

Date of Hearing: March 17, 2020

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 2037 (Wicks) – As Introduced February 3, 2020

SUBJECT: Health facilities: notices.

SUMMARY: Increases the amount of notice a hospital that provides emergency medical services (EMS) is required to provide, from at least 90 days to at least 180 days, before a planned reduction or elimination in the level of EMS. Increases the notice requirements from 30 to at least 180 days prior to closing a facility and from 30 days to at least 90 days prior to eliminating or relocating a supplemental service. Specifically, **this bill:**

- 1) Requires a hospital that provides EMS to provide notice, at least 180 days before a planned reduction or elimination in the level of EMS, to the Department of Public Health (DPH), the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital.
- 2) Requires the hospital to provide public notice of the intended change in a manner that is likely to reach a significant number of residents of the community serviced by that facility, at the same time as the notice described in 1) above.
- 3) Requires the public notice described in 2) above to include, but not be limited to, all of the following:
 - a) Written notice to the city council of the city in which the hospital is located;
 - b) A continuous notice posted in a conspicuous location on the homepage of the hospital's internet website;
 - c) A notice published for a minimum of 15 publication dates in a conspicuous location within a newspaper of general circulation serving the local geographical area in which the hospital is located;
 - d) A continuous notice posted in a conspicuous location within the internet website of a newspaper of general circulation serving the local geographical area in which the hospital is located; and,
 - e) A notice posted at the entrance of every community clinic within the affected county in which the hospital is located that grants voluntary permission for posting.
- 4) Requires a hospital or acute psychiatric hospital, not less than 180 days prior to closing, or 90 days prior to eliminating a supplemental service, to provide public notice of the proposed closure or elimination of the supplemental service.
- 5) Requires the public notice described in 4) above to include, but not be limited to, all of the following:
 - a) Written notice to the city council of the city in which the hospital is located;
 - b) A continuous notice posted in a conspicuous location on the homepage of the hospital's internet website;
 - c) A notice published for a minimum of 15 dates in a conspicuous location within a newspaper of general circulation serving the local geographical area in which the hospital is located;

- d) A continuous notice posted in a conspicuous location within the internet website of a newspaper of general circulation serving the local geographical area in which the hospital is located; and,
 - e) A notice posted at the entrance of every community clinic within the affected county in which the hospital is located that grants voluntary permission for posting.
- 6) Specifies that the provisions of this bill do not apply to a health facility that is forced to close or eliminate a service as the result of a natural disaster or state of emergency that prevents the health facility from being able to operate at its current level.

EXISTING LAW:

- 1) Licenses and regulates health facilities by DPH, including general acute care hospitals, acute psychiatric hospitals, and skilled nursing facilities, among others.
- 2) Requires any hospital that provides EMS to provide notice of a planned reduction or elimination of the level of EMS to DPH, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital, as soon as possible but not later than 90 days prior to the planned reduction or elimination of emergency services. Requires the hospital to also provide public notice, within the same time limits, in a manner that is likely to reach a significant number of residents of the community serviced by that facility.
- 3) Specifies that a hospital is not subject to the notice requirements in 2) above if DPH determines that the use of resources to keep the emergency center open substantially threatens the stability of the hospital as a whole, or if DPH cites the emergency center for unsafe staffing practices.
- 4) Permits a health facility license holder, with the approval of DPH, to surrender its license or special permit for suspension or cancellation by DPH. Requires DPH, before approving a downgrade or closure of emergency services, to receive a copy of an impact evaluation by the county to determine impacts of the closure or downgrade on the community. Permits the county to designate the local EMS agency (LEMSA) as the appropriate agency to conduct the impact evaluation. Requires development of the impact evaluation to incorporate at least one public hearing, and requires the impact evaluation and hearing to be completed within 60 days of the county receiving notification of intent to downgrade or close emergency services.
- 5) Requires a general acute care hospital or acute psychiatric hospital, not less than 30 days prior to closing the facility, eliminating a supplemental service, or relocating a supplemental service to a different campus, to provide public notice, containing specified information, of the proposed closure, elimination, or relocation, including a notice posted at the entrance to all affected facilities and a notice to DPH and the board of supervisors of the county in which the health facility is located.
- 6) Requires a health facility (which includes skilled nursing facilities, intermediate care facilities, and other types of facilities offering 24-hour care, in addition to hospitals) to make reasonable efforts to ensure that the community served by its facility is informed of a proposed downgrade, change or closure, including advertising the change in terms likely to be understood by a layperson, soliciting media coverage regarding the change, informing

patients of the facility of the impending change, and notifying contracting health care service plans. Requires the notice to include a description of the three nearest available comparable services in the community, and, if the health facility closing services serves Medi-Cal or Medicare patients, the facility to specify if the providers of the nearest available comparable services serve these patients.

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

COMMENTS:

1) PURPOSE OF THIS BILL. According to the author, the closures of hospitals and emergency departments (EDs) greatly threaten the future of California's healthcare safety net. Hospital closures can have a domino effect on impacted communities, beginning with increased ambulance turnaround times, increased pressure on hospitals in neighboring communities, and a reduction in the quality of patient care. The author states that her community has experienced this devastation after losing one hospital, and faces the loss of a second hospital in a few years. The author states the loss of two hospitals in the district will create a health care desert that will affect residents, patients and workers. The author concludes, that while the communities impacted by hospital closures have no say in the business decisions that lead to the closures, the least that the Legislature can do is give patients, residents and workers more time to work with their local leaders to find an alternative way to address their health care needs.

2) BACKGROUND.

a) ED use in California. According to the August 2018, California Health Care Foundation report (CHCF report), "California Emergency Departments: Use Grows as Coverage Expands," in 2016, 334 acute care hospitals in California operated EDs. The number of EDs has remained relatively stable since 2006, while the number of individual treatment stations within them has grown by 1,802 to reach 7,889 in 2016. California's EDs handled 14.6 visits in 2016, an increase of 44% since 2006. The supply of ED treatment stations increased in regions throughout the state, even those that experienced a decrease in EDs.

| | EMERGENCY DEPARTMENTS | | | TREATMENT STATIONS | | |
|---------------------|-----------------------|------------|------------|--------------------|--------------|------------|
| | 2006 | 2016 | CHANGE | 2006 | 2016 | CHANGE |
| Central Coast | 24 | 24 | 0% | 320 | 416 | 23% |
| Greater Bay Area | 64 | 65 | 2% | 1,240 | 1,545 | 20% |
| Inland Empire | 32 | 35 | 9% | 634 | 820 | 23% |
| Los Angeles County | 76 | 75 | -1% | 1,544 | 1,960 | 21% |
| Northern and Sierra | 40 | 38 | -5% | 344 | 425 | 19% |
| Orange County | 26 | 26 | 0% | 518 | 646 | 20% |
| Sacramento Area | 16 | 15 | -6% | 352 | 473 | 26% |
| San Diego Area | 20 | 20 | 0% | 476 | 733 | 35% |
| San Joaquin Valley | 39 | 36 | -8% | 659 | 871 | 24% |
| California | 337 | 334 | -1% | 6,087 | 7,889 | 23% |

Use of EDs varies widely across California, from a low of 311 visits per 1,000 residents in Orange County, to a high of 516 in Northern and Sierra Counties. Medi-Cal was the expected payer for 43% of all ED visits in 2016, compared to 26% for private payers and 21% for Medicare. Approximately one in every eight ED visits resulted in a hospital admission.

The CHCF report notes that long stays in an ED can be a sign that the ED is overcrowded or understaffed, or that there is a lack of available inpatient beds. In 2016, the median stay for California ED patients who were sent home was nearly three hours. That is 24 minutes longer than the median stay nationwide.

A CHCF Blog titled, “The State of Emergency: What the data tell us about emergency department use in California,” explains that ED visits are up regardless of the type of insurance a patient has, and the state is “likely to continue to see increased demand for emergency services as the population ages.” However, despite the increased demand for EMS, another CHCF report released in 2015, “California Hospitals: An Evolving Environment,” found that the number of acute hospitals in California is declining. Specifically, between 2004 and 2013, California acute hospitals declined by 4%, from 401 to 386, while the number of beds remained mostly unchanged: 28 hospitals closed, for a loss of about 4,032 beds; and, 20 hospitals opened with 2,487 beds.

- b) **Current process for closing an ED.** Under existing law, hospitals are required to provide notice at least 90 days prior to a planned reduction or elimination of the level of EMS to DPH, the local health department, and all health care service plans or other entities under contract with the hospital to provide services to enrollees. However, under a separate provision of law, which permits a hospital to surrender a license or permit with the approval of DPH, the law specifies that “before approving a downgrade or closure of emergency services,” the county or the LEMSA is required to conduct an impact evaluation of the downgrade or closure upon the community, and how that downgrade or closure will affect EMS provided by other entities. This impact evaluation is required to incorporate at least one public hearing, and must be done within 60 days of DPH receiving notice of the intent to downgrade or close EMS. However, despite the language stating “before approving a downgrade or closure of emergency services,” DPH has not interpreted this provision of law as giving it the ability to deny a hospital the ability to close or reduce EMS before an impact evaluation is submitted, and therefore the impact evaluation has become more of a tool to help the community and the LEMSA prepare for the reduction or closure.

The Emergency Medical Services Authority developed guidelines for the impact report and each county or its designated LEMSA is responsible for developing a policy specifying the criteria it will consider in conducting an impact evaluation. The notice to the county would trigger the impact evaluation that includes the effect of the downgrade or closure upon the community, including community access to emergency care, and how that downgrade or closure will affect EMS provided by other entities. DPH is not required to notify anyone else, and the statutes requiring hospitals to provide notice of closure do not include a provision for administrative penalties if the hospital fails to notify DPH.

As noted in existing law, above, DPH can permit the hospital to reduce or eliminate emergency services sooner than 90 days if DPH determines the use of resources to keep the ED open threatens the stability of the hospital as a whole or if DPH cites the hospital for unsafe staffing.

- c) **St. Vincent Medical Center closure.** The proponents of this bill cite the sudden closure of St. Vincent Medical Center (SVMC) as a reason for the need for additional notice prior to a hospital closure. On January 9, 2020, the owners, Verity Healthcare, informed the Los Angeles County EMS Agency (LACMA) that the hospital, located at 2131 W. 3rd Street in Los Angeles, would be closing on January 27, 2020, citing the dire financial situation as the reason for the closure. The closure notice to LACMA also requested immediate closure of the ED and a waiver for the 90-day closure notification requirement. LACMA immediately rerouted all 9-1-1 patient transports from SVMC to surrounding hospitals.

SVMC's ED treated 29,143 patients in 2018, approximately 80 patients per day. Of those patients, 3,673 were transported by the 9-1-1 system, approximately 10 patients per day. SVMC was not a designated trauma center. The Los Angeles County EMS Agency concluded in its impact evaluation that the closure of the ED and 67 critical care beds at SVMC will negatively impact the surrounding hospitals and the Los Angeles Fire Department, which reports longer transport times to alternate facilities and increased delay of prehospital personnel as they wait for transfer of patient care to hospital staff. The closure will also have a negative impact on access to, and delivery of, EMS in the downtown Los Angeles communities of Westlake, MacArthur Park and Echo Park.

- d) **The Worker Adjustment and Retraining Notification (WARN) Act.** The federal WARN Act offers protection to workers, their families and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. It applies to employers with 100 or more employees, including hospitals, however not including employees who work an average of less than 20 hours per week. A notice is triggered if an employment site will be shut down, and the shutdown will result in an employment loss for 50 or more employees during any 30-day period. A notice is also triggered if there is to be a mass layoff, which does not result from a plant closing, but will result in an employment loss of 500 or more employees, or for 50-499 employees if they make up at least 33% of the employer's active workforce. The WARN Act contains exceptions to the 60-day notice requirement for unforeseeable business circumstances, faltering companies, and natural disasters.

- 3) **SUPPORT.** The California Nurses Association/National Nurses United (CNA) is the sponsor of this bill and states that hospitals plan closures not months, but years in advance. CNA contends that too often corporate mergers and acquisitions affect the fiscal decisions large hospital chains make, which frequently means smaller, less profitable hospitals are on the chopping block for closure or reduction in services. CNA states that if a local community has time to put pressure on the large companies that run the healthcare system, the public engagement can be enough to encourage them to do the right thing and keep a facility open, such as the case with Alta-Bates Hospital in Berkeley.

The California Labor Federation (CLF) supports this bill and states that hospital closures or reductions and changes in services impact communities that rely on those facilities. Patients

may experience disruptions in care, or need to make alternative plans for care, and health care workers may lose their jobs. CLF notes that patients and residents deserve adequate notice to prepare for a closure or reduction in services. CLF concludes that the existing timeframes are too short and do not allow for proper community engagement.

- 4) **OPPOSITION.** The California Hospital Association (CHA) is opposed to this bill unless it is amended. CHA states that statewide, one in three hospitals in California are showing signs of financial distress, and when faced with difficult resource decisions, hospitals must at times reduce the services they provide their communities or cease to operate entirely. CHA notes that hospitals must consider patient safety, and when patient census or staffing are low, they may not be able to provide the care that all patients need. CHA also points to the WARN Act, stating that employers must provide 60 days' notice if their facility will lay off 50 or more employees in a 30-day period or close entirely. CHA states that this time frame was developed to balance employees' needs to find alternate employment with the employer's need to continue to operate during the wind-down period. CHA states that this bill's requirement of 180-days' notice for closures would likely result in the premature loss of highly skilled health care workers, limiting access to care for patients in that community. CHA requests an amendment to align with the WARN Act, recommending a 60-day notification period for hospital closure.

5) **PREVIOUS LEGISLATION.**

- a) AB 1014 (O'Donnell) of 2019 would have increased the period of time when a hospital is required to provide public notice of a proposed closure or elimination of a supplemental service, currently 90 days for the closure or downgrading of EMS and 30 days for all other closures or eliminations of supplemental services, to 180 days prior to the closure of a hospital or the elimination or downgrading of emergency services, and 90 days prior to the elimination of any other supplemental service. AB 1014 was vetoed by Governor Newsom, who stated, in part, "I agree that hospital closures have vast impacts on communities. However, this bill would not change the fact that the State is not able to force a hospital to stay open when they are financially unable. I am concerned that this bill may exacerbate the financial and patient safety concerns that often lead to closures."
- b) AB 2874 (Thurmond) of 2018 would have required any hospital that provides EMS to notify the Attorney General (AG) no later than 180 days prior to a planned reduction or elimination of the level of EMS. AB 2784 failed passage on the Assembly Floor.
- c) AB 651 (Muratsuchi), Chapter 782, Statutes of 2017, extended the time frame for the AG to approve or reject the proposed sale of a nonprofit health facility from 60 to 90 days; required that public notice of a hearing regarding the proposed sale be provided in English and any other language that is widely spoken in the county where the facility is located; and, required the AG to consider whether the sale will have an adverse impact on the significant cultural interests in the affected community.
- d) SB 687 (Skinner) of 2017 would have required a nonprofit corporation that operates a health facility that includes a licensed emergency center to obtain the consent of the AG prior to a planned elimination or reduction in the level of EMS provided. SB 687 was vetoed by Governor Jerry Brown.

- e) SB 1094 (Lara) of 2014 would have provided an additional 30 days for the AG to review proposed transactions involving nonprofit health facilities. SB 1094 would also have allowed the AG to enforce the conditions of an approved agreement, and to amend the conditions of an agreement or transaction involving a nonprofit health facility if a party to the transaction or agreement made material misrepresentations to the AG. Finally, SB 1094 would have required the AG, prior to imposing an amended condition, to provide the parties to the agreement written notice of the proposed condition and allowed the parties 30 days to respond. SB 1094 was vetoed by Governor Jerry Brown.
 - f) AB 2400 (Price), Chapter 459, Statutes of 2008, requires hospitals, not less than 30 days prior to closing a general acute care or acute psychiatric hospital, eliminating a supplemental service, as defined in existing regulations, or relocating the provision of a supplemental service to a different campus, to provide notice to the public and the applicable administering state department.
- 6) **SUGGESTED AMENDMENTS.** This bill requires hospitals to post notices of an impending closure, the elimination of EMS, or other supplemental services throughout the affected community. Should this bill move forward, the author and sponsors may want to consider requiring the notices to be posted in English and in the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries in the county in which the facility is located.
- 7) **POLICY COMMENT.** This bill is almost identical to AB 1014 of 2019, which was vetoed by Governor Newsom. The Committee may wish to ask the author and sponsors how they plan to address the Governor's concerns.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Nurses Association/National Nurses United, AFL-CIO

Opposition

None on file.

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