

Date of Hearing: April 4, 2017

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

AB 275 (Wood) – As Amended March 28, 2017

**SUBJECT:** Long-term care facilities: requirements for changes resulting in the inability of the facility to care for its residents.

**SUMMARY:** Extends the notice periods that long-term care (LTC) facilities are required to give residents, their families, the Department of Public Health (DPH) and the Office of the State LTC Ombudsman when they are planning to close. Clarifies and strengthens requirements to medically and socially assess residents in order to prevent and reduce transfer trauma. Requires LTC facilities, in their relocation plans, to provide specific information regarding the number of residents who do not have the capacity to make decisions for themselves, the availability of alternative LTC beds in the community, and the reason for the proposed closure, among other things. Specifically, **this bill**:

- 1) Increases to 60 from 30 days:
  - a) The requirement of a LTC facility to give written notice to affected residents, or their guardians, of the facility's inability to care for its residents;
  - b) The requirement of the LTC facility to give notification to the office of the LTC Ombudsman of a change in the status of a license or operation of the LTC facility and requires this notice to be written instead of oral;
  - c) The requirement, in advance of a transfer, of the LTC facility to inform the resident or resident's representative of alternative facilities, as specified; and,
  - d) The requirement of a LTC facility to provide written notice to affected residents or their representatives regarding existing law's transfer requirements.
- 2) Requires LTC facilities to provide notification and hold a community meeting for residents, their families, and local health authorities to assist in obtaining alternative placements for LTC facility residents.
- 3) Requires a LTC facility to ensure that the resident's attending physician or the LTC facility medical director, if the resident does not have an attending physician, completes a medical assessment, and that a licensed mental health professional or licensed social worker and the LTC facility's nursing staff complete an assessment of the resident's social and physical functioning before written notice of transfer is given to the resident or their representative.
- 4) Requires the following information to be included in the LTC facility's relocation plan:
  - a) The total number of residents affected by the proposed closure;
  - b) The number of residents who do not have a legal representative and do not have the capacity to make decisions for themselves;
  - c) Attestation that each resident will undergo a medical assessment before being relocated;

- d) The availability of alternative skilled nursing facility (SNF) beds or other available LTC beds within the community;
  - e) The reason for the proposed closure; and,
  - f) The steps the LTC facility is taking to transfer affected residents safely and minimize possible transfer trauma.
- 5) Authorizes DPH to reject a relocation plan if, among other things, DPH determines that the plan does not provide adequate protections to minimize transfer trauma for residents, and requires, once a plan has been approved, that it be posted on the DPH Internet Website within 10 business days.

**EXISTING LAW:**

- 1) Provides for the licensure and regulation of LTC facilities by the Licensing and Certification Division of DPH.
- 2) Defines a LTC facility as a licensed facility that is any of the following:
  - a) Skilled Nursing Facility (SNF);
  - b) Intermediate care facility (ICF);
  - c) Intermediate care facility/developmentally disabled (ICF/DD);
  - d) Intermediate care facility/developmentally disabled-nursing (ICF/DD-N);
  - e) Congregate living health facility;
  - f) Nursing facility; or,
  - g) Intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN).
- 3) Requires LTC facilities to give written notice to a patient or their guardian at least 30 days prior to any change in the status of the LTC facility license or in the operation of the LTC facility resulting in the inability of the facility to care for its patients. Allows DPH and the LTC facility to agree on an extension not to exceed an additional 60 days, if patient placement problems are encountered which cannot be satisfactorily resolved within the notice period.
- 4) Requires LTC facilities that have notified patients of a proposed change in licensure to include notification of the change in the status of the license in response to patient inquiries.
- 5) Requires the LTC facility, before any residents are transferred, to take reasonable steps to transfer affected residents safely and minimize possible transfer trauma by, at a minimum, doing all of the following:
  - a) Ensure that the resident's attending physician, if available, or a LTC facility medical director, if available, completes a medical assessment of the resident's condition which includes recommendations for counseling, follow-up visits, and for preventing or

ameliorating potential adverse health consequences in the event of transfer, among other requirements;

- b) Ensure that the LTC facility nursing staff and activity director complete an assessment of the social and physical functioning of the resident before written notice of the transfer is given to the resident;
  - c) Evaluate the relocation needs of the resident, including proximity to family, and determine the most appropriate and available type of future care and services for the resident before written notice of transfer is given and make the evaluation and assessment part of the medical records for transfer. If the resident or their family chooses to make a transfer prior to the completion of assessments, the LTC facility must inform the resident in writing of the importance of obtaining the assessments and follow up consultation; and,
  - d) Inform the resident, at least 30 days in advance of the transfer, of alternative facilities that are available and adequate to meet resident and family needs, and arrange for appropriate future medical care and services unless the resident has made other arrangements.
- 6) Provides that if 10 or more residents are likely to be transferred due to any change in the status of the license or operation of a LTC facility, the LTC facility must submit a proposed relocation plan for the affected residents to DPH for approval at least 15 days prior to the written transfer notification being given to any resident.
- 7) Requires DPH to conduct inspections of LTC facilities, as necessary, to ensure the health, safety, and security of patients, and requires, if a LTC facility has been determined to be in violation of any state or federal law or regulation, DPH to issue a notice to correct the violation and of intent to issue a citation to the licensee.
- 8) Provides DPH with the authority to issue citations and impose civil penalties for failure to comply with the requirements above.

**FISCAL EFFECT:** This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

**Purpose of this Bill:** According to the author, last year, Rockport Healthcare Services (Rockport), the owner of the only SNFs in the Eureka area of Assembly District 2, announced that it was closing three of its five facilities, which would have displaced more than 100 residents, moving them far from their families. The author notes that only after an outpouring of support for the residents from the community, many meetings with stakeholders, and a lot of media coverage did Rockport relent and change plans, ultimately closing only one facility. The author states that during those many months, residents and their families were in a state of limbo and it became clear that new, stronger protections need to be put in place to help prevent this from happening to others in the future. The author concludes that this bill provides longer notice periods to help residents and their families find alternative care, clarifies and strengthens the requirements around medical assessments for residents prior to transfer, and provides specific authority to DPH to reject a closure plan that does not provide adequate protections for residents.

**Background:** On August 24, 2016, Rockport submitted plans to DPH to close three of its five SNFs in Humboldt County. Rockport argued that its financial sustainability was jeopardized by staffing challenges and a Medi-Cal reimbursement formula that assumes lower operational costs in rural areas, which Rockport said was not the experience in Humboldt County. Despite work by community advocates, Partnership Health Plan of California (PHC) a nonprofit community-based public health care organization that contracts with the state to administer Medi-Cal benefits, and elected officials to find a way to keep the facilities open, Rockport would not agree to any of the proposals. Alternatives included a proposed rate increase and an offer by PHC to purchase one of the facilities. DPH approved the closures on September 29, 2016. Rockport subsequently decided to close only one of the three facilities.

- a) **Medi-Cal payments to LTC facilities.** AB 1629 (Frommer) Chapter 875, Statutes of 2004, requires all facilities in California to be reimbursed based on their actual costs, and rates at one facility are not tied to the rates of similar facilities in other parts of the state. PHC covers 143 of the 192 residents who would have been affected if Rockport closed the three facilities in Humboldt County. According to PHC, it provides an additional 2% payment above the state rate to Rockport; ensures that LTC rates do not go down from one year to the next; and, provides an additional 2% payment to facilities annually based on reaching specific quality improvements tied to patient safety and health.
- b) **LTC Beds in California:** According to DPH, it licenses 1,244 SNFs and 1,183 ICFs. DPH does not have data on the number of residents that currently reside in California SNFs and ICFs, but tracks the number of beds licensed to these facilities.

From July 1, 2014, to June 30, 2016, 18 SNFs, with a total of 1,516 beds closed in California. The facilities that closed were situated throughout the state and closed for a variety of reasons, some being due to consolidation with other facilities, voluntary closure, failing to meet health and safety standards, and converting to another type of facility.

- c) **Transfer trauma.** Relocation can have negative physical and psychological effects on patients in acute care and residents of LTC. According to the U.S Administration on Aging, transfer trauma, as a result of a sudden and unexpected relocation, is associated with depression, increased irritability, serious illness, and elevated mortality risk for the frail elderly.

**Support:** The Humboldt County Board of Supervisors supports this bill stating, that in Humboldt County, one company controls ownership of all SNF beds available to Medi-Cal patients and the recent experience of proposed closures highlighted the vulnerability of the long-term care system in rural counties.

### **Related Legislation:**

AB 940 (Weber) requires a LTC facility to notify the local LTC ombudsman any time a resident is notified in writing of a transfer or discharge from the facility, and provides that a failure to provide that notice would constitute a violation for purposes of a DPH-issued citation. Authorizes DPH to impose additional penalties under those provisions if the failure to send the notice is intentional. AB 940 will be heard in the Assembly Aging and Long-Term Care Committee on April 4, 2017.

AB 1335 (Kalra) makes technical and non-substantive changes to provisions relating to regulations for patient care and a system for the imposition of prompt and effective civil sanctions against LTC facilities in violation of the laws and regulations of this state. AB 1335 is in the Assembly Rules Committee pending referral.

**Previous Legislation:**

SB 503 (Hernandez) of 2016 would have made changes to the existing process for the prescribing or ordering of a medical intervention for a resident of a SNF or ICF who lacks capacity to make decisions involving his or her health care; modified the existing interdisciplinary team review process required for such medical interventions; and would have established a new process for the administration of antipsychotic medication to residents of SNFs and ICFs. SB 503 was not set for a hearing in Assembly Health Committee.

**REGISTERED SUPPORT / OPPOSITION:****Support**

AARP

California Long-Term Care Ombudsman Association (CLTCOA)

California Retired Teachers Association (CalRTA)

Humboldt County Board of Supervisors

National Association of Social Workers, California Chapter (NASW-CA)

Office of the State Long-Term Care Ombudsman

PSA 2 Area Agency on Aging Long-Term Care Ombudsman

Rural County Representatives of California

St. Joseph Health System-Humboldt County

**Opposition**

None on file.

**Analysis Prepared by:** Barry Brewer / AGING & L.T.C. / (916) 319-3990