

Date of Hearing: August 6, 2013

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

SB 534 (Hernandez) – As Amended: July 3, 2013

SENATE VOTE: 34-0

SUBJECT: Health and other care facilities.

SUMMARY:

- 1) Requires chronic dialysis clinics, surgical clinics, and rehabilitation clinics to comply with federal certification standards in effect immediately preceding January 1, 2013 until the Department of Public Health (DPH) adopts regulations relating to the provision of those services.
- 2) Requires DPH, by July 1, 2017, to conduct at least one public hearing and submit a report to appropriate legislative committees, describing the extent to which the federal certification standards are sufficient, or not, as a basis for state licensing standards, and make recommendations for any California specific standards which may be necessary.
- 3) Requires health facilities categorized as "intermediate care facility/developmentally disabled-nursing" (ICF/DD-N), and "intermediate care facility/developmentally disabled-continuous nursing" (ICF/DD-CN), to comply with specified federal certification standards until the DPH and the Department of Developmental Services (DDS) comply with existing law to jointly develop and implement appropriate licensing regulations.
- 4) Repeals these provisions on January 1, 2018.

EXISTING LAW:

- 1) Establishes a range of duties and powers for the DPH, including adopting, and occasionally amending or repealing, reasonable rules and regulations, including those for various types of clinics, necessary to carry out the purposes of law.
- 2) Requires those regulations to prescribe standards of adequacy, safety, sanitation, staffing, and standards for providing the services offered.
- 3) Requires DPH to propose licensing fees for all clinics and facilities within its regulatory jurisdiction at a level that, along with support from federal funds, will not require the Licensing and Certification Division to seek General Funds to support its activities.
- 4) Requires DPH and DDS to jointly develop and implement licensing and Medi-Cal regulations appropriate for ICF/DD-N and ICF/DD-CN facilities to assure residents receive appropriate medical and nursing services, along with developmental program services, in the least restrictive physical and programmatic environment appropriate to resident need.

- 5) Requires DDS to review and approve an applicant facility's program plan as a prerequisite to the licensing and certification process, rather than as a part of the process.

FISCAL EFFECT: The Assembly Appropriations Committee has not yet analyzed this measure. SB 534 was placed on Senate Second Reading pursuant to Senate Rule 28.8.

COMMENTS:

AUTHORS STATEMENT: "This bill would require four health facility categories currently regulated by DPH to comply with facility-specific federal certification requirements to meet state licensing requirements until DPH adopts state regulations. These facilities already meet federal requirements in order to receive Medicare and Medicaid funding; this bill simply gives authority to state regulators to enforce these standards until such time that DPH adopts regulations specific to these facilities."

FEDERAL, STATE REGULATIONS: Technical, operational, and legal details that make laws work on a day-to-day basis, known as regulations, are often required to implement laws. The federal regulatory standards for chronic dialysis clinics (referred to as "end stage renal centers" in federal regulations), surgical clinics (known as "ambulatory surgical clinics" in federal regulations), and rehabilitation clinics, describe standards which would qualify them to seek reimbursement from the Medicare program or the Medicaid program. The federal regulations currently in place which impact the facilities addressed in SB 534 are known as Title 42 of the Code of Federal Regulation and pertain to public health, social welfare, and civil rights. They set forth standards to assure quality, cleanliness, adequate medical and/or nursing staff, patient's rights, and privacy. In addition, regulations for ICF/DD-N and ICF/DD-CN address active treatment services, client behavior and facility practices.

BACKGROUND: According to the DPH, health care facilities in California are licensed, regulated, inspected, and/or certified by a number of public and private agencies at the state and federal levels, including the DPH Licensing and Certification Program (L&C) and the federal Centers for Medicare and Medicaid Services (CMS). These agencies have separate -- yet sometimes overlapping -- jurisdictions. L&C is responsible for ensuring health care facilities comply with state laws and regulations. In addition, L&C cooperates with CMS to ensure that facilities accepting Medicare and Medi-Cal meet federal requirements. L&C also oversees the certification of nurse assistants, home health aides, hemodialysis technicians, and the licensing of nursing home administrators.

L&C serves as the regulatory authority for about 30 separate types of health care facilities and clinics. DPH does not currently have state-level enforcement standards in place for licensed ambulatory surgery clinics, chronic dialysis clinics, rehabilitation clinics, or intermediate care facility classifications. Nonetheless, federal Medicaid and Medicare certification standards exist. State law does not authorize the use of those standards in lieu of state-specific standards. When compliance with federal standards is lacking, the only existing recourse for DPH is to recommend action by CMS to stop funding, which carries long-term consequences which could be detrimental to access. SB 534 links state licensing enforcement to federal certification standards and allows the state to enforce the federal standards without resorting immediately to a recommendation to withhold federal funding. DPH reports that draft regulations for the ICF/DD-N category are expected to be submitted to the Office of Administrative Law by March of 2014. According to DPH, SB 534 will link enforcement to standards which will likely

improve care for patients being treated in these settings. The following are descriptions of the classes of facilities addressed by SB 534:

- Surgical clinics are entities that operate exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.
- Chronic dialysis clinics provide outpatient maintenance dialysis services, or home dialysis training and support services, or both, and may be independent or hospital-based.
- Rehabilitation clinics are nonresidential facilities established for the purpose of providing diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons, at a single fixed location, generally under the supervision of a physician.
- ICF/DD-N is a 4- to 15-bed facility that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care.

The Department has prioritized its regulation packages such that those that have an impact to the health and safety of patients are completed first. The Department anticipates using the federal standards at licensed dialysis, surgical and rehabilitation clinics, and no state level regulations are under development. Federal standards are focused on the provision of quality healthcare and patient safety in health care facilities.

RELATED LEGISLATION:

AB 2308 (Plescia) of 2006, would have required the Department of Health Services (now DPH) to convene a workgroup to develop licensure criteria to protect patients receiving care in surgical centers and to submit workgroup conclusions and recommendations to the appropriate policy committees of the Legislature no later than March 1, 2007. AB 2308 was vetoed by the Governor.

AB 543 (Plescia) of 2007 would have established licensing requirements for surgical clinics and would have required, effective January 1, 2008, that all surgical clinics meet specified operating and staffing standards. AB 543 was vetoed by the Governor.

AB 2122 (Plescia) of 2008 would have established the California Outpatient Surgery Patient Safety and Improvement Act which would have required surgical clinics to meet prescribed licensing requirements and standards, including compliance with Medicare Conditions of Participation. AB 2122 was held in the Assembly Appropriations Committee.

SB 1170 (Alquist) of 2008 would have required the DPH, the DDS, and the DHCS to promulgate emergency regulations setting forth training standards for intermediate care facility (ICF) and intermediate care facility/developmentally disabled-nursing (ICF/DD-N) staff. SB 1180 was held in Senate Appropriations Committee.

AB 832 (Jones) of 2009, was also sponsored by DPH and would have required DPH to convene a workgroup, no later than February 1, 2010, to consider and develop recommendations for state oversight and monitoring of surgical clinics, to ensure public health and safety. AB 832 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Public Health (CDPH) - **Sponsor**

Opposition

None on file.

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