
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: AB 279
AUTHOR: Muratsuchi
VERSION: June 8, 2021
HEARING DATE: June 23, 2021
CONSULTANT: Vincent D. Marchand

SUBJECT: Intermediate care facilities and skilled nursing facilities: COVID-19

SUMMARY: Prohibits an intermediate care facility (ICF) or a skilled nursing facility (SNF) from terminating or making significant quality-of-care changes, or from transferring a resident to another facility, during the COVID-19 state of emergency, except under specified circumstances. Requires an ICF or SNF, for six months after the termination of any COVID-19 state of emergency, to issue a 90-day advance notice of any proposed sale or termination of the licensed operation of the facility to each resident before the sale or termination goes into effect. Requires all conditions imposed by the Attorney General based on a nonprofit transaction of an ICF or SNF that are in effect at the beginning of the COVID-19 state of emergency, to remain in effect during the COVID-19 state of emergency, unless the owner of the ICF or SNF files for bankruptcy.

Existing law:

- 1) Licenses and regulates long-term health care (LTC) facilities, including ICFs and SNFs, by the California Department of Public Health (CDPH). Defines an ICF as a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care. Defines a SNF as a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. [HSC §1250 (c) and (d)]
- 2) Requires LTC facilities to give written notice to residents or guardians of residents at least 60 days prior to any change in the status of the license or in the operation of the facility resulting in the inability of the facility to care for its residents. Requires facilities, before residents are transferred due to any change in the license status, to take certain actions, including being responsible for evaluating the relocation needs of the resident and determining the most appropriate and available type of future care and services before written notice of transfer is given to the resident. Requires the facility to inform the resident or the resident's representative at least 60 days in advance of the transfer. [HSC §1336, §1336.2(a)]
- 3) Requires the facility, if ten or more residents are likely to be transferred due to any voluntary or involuntary change in the status of the license or operation of a facility, including a facility closure, to submit a proposed relocation plan to CDPH for approval at least 30 days prior to the written transfer notification in 2) above. Requires the proposed relocation plan to provide for implementation of relocation services and to describe the availability of beds in the area for residents to be transferred. Requires the proposed relocation plan to become effective upon the date CDPH grants its approval. Prohibits a facility from issuing a notice of transfer until a proposed relocation plan has been approved. [HSC §1336.2(g)]

- 4) Prohibits LTC facilities, that participate in the Medi-Cal program, from seeking to evict or transfer any resident as a result of the resident changing from private payment or Medicare to Medi-Cal. [WIC §14124.7]
- 5) Requires, under federal law, LTC facilities that are certified by the Centers for Medicare and Medicaid Services (CMS), to inform residents, their representatives, and families of those residing in facilities by 5:00 p.m. the next calendar day following the occurrence of a confirmed infection of COVID-19. Prohibits this information from including personally identifiable information. [42 CFR §483.80(g)(3)]
- 6) Requires any nonprofit corporation that operates or controls a health facility, as defined, to provide written notice to, and obtain the written consent of, the Attorney General (AG) prior to entering into any agreement or transaction to do either of the following: [CORP §5914, §5920]
 - a) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity, or another nonprofit corporation; or,
 - b) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to any for-profit corporation or entity, or another nonprofit corporation.
- 7) Provides the Attorney General (AG) with the discretion to consent to, give conditional consent to, or not consent to any agreement or transaction involving a nonprofit health facility based on the consideration of any factors that the AG deems relevant, including but not limited to:
[CORP §5917, §5923]
 - a) Whether the agreement or transaction is at fair market value;
 - b) Whether the proposed use of the proceeds from the transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system;
 - c) Whether the transaction would create significant effects on the availability or accessibility of health care services to the affected community; or,
 - d) Whether the transaction is in the public interest.
- 8) Empowers the Governor to proclaim a state of emergency in an area affected or likely to be affected when requested to do so by local government officials, or if he finds that local authority is inadequate to cope with the emergency. Requires the Governor to proclaim the termination of the state of emergency at the earliest possible date that conditions warrant.
[GOV §8625, §8629]

This bill:

- 1) Prohibits an ICF or SNF from terminating or making significant quality-of-care changes to its skilled nursing or supportive care services, or from transferring a resident to another facility except as permitted in 2) below, during any state of emergency relating to COVID-19, unless the owner of the facility files a bankruptcy petition.
- 2) Permits a resident of an ICF or SNF to be transferred during a COVID-19 state of emergency if any of the following is met:

- a) The transfer is deemed medically necessary by an attending physician approved by the impacted resident or their legally authorized representative;
 - b) The impacted resident or their legally authorized representative provides written consent after being informed of their right to refuse the transfer in writing and in a language and manner that they understand; or,
 - c) The transfer is to a general acute care hospital to treat an urgent medical condition.
- 3) Requires the owner of an ICF or SNF, for six months after termination of any COVID-19 state of emergency, to issue a 90-day advance notice of any proposed sale or termination of the licensed operation of the facility to each resident and their representatives before the sale or termination goes into effect.
- 4) Requires both of the following to apply during any COVID-19 state of emergency, unless the owner of an ICF or SNF files a bankruptcy petition:
- a) All conditions of operation imposed by the AG as conditions for the sale of assets from a nonprofit entity to a for-profit entity to remain in effect and unchanged; and,
 - b) All conditions for the sale of assets imposed by the AG that are in effect at the beginning of the state emergency to remain in effect.
- 5) Requires an ICF or SNF, during any state of emergency relating to COVID-19, if a resident of that ICF or SNF, or an individual temporarily transferred to that ICF or SNF from another ICF or SNF or any other type of health facility, has tested positive for COVID-19 within the previous 14 calendar days, to do both of the following subject to state and federal privacy laws:
- a) Notify all other residents of the facility and their representatives about the existence of a new case of COVID-19, without disclosing the identity of the resident or other individual who has tested positive; and,
 - b) In the case of a resident who has tested positive for COVID-19, or an individual temporarily transferred to the ICF or SNF who has tested positive for COVID-19 and becomes a resident, to notify the representatives of that resident about their COVID-19 case.
- 6) Excludes the following from the provisions of this bill:
- a) Licensed beds in any facility operated by the Department of State Hospitals;
 - b) Any facility operated by the Department of Social Services, including any Stabilization, Training, Assistance and Reintegration home, developmental center, or community facility; and,
 - c) Any facility operated by the Department of Veterans Affairs.
- 7) Contains an urgency clause that will make this bill effective upon enactment.
- 8) Sunsets the provisions of this bill on January 1, 2026.

FISCAL EFFECT: According to the Assembly Appropriations Committee, negligible fiscal effect.

PRIOR VOTES:

Assembly Floor:	58 - 1
Assembly Appropriations Committee:	12 - 4
Assembly Health Committee:	11 - 2

COMMENTS:

- 1) *Author's statement.* According to the author, one of the serious threats facing residents of ICFs and SNFs have been forced involuntary transfers. Despite California and federal law giving residents and their families/legal representatives the right to participate in the selection of a new home before transfers and adequate notice of the planned transfers, these laws are routinely ignored by the facilities with no recourse. The COVID-19 state of emergency has exacerbated these involuntary transfers and discharges. Long-Term Care Ombudsman have stated that transfers and discharges have continued to be one of the top complaints that the Ombudsman programs received. In 2017, 10,610 complaints were solely on discharges and transfers. Seniors in residential care facilities are among the most vulnerable to the COVID-19 pandemic. We have a moral obligation to do everything we can to protect these seniors from eviction or transfer trauma. At the very least, we should allow these seniors and their loved ones the peace of mind knowing that their current homes will not be taken away from them during a pandemic.
- 2) *Background on upcoming closure Sakura Gardens ICF.* Sakura Gardens is a retirement community in the Boyle Heights neighborhood of Los Angeles, established in the 1970s by Keiro Services, a nonprofit corporation, to serve the Japanese American community. It consists of an assisted living facility with 127 units, a small memory care facility, and a 90-bed ICF. In 2015, Keiro Services submitted a request to sell its four facilities to Pacifica Companies, LLC, which included the ICF and assisted living facility at Sakura Gardens, as well as two nursing homes in Lincoln Heights and Gardena. The AG granted the consent with specified conditions on September 2, 2015. Among the conditions imposed on the sale were a requirement that the future owners could not turn around and sell or transfer the facilities without AG approval for at least five years; that the four facilities continue to be operated and maintained as currently licensed for five years; the purchasers be certified to participate in Medi-Cal and provide the same level of service to Medi-Cal beneficiaries for five years; and that the buyers maintain and operate the facilities in a culturally sensitive manner of the Japanese American community, as specified, also for five years. The five-year period for these conditions ended in February of this year, after which Pacifica announced plans to close the ICF because it was losing significant amounts of money, and build apartments on the site of the ICF.

Pacifica submitted a relocation plan for the residents of the ICF to CDPH, as required when a facility plans to close. After initially rejecting the plan, CDPH approved an amended plan on May 18th, and Pacifica issued the required 60-day transfer notice to the residents on May 19th. The facility is scheduled to close on July 20th.

- 3) *Controversy over potential alternative placement site for Sakura residents.* The relocation plan submitted by Pacifica included the nursing homes that it acquired from Keiro Services in 2015 as alternative facilities with culturally appropriate services where residents could be transferred: Kei-Ai Los Angeles Healthcare Center, a 300-bed SNF located in the Lincoln

Heights neighborhood of Los Angeles, and Kei-Ai South Bay Healthcare Center, a 98-bed SNF in Gardena. However, according to a March 1, 2021, article in the Los Angeles Times, Kei-Ai Los Angeles was one of 27 SNFs that participated in a little-publicized county program that allowed nursing facilities to volunteer to receive COVID-19 patients from hospitals and other nursing facilities. According to the article, the program was intended to free up hospital space for anticipated surges in infections. Three of the four most lethal outbreaks at nursing homes in California were at these designated sites, and according to the most recent data, Kei-Ai Los Angeles has had 105 resident deaths attributed to COVID-19. As a result of this track record with COVID-19, advocacy organizations have urged that Kei-Ai Los Angeles be removed from the list of alternate placement facilities. In the letter issued to residents in advance of the closure of Sakura Gardens ICF, Pacifica notes that all current Sakura ICF residents have been fully vaccinated, reducing the risk of COVID-19 infection related to transfers to another facility.

- 4) *Dwindling number of ICFs.* According to CDPH, there are approximately 1,201 SNFs, with 116,291 beds, subject to the provisions of this bill (meaning facilities not operated by the state or federal government). However, there are only five ICFs with 273 beds. If and when Sakura Gardens ICF is closed, there will only be 4 ICFs with 183 beds. According to the California Association of Health Facilities, the Medi-Cal rate for ICFs is about half the amount of a SNF, so it is difficult for them to survive and be a sustainable model. In addition to the proposed closure of the Sakura Gardens ICF, CDPH reports that an ICF also closed in 2020.
- 5) *New York Times article on nursing home evictions.* A June 21, 2020 article in the New York Times highlighted the problems with nursing home evictions. One of the examples in the story concerned an 88-year-old with dementia living at the Lakeview Terrace SNF in Los Angeles, who was dropped off at an unregulated boarding house without notification to his family. The article cited three employees who said the nursing home was telling staff members to try and clear out less-profitable residents to make room for COVID-19 residents who would generate more revenue. Lakeview Terrace was already the subject of accusations that it had been evicting residents illegally, and was the subject of a \$600,000 legal settlement in February of 2019 with the City of Los Angeles, which had charged the facility with illegally evicting mentally ill and homeless residents. According to the article, as part of that settlement, prosecutors appointed someone to monitor the facility, but in March of 2020 the monitor had to stop visiting as a result of COVID-19 infection control policies.

The article notes that nursing homes have long had a financial incentive to evict Medicaid residents in favor of those who pay through private insurance or Medicare, which has a higher reimbursement rate than Medicaid. The article states that the COVID-19 pandemic has intensified the situation, since there is less scrutiny due to policies not allowing visitors. While state and federal law provide protections against unlawful evictions, and require formal notice to residents and their representatives as well as local ombudsman programs, the article states that some homes have figured out a workaround: they pressure residents to leave. The article cites an example of a 54-year-old man recovering from spinal surgery at Windsor Park Care Center SNF, where staff informed him that he had to go to a hotel to clear the way for coronavirus patients. The resident felt he had no choice and agreed to leave.

- 6) *COVID-19 state of emergency might linger.* The provisions of this bill are tied to the COVID-19 state of emergency declared by the Governor. Governor Newsom first declared a statewide state of emergency over the coronavirus on March 4, 2020, and it remains in effect. According to various media articles in recent days, the Governor is preparing to “re-open” the state by relaxing or lifting many of the restrictions that have been in place. However, his spokesperson was quoted this week as saying that as long as the state is using programs set up to tackle COVID-19, such as vaccinations, testing and contact tracing, the emergency declaration will likely stay. The spokesperson went on to state that it is common for emergency declarations to remain during a recovery for a disaster, and that as an example, the state of emergency for the 2018 Camp Fire is still in place as the town of Paradise rebuilds.
- 7) *Related legislation.* SB 650 (Stern) requires an organization that operates, conducts, owns, manages, or maintains a SNF to prepare and file an annual consolidated financial report with the Office of Statewide Health Planning and Development, requires the financial report to include data from all related parties in which the organization has an ownership or control interest of 5% or more and that provides any services or supplies to the SNF, and requires the financial report to be reviewed by a certified public accountant. *SB 650 is pending in Assembly Health Committee.*

AB 749 (Nazarian) prohibits a skilled nursing facility from contracting with a person as a medical director if the person is not, or will not be within five years, certified by the American Board of Post-Acute and Long-Term Care Medicine (ABPLM) as a Certified Medical Director. *AB 749 passed the Senate Health Committee by a vote of 10-0 on June 9, 2021.*

AB 323 (Kalra) changes the standard CDPH uses when issuing penalties against LTC facilities for violations that result in the death of a resident from “direct proximate cause” to “substantial factor” and the death was a result of the violation. Increases the amount of civil penalties assessed against LTC facilities. *AB 323 is pending in this Committee.*

AB 1042 (Jones-Sawyer) authorizes CDPH, when a SNF fails to pay certain penalties, and all appeals have been exhausted, to provide written notice to the SNF and any “related parties” that CDPH may take legal action to recover the unpaid penalty amount from the SNFs’ financial interest in the related party. Requires CDPH to give written notice to related parties when a citation has been issued against a SNF, and to advise the related parties of the potential action if the violation is not remedied. Requires the Department of Health Care Services (DHCS) to give notice to related parties that DHCS may take legal action to recover unpaid quality assurance fees from the SNFs financial interest in a related party. *AB 1042 is pending in this Committee.*

- 8) *Prior legislation.* AB 2644 (Wood, Chapter 287, Statutes of 2020) requires a SNF, during a declared emergency related to a communicable disease, to report each disease-related death within 24 hours. Requires SNFs to have a full-time IP, and prohibits a long-term care facility from preventing a representative of the Long-Term Care Ombudsman Program from entering the facility in the event of a declared emergency.

AB 275 (Wood, Chapter 185, Statutes of 2017) revises the procedures for when a long-term health care facility plans to close or there is otherwise a change in the status of their license resulting in a need to transfer residents by, among other things, requiring written notice to residents to be made 60 days in advance, rather than 30; requiring the facility to hold a community meeting for residents; and adding requirements to the proposed relocation plans that facilities are required to have approved by CDPH, including identifying the number of affected residents and identifying the availability of alternative beds within the community as part of the proposed relocation plan.

AB 651 (Muratsuchi, Chapter 782, Statutes of 2017) revises provisions of law requiring nonprofit corporations that operate a health facility to obtain the consent of the AG prior to entering into any agreement to sell or otherwise transfer control of the facility to another entity, by giving the AG an additional 30 days to review the transaction, requiring the notice of the public comment hearings to be provided in different languages, requiring the AG to consider the impact on cultural interests of the affected community, and requiring the review of health facility transactions regardless of whether or not the nonprofit corporation has a suspended license.

AB 940 (Weber, Chapter 274, Statutes of 2017) requires a long-term health care facility to also notify the local long-term care ombudsman when a resident is notified in writing of a facility-initiated transfer or discharge from the facility.

- 9) *Support.* This bill is sponsored by the California Advocates for Nursing Home Reform (CANHR), which states that existing legal protections have not prevented facilities from involuntarily discharging vulnerable residents even during California's state of emergency. According to CANHR, voluntary discharge during the pandemic to a facility with a deadly history is the danger facing residents of Sakura Gardens, one of the last California facilities to give Japanese-speaking residents a culturally-appropriate and secure home in their old age. Last September, the new owner of Sakura Gardens, the for-profit Pacifica Companies, submitted a proposal to the City of Los Angeles to turn the intermediate care facility into an apartment building. To facilitate this conversion, Sakura Gardens' current residents are being urged to transfer to a sister facility, Kei-Ai Los Angeles Healthcare Center, with shockingly high rates of COVID-19 infection sight unseen. This bill would prohibit the owner of an ICF or SNF from involuntarily transferring a resident to another facility during any declared state of emergency relating to COVID-19, except if the owner files for bankruptcy.

The Office of the State Long-Term Care Ombudsman (the Ombudsman) supports this bill and states that, for decades, one of the most serious threats facing residents of California's SNFs and ICFs has been the trauma of forced involuntary transfer to locations away from friends, families, and advocates. California and federal law give residents and their families the right to participate in the selection of any new home before transfer and require adequate notice and the opportunity for an appeal. Nevertheless, these laws are routinely ignored by facility owners, even during the current state of emergency. The Ombudsman notes that these legal protections have not slowed the rate at which facilities are involuntarily transferring and discharging vulnerable and elderly residents during California's state of emergency without even giving residents the opportunity to visit new facilities first to assess their safety.

Progressive Asian Network for Action (PANA) supports this bill stating that it will provide critical protection to seniors in this time of the current pandemic. PANA states that Sakura ICF is the only ICF in the nation that provides the level of bilingual and bi-cultural care that Japanese American and Japanese seniors at that facility have enjoyed. Further, unlike other senior care facilities across the county, it has been kept 100% COVID-19 free during the pandemic. Evictions of these seniors from this facility, with no viable options providing the same level of care elsewhere, is tantamount to a death threat during the pandemic.

The Keiro Pacific Community Advisory Board, appointed in 2016 to review compliance of the conditions of sale of Sakura Gardens and other facilities to Pacifica, supports this bill, stating California and federal laws give residents and their families the right to participate in the selection of new living arrangements before transfer. However, during the COVID-19 public health emergency, it was unsafe and contrary to public health policy for families to visit post-acute facilities. This prevents facilities, families, and staff from making informed decisions.

- 10) *Opposition.* This bill is opposed by CDPH, which states that it is concerned this bill could have unintended consequences for residents. Limiting ICFs and SNFs from stopping or making changes to services unless they have filed a bankruptcy petition could lead to negative health outcomes for residents, particularly those in facilities operating under challenging economic circumstances short of bankruptcy. Requiring facilities to remain open may create a critical situation where care is compromised due to the facility's inability to retain staff, pay vendors, and obtain supplies and services. In such circumstances, CDPH would arrange for a temporary manager for a facility and these conditions may ultimately result in a more emergent transfer of residents by an entity less familiar with the residents rather than the organized transfer of an operator who can implement the approved transfer plan and allow for a less stressful transfer of these residents. Ultimately, CDPH states it cannot stop the sale or closure of a facility or force an operator to continue providing services they do not wish to provide.

The California Hospital Association (CHA) also opposes this bill, stating that their member hospitals operate approximately 100 distinct part SNFs, and that many of these hospital-based SNFs focus on short-term transitional care and rehabilitation following an acute care admission, while others provide long-term residential care for individuals unable to reside in the community. CHA states that California regulations already provide extensive oversight for facility closures, including ensuring that appropriate resident transfer plans have been developed. CHA argues that existing regulations are sufficient and effective in protecting residents, while also supporting a provider's ability to make service and program changes necessary to meeting the evolving needs of the patient's and residents.

- 11) *Proposed amendments to be adopted in committee.*

- a) *Shorter sunset to address possibility state of emergency lingers.* This bill prohibits an ICF or a SNF from closing down during the COVID-19 state of emergency, unless the owner files a bankruptcy petition. According to CDPH, there were 14 SNF closures in 2018, and 10 each in 2019 and 2020. It is unclear how long the proclamation of the state of emergency for COVID-19 will remain in effect, but it is possible it could linger for a long time, even as the Governor reverses executive orders imposing restrictions and continues to open up the state. As noted above, the Camp Fire emergency order is still in effect

from 2018. If the state of emergency for COVID also lingers for two years or more, it is unclear what effect will this bill have on those facilities that otherwise would have closed. To address this concern, the author has agreed to amendments that sunset the provisions of this bill on July 1, 2022, although the requirement that facilities provide 90 days advance notice of any proposed sale or termination of the license for six months following the end of the state of emergency will continue until January 1, 2023.

- b) *Exempt distinct-part SNFs.* To address concerns expressed by CHA, the author has agreed to exempt SNFs operated as a distinct part of a general acute care hospital from the provisions of this bill.
- c) *Limit on involuntary transfers.* This bill prohibits a SNF or ICF from transferring a resident to another facility during the COVID-19 state of emergency, except under specified conditions, such as when the resident provides written consent after being informed of their right to refuse. A provision added in the Assembly additionally permitted transfers that were deemed medically necessary by an attending physician. The intent in this amendment was to ensure that transfers to hospitals to treat an urgent medical condition were permitted, not to allow involuntary “lateral” transfers to other SNFs or ICFs that could be approved by the facility’s medical director. The bill has since been amended to specify that transfers to hospitals are permitted, and so the author is proposing to remove the ability of a facility to approve an involuntary lateral transfer during the COVID-19 state of emergency, but will instead permit these transfers to be approved by a public health authority, if necessary to manage the COVID-19 pandemic.

SUPPORT AND OPPOSITION:

Support: California Advocates for Nursing Home Reform (sponsor)
 AARP California
 Advocacy, Inc.
 Asian Americans Advancing Justice- Los Angeles
 California Advocates for Nursing Home Reform
 California Alliance for Retired Americans
 California Association of Long Term Care Medicine
 California Association of Public Authorities for IHSS
 California Health Advocates
 California Long-term Care Ombudsman Association
 California Retired Teachers Association
 Chinatown Community for Equitable Development
 Consumer Attorneys of California
 Consumer Federation of California
 Essential Caregivers Coalition
 Florin Japanese American Citizens League, Sacramento Valley
 Gray Panthers of San Francisco
 Health Care for All, Los Angeles Chapter
 Japanese American Bar Association
 Japanese American Citizens League, Pacific Southwest District
 Japanese American Citizens League, Twin Cities Chapter
 Keiro Pacifica Community Advisory
 Koreisha Senior Care & Advocacy

Los Angeles County Board of Supervisors
National Association of Social Workers, California Chapter
National Health Law Program
Nikkei for Civil Rights & Redress
Nikkei Progressives
Progressive Asian Network for Action
Sakura ICF Family Council
Save Our Seniors Network
SEIU California
The Geriatric Circle
62 Individuals

Oppose: California Department of Public Health
California Hospital Association

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