

An act to amend Sections 1294, 1569.50, and 1599.1 of, and to add Chapter 3.91 (commencing with Section 1599.50) to Division 2 of, the Health and Safety Code, relating to health and care facilities.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Video Recording to Ensure Honesty in Nursing Notes Act.

SEC. 2. Section 1294 of the Health and Safety Code is amended to read:

1294. The state department may suspend or revoke any license or special permit issued under the provisions of this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee or holder of a special permit of any of the provisions of this chapter or of the rules and regulations promulgated under this chapter.

(b) Violation by a facility certified as a skilled nursing facility under Title XVIII of the Social Security Act or as a nursing facility under Title XIX of the Social Security Act, or as both, of any federal statutes or regulations applicable to its operation.

(c) Aiding, abetting, or permitting the violation of any provision of this chapter or of the rules and regulations promulgated under this chapter.

(d) Conduct inimical to the public health, morals, welfare, or safety of the people of the State of California in the maintenance and operation of the premises or services for which a license or special permit is issued.

(e) The conviction of a licensee, or other person mentioned in subdivision (b) of Section 1265.1, at any time during licensure, of a crime as defined in Section 1265.2.

(f) Violation by the facility of Chapter 3.91 (commencing with Section 1599.50).

SEC. 3. Section 1569.50 of the Health and Safety Code is amended to read:



1569.50. (a) The department may deny an application for a license or may suspend or revoke ~~any~~ a license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(a)

(1) Violation by the licensee of this chapter or of the rules and regulations adopted under this chapter.

(b)

(2) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted under this chapter.

(c)

(3) Conduct ~~which~~ that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.

(d)

(4) The conviction of a licensee, or other person mentioned in Section 1569.17 at any time before or during licensure, of a crime as defined in Section 1569.17.

(e)

(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(6) Violation by the facility of Chapter 3.91 (commencing with Section 1599.50).

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(b) The director may temporarily suspend ~~any~~ a license, prior to ~~any~~ a hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 4. Section 1599.1 of the Health and Safety Code is amended to read:

1599.1. Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.



(b) Each patient shall show evidence of good personal hygiene and be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.

(c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

(d) The facility shall provide an activity program staffed and equipped to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities. Patients shall be encouraged to participate in activities suited to their individual needs.

(e) The facility shall be clean, sanitary, and in good repair at all times.

(f) A nurses' call system shall be maintained in operating order in all nursing units and provide visible and audible signal communication between nursing personnel and patients. Extension cords to each patient's bed shall be readily accessible to patients at all times.

(g) (1) If a facility has a significant beneficial interest in an ancillary health service provider or if a facility knows that an ancillary health service provider has a significant beneficial interest in the facility, as provided by subdivision (a) of Section 1323, or if the facility has a significant beneficial interest in another facility, as provided by subdivision (c) of Section 1323, the facility shall disclose that interest in writing to the patient, or his or her representative, and advise the patient, or his or her representative, that the patient may choose to have another ancillary health service provider, or facility, as the case may be, provide any supplies or services ordered by a member of the medical staff of the facility.



(2) A facility is not required to make any disclosures required by this subdivision to any patient, or his or her representative, if the patient is enrolled in an organization or entity that provides or arranges for the provision of health care services in exchange for a prepaid capitation payment or premium.

(h) (1) If a resident of a long-term health care facility has been hospitalized in an acute care hospital and asserts his or her rights to readmission pursuant to bed hold provisions, or readmission rights of either state or federal law, and the facility refuses to readmit him or her, the resident may appeal the facility's refusal.

(2) The refusal of the facility as described in this subdivision shall be treated as if it were an involuntary transfer under federal law, and the rights and procedures that apply to appeals of transfers and discharges of nursing facility residents shall apply to the resident's appeal under this subdivision.

(3) If the resident appeals pursuant to this subdivision, and the resident is eligible under the Medi-Cal program, the resident shall remain in the hospital and the hospital may be reimbursed at the administrative day rate, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(4) If the resident appeals pursuant to this subdivision, and the resident is not eligible under the Medi-Cal program, the resident shall remain in the hospital if other payment is available, pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(5) If the resident is not eligible for participation in the Medi-Cal program and has no other source of payment, the hearing and final determination shall be made within 48 hours.



(i) (1) Effective July 1, 2007, Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations in effect on July 1, 2006, shall apply to each skilled nursing facility and intermediate care facility, regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the skilled nursing facility or intermediate care facility in which the resident resides, except that a noncertified facility is not obligated to provide notice of Medicaid or Medicare benefits, covered services, or eligibility procedures.

(2) Effective January 1, 2013, Sections 483.10, 483.12, 483.13, and 483.15 of Title 42 of the Code of Federal Regulations in effect on July 1, 2006, shall apply to each hospice facility, regardless of a resident's payment source or the Medi-Cal or Medicare certification status of the hospice facility in which the resident resides, except that a noncertified facility is not obligated to provide notice of Medicaid or Medicare benefits, covered services, or eligibility procedures and a hospice facility is not obligated to comply with the provisions of subdivision (f) of Section 483.15 of Title 42 of the Code of Federal Regulations.

(j) The facility shall comply and require each patient or resident of the facility to comply with Chapter 3.91 (commencing with Section 1599.50).

SEC. 5. Chapter 3.91 (commencing with Section 1599.50) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 3.91. ELECTRONIC MONITORING OF FACILITIES

1599.50. For purposes of this chapter, the following definitions apply:



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(a) "Authorized electronic monitoring" means the placement of electronic monitoring devices in the common areas of a facility or the room of a resident of the facility, as authorized pursuant to this chapter, and the tapes or recordings from those devices.

(b) "Authorized electronic monitoring devices" means both of the following:

(1) Video surveillance cameras installed in the common areas of a facility or in a resident's room as authorized under this chapter.

(2) Audio devices installed in the room of a resident as authorized under this chapter that are designed to acquire communications or other sounds occurring in the room.

(c) "Facility" means a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) or a facility licensed pursuant to Chapter 2 (commencing with Section 1250) that is any of the following:

- (1) A skilled nursing facility.
- (2) An intermediate care facility.
- (3) An intermediate care facility/developmentally disabled.
- (4) An intermediate care facility/developmentally disabled habilitative.
- (5) An intermediate care facility/developmentally disabled-nursing.
- (6) A hospice facility.

(d) "Representative" means any of the following:

(1) The health care agent of a resident under the resident's advance health care directive, unless the advance health care directive denies the agent the authority to consent to electronic monitoring of the resident's room.



(2) The guardian or conservator of the resident's person, if the guardian or conservator has general medical consent authority, or has been awarded the authority to consent to electronic monitoring of the resident's room.

(3) A parent of an individual under 18 years of age.

(e) "Resident" means a resident of a residential care facility for the elderly or a patient of any of the other facilities listed in subdivision (c).

1599.51. Except as otherwise provided in this chapter, the State Department of Social Services shall administer the provisions of this chapter as they pertain to residential care facilities for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569). The State Department of Public Health shall administer the provisions of this chapter as they pertain to the other facilities subject to this chapter.

1599.52. (a) A resident or the representative of a resident may conduct authorized electronic monitoring of the resident's room through the use of authorized electronic monitoring devices placed in the room provided that all of the following requirements are satisfied:

(1) The resident or his or her representative bears the expense of the devices and the installation and maintenance thereof.

(2) The resident or his or her representative posts and maintains a notice at the entrance to the resident's room stating that the room is being monitored by an electronic monitoring device.

(3) Any other resident of the resident's room, or his or her representative, provides written consent to the authorized electronic monitoring, as described in this section.



(b) The written consent required under paragraph (3) of subdivision (a) shall be provided on a form prescribed by the Department of Public Health. The signed form shall be submitted to the facility and placed on file with the administrator of the facility.

(c) The resident, or representative thereof, from whom consent is requested pursuant to this section may do both of the following:

(1) Condition his or her consent on the positioning of any video surveillance camera so that he or she is not within the view captured by the camera.

(2) Condition his or her consent on the prohibition or limitation of the use of an audio electronic monitoring device as he or she desires.

(d) If authorized electronic monitoring is being conducted in the room of a resident under this section, another resident may not be moved into the room unless that resident or his or her representative has consented to the use of that monitoring in accordance with this section.

(e) If a resident residing in a shared room, or his or her representative, desires to utilize electronic monitoring in the room and the other resident in the room refuses to consent to the use of that monitoring, the facility shall make all reasonable efforts to accommodate, as soon as practical, the relocation of the resident for whom electronic monitoring is desired to another room, provided that the resident or his or her representative requests that relocation within a reasonable amount of time.

1599.53. (a) A facility may conduct authorized electronic monitoring of any common areas of the facility.



(b) A facility may conduct authorized electronic monitoring of a resident's room through the use of authorized electronic monitoring devices placed in the room provided that all of the following requirements are satisfied:

(1) The facility bears the expense of the devices and the installation and maintenance thereof.

(2) The facility posts and maintains a notice at the entrance to the resident's room stating that the room is being monitored by an electronic monitoring device.

(3) The resident, or residents in the case of a shared room, or their representatives provide written consent to the authorized electronic monitoring, as described in this section.

(c) The written consent required under paragraph (3) of subdivision (a) shall be provided on a form prescribed by the State Department of Public Health. The signed form shall be submitted to the facility and placed on file with the administrator of the facility.

(d) The resident, or representative thereof, from whom consent is requested pursuant to this section may condition his or her consent on the prohibition or limitation of the use of an audio electronic monitoring device as he or she desires.

(e) If authorized electronic monitoring is being conducted in the room of a resident under this section, another resident may not be moved into the room unless that resident or his or her representative has consented to the use of that monitoring in accordance with this section.

1599.54. (a) A facility shall provide written notice to each resident, or to the representative of each resident, that authorized electronic monitoring of a resident's



room conducted under the provisions of this chapter is not mandatory and shall only be conducted with the written consent of the resident or the representative of the resident.

(b) A facility shall not refuse to admit an individual into the facility and shall not remove a resident from the facility because of authorized electronic monitoring of the resident's room or any attempt to engage in authorized electronic monitoring of the resident's room.

(c) On or before March 1, 2016, a facility shall post at or near its main entrances a sign that clearly states that electronic monitoring devices may be in use in the facility.

1599.55. (a) A person or entity shall not intentionally hamper, obstruct, tamper with, or destroy an authorized electronic monitoring device or a recording from that device. A violation of this subdivision is a misdemeanor.

(b) A person or entity shall not intercept a communication or disclose or use an intercepted communication of an authorized electronic monitoring device placed or installed in a common area of a facility without the express written consent of the facility.

(c) A person or entity shall not intercept a communication or disclose or use an intercepted communication of an authorized electronic monitoring device placed or installed in a resident's room without the express written consent of the resident or the representative of the resident.

1599.56. Subject to other provisions of applicable law, a tape or recording created through the use of authorized electronic monitoring pursuant to this chapter may be admitted into evidence in a civil, criminal, or administrative proceeding.



1599.57. Notwithstanding Section 1599.54, a resident or a representative of a resident or a facility utilizing electronic monitoring devices in the room of the resident as of January 1, 2015, shall comply with the provisions of this chapter no later than January 1, 2016.

1599.58. Chapter 1.5 (commencing with Section 630) of Part 1 of Title 15 of the Penal Code shall not apply to authorized electronic monitoring conducted under this chapter.

1599.59. (a) The State Department of Public Health shall prescribe the forms required by Sections 1599.52 and 1599.53 no later than July 1, 2015, and shall make those forms available on its Internet Web site.

(b) The State Department of Public Health may include in the form prescribed pursuant to subdivision (a) other information that it reasonably considers to be appropriate.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Health and care facilities: electronic monitoring.

Existing law provides for the licensure and regulation of health facilities, including skilled nursing facilities, intermediate care facilities, and hospice facilities, by the State Department of Public Health. Existing law also provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services.

This bill would authorize a resident of a skilled nursing facility, an intermediate care facility, a hospice facility, or a residential care facility for the elderly, or his or her representative, as defined, to conduct electronic monitoring of the resident's room provided that the representative or resident bears the cost of the devices used, the resident or his or her representative posts or maintains a notice at the entrance to the room indicating that the room is being electronically monitored, and any other resident of the room, or his or her representative, provides written consent to the monitoring,



as specified. The bill would also authorize the facility to conduct electronic monitoring of a residents room if similar requirements are satisfied and would further authorize a facility to conduct electronic monitoring of any common areas of the facility. The bill would authorize the admission of a tape or recording created through the use of this electronic monitoring into evidence in a civil, criminal, or administrative proceeding, subject to other applicable provisions of law. The bill would prohibit a facility from refusing to admit an individual into the facility or removing a resident because of electronic monitoring of the resident's conducted pursuant to these provisions.

The bill would prohibit a person from intentionally hampering, obstructing, tampering with, or destroying electronic monitoring devices authorized pursuant to these provisions and would make a violation of that prohibition a misdemeanor, thereby imposing a state-mandated local program. The bill would prohibit interception or disclosure of a communication of an authorized electronic monitoring device without obtaining specified consent. The bill would require the State Department of Public Health and the State Department of Social Services to administer these provisions with respect to the facilities subject to their regulatory authority and would make violation of these provisions by a facility grounds for disciplinary action.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

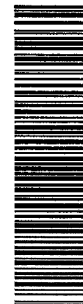
This bill would provide that no reimbursement is required by this act for a specified reason.



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Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local
program: yes.



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