

CONCURRENCE IN SENATE AMENDMENTS

AB 1502 (Muratsuchi and Wood)

As Amended June 27, 2022

Majority vote

SUMMARY

Enacts the Skilled Nursing Facility Ownership and Management Reform Act of 2022, which establishes suitability standards for persons and entities seeking to acquire, operate, or manage skilled nursing facilities (SNFs) in California. Directs the Department of Public Health (DPH) to screen all persons and entities seeking licenses to acquire, operate, or manage SNFs. Requires owners and operators, including nursing home chains, to obtain prior approval from DPH before acquiring, operating, or managing a SNF. Prohibits the use of interim or longer-term management agreements to circumvent state licensure requirements. Provides sanctions to deter owners and operators from "unpermitted operation," which is defined as the act of acquiring, operating, or managing a SNF without first obtaining a license or other approval from DPH. Requires DPH to make a determination within 120 days of an applicant's submission of a complete application for any type of change to the SNF license.

Senate Amendments

- 1) Delete the requirement that DPH post licensing applications involving SNFs on its internet website and to give the public an opportunity to comment on pending applications.
- 2) Change the term "suitability standards" to "reputability and responsibility standards" to conform with existing law.
- 3) Require an applicant to automatically be disqualified if they had a felony conviction related to the services or care provided in a health or community care facility, regardless of the length of time between the date of the application and the felony conviction.
- 4) Clarify the prohibition on an applicant from acquiring, operating, establishing, managing, conducting, or maintaining a SNF prior to obtaining a favorable determination from DPH on a licensure application. Prohibit a transfer of ownership, operations, or management of the facility from taking place prior to DPH's approval, whether interim, long term, or permanent.
- 5) Authorize DPH to deny an application if the applicant has owned, operated, or managed a long-term care health facility that, while under their ownership, operation, or management, has been issued two or more of any combination of "AA" citations or "A" citations involving the death of a resident at the facility within the prior 24-month period, or, if the applicant owns, operates, or manages 10% or more of the licensed skilled nursing facilities in the state upon the date of submission of the application for licensure to the department, unless the department in its discretion concludes that the interests of resident health and safety requires that an exception is warranted.
- 6) Permit the following actions to be immediately taken if an applicant acquires, operates, establishes, manages, conducts, or maintains a SNF before DPH acts on its application, following DPH's denial of its application, or in any instance when a person or entity acquires, operates, establishes, manages, conducts, or maintains a SNF without first applying to and obtaining a license for that purpose:

- a) DPH to issue a class "B" citation and civil penalty, in an amount between \$500 and \$2,000 for each citation, if an applicant assumes management or operational control of a facility on behalf of a licensee prior to receiving approval, or if a licensee fails to report changes to CDPH. Requires CDPH to assess an additional \$500 penalty for each day that the deficiency continues beyond the date specified for correction. Requires any penalty assessed to be paid prior to the issuance of a permanent license, or to be collected by Medi-Cal offset if there is a balance due at the time the permanent license is issued;
- b) DPH, subsequent to licensure, to assess a civil penalty of \$10,000 for a material violation of this bill;
- c) Require DPH, if an applicant acquires, operates, establishes, or manages a facility following a denial, to ensure that the facility's operation is transitioned to a qualified operator in a manner that will protect the health and safety of the residents; and,
- d) Require the facility administrator to advise all residents, their representatives, and the state and local long-term care ombudsperson offices of the circumstances, and inform them of the sanctions that are being imposed and of the residents' right to remain at the facility while corrective actions are taken.

7) Apply the provisions of this bill to SNF applications submitted after July 1, 2023.

COMMENTS

In California 1,215 SNFs provide care to 96,296 residents and patients. SNFs are licensed and regulated by DPH and provide skilled nursing and supportive care to patients whose primary need is for the availability of skilled nursing care on an extended basis. These include freestanding nursing homes and 'distinct part' nursing homes, which are attached to hospitals. In 2020, the reported average cost per patient day for a SNF was approximately \$304 (\$110,960 annually). Medicare and private pay costs are usually higher. SNF occupancy rates in California are approximately 87%. According to the Department of Health Care Access and Information (formerly the Office of Statewide Health Planning and Development) 88% of facilities are proprietary (i.e., run by for-profit corporations (26%), limited liability companies (51%), health care districts, counties, or other public agencies) and 12% are nonprofit.

DPH is responsible for ensuring SNFs comply with state laws and regulations. DPH Licensing & Certification (L&C) staff conducts on-site inspections of long-term care (LTC) facilities (including SNFs) and responds to approximately 6,650 complaints and 19,300 events reported by facilities each year. Events that facilities are required to report to DPH (reportable events) include interruptions of services essential to the health and safety of residents; alleged or suspected abuse; all fires, disasters, and other risks to resident life or health resulting from accidents or incidents at the facility; and, administrator or director of nursing personnel changes. Investigation of complaints and reportable events also require on-site inspections. These inspections, called surveys (also conducted by DPH L&C staff), evaluate compliance with both state and federal requirements.

- 1) California State Audit (CSA) 2018. CSA's audit: "Absent Effective State Oversight, Substandard Quality of Care Has Continued," found that the state has not adequately addressed ongoing deficiencies related to the quality of care that nursing facilities provide. One of the recommendations of the audit is for DPH to amend its application licensing

reviews by developing a defined process that specifies how an analyst will determine whether an applicant has demonstrated its ability to comply with state and federal requirements. The audit notes that the process should ensure that analysts conduct complete and standardized reviews of each nursing facility application, and should clearly outline what factors analysts will consider when determining whether an applicant is in compliance. The audit also recommended, among other things, that DPH should document the additional factors higher-level management will consider if applications are elevated for their review, and to ensure that DPH documents its decisions adequately.

- 2) DPH Centralized Applications Branch (CAB). In an effort to streamline and improve the licensing process, in July 2016, DPH began centralizing all application processing at its headquarters in Sacramento. The CAB processes applications in the order in which they are received, and processing times vary widely due to the complexity of the application. According to DPH, licensees and owners are vetted by completing a compliance history that includes a list of all facilities they currently operate and all of their reported deficiencies and violations. Based on the level of severity and scope of federal and state level citations, DPH will either issue or deny the application. According to DPH, the CAB provides standardization and consistency of state licensing and federal certification through the application process. CAB consists of four sections: a) CAB Administration Section; b) LTC Section; c) Non-LTC Section; and, d) Home Health Aide/Hospice Section. The branch has 93 full-time employees and three student assistants.

CAB processes initial applications for providers seeking to open a new facility, Change of Ownership (CHOW) applications for existing licensed facilities that are being sold, thereby changing the licensee, and employer identification number, and all other Report of Changes (ROC) required to be reported to DPH. DPH has received 16 Initial (new SNF license) applications since 2015. Of those applications, one was denied, three were withdrawn, one was deemed incomplete, and 11 applications were approved.

In calendar year 2020, CAB received over 9,000 Initial, CHOWs, and ROC applications, across all types of facilities. CAB has experienced an increase in workload each year since 2017. The volume of applications and processing timeframes vary by facility and application type. According to DPH, there are currently 50 SNF CHOW applications in "pending" status, and nine denied applications currently under appeal.

- 3) Management operating transfer agreements. A CHOW application may contain a management operating transfer agreement (MOTA) between the current licensee and the prospective licensee that allows the prospective licensee to operate the facility while the application is on file and pending a determination. The facility remains licensed under the current licensee. Current law is silent on the length of time in which an "interim" owner or management company may operate a facility under a MOTA, which leaves many facilities in limbo, being operated under the former owner's license. There are currently CHOW applications on file that were received in March 2016 that still are pending a determination five years later.

According to the Author

We need to do whatever we can to protect some of our most vulnerable, our SNF residents. Unfortunately, some California SNF operators are operating and owning nursing homes without a fully completed license approval from DPH. Further, after these nursing homes have been

denied licenses due to findings they are unfit; some SNFs continue to operate nursing homes despite being unlicensed. The authors conclude that this bill puts an end to that and that we need SNF owners who are qualified and who care, and who put people over profit, not the other way around.

Arguments in Support

Asian Pacific Islander Legal Outreach (APILO) supports this bill stating that the COVID-19 pandemic has brought tragedy and death to nursing home residents throughout California and exposed severe problems in the state's oversight of these facilities. One of the gravest dangers to residents is from the acquisition, ownership, and operation of SNFs by unsuitable, unapproved, and unaccountable persons and entities. Although this problem existed even before the pandemic, the pandemic has exacerbated the negative consequences of this lack of oversight. APILO notes that these chain operators have acquired and are operating SNFs without obtaining licenses and approvals from DPH, yet DPH allows them to continue operating facilities even after denying licenses due to findings that they are unfit. APILO notes that they understand and are concerned about where nursing home residents may live in the event that an operator gets shut down, but that is not an excuse to allow chain operators with a negative performance history to acquire skilled nursing facilities in the first place. Nor is it an excuse to allow chain operators to operate pending a license, or to continue allowing them to operate even after their license is denied.

The Geriatric Circle supports this bill and notes that the California media has frequently reported negligent care by notorious SNF owners during the pandemic. California is currently allowing at least 15 skilled nursing facilities to be run by operators who were denied licenses due to dangerous conditions in their SNFs. Preventing disreputable owners from purchasing and managing California nursing homes should have the highest priority by policy makers. It is time to take immediate action to protect residents from unfit owners/managers.

Arguments in Opposition

California Advocates for Nursing Home Reform (CANHR) states that the June 15, 2022 amendments by DPH gut this bill and transform it from a vital elder abuse prevention bill into a lifeline for California's most dangerous nursing home operators. CANHR contends that core suitability standards are eliminated, track records of SNF owners are wiped clean every three years, and licensure loopholes are preserved and public engagement in SNF ownership changes is dropped.

FISCAL COMMENTS

According to the Senate Appropriations Committee, DPH estimates annual state staffing costs of approximately \$266,000 (Licensing and Certification Fund), beginning in 2023-24.

VOTES:

ASM HEALTH: 12-2-1

YES: Wood, Aguiar-Curry, Arambula, Burke, Carrillo, Maienschein, Robert Rivas, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago

NO: Cunningham, Waldron

ABS, ABST OR NV: Flora

ASM APPROPRIATIONS: 12-3-1

YES: Holden, Bryan, Calderon, Luz Rivas, Gabriel, McCarty, Levine, Quirk, Robert Rivas, Akilah Weber, Stone, Mullin

NO: Bigelow, Davies, Fong

ABS, ABST OR NV: Megan Dahle

ASSEMBLY FLOOR: 55-15-6

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Cooley, Cooper, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Lackey, Nguyen, Patterson, Seyarto, Smith, Valladares, Waldron

ABS, ABST OR NV: Daly, Gallagher, Kiley, Mathis, Mayes, Voepel

SENATE FLOOR: 25-8-7

YES: Allen, Archuleta, Atkins, Becker, Caballero, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Hurtado, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Umberg, Wiener

NO: Bates, Dahle, Grove, Jones, Kamlager, Nielsen, Stern, Wilk

ABS, ABST OR NV: Borgeas, Bradford, Glazer, Melendez, Ochoa Bogh, Skinner, Wieckowski

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