
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: AB 2037
AUTHOR: Wicks
VERSION: May 20, 2020
HEARING DATE: August 1, 2020
CONSULTANT: Vincent D. Marchand

SUBJECT: Health facilities: notices

SUMMARY: Increases 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 emergency services 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.

Existing law:

- 1) Licenses and regulates health facilities by the Department of Public Health (DPH), including general acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, and intermediate care facilities, among others. [HSC §1250, et seq.]
- 2) Requires any hospital that provides emergency medical services (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. [HSC §1255.1]
- 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. [HSC §1255.1(c)]
- 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 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. [HSC §1300]
- 5) Requires a general acute care hospital or acute psychiatric hospital, not less than 30 days prior to closing the facility, eliminating a supplemental services, 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. [HSC §1255.25]

- 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. [HSC §1255.2]

This bill:

- 1) Increases the time period for when a general acute care hospital or acute psychiatric hospital is required to provide public notice of a proposed closure, the elimination of a supplemental service, or the relocation of a supplemental service to a different campus, currently 30 days prior to the proposed closure, elimination, or relocation, to instead be 180 days prior to a proposed closure and 90 days prior to an elimination or relocation of a supplemental service.
- 2) Increases the time period for when a hospital that provides EMS is required to provide prior notice of a planned reduction or elimination of the level of emergency medical service, currently 90 days prior to the reduction or elimination, to 180 days prior to the reduction or elimination of the level of EMS. Prohibits this notice from applying to a health facility that is forced to close or eliminate a service as a result of a natural disaster or state of emergency that prevents the health facility from being able to operate at its current level.
- 3) Requires the public notice in 1) and 2) above to include all of the following:
 - a) Written notice to the city council of the city in which the health facility is located;
 - b) A continuous notice posted in a conspicuous location on the homepage of the health facility'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 health facility is located, and requires the notice to be posted continuously on the internet website of the newspaper; and,
 - d) A notice posted at the entrance of every community clinic within the affected county in which the health facility is located that grants voluntary permission for posting.

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

PRIOR VOTES:

Assembly Floor:	50 - 15
Assembly Appropriations Committee:	12 - 5
Assembly Health Committee:	10 - 3

COMMENTS:

- 1) *Author's statement.* According to the author, given the impact that hospital closures have on local communities and in the continued global threat of COVID-19, the current timelines are inadequate and do not give patients and residents enough notice to prepare for a closure or reduction in services. The existing timeframes, however, are too short and do not allow for proper community engagement. A hospital's decision to reduce or eliminate services, especially emergency medical services, still poses significant challenges for a community, as healthcare workers are forced to search for new employment, ambulances must divert to facilities farther away, and neighboring hospitals may experience overcrowding. This increased strain on regional health systems can lead to patients traveling longer distances for care, longer wait times, and lower quality of care. COVID-19 continues to rage our communities and killing more Californians every day, there are still hospitals trying to close. It is unacceptable in a global pandemic to deny health care service and continue to close hospital doors.
- 2) *Current process for closing an ED requires an impact evaluation.* 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, a separate provision of law, which permits a hospital to surrender a license or permit with the approval of DPH, specifies that "before approving a downgrade or closure of emergency services," the county or the local EMS agency is required to conduct an impact evaluation of the downgrade or closure upon the community, and how that downgrade or closure will affect emergency services 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 emergency services. Despite the language stating "before approving a downgrade or closure of emergency services," DPH has not interpreted this provision of law as giving them the ability to deny a hospital the ability to close or reduce emergency services, and therefore the impact evaluation is more of a tool to help the community and the local emergency services agency prepare for the reduction or closure.
- 3) *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, not including those 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.
- 4) *Prior legislation.* AB 1014 (O'Donnell of 2019) was substantially similar to this bill. AB 1014 was vetoed by the Governor, who stated the following in his veto message: "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."

AB 2874 (Thurmond of 2018) would have required any hospital that provides EMS to notify the Attorney General no later than 180 days prior to a planned reduction or elimination of the level of EMS. *AB 2874 failed passage on the Assembly Floor.*

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 Brown.*

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.

- 5) *Support.* This bill is sponsored by the California Nurses Association/National Nurses United (CNA), which states that hospitals plan closures years in advance, and that corporate mergers and acquisitions affect the fiscal decisions large hospital chains make, which frequently mean smaller, less profitable hospitals are on the chopping block for closure or reduction in services. According to CNA, if a local community has time to put pressure on the large companies that run our healthcare system, the public engagement can be enough to encourage them to do the right thing and keep a facility open. CNA points to the closure in January of this year of St. Vincent Medical Center, which provided care to many Medi-Cal, undocumented, and low-income patients. According to CNA, adequate public notice could have helped the community find a way to maintain healthcare services. Additionally, CNA points to a proposal to close labor and delivery services and the neo-natal intensive care unit (NICU) at Regional Medical Center in East San Jose, which would put the nearest NICU up to an hour away for some low-income delivering mothers. CNA states that communities need an appropriate amount of time to plan for the loss of emergency and lifesaving services, particularly in a pandemic.

The California Professional Firefighters state in support that when a hospital makes the decision to either reduce the services provided or eliminate a service altogether, emergency healthcare services, departments and providers must make restructuring decisions on how to divert and treat their patients based on reduced capacity or a service that has moved farther away. Absent time to plan properly, such reductions may impact health outcomes or threaten patient safety. The City of Long Beach states in support that it has recently endured a hospital closure, and that while increased notice cannot guarantee a seamless transition, it can help address community concerns. The California Labor Federation states that this bill will not ultimately require a hospital to stay open, but it does make sure communities have an appropriate amount of time to plan for the loss of emergency and lifesaving services.

- 6) *Oppose unless amended.* The California Hospital Association (CHA) opposes this bill unless amended to align with the federal WARN Act requirement of a 60 day notice. According to CHA, prior to the COVID-19 response, one in three hospitals in California was showing signs of financial distress. The response to the 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 operation margins, and ongoing COVID-19 expenses. Facing difficult resource decisions, hospitals must have the ability to reduce services to address financial losses otherwise, the financial

security of the hospital operations are at risk. According to CHA, the increased public notifications of these changes will have the unintended consequence of hastening hospital closure and reducing access to care even sooner. CHA states that under the WARN Act, 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 suggests a 60-day notification for facility closure to align with the WARN Act. CHA also request that the bill include an exception in cases of exigent economic circumstances, employee loss, or quality of care concerns that force early closure or reductions in service. The District Hospital Leadership Forum also opposes this bill unless amended, making similar arguments to CHA and requesting the same amendments.

The California Children's Hospital Association (CCHA) is similarly opposed to this bill unless amended, arguing that the increase in the notice periods are substantial and unnecessary to protect the interests of the local communities affected by these decisions. CCHA states that as a general rule, financially health hospitals don't shut their doors or cut profitable services lines, and that they best way to prevent a hospital closure or service reduction is to address the underlying cause of the financial hardship that has led to the decision. CCHA requests the same amendments as CHA.

SUPPORT AND OPPOSITION:

Support: California Nurses Association/National Nurses United (sponsor)
California Labor Federation
California Professional Firefighters
City of Berkeley
City of Long Beach
Service Employees International Union (SEIU)

Oppose: California Children's Hospital Association (unless amended)
California Hospital Association (unless amended)
District Hospital Leadership Forum (unless amended)

-- END --