

Date of Hearing: April 4, 2017

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

AB 940 (Weber) – As Introduced February 16, 2017

SUBJECT: Long-term health care facilities: notice.

SUMMARY: Any time a resident is notified in writing of a transfer or discharge from a long-term health care facility, the facility shall also send a copy of the notice to the local long-term care ombudsman within 24 hours. Specifically, **this bill**:

- 1) Any time a resident is notified in writing of a transfer or discharge from a long-term health care facility, the facility shall also send a copy of the notice to the local long-term care ombudsman within 24 hours.
- 2) A facility's failure to send the notice within 24 hours shall constitute a class B violation for purposes of a Department of Health issued citation as defined.
- 3) If the department determines failure to send the notice to the ombudsman was intentional, the department may impose additional penalties on the facility.

EXISTING LAW:

- 1) Provides for the licensure and regulation of long-term health care facilities by the State Department of Public Health.
- 2) Authorizes the department to issue citations for violations of those provisions which are classified according to the nature of the violation.
- 3) Authorizes a licensee to contest a citation or proposed assessment of a civil penalty under specified provisions.
- 4) Specifies that Class B violations are violations that the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients or residents, other than class "AA" or "A" violations.
- 5) A class "B" violation as determined by the state department is one that to causes or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient.
- 6) A class "B" citation is subject to a civil penalty in an amount not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) for each and every citation.
- 7) A class "B" citation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

- 8) Provides for the Long-Term Care Ombudsman Program, under which funds are allocated to local ombudsman programs to assist elderly persons in long-term health care facilities and residential care facilities by, among other things, investigating and seeking to resolve complaints against these facilities.
- 9) Involuntary transfer or discharge is discussed in section 483.15(c) of Title 42 of the Code of Federal Regulations (C.F.R.).
- 10) Makes it a requirement of nursing home admission agreements to ensure residents will be given advance written notice of any involuntary transfer or discharge and mandates these notices to be sent to a representative of the Office of the State Long-Term Care Ombudsman in a limited number of cases.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Complaint investigations conducted by Local Long-Term Care Ombudsman Programs for improper, unsafe and illegal discharges are a recently growing problem all across the state. In 2016 local programs investigated 1,504 complaints regarding discharge and evictions a 68% increase since 2012.

"Many residents when faced with discharge are not aware of their options. AB 940 ensures California residents of skilled nursing facilities will be afforded a greater opportunity for timely intervention from their local Long-Term Care Ombudsman Program."

Background: In November of 2016 an update in the federal rules regarding 30-day discharge/eviction notifications for residents living in Skilled Nursing Facilities went into effect 42 CFR 483.15(c)(3)(i). The updated rule requires the facility, in addition to providing the notice to the resident, and the representative of the resident, a notice must be sent to the Office of the State Long-Term Care (LTC) Ombudsman. The intent behind this change in the federal rule was to provide these residents an extra level of protection/advocacy by informing the local LTC Ombudsman Program of the discharge.

The federal rules are unclear on a time frame for when the notification must be sent to the LTC Ombudsman and does not specify how the notices should be sent. There is also confusion because it states the notices are to be sent to the Office of the State Long-Term Care Ombudsman and not the representative of the Office of the State Long-Term Care Ombudsman more commonly known as the local LTC Ombudsman Program.

The State Long-Term Care Ombudsman Office develops policy and provides oversight to 35 local Long-Term Care Ombudsman programs. In California, LTC Ombudsman organizations monitor and assist residents in both skilled nursing facilities (nursing homes) and residential care facilities for the elderly (assisted living facilities).

The LTC Ombudsman Program serves as the first line of defense for residents of care facilities and provides on-site monitoring of facility conditions and resident well-being. Ombudsmen are trained to spot systemic problems and to develop personal rapport with residents who may fear reporting problems or abuse. Ombudsmen are able to intervene on behalf of a resident and identify, investigate and resolve complaints before they result in more serious and costly cases of

abuse and neglect. This is particularly important to the 60% of residents without family members visiting to observe care and report problems.

Arguments in Support: Writing in Support of this bill, The California Advocates for Nursing Home Reform states “In 2016, the federal regulations governing nursing homes were updated. New 42 CFR Section 483.15(c)(3) requires copies of transfer or discharge notices be sent to the Long-Term Care Ombudsman program. This was a welcome addition to protect residents from inappropriate, unsafe, or illegal discharges. In an average month, CANHR assists dozens of residents or their families regarding inappropriate transfers and discharges and that is likely only a tiny fraction of the statewide cases. Providing notice to the Ombudsman programs is a good, low-cost method for vetting proposed evictions and better ensuring residents are not dumped into unsafe situations.”

Arguments in Opposition: None.

REGISTERED SUPPORT / OPPOSITION:

Support

California Long-Term Care Ombudsman Association (CLTCOA) – Sponsor
California Advocates for Nursing Home Reform (CANHR)
California Association of Public Authorities (CAPA)
California Continuing Care Residents Association (CALCRA)
Congress of California Seniors (CCS)
Consumer Federation of California (CFC)
Long-Term Care Ombudsman Program of Lake & Mendocino Counties
Long Term Care Ombudsman Program of Monterey County
Ombudsman Services of Contra Costa
Planning and Services Area 2 Area Agency on Aging
Various individuals.

Opposition

LeadingAge California – Oppose Unless Amended

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