

AMENDED IN SENATE MAY 5, 2015
AMENDED IN SENATE APRIL 23, 2015

SENATE BILL

No. 145

Introduced by Senator Pan

January 27, 2015

An act to add Section 1262.3 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, Pan. Health facilities: patient transporting.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Care Services. A violation of these provisions is a crime.

Existing law requires each hospital to have in effect a written discharge planning policy and process that requires appropriate arrangements for posthospital care and a process that requires that each patient be informed, orally or in writing, of the continuing care requirements following discharge from the hospital, as specified.

Existing law also prohibits a hospital from causing the transfer of homeless patients from one county to another county for the purpose of receiving supportive services from a social service agency, health care service provider, or nonprofit social service agency within the other county, without prior notice and authorization, as specified.

This bill would prohibit a general acute care hospital, acute psychiatric hospital, or special hospital from causing a patient who, in the judgment of the attending physician or other licensed health care professional, acting within the scope of his or her practice, is at risk of serious injury or death as a result of clinical alcohol intoxication, to be transported to another location except when the patient is either medically stabilized

or appropriately transferred to another health facility pursuant to another provision of law. ~~The bill would make the violation of that provision subject to civil penalties, as specified. The bill would require these civil penalties, upon appropriation, to be used exclusively for the provision of posthospital recuperative beds, transitional housing, and mental health counseling programs for the homeless. The bill would authorize the department, if it determines that a hospital has violated the requirements of the bill, to determine further that the violation is an immediate jeopardy violation pursuant to specified law and regulations, and to assess penalties accordingly.~~

By expanding the scope of an existing crime, this bill would result in a state-mandated local program.

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 1262.3 is added to the Health and Safety
- 2 Code, to read:
- 3 1262.3. (a) A general acute care hospital, acute psychiatric
- 4 hospital, or special hospital shall not cause a patient who, in the
- 5 judgment of the attending physician or other licensed health care
- 6 professional, acting within his or her scope of practice, is at risk
- 7 of serious injury or death as a result of clinical alcohol intoxication,
- 8 to be transported to another location, including, but not limited to,
- 9 police custody, a correctional facility, or a county jail, except when
- 10 the patient is medically stabilized, as defined in subdivision (j) of
- 11 section 1317.1, or appropriately transferred to another licensed
- 12 health facility pursuant to another law.
- 13 (b) *If the department determines that a hospital has violated*
- 14 *subdivision (a), the department may determine that the violation*
- 15 *is an immediate jeopardy violation pursuant to Section 1280.3 and*
- 16 *regulations promulgated thereunder, and may assess penalties*
- 17 *accordingly.*

1 ~~(b) If the department determines that a hospital has violated~~
2 ~~subdivision (a), it shall consider, at a minimum, all of the following~~
3 ~~actions:~~

4 ~~(1) Assessment of an administrative penalty pursuant to Section~~
5 ~~1280.1 or 1280.3.~~

6 ~~(2) Referral to appropriate authorities for consideration of~~
7 ~~commencing an action for violation of Section 1290.~~

8 ~~(c) This section shall not apply to any of the following:~~

9 ~~(1) Patients in state hospitals operated and administered by the~~
10 ~~State Department of State Hospitals who are civilly or criminally~~
11 ~~committed and subject to transfer to the Department of Corrections~~
12 ~~and Rehabilitation, the Forensic Conditional Release Program, or~~
13 ~~to a court for further proceedings.~~

14 ~~(2) Patients who remain under the jurisdiction of the Department~~
15 ~~of Corrections and Rehabilitation.~~

16 ~~(3) Residents of state developmental centers operated and~~
17 ~~administered by the State Department of Developmental Services~~
18 ~~who are discharged to the community pursuant to the Lanterman~~
19 ~~Developmental Disabilities Services Act (Division 4.5~~
20 ~~(commencing with Section 4500) of the Welfare and Institutions~~
21 ~~Code), and in accordance with an individual program plan, as~~
22 ~~defined in Section 4646 of the Welfare and Institutions Code,~~
23 ~~developed specifically for the resident.~~

24 ~~(d) (1) Upon a second violation of subdivision (a), a general~~
25 ~~acute care hospital, acute psychiatric hospital, or special hospital,~~
26 ~~shall be subject to a civil penalty of one hundred fifty thousand~~
27 ~~dollars (\$150,000). The Attorney General, a district attorney, a~~
28 ~~city attorney of a city having a population in excess of 750,000,~~
29 ~~or a city attorney of a city and county, may bring a civil action in~~
30 ~~the name of the people of the State of California seeking civil~~
31 ~~penalties, preventive relief, including an application for a~~
32 ~~permanent or temporary injunction, restraining order, or other~~
33 ~~order against the health facility.~~

34 ~~(2) Any general acute care hospital, acute psychiatric hospital,~~
35 ~~or special hospital criminally convicted of a violation of~~
36 ~~subdivision (a), that has been previously penalized for two separate~~
37 ~~violations of subdivision (a) may be subject to civil penalties of~~
38 ~~no less than three hundred thousand dollars (\$300,000).~~

1 ~~(3) In determining the civil penalty to be imposed pursuant to~~
2 ~~this subdivision, the court shall consider all relevant facts,~~
3 ~~including, but not limited to, all of the following:~~

4 ~~(A) Whether the violation exposed the patient to a risk of death~~
5 ~~or serious physical harm.~~

6 ~~(B) Whether the violation had a direct or immediate relationship~~
7 ~~to the health, safety, or security of the patient.~~

8 ~~(C) Evidence, if any, of willfulness.~~

9 ~~(D) The number of repeated violations.~~

10 ~~(E) The presence or absence of good faith efforts by the~~
11 ~~defendant to prevent the violation.~~

12 ~~(4) Any investigative costs incurred in the enforcement of this~~
13 ~~subdivision, including, but not limited to, expert's and attorney's~~
14 ~~fees incurred by the Attorney General, district attorney, or city~~
15 ~~attorney in carrying out this subdivision shall be recoverable from~~
16 ~~the liable general acute care hospital, acute psychiatric hospital,~~
17 ~~or special hospital.~~

18 ~~(5) If the action authorized by this subdivision is brought by the~~
19 ~~Attorney General, the civil penalty collected shall be paid to the~~
20 ~~General Fund. If the action is brought by a district attorney, the~~
21 ~~civil penalty collected shall be paid to the treasurer of the county~~
22 ~~in which the judgment was entered. If the action is brought by a~~
23 ~~city attorney, the civil penalty collected shall be paid to the~~
24 ~~treasurer of the city in which the judgment was entered. The funds~~
25 ~~described in this paragraph shall, upon appropriation, be used~~
26 ~~exclusively for the provision of posthospital recuperative beds,~~
27 ~~transitional housing, and mental health counseling programs for~~
28 ~~the homeless.~~

29 ~~(6) Nothing in this subdivision shall preclude criminal~~
30 ~~prosecution or civil action under any other law. Furthermore,~~
31 ~~nothing in this subdivision shall limit or abridge the authority of~~
32 ~~any city or county to adopt an ordinance authorizing investigations~~
33 ~~or inspections, or implementing and enforcing restrictions dealing~~
34 ~~with patient transportation.~~

35 ~~(e)~~

36 ~~(c) Nothing in this section shall be construed to contradict any~~
37 ~~other law related to workplace violence prevention, including, but~~
38 ~~not limited to, workplace violence standards adopted by the~~
39 ~~Occupational Safety and Health Standards Board.~~

1 SEC. 2. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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