the deceased resident and any previous address may not be disclosed unless, under the facts of the particular case, the custodian of the records finds that the public interest in disclosure of that information clearly outweighs the public interest in nondisclosure. The name of the facility, the date, and the time and cause of death shall be made available to the public upon request, in accordance with the act.

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

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

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