

ASSEMBLY BILL

No. 1752

Introduced by Assembly Member Yamada

February 17, 2012

An act to amend Section 1599.1 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1752, as introduced, Yamada. Long-term health care facilities: bed hold: appeals.

Under existing law, residents of long-term health care facilities have certain rights, including the right to be readmitted to a facility following a hospital stay, as specified, and the right, if denied readmission by the facility, to appeal this decision.

Existing law establishes the State Health Facilities Citation Penalties Account within the Special Deposit Fund, available upon appropriation by the Legislature, for the protection of health or property of residents of long-term health care facilities.

This bill would require the State Department of Health Care Services, if readmission is ordered on appeal and the facility refuses to readmit the resident, to assess a civil penalty of an unspecified amount per day against the facility until the resident is readmitted. The bill would require that these penalties be deposited into the State Health Facilities Citation Penalties Account. The bill would require the department to request that the Attorney General seek injunctive relief and damages pursuant to specified provisions of law. The bill would authorize the department to implement these provisions by means of letters, provider bulletins, or other similar instructions.

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. This act shall be known, and may be cited, as the
2 Nursing Facility Bed Hold Protection Act of 2012.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) The protection of residents in California's nursing facilities
5 is of paramount importance to the citizens of California.
- 6 (b) Sixty-four percent of California nursing facility residents
7 have all or part of their care paid for by Medi-Cal.
- 8 (c) Nearly 40 percent of nursing home residents are hospitalized
9 at least once during their residency.
- 10 (d) State and federal law guarantee that a hospitalized resident's
11 bed will be held for at least seven days if the resident elects. The
12 bed hold protects a resident's continuity of placement, ensures that
13 a decision to go to a hospital is unaffected by the risk of losing his
14 or her home, and protects residents from transfer trauma.
- 15 (e) Despite the bed hold requirements, nursing facilities often
16 refuse to hold a resident's bed, resulting in substantial costs to the
17 state in reimbursing acute care hospitals for administrative days
18 under Medi-Cal.
- 19 (f) A resident whose bed is not held may file a complaint with
20 the State Department of Public Health and request an appeal with
21 the State Department of Health Care Services.
- 22 (g) Even when a resident's appeal is granted and the nursing
23 facility is ordered to readmit the resident, many facilities refuse
24 to comply and do not suffer any adverse consequences.
- 25 (h) It is, therefore, the intent of the Legislature to enact
26 legislation that would do both of the following:
- 27 (1) Penalize nursing facilities that do not honor state and
28 federally required resident bed holds.
- 29 (2) Engage the Attorney General to consider an action to defend
30 the bed hold rights of nursing facility residents.
- 31 SEC. 3. Section 1599.1 of the Health and Safety Code is
32 amended to read:
- 33 1599.1. Written policies regarding the rights of patients shall
34 be established and shall be made available to the patient, ~~to~~ any
35 guardian, next of kin, sponsoring agency or representative payee,

1 and to the public. Those policies and procedures shall ensure that
2 each patient admitted to the facility has the following rights and
3 is notified of the following facility obligations, in addition to those
4 specified by regulation:

5 (a) The facility shall employ an adequate number of qualified
6 personnel to carry out all of the functions of the facility.

7 (b) Each patient shall show evidence of good personal hygiene
8 and be given care to prevent bedsores, and measures shall be used
9 to prevent and reduce incontinence for each patient.

10 (c) The facility shall provide food of the quality and quantity
11 to meet the patients' needs in accordance with physicians' orders.

12 (d) The facility shall provide an activity program staffed and
13 equipped to meet the needs and interests of each patient and to
14 encourage self-care and resumption of normal activities. Patients
15 shall be encouraged to participate in activities suited to their
16 individual needs.

17 (e) The facility shall be clean, sanitary, and in good repair at all
18 times.

19 (f) A nurses' call system shall be maintained in operating order
20 in all nursing units and provide visible and audible signal
21 communication between nursing personnel and patients. Extension
22 cords to each patient's bed shall be readily accessible to patients
23 at all times.

24 (g) (1) If a facility has a significant beneficial interest in an
25 ancillary health service provider or if a facility knows that an
26 ancillary health service provider has a significant beneficial interest
27 in the facility, as provided by subdivision (a) of Section 1323, or
28 if the facility has a significant beneficial interest in another facility,
29 as provided by subdivision (c) of Section 1323, the facility shall
30 disclose that interest in writing to the patient, or his or her
31 representative, and advise the patient, or his or her representative,
32 that the patient may choose to have another ancillary health service
33 provider, or facility, as the case may be, provide any supplies or
34 services ordered by a member of the medical staff of the facility.

35 (2) A facility is not required to make any disclosures required
36 by this subdivision to any patient, or his or her representative, if
37 the patient is enrolled in an organization or entity that provides or
38 arranges for the provision of health care services in exchange for
39 a prepaid capitation payment or premium.

(h) (1) If a resident of a long-term health care facility has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions, or readmission rights of either state or federal law, and the facility refuses to readmit him or her, the resident may appeal the facility's refusal. *Appeal hearings shall be conducted by the State Department of Health Care Services.*

(2) The refusal of the facility as described in this subdivision shall be treated as if it were an involuntary transfer under federal law, and the rights and procedures that apply to appeals of transfers and discharges of nursing facility residents shall apply to the resident's appeal under this subdivision.

(3) If the resident appeals pursuant to this subdivision, and the resident is eligible under the Medi-Cal program, the resident shall remain in the hospital and the hospital may be reimbursed at the administrative day rate, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(4) If the resident appeals pursuant to this subdivision, and the resident is not eligible under the Medi-Cal program, the resident shall remain in the hospital if other payment is available, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(5) If the resident is not eligible for participation in the Medi-Cal program and has no other source of payment, the hearing and final determination shall be made within 48 hours.

(6) *If readmission is ordered on appeal and the facility refuses to readmit the resident after it receives the decision, the State Department of Health Care Services shall provide for the resident's readmission. The department shall assess a civil penalty of _____ dollars (\$_____) per day against the facility until the resident is readmitted. Penalties collected pursuant to this paragraph shall be deposited into the State Health Facilities Citation Penalties Account created pursuant to Section 1417.2. The department shall request that the Attorney General seek injunctive relief to enforce the appeal decision and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. If the Attorney General prevails, the facility shall be liable for costs and attorney's fees.*

1 (A) The department may withhold or deduct any Medi-Cal
2 reimbursement payments to the facility to collect the civil penalties
3 assessed pursuant to this paragraph. If any penalty assessed under
4 this paragraph remains unpaid 60 days after payment is due, the
5 department may assess a penalty equal to 50 percent of the unpaid
6 penalty amount and may seek to delay the renewal of the facility's
7 license.

8 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code, or any other provision of law, the
11 department may implement this paragraph, in whole or in part,
12 by means of letters, provider bulletins, or other similar instructions
13 without taking regulatory action.

14 (C) If the facility is granted a writ of mandate pursuant to
15 Section 1094.5 of the Code of Civil Procedure, it shall not be liable
16 for the civil penalties authorized by this paragraph.

17 (i) Effective July 1, 2007, Sections 483.10, 483.12, 483.13, and
18 483.15 of Title 42 of the Code of Federal Regulations in effect on
19 July 1, 2006, shall apply to each skilled nursing facility and
20 intermediate care facility, regardless of a resident's payment source
21 or the Medi-Cal or Medicare certification status of the skilled
22 nursing facility or intermediate care facility in which the resident
23 resides, except that a noncertified facility is not obligated to provide
24 notice of Medicaid or Medicare benefits, covered services, or
25 eligibility procedures.