

RESOLUTION 05-02-2016

DIGEST

Health and Safety: Short-Term Residents

Amends Health and Safety Code sections 1250 and 1599 to extend patient rights to persons in a short-term care facility.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 1250 and 1599 to read as follows:

§1250

1 As used in this chapter, "health facility" means a facility, place, or building that is
2 organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human
3 illness, physical or mental, including convalescence and rehabilitation and including care during
4 and after pregnancy, or for any one or more of these purposes, for one or more persons, to which
5 the persons are admitted for a 24-hour stay or longer, and includes the following types:

6 (a) "General acute care hospital" means a health facility having a duly constituted
7 governing body with overall administrative and professional responsibility and an organized
8 medical staff that provides 24-hour inpatient care, including the following basic services:
9 medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A
10 general acute care hospital may include more than one physical plant maintained and operated on
11 separate premises as provided in Section 1250.8. A general acute care hospital that exclusively
12 provides acute medical rehabilitation center services, including at least physical therapy,
13 occupational therapy, and speech therapy, may provide for the required surgical and anesthesia
14 services through a contract with another acute care hospital. In addition, a general acute care
15 hospital that, on July 1, 1983, provided required surgical and anesthesia services through a
16 contract or agreement with another acute care hospital may continue to provide these surgical
17 and anesthesia services through a contract or agreement with an acute care hospital. The general
18 acute care hospital operated by the State Department of Developmental Services at Agnews
19 Developmental Center may, until June 30, 2007, provide surgery and anesthesia services through
20 a contract or agreement with another acute care hospital. Notwithstanding the requirements of
21 this subdivision, a general acute care hospital operated by the Department of Corrections and
22 Rehabilitation or the Department of Veterans Affairs may provide surgery and anesthesia
23 services during normal weekday working hours, and not provide these services during other
24 hours of the weekday or on weekends or holidays, if the general acute care hospital otherwise
25 meets the requirements of this section. A "general acute care hospital" includes a "rural general
26 acute care hospital." However, a "rural general acute care hospital" shall not be required by the
27 department to provide surgery and anesthesia services. A "rural general acute care hospital" shall
28 meet either of the following conditions:

29 (1) The hospital meets criteria for designation within peer group six or eight, as defined
30 in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20,
31 1982.

32 (2) The hospital meets the criteria for designation within peer group five or seven, as
33 defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated

34 December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling
35 place of 15,000 or less population according to the 1980 federal census.

36 (b) "Acute psychiatric hospital" means a health facility having a duly constituted
37 governing body with overall administrative and professional responsibility and an organized
38 medical staff that provides 24-hour inpatient care for persons with mental health disorders or
39 other patients referred to in Division 5 (commencing with Section 5000) or Division 6
40 (commencing with Section 6000) of the Welfare and Institutions Code, including the following
41 basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

42 (c) (1) "Skilled nursing facility" means a health facility that provides skilled nursing care
43 and supportive care to patients whose primary need is for availability of skilled nursing care ~~on~~
44 ~~an extended basis.~~

45 (2) "Skilled nursing facility" includes a "small house skilled nursing facility (SHSNF),"
46 as defined in Section 1323.5.

47 (d) "Intermediate care facility" means a health facility that provides inpatient care to
48 ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision
49 and need supportive care, but who do not require availability of continuous skilled nursing care.

50 (e) "Intermediate care facility/developmentally disabled habilitative" means a facility
51 with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental,
52 and supportive health services to 15 or fewer persons with developmental disabilities who have
53 intermittent recurring needs for nursing services, but have been certified by a physician and
54 surgeon as not requiring availability of continuous skilled nursing care.

55 (f) "Special hospital" means a health facility having a duly constituted governing body
56 with overall administrative and professional responsibility and an organized medical or dental
57 staff that provides inpatient or outpatient care in dentistry or maternity.

58 (g) "Intermediate care facility/developmentally disabled" means a facility that provides
59 24-hour personal care, habilitation, developmental, and supportive health services to persons
60 with developmental disabilities whose primary need is for developmental services and who have
61 a recurring but intermittent need for skilled nursing services.

62 (h) "Intermediate care facility/developmentally disabled-nursing" means a facility with a
63 capacity of 4 to 15 beds that provides
64 24-hour personal care, developmental services, and nursing supervision for persons with
65 developmental disabilities who have intermittent recurring needs for skilled nursing care but
66 have been certified by a physician and surgeon as not requiring continuous skilled nursing care.
67 The facility shall serve medically fragile persons with developmental disabilities or who
68 demonstrate significant developmental delay that may lead to a developmental disability if not
69 treated.

70 (i) (1) "Congregate living health facility" means a residential home with a capacity,
71 except as provided in paragraph (4), of no more than 18 beds, that provides inpatient care,
72 including the following basic services: medical supervision, 24-hour skilled nursing and
73 supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified
74 in paragraph

75 (2) The primary need of congregate living health facility residents shall be for availability
76 of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is
77 generally less intense than that provided in general acute care hospitals but more intense than
78 that provided in skilled nursing facilities.

79 (2) Congregate living health facilities shall provide one or more of the following services:

80 (A) Services for persons who are mentally alert, persons with physical disabilities, who
81 may be ventilator dependent.

82 (B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-
83 threatening illness, or both. Terminal illness means the individual has a life expectancy of six
84 months or less as stated in writing by his or her attending physician and surgeon. A "life-
85 threatening illness" means the individual has an illness that can lead to a possibility of a
86 termination of life within five years or less as stated in writing by his or her attending physician
87 and surgeon.

88 (C) Services for persons who are catastrophically and severely disabled. A person who is
89 catastrophically and severely disabled means a person whose origin of disability was acquired
90 through trauma or nondegenerative neurologic illness, for whom it has been determined that
91 active rehabilitation would be beneficial and to whom these services are being provided. Services
92 offered by a congregate living health facility to a person who is catastrophically disabled shall
93 include, but not be limited to, speech, physical, and occupational therapy.

94 (3) A congregate living health facility license shall specify which of the types of persons
95 described in paragraph (2) to whom a facility is licensed to provide services.

96 (4) (A) A facility operated by a city and county for the purposes of delivering services
97 under this section may have a capacity of 59 beds.

98 (B) A congregate living health facility not operated by a city and county servicing
99 persons who are terminally ill, persons who have been diagnosed with a life-threatening illness,
100 or both, that is located in a county with a population of 500,000 or more persons, or located in a
101 county of the 16th class pursuant to Section 28020 of the Government Code, may have not more
102 than 25 beds for the purpose of serving persons who are terminally ill.

103 (5) A congregate living health facility shall have a noninstitutional, homelike
104 environment.

105 (j) (1) "Correctional treatment center" means a health facility operated by the Department
106 of Corrections and Rehabilitation, the Department of Corrections and Rehabilitation, Division of
107 Juvenile Facilities, or a county, city, or city and county law enforcement agency that, as
108 determined by the department, provides inpatient health services to that portion of the inmate
109 population who do not require a general acute care level of basic services. This definition shall
110 not apply to those areas of a law enforcement facility that houses inmates or wards who may be
111 receiving outpatient services and are housed separately for reasons of improved access to health
112 care, security, and protection. The health services provided by a correctional treatment center
113 shall include, but are not limited to, all of the following basic services: physician and surgeon,
114 psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may
115 provide the following services: laboratory, radiology, perinatal, and any other services approved
116 by the department.

117 (2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment
118 center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with
119 the exception of the requirement that patients remain less than 24 hours.

120 (3) Correctional treatment centers shall maintain written service agreements with general
121 acute care hospitals to provide for those inmate physical health needs that cannot be met by the
122 correctional treatment center.

123 (4) Physician and surgeon services shall be readily available in a correctional treatment
124 center on a 24-hour basis.

125 (5) It is not the intent of the Legislature to have a correctional treatment center supplant
126 the general acute care hospitals at the California Medical Facility, the California Men's Colony,
127 and the California Institution for Men. This subdivision shall not be construed to prohibit the
128 Department of Corrections and Rehabilitation from obtaining a correctional treatment center
129 license at these sites.

130 (k) "Nursing facility" means a health facility licensed pursuant to this chapter that is
131 certified to participate as a provider of care either as a skilled nursing facility in the federal
132 Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et
133 seq.) or as a nursing facility in the federal Medicaid Program under Title XIX of the federal
134 Social Security Act (42 U.S.C. Sec. 1396 et seq.), or as both.

135 (l) Regulations defining a correctional treatment center described in subdivision (j) that
136 is operated by a county, city, or city and county, the Department of Corrections and
137 Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile
138 Facilities, shall not become effective prior to, or, if effective, shall be inoperative until January 1,
139 1996, and until that time these correctional facilities are exempt from any licensing requirements.

140 (m) "Intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-
141 CN)" means a homelike facility with a capacity of four to eight, inclusive, beds that provides 24-
142 hour personal care, developmental services, and nursing supervision for persons with
143 developmental disabilities who have continuous needs for skilled nursing care and have been
144 certified by a physician and surgeon as warranting continuous skilled nursing care. The facility
145 shall serve medically fragile persons who have developmental disabilities or demonstrate
146 significant developmental delay that may lead to a developmental disability if not treated.
147 ICF/DD-CN facilities shall be subject to licensure under this chapter upon adoption of licensing
148 regulations in accordance with Section 1275.3. A facility providing continuous skilled nursing
149 services to persons with developmental disabilities pursuant to Section 14132.20 or 14495.10 of
150 the Welfare and Institutions Code shall apply for licensure under this subdivision within 90 days
151 after the regulations become effective, and may continue to operate pursuant to those sections
152 until its licensure application is either approved or denied.

153 (n) "Hospice facility" means a health facility licensed pursuant to this chapter with a
154 capacity of no more than 24 beds that provides hospice services. Hospice services include, but
155 are not limited to, routine care, continuous care, inpatient respite care, and inpatient hospice care
156 as defined in subdivision (d) of Section 1339.40, and is operated by a provider of hospice
157 services that is licensed pursuant to Section 1751 and certified as a hospice pursuant to Part 418
158 of Title 42 of the Code of Federal Regulations.

159
160 §1599

161 It is the intent of the Legislature in enacting this chapter to expressly set forth
162 fundamental human rights which all patients shall be entitled to in a ~~skilled nursing, intermediate~~
163 ~~care facility, or hospice facility~~ health facility, as defined in Section 1250, and to ensure that
164 patients in such facilities are advised of their fundamental rights and the obligations of the
165 facility.

166

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Pursuant *California Health & Safety Code Section 1599.1(a) and (c)*, patients admitted to long term care facilities shall be entitled to “adequate number of qualified personnel” and “food of the quantity to meet the patients’ needs in accordance with the physician’s orders.” However, the section does not apply to patients admitted for the purposes of receiving short term, respite, and rehabilitation care.

Patients, primarily seniors, are frequently admitted to skilled nursing facilities for short term, respite, and rehabilitation services to recover from injuries or to seek treatment for their medical conditions. Often these patients have a host of other illnesses that require monitoring, such as diabetes. However, under the current Code, such patients are not afforded the same protections as long term residents in the same facilities.

The legislature, when enacting Section 1599, declared that patients within long term care facilities shall be entitled to “fundamental human rights,” such as “adequate number of qualified personnel” attending to their needs and “food of the quantity to meet the patients’ needs in accordance with the physician’s orders.” *California Health & Safety Code Section 1599; 1599.1(a) and (c)*. However, the legislature enacted the provision without regard to the approximately 250,000 Californians who are admitted to skilled nursing facilities for a period of less than three months each year. *California Association of Health Facilities (CAHF)*. http://www.cahf.org/Portals/0/Public/Media/LTC_Resident_Facts_SNF%202015%20final.pdf The problem created a black hole in the care of these Californians, which creates dangerous and potentially deadly consequences. For example, these facilities are not required to provide these residents, a nutritionally balanced diet for those living with Diabetes. According to the Americans with Diabetes Association (ADA), 25.9% of seniors over the age of 65 have been diagnosed with Diabetes. <http://www.diabetes.org/diabetes-basics/statistics/?referrer=https://www.bing.com/>. An uncontrolled diet can cause stroke, heart attack, kidney disease, blindness, coma, and even death. *Id.* Even if the patient is only admitted to short term care, the long term effects of a diet which is not measured, planned, and filled with inexpensive starches, could have effects that create a worsened condition than the underlying reason in which they were admitted.

The Solution: This resolution would implement the exact same rights in which long term care residents are already entitled to under Health & Safety Code sections 1250 and 1599. The amended language does not create new rights that skilled nursing facilities are not already required to provide to long term patients. This is a common sense measure to ensure that all disabled and elderly patients the same “fundamental human rights” the legislature envisioned when it enacted these code sections.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule, other than those identified above.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The full Conference rejected that recommendation and approved the resolution.