

AMENDED IN ASSEMBLY MARCH 8, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 275**

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**Introduced by Assembly Member Wood**

February 1, 2017

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An act to amend Sections 1336, 1336.1, ~~and 1336.2~~ 1336.2, and 1336.3 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 275, as amended, Wood. Long-term care facilities: requirements for changes resulting in the inability of the facility to care for its ~~patients~~ *residents*.

(1) Existing law imposes various notice and planning requirements upon a long-term health care facility before allowing a change in the status of the license or operation of the facility that results in the inability of the facility to care for its ~~patients~~, *patients or residents*, including a requirement for written notification to the affected patients or their guardians at least 30 days prior to the change. Under existing law, these requirements also include taking reasonable steps to medically, socially, and physically assess each affected patient *or resident* prior to a transfer due to the change, and, when 10 or more ~~patients~~ *residents* are likely to be transferred due to a change, the preparation and submission of a proposed relocation plan to the department for approval. A violation of these requirements is a misdemeanor and also may be enforced by the issuance of citations and the imposition of civil penalties.

This bill would expand the notice and planning requirements that a long-term health care facility provides before any change in the status of the license or in the operation of the facility that results in its inability to care for its ~~patients~~ *residents*. The bill would require a facility to

provide ~~90~~ 60 days' notice to the affected ~~patients~~ *residents* or their guardians and ~~90-day~~ 60-day written notice to the State Long-Term Care Ombudsman. The bill would modify who may perform the required assessments of the affected residents. The ~~department~~ *State Department of Public Health* would have the authority to require the facility, as part of the *proposed relocation* plan required when 10 or more residents are likely to be transferred, to provide additional information, including information ~~that demonstrates its compliance with federal and state laws for closure.~~ The bill would also require 2 or more facilities, that are within a 6-mile radius and propose to close within 30 days of one another, to comply with additional reporting requirements and would authorize the department to deny closure of the multiple facilities and to require the facilities to resubmit their closure plans with different ~~timelines.~~ *on the number of residents affected by the proposed closure.* By expanding the notice and reporting requirements, the bill would expand a crime, and thus would impose a state-mandated local program. *This bill would also make technical, nonsubstantive changes to uniformly use the term "resident" and refer to the State Department of Public Health in these provisions.*

(2) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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 1336 of the Health and Safety Code is
- 2 amended to read:
- 3 1336. (a) Notwithstanding any other law, a long-term health
- 4 care facility shall give written notice to the affected ~~patients~~
- 5 *residents* or to the guardians of the affected ~~patients~~ *residents* at
- 6 least ~~90~~ 60 days prior to any change in the status of the license or
- 7 in the operation of the facility resulting in the inability of the
- 8 facility to care for its ~~patients.~~ *residents.*
- 9 (b) If ~~patients'~~ *residents'* placement problems are encountered
- 10 ~~which~~ *that* cannot be satisfactorily resolved within this ~~90-day~~
- 11 *60-day* period, the State Department of Public Health and the health

1 facility shall agree on an extension which shall not exceed an  
2 additional ~~90~~ 60 days.

3 (c) The facility shall provide an appropriate team of professional  
4 staff to assist ~~patients~~ residents and families in obtaining alternative  
5 placement. *The facility shall provide notification of a community*  
6 *meeting for residents and their families, and to local health*  
7 *authorities, including, but not limited to, the State Department of*  
8 *Public Health representative and the local ombudsman program.*

9 (d) This section shall not apply to actions initiated by the  
10 ~~department~~ State Department of Public Health to suspend or revoke  
11 the license.

12 SEC. 2. Section 1336.1 of the Health and Safety Code is  
13 amended to read:

14 1336.1. (a) After notifying its affected ~~patients~~, residents, the  
15 facility shall, in response to inquiries made by prospective ~~patients~~  
16 residents or their representatives, include notification of the change  
17 in the status of the license or the operation of the facility.

18 (b) The facility shall also give written notification to the office  
19 of the State Long-Term Care Ombudsman of the change in the  
20 status of the license or the operation of the facility at least ~~90~~ 60  
21 days prior to any change in the status of the license or the operation  
22 of the facility.

23 SEC. 3. Section 1336.2 of the Health and Safety Code is  
24 amended to read:

25 1336.2. (a) Before residents are transferred due to any change  
26 in the status of the license or operation of a facility, including a  
27 facility closure or voluntary or involuntary termination of a  
28 facility's Medi-Cal or Medicare certification, the facility shall take  
29 reasonable steps to transfer affected residents safely and minimize  
30 possible transfer trauma by, at a minimum, doing all of the  
31 following:

32 (1) Be responsible for ensuring that the resident's attending  
33 physician *or the facility medical director, if the resident does not*  
34 *have an attending physician*, completes the medical assessment  
35 of the resident's condition and susceptibility to adverse health  
36 consequences, including psychosocial effects, prior to written  
37 notice of transfer being given to the resident. The assessment shall  
38 not be considered complete unless it provides, in accordance with  
39 these assessments, recommendations for counseling, followup  
40 visits, and other recommended services, by designated health

1 professionals, and for preventing or ameliorating potential adverse  
2 health consequences in the event of transfer.

3 (2) Be responsible for ensuring that a licensed mental health  
4 professional *or a licensed social worker* and the facility nursing  
5 staff complete an assessment of the social and physical functioning  
6 of the resident based on the relevant portions of the minimum data  
7 set, as described in Section 14110.15 of the Welfare and Institutions  
8 Code, before written notice of transfer is given to the resident. The  
9 assessment shall not be considered complete unless it provides  
10 recommendations for preventing or ameliorating potential adverse  
11 health consequences in the event of transfer. The assessment may  
12 be amended because of a change in the resident's health care needs.  
13 The assessment shall also include a recommendation for the type  
14 of facility that would best meet the resident's needs.

15 (3) (A) Be responsible for evaluating the relocation needs of  
16 the resident including proximity to the resident's representative  
17 and determine the most appropriate and available type of future  
18 care and services for the resident before written notice of transfer  
19 is given to the resident or the resident's representative. The health  
20 facility shall discuss the evaluation and medical assessment with  
21 the resident or the resident's representative and make the evaluation  
22 and assessment part of the medical records for transfer.

23 (B) If the resident or resident's representative chooses to make  
24 a transfer prior to completion of assessments, the facility shall  
25 inform the resident or the resident's representative, in writing, of  
26 the importance of obtaining the assessments and followup  
27 consultation.

28 (4) At least 60 days in advance of the transfer, inform the  
29 resident or the resident's representative of alternative facilities that  
30 are available and adequate to meet resident and family needs.

31 (5) Arrange for appropriate future medical care and services,  
32 unless the resident or resident's representative has otherwise made  
33 these arrangements. This requirement does not obligate a facility  
34 to pay for future care and services.

35 (b) The facility shall provide an appropriate team of professional  
36 staff to perform the services required in subdivision (a).

37 (c) The facility shall also give written notice to affected residents  
38 or their representatives, advising them of the requirements in  
39 subdivision (a) at least 60 days in advance of transfer. If a facility  
40 is required to give written notice pursuant to Section 1336, then

1 the notice shall advise the affected resident or resident's  
2 representative of the requirements in subdivision (a). If the transfer  
3 is made pursuant to subdivision (g), the notice shall include  
4 notification to the resident or resident's representative that the  
5 transfer plan is available to the resident or resident's representative  
6 free of charge upon request.

7 (d) In the event of a temporary suspension of a facility's license  
8 pursuant to Section 1296, the 60-day notice requirement in  
9 subdivision (c) shall not apply, but the facility shall provide the  
10 relocation services required in subdivision (a) unless the ~~department~~  
11 *State Department of Public Health* provides the services pursuant  
12 to subdivision (f).

13 (e) The ~~department~~ *State Department of Public Health* may  
14 make available assistance for the placement of hard-to-place  
15 residents based on the ~~department's~~ *its* determination of the benefit  
16 and necessity of that assistance. A hard-to-place resident is a  
17 resident whose level of care, physical malady, or behavioral  
18 management needs are substantially beyond the norm.

19 (f) The ~~department~~ *State Department of Public Health* may  
20 provide, or arrange for the provision of, necessary relocation  
21 services at a facility, including medical assessments, counseling,  
22 and placement of ~~patients, residents,~~ if the ~~department~~ *it* determines  
23 that these services are needed promptly to prevent adverse health  
24 consequences to ~~patients, residents,~~ and the facility refuses, or  
25 does not have adequate staffing, to provide the services. In these  
26 cases, the facility or the licensee shall reimburse the ~~department~~  
27 *State Department of Public Health* for the cost of providing the  
28 relocation services. The ~~department's~~ *State Department of Public*  
29 *Health's* participation shall not relieve the facility of any  
30 responsibility under this section. If the ~~department~~ *State Department*  
31 *of Public Health* does not provide or arrange for the provision of  
32 the necessary relocation services, and the facility refuses to provide  
33 the relocation services required in subdivision (a), then the  
34 ~~department~~ *State Department of Public Health* shall request that  
35 the Attorney General's office or the local district attorney's office  
36 seek injunctive relief and damages in the same manner as provided  
37 for in Chapter 5 (commencing with Section 17200) of Part 2 of  
38 Division 7 of the Business and Professions Code.

39 (g) If 10 or more residents are likely to be transferred due to  
40 any voluntary or involuntary change in the status of the license or

1 operation of a facility, including a facility closure or voluntary or  
2 involuntary termination of a facility's Medi-Cal or Medicare  
3 certification, the facility shall submit a proposed relocation plan  
4 for the affected residents to the ~~department~~ *State Department of*  
5 *Public Health* for approval at least 30 days prior to the written  
6 transfer notification given to any resident or resident's  
7 representative. The *proposed relocation* plan shall provide for  
8 implementation of the relocation services in subdivision (a) and  
9 shall describe the availability of beds in the area for residents to  
10 be transferred, the proposed discharge process, and the staffing  
11 available to assist in the transfers. ~~The~~ *The proposed relocation*  
12 *plan shall include, but not be limited to, all of the following*  
13 *information:*

14 (1) *The number of residents affected by the proposed closure.*

15 (2) *The number of residents who do not have a legal*  
16 *representative and do not have the capacity to make decisions for*  
17 *themselves as described in Section 1418.8.*

18 (3) *Attestation that the facility completed a medical assessment*  
19 *of each resident.*

20 (4) *The availability of alternative skilled nursing facility beds*  
21 *or other available long-term care beds within the community.*

22 (5) *The reason for the proposed closure.*

23 (6) *The actions the facility is taking to transfer affected residents*  
24 *safely and minimize possible transfer trauma.*

25 ~~The proposed relocation plan shall become effective five~~  
26 ~~working days after upon~~ the date the ~~department~~ *State Department*  
27 *of Public Health* grants its approval. The ~~department~~ *State*  
28 *Department of Public Health* shall base its approval of a *proposed*  
29 relocation plan on the standards specified in this ~~section.~~ *section,*  
30 *including, but not limited to, its determination that the plan*  
31 *provides adequate protections to minimize transfer trauma for*  
32 *residents.* The ~~department~~ *State Department of Public Health* shall  
33 promptly either approve or reject the *proposed relocation* plan  
34 within 14 working days of receipt from the facility. If the  
35 ~~department~~ *State Department of Public Health* rejects the *proposed*  
36 relocation plan, the facility may resubmit amended *proposed*  
37 relocation plans, each of which the ~~department~~ *State Department*  
38 *of Public Health* shall promptly either approve or reject within 14  
39 working days of receipt from the facility. ~~The department shall~~  
40 ~~have the authority to require the facility, as part of the closure and~~

1 relocation plans, to provide specific interventions that the  
2 transferring facility will implement to help prevent possible resident  
3 transfer trauma, identify facilities that are available to receive  
4 residents for transfer, and provide timelines with specific dates  
5 that demonstrate compliance with both federal and state laws and  
6 regulations for closure with the required notifications to residents  
7 or the resident's legal and responsible parties. Until one *proposed*  
8 *relocation* plan has been approved by the ~~department~~, *State*  
9 *Department of Public Health*, and until the facility complies with  
10 the requirements in subdivision (a), the facility may not issue a  
11 notice of transfer. The facility shall submit the *proposed* relocation  
12 plan to the local long-term care ombudsman at the same time the  
13 plan is submitted to the ~~department~~. *State Department of Public*  
14 *Health. Once the State Department of Public Health approves a*  
15 *proposed relocation plan, it shall post the plan on its Internet Web*  
16 *site within 10 business days.*

17 (h) The resident shall have the right to remain in the facility for  
18 up to ~~90~~ 60 days after the approved written notice of the facility's  
19 intent to transfer the resident if an appropriate placement based on  
20 the relocation assessment and relocation recommendations has not  
21 been made. The facility shall be required to maintain an appropriate  
22 level of staffing in order to ensure the well-being of all the residents  
23 as they continue to reside in the facility. The ~~department~~ *State*  
24 *Department of Public Health* shall monitor the facility's staging  
25 of transfers, and, if it determines that the facility's staging of  
26 placements is causing a detrimental impact on those residents being  
27 transferred, then the ~~department~~ *State Department of Public Health*  
28 shall limit the number of residents being transferred per day until  
29 the ~~department~~ *it* determines ~~that it would be~~ *when it is* safe to  
30 increase the numbers.

31 (i) ~~(1) In the event that two or more facilities within a six-mile~~  
32 ~~radius propose to close on the same date, or within 30 days of one~~  
33 ~~another, the facilities shall each prepare a community impact report.~~  
34 ~~The community impact report shall be included in the proposed~~  
35 ~~closure plan. The report shall include all of the following~~  
36 ~~information:~~

37 (A) ~~The total number of residents affected by the proposed~~  
38 ~~closures.~~

1 ~~(B) The number of additional skilled nursing facilities within~~  
 2 ~~5, 10, 25, and 50 miles of the facilities proposing to close and the~~  
 3 ~~number of available beds at each of those facilities.~~

4 ~~(C) The reason for the proposed closures.~~

5 ~~(D) The number of residents at each facility proposed for closure~~  
 6 ~~that could potentially experience transfer trauma.~~

7 ~~(E) The number of residents at each facility proposed for closure~~  
 8 ~~that are unrepresented or under conservatorship.~~

9 ~~(F) The number of residents at each facility proposed for closure~~  
 10 ~~that are taking psychotropic medications.~~

11 ~~(G) The number of residents at each facility proposed for closure~~  
 12 ~~that have a dementia diagnosis.~~

13 ~~(2) The facilities proposing to close shall hold at least one~~  
 14 ~~community meeting to solicit input from the affected community.~~

15 ~~(3) If the facilities proposing to close are owned by the same~~  
 16 ~~entity, and are proposing to close simultaneously, the department~~  
 17 ~~shall have the authority to deny approval of simultaneous closures~~  
 18 ~~of the multiple facilities and require the facilities to resubmit their~~  
 19 ~~closure plans with different timelines.~~

20 *SEC. 4. Section 1336.3 of the Health and Safety Code is*  
 21 *amended to read:*

22 1336.3. (a) In the event of an emergency, such as earthquake,  
 23 fire, or flood ~~which that~~ threatens the safety or welfare of ~~patients~~  
 24 ~~the residents~~ in a facility, the facility shall do all of the following:

25 (1) Notify, as soon as possible, family members, ~~patients'~~  
 26 ~~guardians, guardians of residents, the state department, State~~  
 27 ~~Department of Public Health, and the ombudsperson for that~~  
 28 facility of the emergency and the steps that the facility plans to  
 29 take for the ~~patient's welfare. welfare of the residents.~~

30 (2) Provide the services set forth in subdivision (a) of Section  
 31 1336.2 if further relocation of ~~the patient a resident~~ is necessary.

32 (3) Undertake prompt medical assessment of, and provide  
 33 counseling as needed to, ~~patients residents~~ whose further relocation  
 34 is not necessary but who have suffered or may suffer adverse health  
 35 consequences due to the emergency or sudden transfer.

36 (b) (1) Each facility shall adopt a written emergency  
 37 preparedness plan and shall make that plan available to the ~~state~~  
 38 ~~department State Department of Public Health~~ upon request. The  
 39 plan shall comply with the requirements in this section and the  
 40 ~~state department's State Department of Public Health's~~

1 Contingency Plan for Licensed Facilities. The facility, as part of  
2 its emergency preparedness planning, shall seek to enter into  
3 reciprocal or other agreements with nearby facilities and hospitals  
4 to provide temporary care for ~~patients~~ *residents* in the event of an  
5 emergency. The facility shall report to the ~~state department~~ *State*  
6 *Department of Public Health* the name of any facility or hospital  
7 ~~which~~ *that* fails or refuses to enter into such agreements and the  
8 stated reason for that failure or refusal.

9 ~~Section~~

10 (2) *Section* 1336.2 shall not apply in the event of transfers made  
11 pursuant to an emergency preparedness plan. In any event,  
12 however, the facility shall provide the notice and services described  
13 in subdivisions (a) to (c), inclusive.

14 ~~SEC. 4.~~

15 *SEC. 5.* No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 the only costs that may be incurred by a local agency or school  
18 district will be incurred because this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the penalty  
20 for a crime or infraction, within the meaning of Section 17556 of  
21 the Government Code, or changes the definition of a crime within  
22 the meaning of Section 6 of Article XIII B of the California  
23 Constitution.