Date of Hearing: May 18, 2020

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 2037 (Wicks) – As Amended May 11, 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. Prohibits a hospital, during any health-related state of emergency in California, from closing or otherwise ceasing operations or eliminating a level of EMS and requires the Department of Public Health (DPH) to impose a penalty of $75,000, per day, for each day a hospital violates this provision. Requires a hospital, during a health-related emergency, to offer the state and the city and county where the hospital is located, a reasonable opportunity to purchase the hospital at a fair market value. 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 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.

7) Prohibits a hospital from doing any of the following during a health-related state of emergency in California proclaimed by the President of the United states, or health-related state of emergency proclaimed by the Governor:
a) Closing or otherwise ceasing operations;
b) Eliminating a level of emergency care; or,
c) Eliminating a supplemental service.

8) Prohibits, during any health-related local emergency, a hospital located within the jurisdiction, or a hospital located within a 40-mile circumference outside the boundary of the jurisdiction that proclaimed the local emergency, from doing any of the following:
a) Closing or otherwise ceasing operations;
b) Eliminating a level of emergency care; or,
c) Eliminating a supplemental service.

9) Requires DPH to impose a penalty of $75,000 a day, for each day a hospital violates the provisions described in 7) and 8), above. Requires DPH to deposit all penalties collected pursuant to this bill into the Internal Departmental Quality Improvement Account.

10) Allows DPH to excuse a hospital from the prohibitions described in 7) and 8), as necessary to redirect resources to address public need for health services during the proclaimed federal or state emergency or local emergency.

11) Requires a hospital, during any health-related state of emergency in California proclaimed by the President of the US or health-related state of emergency proclaimed by the Governor and prior to an offer for sale on the open market, to first offer the state and the city and the county where the hospital is located a reasonable opportunity to purchase the hospital at a fair market rate, as determined by the Attorney General (AG).

12) Requires, during any health-related local emergency, and prior to an offer for sale on the open market, a hospital located within the jurisdiction, or a hospital located within a 40-mile circumference outside the boundary of the jurisdiction that proclaimed the local emergency, to first offer the state and the city and the county where the hospital is located a reasonable opportunity to purchase the hospital at a fair market rate, as determined by the AG.

13) Requires a hospital to ensure, during any health-related state of emergency in California proclaimed by the President of the US, health-related state of emergency, or health-related local emergency, that there are no lapses in operation of the hospital between a change in ownership.

14) States that this bill does not apply to a hospital that is forced to close, eliminate a level of emergency care, or eliminate a supplemental service as a result of the impacts of a natural disaster on the physical operations of the hospital.

15) Defines the following for purposes of this bill:
    a) "Hospital" as meaning the following:
        i) A general acute care hospital (GACH) that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services;
        ii) An acute psychiatric hospital (APH) that provides 24-hour inpatient care for persons with mental health disorders, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services; and,
        iii) A GACH that provides EMS.
    b) "Supplemental service" means an organized inpatient or outpatient service which is not required to be provided by law or regulation.

EXISTING LAW:

1) Licenses and regulates health facilities by DPH, including GACHs, APHs, 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 GACH or APH, 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.

7) Authorizes the Governor, under the California Emergency Services Act, (Government Code Sections 8625, 8558, and 8567, et seq.) to proclaim a state of emergency when specified conditions of disaster or extreme peril to the safety of persons and property exist.

8) Defines a "state of emergency" as the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

9) Authorizes the Governor to make, amend, and rescind orders and regulations necessary to carry out the provisions of the California Emergency Services Act, requires the orders and regulations to have the force and effect of law, and requires orders and regulations, or amendments or rescissions to orders and regulations, issued during a state of war emergency or state of emergency to be in writing and to take effect immediately upon their issuance.

10) Authorizes the Governor, during a state of emergency, to direct all state agencies to utilize and employ state personnel, equipment, and facilities to perform activities that are designed to prevent or alleviate actual and threatened damage due to that emergency. Authorizes a state agency so directed to expend any of the moneys that have been appropriated to it in order to perform that activity.

11) Defines "Local emergency" as the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm,

epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions.

12) Authorizes the Director of Public Health or a local health officer to declare a "health emergency," or "local health emergency," pursuant to certain circumstances, including whenever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent in the jurisdiction or any area thereof affected by the threat to the public health.

13) Specifies that when a local health emergency is declared by a local health officer, the local health emergency must not remain in effect for a period in excess of seven days unless it has been ratified by the board of supervisors, or city council, and requires the board of supervisors, or city council, to review, at least every 30 days until the local health emergency is terminated, the need for continuing the local health emergency and to proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination.

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 contends, 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. Furthermore, with the devastation and continued threat of COVID-19, hospitals and health care facilities cannot close. The author states that we are facing a huge medical and health emergency that needs every health professional and every health facility to be open. This global emergency continues to ravage our communities, killing fellow Californians, and closing hospitals in this state-of-emergency is unconscionable. The author concludes that the provisions of this bill would ensure that if we are unfortunately struck with another global pandemic, Californians can know that their hospitals are open and ready to help.

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 million 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 visits per 1,000 residents 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. LACMA 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.

SVMC was reopened April 13, 2020 as a COVID-19 treatment center. According to a Department of Health Care Services press release, the facility will increase capacity in phases with a maximum capacity of 266 beds. The state is leasing the medical center to expand the capacity of the health care delivery system to prepare for a potential surge in COVID-19 cases. This was done through a public private partnership between the State of California, the Los Angeles County Department of Health Services, Dignity Health, and Kaiser Permanente. Renamed the Los Angeles Surge Hospital, it is a transfer-only facility, accepting only patients who test positive for the virus from other regional public and private hospitals to increase the county's surge capacity should the need arise. According to press reports, the state is paying $16 million for a six-month lease, to the

hospital's owner, and paying healthcare companies Kaiser Permanente and Dignity Health a monthly management fee of $500,000 each to oversee the hospital.

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.

e) **Hospital finances during the pandemic.** According to a May 6, 2020 letter from the California Hospital Association to Governor Newsom, California hospitals' short-term losses due to the COVID-19 pandemic currently exceed $10 billion and may rise to $15 billion or more. The letter states that to date, about $3 billion in federal funds have been allocated to California hospitals, and asks the Governor to redirect $1 billion in General Fund monies from the current state fiscal year, and additionally, to include in the upcoming 2020-21 budget, an additional $3.1 billion in funds to support hospitals with the submission of a second Emergency Disaster Waiver request.

f) **Health workforce pandemic-related job loss.** In California, thousands of nurses, doctors and other medical staff have been laid off or furloughed or have taken a pay cut since mid-March. Across the nation, job losses in the healthcare sector have been second only to those in the restaurant industry. According to the federal Bureau of Labor Statistics, health care employment declined by 1.4 million, led by losses in offices of dentists (-503,000), offices of physicians (-243,000), and offices of other health care practitioners (-205,000).

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. To support the need for this bill, CNA also notes that on April 21, 2020, three legislators from the San Jose region sent a letter to HCA Healthcare urging them to not close women's services which includes labor & delivery and the neo-natal intensive care (NICU) at Regional Medical Center in East San Jose. The nearest NICU for this population is on the other side of Santa Clara County and would put low-income delivering mothers in traffic for up to an hour to receive care. This proposed closure of vital services in a lower socio-economic neighborhood, is abhorrent at any time, but particularly during a health crisis.

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, and states that hospitals went to great lengths to surge their capacity to care for COVID-19 patients and everyone else needing emergency medical care during this public health crisis. CHA states that this is why, in the unfortunate circumstance when hospitals are not in a financial position to continue all their operations, they strive to provide high-quality access to care for as long as they are able. Prior to the COVID-19 response, statewide, one in three hospitals in California was showing signs of financial distress. CHA notes that the response to this unprecedented pandemic has deepened these losses and hospitals now face delayed capital projects, emergency loans, a 50% reduction in emergency department visits, reduced operating room volume, significant decreases in operating margins, and a 12% expense increase per discharge. CHA states that the response to the pandemic required hospitals to reduce or stop services to prepare for the anticipated surge. Now, facing difficult resource decisions, hospitals must have the ability to reduce services to address financial losses; otherwise, the financial security of the hospital operations writ large are at risk. CHA argues that, by prohibiting the elimination of supplemental services, this bill would prevent hospitals from doing exactly what they should do in a declared emergency: eliminating non-essential services to focus on essential services. Hospitals rose to the challenge during the recent COVID-19 response. This bill would chip away at their ability to provide care come the next public health crisis.

   CHA also notes that this bill requires a hospital during a local, state, or federal state of emergency — prior to an offer for sale — to first offer the state, city, and county the opportunity for purchase. During the COVID-19 response, hospitals partnered with the state and counties to keep open hospitals on the brink of closure, such as Seton Hospital in Daly City, and worked to reopen others, such as St. Vincent in Los Angeles. CHA concludes that this bill does not acknowledge that spirit of partnership, and instead imposes first rights of refusal to multiple levels of government that could result in no sale at all, but rather closure of a hospital.

5) **RELATED LEGISLATION**. AB 2604 (Carrillo) would, among other provisions, require a hospital to postpone indefinitely an appointment for routine medical care that may be delayed without undue risk, including an annual physical or elective surgery. AB 2604 is pending in the Assembly Committee on Labor and Employment.

6) **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.

7) POLICY COMMENTS.

Governor's police powers. According to the author, this bill ensures that if another pandemic strikes the state, Californians will know that their hospitals are open and ready to help. However, it is unlikely that the provision of this bill would have a concrete effect on policy during a declared emergency because the Governor currently has emergency powers, including the ability to lease a hospital that is pending closure as he has done with SVMC. In addition, it is unclear if this bill if is granting the State Health officer the authority to keep a hospital open. Current law provides authority for the State Health Officer to declare a health emergency, but this authority is limited to controlling and preventing the spread of communicable diseases, pursuant to the state's police powers during an emergency declared pursuant to the EMS Act. In the same manner, LHOs declaring a health emergency are limited in that after seven days, the Board must ratify the declaration and thereafter every 30 days until the emergency terminates. Like the State Health Officer, LHOs have broad

authority to act to prevent the spread of communicable diseases, and do not need to declare a health emergency in order to act. When there are outbreaks of communicable diseases, both the State and Local Health Officers have broad authority to protect public health without having to declare a health emergency. However, these powers have never been interpreted to grant them the authority to keep a hospital open.

Governor's veto. This bill is similar 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.

Contingent on state funding. Should this bill move forward, the author and sponsor may wish to amend this bill to make the requirements that a hospital remain open during a health-related emergency contingent on state funding.

8) **AUTHORS' AMENDMENTS**. The author is proposing amendments that will return this bill to the introduced version.

REGISTERED SUPPORT / OPPOSITION:

Support

California Nurses Association/National Nurses United, AFL-CIO (sponsor)
Berkeley, City of
California Labor Federation, AFL-CIO
California Professional Firefighters
California State Council of Service Employees International Union
City of Long Beach

Opposition

Adventist Health
Alliance of Catholic Health Care, Inc.
Association of California Healthcare Districts
California Hospital Association
California Children's Hospital Association
Dignity Health
District Hospital Leadership Forum
Loma Linda University Health
Private Essential Access Community Hospitals
Sharp Healthcare
Tenet Healthcare Corporation
United Hospital Association

Analysis Prepared by: Lara Flynn / HEALTH / (916) 319-2097