

## ASSEMBLY THIRD READING

AB 2037 (Wicks)

As Amended May 20, 2020

Majority vote

**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.

Also increases the notice requirements, from 30 days prior to closing a hospital facility to at least 180 days prior, and from 30 days prior to eliminating or relocating a supplemental service to at least 90 days prior and includes additional manners in which public notices must be posted.

**COMMENTS:**

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 emergency departments (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.

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.

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 the Department of Public Health (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 local emergency medical services agency (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 LEMSAs prepare for the reduction or closure.

The Emergency Medical Services Authority developed guidelines for the impact report and each county or its designated LEMSAs 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. 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.

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.

The federal Worker Adjustment and Retraining Notification Act of 1988 (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.

**According to the Author:**

According to the author, the closures of hospitals and 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.

**Arguments in 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.

### **Arguments in Opposition:**

The California Hospital Association (CHA) is opposed to this bill unless it is amended to require a 60 day notice prior to a closure, in accordance with the WARN Act. 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 notes 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. The bill also includes a provision to address natural disaster and state-of-emergency situations that prevent a hospital from operating at its current level. However, there are other circumstances in which hospitals cannot meet these timelines. 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 recommends the bill include an exception for cases of exigent economic circumstances, employee loss, or quality-of care-concerns that force early closure or reductions in service.

### **FISCAL COMMENTS:**

According to the Assembly Appropriations Committee, minor and absorbable costs to DPH in its oversight of hospital licensing (Licensing and Certification Fund).

### **VOTES:**

#### **ASM HEALTH: 10-3-2**

**YES:** Wood, Aguiar-Curry, Bonta, Burke, Carrillo, Limón, McCarty, Nazarian, Rodriguez, Santiago

**NO:** Mayes, Bigelow, Waldron

**ABS, ABST OR NV:** Flora, Ramos

#### **ASM APPROPRIATIONS: 12-5-1**

**YES:** Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, McCarty, Robert Rivas

**NO:** Bigelow, Megan Dahle, Diep, Fong, Voepel

**ABS, ABST OR NV:** Petrie-Norris

### **UPDATED:**

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CONSULTANT: Lara Flynn / HEALTH / (916) 319-2097

FN: 0002802