

AMENDED IN SENATE APRIL 27, 2004
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)
(Coauthors: Assembly Members Laird and Pavley)

February 20, 2004

An act to add Section 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) 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~~ *whenever a resident in a long-term health care facility, as defined, is known or suspected to have died*, 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 also impose a state-mandated local program by requiring the coroner or medical examiner to compile, on a quarterly basis, aggregate information required by the bill concerning the number of deaths and the names of the facilities in which the deaths occurred, and to make the aggregate information available to the public upon request.~~

(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:

- 1 SECTION 1. Section 102800.1 is added to the Health and
- 2 Safety Code, to read:
- 3 102800.1. (a) (1) ~~Upon the suspected identification of a~~
- 4 ~~deceased~~ When a resident in a long-term care health facility, as
- 5 defined in Section 1418, *is either known or suspected to have died,*
- 6 the facility shall immediately notify the physician and surgeon last

1 in attendance, or the physician and surgeon's designated medical
2 professional, who shall certify the death in accordance with this
3 chapter. Notwithstanding any other provision of law, in addition
4 to the medical and health section data, the physician and surgeon
5 or designated medical professional shall indicate on the certificate
6 of death the name of the resident, the name and address of the
7 facility, and the date and time of death, as well as any other
8 pertinent identifying information that the local coroner or medical
9 examiner deems appropriate.

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

16 (b) Failure by a physician and surgeon or designated medical
17 professional to comply with this section may result in the
18 imposition of a civil penalty in an amount not less than one
19 hundred dollars (\$100) and not exceeding one thousand dollars
20 (\$1,000) for each failure to comply.

21 (c) ~~Notwithstanding any other provision of law, the~~
22 ~~information required to be reported under this section shall be~~
23 ~~considered a public record for purposes of the California Public~~
24 ~~Records Act (Chapter 3.5 (commencing with Section 6250) of~~
25 ~~Division 7 of Title 1 of the Government Code). However, the name~~
26 ~~of the deceased resident and any previous address may not be~~
27 ~~disclosed unless, under the facts of the particular case, the~~
28 ~~custodian of the records finds that the public interest in disclosure~~
29 ~~of that information clearly outweighs the public interest in~~
30 ~~nondisclosure. The name of the facility, the date, and the time and~~
31 ~~cause of death shall be made available to the public upon request,~~
32 ~~in accordance with the act.~~ *aggregate information derived from the*
33 *information required to be reported under this section and Section*
34 *15630 of the Welfare and Institutions Code concerning the number*
35 *of deaths and the names of the facilities in which these deaths*
36 *occurred shall be compiled quarterly by the coroner or medical*
37 *examiner and made available to the public upon request.*

38 SEC. 2. Section 15630 of the Welfare and Institutions Code
39 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.

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

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

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

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

15 (2) (A) A mandated reporter, with the exception of the State
16 Department of Health Services, who is required to report an
17 incident pursuant to paragraph (1) that involves a resident in a
18 long-term health care facility, as defined in Section 1418 of the
19 Health and Safety Code, who makes a report in accordance with
20 subparagraph (B), and the resident who is the subject of the report
21 dies, shall immediately upon the resident's death, or within 24
22 hours of learning of the death if the mandated reporter is not aware
23 of the death when it occurs, report the death and the incident to the
24 medical examiner or coroner of the county in which the death
25 occurred. The mandated reporter may communicate the report by
26 telephone, facsimile, or electronic mail. The medical examiner or
27 coroner to whom the report is made shall provide acknowledgment
28 of receipt of the report to the mandated reporter who made the
29 report.

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

38 (C) Notwithstanding any other provision of law, ~~the~~
39 ~~information required to be reported under this paragraph shall be~~
40 ~~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, aggregate information derived from the information required to be reported under this section and Section 102800.1 of the Health and Safety Code concerning the number of deaths and the names of the facilities in which these deaths occurred shall be compiled quarterly by the coroner or medical examiner and made available to the public upon request.~~

(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

1 of the Evidence Code, shall not be required to report, pursuant to
2 paragraph (1), an incident where all of the following conditions
3 exist:

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

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

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

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

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

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

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

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

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

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

34 (B) This paragraph shall not be construed to require a mandated
35 reporter to seek, nor to preclude a mandated reporter from seeking,
36 information regarding a known or suspected incident of abuse
37 prior to reporting. This paragraph shall apply only to those
38 categories of mandated reporters that the State Department of
39 Health Services determines, upon approval by the Bureau of
40 Medi-Cal Fraud and Elder Abuse and the state long-term care

1 ombudsman, have access to plans of care and have the training and
2 experience necessary to determine whether the conditions
3 specified in this section have been met.

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

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

18 (3) If the suspected or alleged abuse occurred in a state mental
19 health hospital or a state developmental center, the report may be
20 made to the designated investigator of the State Department of
21 Mental Health or the State Department of Developmental Services
22 or to a local law enforcement agency or to the local ombudsman.
23 Except in an emergency, the local ombudsman and the local law
24 enforcement agency shall report any case of known or suspected
25 criminal activity to the Bureau of Medi-Cal Fraud and Elder
26 Abuse, as soon as is practicable.

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

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

33 (d) When two or more mandated reporters are present and
34 jointly have knowledge or reasonably suspect that types of abuse
35 of an elder or a dependent adult for which a report is or is not
36 mandated have occurred, and when there is agreement among
37 them, the telephone report may be made by a member of the team
38 selected by mutual agreement, and a single report may be made
39 and signed by the selected member of the reporting team. Any

1 member who has knowledge that the member designated to report
2 has failed to do so shall thereafter make the report.

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

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

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

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

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

36 (h) Failure to report physical abuse, abandonment, abduction,
37 isolation, financial abuse, or neglect of an elder or dependent adult,
38 in violation of this section, is a misdemeanor, punishable by not
39 more than six months in the county jail, by a fine of not more than
40 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 acknowledgment 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. aggregate information derived from the information required to be reported under this section and Section 102800.1 of the Health and Safety Code concerning the number of deaths and the names of the facilities in which these deaths occurred shall be compiled quarterly by the coroner or medical examiner and made available to the public upon request.~~

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.