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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **AB 279 (Muratsuchi) - Intermediate care facilities and skilled nursing facilities: COVID-19**

**Version:** July 8, 2021

**Urgency:** Yes

**Hearing Date:** July 15, 2021

**Policy Vote:** HEALTH 10 - 0

**Mandate:** Yes

**Consultant:** Karen French

**Bill Summary:** AB 279, an urgency measure would prohibit the owner of an Intermediate Care Facility (ICF) or a Skilled Nursing Facility (SNF) from terminating, or making significant changes to, its skilled nursing or supportive care services during the state of emergency related to coronavirus disease 2019 (COVID-19) unless the owner files a bankruptcy petition.. The provisions of the bill sunset on July 1, 2022.

#### **Fiscal Impact:**

- According to the Assembly Appropriations Committee, negligible fiscal effect.
- Actual costs are unknown, but potentially could be significant depending upon the number of facilities that file bankruptcy between the effective date of the bill and the July 1, 2022 sunset. (See Staff Comments below for details)

**Background:** SNFs care for patients who need skilled nursing care on an extended basis, while ICFs provide inpatient care to ambulatory or non-ambulatory patients who do not require continuous skilled nursing care. 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, as noted below, 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.

According to the author, seniors in residential care facilities are among the most vulnerable to the COVID-19 pandemic. The author argues we have a moral obligation to do everything we can to protect seniors from eviction or transfer trauma

*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 September of 2015, then Attorney General Kamala Harris granted conditional consent to a request to sell four facilities to Pacifica Companies, LLC. As a condition of sale, Pacifica agreed it would not substantially change the culturally sensitive living environment of the healthcare facilities for at least five years. Those conditions expired on Feb. 4, 2021, and Pacifica has presented to the City of Los Angeles a proposal to convert one of the healthcare facilities into multi-unit apartments. On February 26, 2021, Pacifica Companies sent a letter to residents and their families

at Sakura ICF, the facility being closed, notifying them, beginning March 1, 2021 Sakura will start discussions regarding new placement options and identifying facilities that offer bicultural food, activities and language capability. Experts in elder care indicate transfer to a new facility can be traumatic, especially if not well-managed or for individuals suffering cognitive decline. 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. This bill would prohibit a closure unless the owner files a bankruptcy petition.

**Proposed Law:**

AB 279, an urgency measure would do the following:

- 1) Prohibit 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.
- 2) Require 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.
- 3) Require all conditions imposed by the Attorney General pursuant to the corporations code regarding nonprofit transactions 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.
- 4) Authorize the Attorney General to adopt regulations.

**Related Legislation:** SB 650 (Stern) requires SNF owners and operators to prepare and file an annual consolidated financial report with the Office of Statewide Health Planning and Development. SB 650 is pending in the 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, a Certified Medical Director. AB 749 is on the Suspense File in this Committee.

AB 323 (Kalra) changes the standard CDPH uses when issuing penalties against LTC facilities for violations that result in the death of a resident. AB 323 is pending in Senate Judiciary Committee.

AB 1042 (Jones-Sawyer) authorizes CDPH to take specified actions to recover unpaid SNF penalties and requires DHCS to give notice of legal action to recover unpaid quality assurance fees. AB 1042 is pending in this Committee.

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.

**Staff Comments:** This bill is an urgency measure, the enactment of which is intended to forestall the closure of Sakura Gardens which was scheduled to close on July 20th. According to Keiro Pacifica Community Advisory Board, the elderly residents were being pressured by the owner/operator to transfer out of the ICF by July 23. Two weeks ago, the operator changed their date to mid to late August 2021.

CDPA notes that this bill addresses voluntary closures. The bill's provision allowing facilities to terminate or make significant changes to quality of care only in instances where the facility has filed for bankruptcy may result in the need for additional oversight by CDPH. CDPA assumptions are based on three facilities filing for bankruptcy and the following possible consequences:

1. \$90,000 for complaint investigation by health facility evaluator nurses (HFEN). If a facility cannot safely provide care but does not have the ability to cease providing care, if CDPH receives complaints from staff, residents, and family members, it will need to investigate these complaints.
2. \$540,000 (facility pays or Health Facility Citation Penalties Account) CDPH may incur cost for Temporary Managers for three facilities for six months if facility cannot pay. If the facility is frequently found to be in violation of certain federal and state requirements, CDPH may need to appoint a Temporary Manager to the facility to protect the safety of the residents.
3. \$3,666,000 for contract nursing staff for three facilities for six months. CDPH assumes these facilities will encounter staffing shortages as staff leaves for more secure employment. The actual number of nursing staff is unknown.

**Proposed Author Amendments:** None

**Recommended Amendments:** None

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