

GOVERNOR'S VETO
AB 279 (Muratsuchi and Santiago)
As Enrolled August 31, 2021
2/3 vote

SUMMARY

Would have prohibited 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. Requires facility owners to notify all residents and their representatives of any resident's COVID-19 infection. Contains an urgency clause to ensure that the provisions of this bill go into immediate effect upon enactment.

Senate Amendments

- 1) Add a requirement that an ICF or SNF, for six months after the termination of any COVID-19 state of emergency, issue a 90-day advance notice of any proposed sale or termination of the operation of the facility to each resident before the sale or termination goes into effect.
- 2) Sunset the provisions of this bill described in the Summary, and 1) above, on July 1, 2022.
- 3) Require all conditions imposed by the Attorney General (AG) 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, unless the owner of the ICF or SNF files for bankruptcy. Sunsets this provision on January 1, 2023.

Governor's Veto Message

This bill prohibits, until July 1, 2022, an intermediate care facility (ICF) or skilled nursing facility (SNF) from terminating or making significant quality-of-care changes, or from transferring a resident to another facility, unless the owner of the facility files for bankruptcy, except under specified circumstances.

Although this bill seeks to protect residents of ICFs and SNFs from involuntary transfers, its restrictions could have unintended consequences for the people it intends to serve. Requiring a struggling facility short of bankruptcy to remain open may lead to conditions where care is compromised because the facility is not able to retain staff. For example, facilities with inadequate staffing will struggle to implement measures to limit COVID-19 transmission and prevent outbreaks. Furthermore, the California Department of Public Health does not have the legal authority to compel a facility to continue operating or providing services if the facility wishes to close. For these reasons, I am returning this bill.

COMMENTS

- 1) *ICF's and SNFs.* SNFs are defined as health facilities that provide skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis, and ICFs are defined as health facilities that provide inpatient care to ambulatory or non-ambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require the availability of continuous skilled nursing care.

Total ICF and SNF facilities and beds that would be effected by this bill as of February 16, 2021 (total number of ICF and SNF facilities and beds less total number of state operated facilities and beds) are as follows:

FACILITY TYPE	Number of Licensed Facilities	Number of Beds
Intermediate Care Facility	5	273
Skilled Nursing Facility	1,201	116,291
Grand Total	1,206	116,564

Facility closures in the past three years (2018-20):

FACILITY TYPE	2018	2019	2020	Grand Total
Intermediate Care Facility (ICF)	*1	*1	*3	*5
Main/Parent ICFs	1	0	3	4
Distinct Part ICFs	0	1	0	1
Skilled Nursing Facility (SNF)	14	10	10	34
Main/Parent SNFs	12	8	8	28
Distinct Part SNFs	2	2	2	6
Grand Total	15	12	15	39

The ICF facilities reported as closed in 2018 and 2019 never received a license to operate an ICF, and thus never actually operated as functional ICFs. The same is true of two of the three ICF facilities that closed in 2020. Therefore, only one functional ICF closed in the period from 2018 through 2020.

- 2) *Keiro Facilities sale.* In September of 2015, then AG Kamala Harris granted conditional consent to Keiro Services, Keiro Nursing Home, and the Japanese Home for the Aged's request to sell four facilities to Pacifica Companies, LLC.
 - a) Keiro Nursing Home: a skilled nursing facility with 300 skilled nursing beds;
 - b) South Bay Keiro Nursing Home: a skilled nursing facility with 98 skilled nursing beds;
 - c) Keiro Intermediate Care Facility: an intermediate care facility with 90 intermediate care beds; and,
 - d) Keiro Retirement Home: a residential care facility for the elderly with a total capacity of 154 (currently 127 independent living units).

As a condition of sale, Pacifica agreed they would not substantially change the culturally sensitive living environment of the healthcare facilities, for at least five years. Those conditions expired on February 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.

According to the AG, under current statutory and regulatory authority, once conditions have expired, the AG no longer has authority to extend or change the conditions imposed on the transaction.

- 3) *Culturally appropriate care.* Currently, a closing facility must evaluate the relocation needs of the resident including proximity to the resident's representative and determine the most appropriate and available type of future care and services for the resident before written notice of transfer is given to the resident or the resident's representative.

On February 26, 2021, Pacifica Companies sent a letter to Sakura ICF (the facility being closed) residents and their families notifying them that beginning March 1, 2021 Sakura will start discussions regarding new placement options and identifying facilities that offer bicultural food, activities and language capability including Kei-Ai Los Angeles Healthcare Center in Lincoln Heights, Kei-Ai South Bay Healthcare Center in Gardena, Pacifica Sakura Gardens independent assisted living and memory care in Boyle Heights, and Nikkei Senior Gardens Assisted Living Facility in Arleta.

According to a March 2021 LA Times article, Kei-Ai Los Angeles was one of 27 nursing homes participating in a little-publicized county program that allows nursing facilities to volunteer to receive COVID patients from hospitals and other nursing facilities. At least 97 COVID deaths overall have been recorded at the center. The Sakura letter to residents and families notes that all current Sakura ICF resident have been fully vaccinated, making the risk of COVID-19 infection related to transfers to another facility reduced.

- 4) *Transfer trauma.* According to the United States (U.S.) Administration on Aging, transfer trauma, also referred to as translocation syndrome, transfer stress, transfer shock, transfer anxiety, is a viable problem. In 1992, a formal nursing diagnosis was approved for "relocation stress syndrome," defined as "physiologic and/or psychosocial disturbances as a result of transfer from one environment to another." Transfer trauma is described as a "wave of disorientation and despair so intense that it can kill." According to the U.S. Department of Aging, the stability of familiar people, surroundings, and routine are important elements for sustaining life for people of advanced age, and that while the first move to a nursing home is almost always traumatic, a subsequent move can be deadly.

According to the Author

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

Arguments in Support

California Advocates for Nursing Home Reform supports this bill and states that involuntary 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.

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 notes they have already

witnessed the disproportionate mortality rates in senior nursing home facilities, where 4% of positive cases in CA have been housed, while suffering 23% of the California COVID-19 deaths. PANA states that in some cases this bill will be the only line of defense against some private entities who have no concern about the lives and safety of some of the most vulnerable members of our population. PANA concludes that this bill will protect the lives of seniors at facilities such as the Sakura Intermediate Care Facility in Boyle Heights, Los Angeles, where Japanese American and Japanese seniors, aged in their 80's to 100's are now facing the traumatizing and deadly prospects of being forced out of their long-time homes for the sake of satisfying the greed of the ownership, Pacifica Companies.

Arguments in Opposition

The California Association of Health Facilities (CAHF) is opposed to this bill and states that while CAHFs understand the concern about displacing frail and elderly residents from a certain ICF in Los Angeles during the COVID-19 pandemic, we believe that this bill's provisions are inappropriately broad and incorrectly apply statewide to all types of long-term care (LTC) facilities that are not ICFs and that do not care for similar individuals nor are they governed by the same requirements. CAHF contends that as drafted, this bill will do more harm than good by applying certain unworkable restrictions to a broad category of facilities and putting patient care at risk. Some of CAHF's concerns with the bill are as follows:

- 1) LTC facilities have extensive requirements in statute and regulation which govern closures, change of ownerships, patient transfers and patient discharge. These rules are already very restrictive and have been developed over years of experience and understanding of the needs of patients and residents while assuring that there will be facility providers interested and willing to provide care;
- 2) SNFs, and ICFs have faced enormous obstacles as they work to protect residents, clients and staff from COVID-19. For SNFs in particular, many additional reporting requirements have been imposed on them in terms of infection prevention control, personal protective equipment, weekly testing and daily reporting of COVID-10 cases and deaths, among others; and,
- 3) There are a variety of reasons why a facility may need to cease delivering or make significant changes to residential care services and facilities should not be restricted from making changes only if they file for bankruptcy. Also, there are a variety of reasons why a resident may be transferred to another facility and this should not be restricted to only under bankruptcy or if a patient consents.

CAHF also states that this bill inappropriately applies a local issue statewide and to facilities that are not impacted nor are affiliated with this local issue. CAHF also notes this bill would eliminate needed options for facilities to address COVID-19 patient care needs. As an example, the bill would prohibit a facility from changing to a COVID-19 only facility or modifying its structure to address requested modifications from the Department of Public Health (DPH). CAHF notes that a particularly unworkable provision of this bill is the requirement that facilities provide a six month notice to residents prior to a sale or closure. Recent legislation, AB 1695 (Carrillo), Chapter 832, Statutes of 2019, requires that SNFs provide a 90 day notice to staff prior to the sale of a SNF facility. This 90 day notice already provides the necessary notice in addition to requirements to inform DPH and local public health and to protect against the sale or change of ownership adversely impacting patient care. CAHF concludes that while it is very

unfortunate when homes have to close, the restrictions in this bill would create additional hardship on operators who are facing the difficult choice of having to close, and at the very least this legislation should apply just to the ICFs that are concerning to the author.

The Department of Finance is opposed to this bill because it creates new special fund costs not included in the 2021 Budget Act. Finance also notes that DPH does not have the authority to compel a facility to continue operating or providing services it no longer is able to financially support, which could have negative consequences for patient health and safety.

FISCAL COMMENTS

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

VOTES

ASM HEALTH: 11-2-2

YES: Wood, Aguiar-Curry, Bonta, Burke, Carrillo, Maienschein, McCarty, Nazarian, Chiu, Rodriguez, Santiago

NO: Bigelow, Flora

ABS, ABST OR NV: Mayes, Waldron

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Bloom, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Kalra, Levine, Nazarian, Quirk, Robert Rivas

NO: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 58-1-19

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

NO: Smith

ABS, ABST OR NV: Bigelow, Cervantes, Chen, Choi, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Gallagher, Kiley, Mathis, Mayes, Nguyen, Patterson, Quirk, Seyarto

SENATE FLOOR: 32-3-5

YES: Allen, Archuleta, Atkins, Bates, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Limón, McGuire, Melendez, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Dahle, Jones, Nielsen

ABS, ABST OR NV: Borgeas, Gonzalez, Grove, Leyva, Skinner

ASSEMBLY FLOOR: 62-0-17

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

ABS, ABST OR NV: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Lorena Gonzalez, Kiley, Mathis, Mayes, Nguyen, Patterson, Quirk, Seyarto, Smith

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