

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

AB 279 (Muratsuchi) – As Amended March 25, 2021

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

**SUMMARY:** Prohibits 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. Specifically, **this bill:**

- 1) Prohibits the owner of an ICF or SNF (facility) from doing either of the following during any state of emergency relating to COVID-19, unless the owner of the facility files a bankruptcy petition:
  - a) Terminating, or make significant changes to, the nature of residential care services; or,
  - b) Transferring a resident or patient to another facility.
- 2) Permits a resident transfer only if one of the following conditions is met:
  - a) The transfer is deemed medically necessary by a government agency; or,
  - b) The impacted resident or their legally authorized representative, if applicable, provides written consent after being informed of their right to refuse the transfer in writing and in a language and manner that they understand.
- 3) Requires the owner of a facility, for one year after termination of any state of emergency related to COVID-19, to issue a six-month 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, unless the owner of a facility files a bankruptcy petition, both of the following to apply during a state of emergency relating to COVID-19:
  - a) All conditions of operation imposed by the Attorney General (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 of imposed by the AG that are in effect at the beginning of the state of emergency to remain in effect.
- 5) Requires, during any state of emergency related to COVID-19, if a resident of a facility, or an individual temporarily transferred to a facility from another facility, or any other type of health facility has tested positive for COVID-19 within the previous 14 calendar days, the facility of that resident or where that individual is transferred to do both of the following, subject to state and federal privacy laws as instructed by the Department of Public Health (DPH):

- 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, notify the representative of the resident about their case. Specifies that in the case of an individual temporarily transferred to the facility who has tested positive for COVID-19, if the individual becomes a resident of the facility, the facility must notify the representatives of that individual about their COVID-19 case.
- 6) Specifies that the protections provided in this bill are in addition to, and not exclusive of, any other protections for facility residents regarding transfer and discharge.
- 7) Defines “facility” as an ICF, and a SNF, defined as follows:
- a) “SNF” means 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; and,
  - b) “ICF” means 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.
- 8) Excludes from the definition in 7) above, either of the following:
- a) Any facility operated by the State Department of State Hospitals; or,
  - b) Any facility operated by the State Department of Developmental Services.
- 9) Specifies that the provisions of this bill will remain in effect only until January 1, 2026, and as of that date is repealed.

**EXISTING LAW:**

- 1) Establishes DPH which licenses and regulates health facilities, including hospitals and long-term care facility (LTC) facilities. Includes as LTC facilities, SNFs, ICFs, ICF/developmentally disabled (ICF/DD), ICF/DD-habilitative, ICF/DD-nursing, and congregate living health facilities.
- 2) Requires a LTC facility to give written notice to the affected residents or to the guardians of the affected 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. Specifies that if residents’ placement problems are encountered that cannot be satisfactorily resolved within this 60-day period, DPH and the health facility must agree on an extension, not to exceed an additional 60 days.
- 3) Requires the facility to provide an appropriate team of professional staff to assist residents and families in obtaining alternative placement, requires the facility to hold a community meeting for residents and their families no later than 30 days after providing the written notice described in 2) above, and requires the facility to provide notice of the meeting to residents and their families and to local health authorities.
- 4) Requires, before residents are transferred due to any change in the status of the license or operation of a facility, including a facility closure or voluntary or involuntary termination of

a facility's Medi-Cal or Medicare certification, the facility to take reasonable steps to transfer affected residents safely and minimize possible transfer trauma by, at a minimum, doing all of the following:

- a) Ensure that the resident's attending physician or the facility medical director, if the resident does not have an attending physician, completes the medical assessment of the resident's condition and susceptibility to adverse health consequences, including psychosocial effects, prior to written notice of transfer being given to the resident. Requires the assessment to include recommendations for counseling, follow-up visits, and other recommended services, by designated health professionals, and for preventing or ameliorating potential adverse health consequences in the event of transfer;
  - b) Ensure that a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, a licensed psychiatrist, or a licensed professional clinical counselor and the facility nursing staff complete an assessment of the social and physical functioning of the resident. Requires the assessment to include recommendations for preventing or ameliorating potential adverse health consequences in the event of transfer, and to include a recommendation for the type of facility that would best meet the resident's needs; and,
  - c) 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. Requires the health facility to discuss the evaluation and medical assessment with the resident or the resident's representative and make the evaluation and assessment part of the medical records for transfer.
- 5) At least 60 days in advance of the transfer, inform the resident or the resident's representative of alternative facilities that are available and adequate to meet resident and family needs.
- 6) Requires any non-profit corporation that operates or controls a health facility, regardless of whether it is currently operating or providing health care services or has a suspended license, to provide written notice to, and obtain the written consent of, the AG prior to entering into any agreement or transaction to do either of the following:
- a) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity, or another non-profit corporation; or,
  - b) Transfer control, responsibility, or governance of a material amount of the assets or operations of the non-profit corporation to any for-profit corporation or entity, or another non-profit corporation.
- 7) Requires the AG, within 90 days of the receipt of a written notice of a proposed transaction involving a non-profit health facility, to notify the non-profit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. Permits the AG to extend the 90-day deadline for one additional 45-day period if any of the following conditions are satisfied: the extension is necessary to obtain specified information; the proposed transaction is substantially modified after the first public meeting conducted by the AG; or, the proposed transaction involves a multi-facility health system serving multiple communities.
- 8) Requires the AG, prior to issuing any written decision described in 7) above, to conduct one or more public meetings, one of which must be in the county in which the facility is located. Requires the AG to provide written notice of the time and place of the meeting in one or

more newspapers and to the board of supervisors of the county in which the facility is located. Requires the notice to be in English and in the primary languages spoken at the facility and the threshold languages for Medi-Cal beneficiaries in the county in which the facility is located.

- 9) Grants the AG 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 whether or not the terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation, the agreement or transaction is at fair market value, or the agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
- 10) Authorizes the AG, through regulation, to amend the terms and conditions of any agreement or transaction for which the AG has given consent or conditional consent only if there is a change in circumstances that could not have reasonably been foreseen at the time of the Attorney General's action.
- 11) Authorizes the Governor, under the California Emergency Services Act (CEMSA), to proclaim a state of emergency when specified conditions of disaster or extreme peril to the safety of persons and property exist. Authorizes the Governor to make, amend, and rescind orders and regulations necessary to carry out the provisions of CEMSA, requires the orders and regulations to have the force and effect of law, and requires orders and regulations, or amendments or rescissions to orders and regulations, issued during a state of war emergency or state of emergency to be in writing and to take effect immediately upon their issuance.

**FISCAL EFFECT:** Unknown. This bill has not yet been analyzed by a fiscal Committee.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** 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.

- 2) **BACKGROUND.**

- a) **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
<b>Intermediate Care Facility (ICF)</b>	<b>*1</b>	<b>*1</b>	<b>*3</b>	<b>*5</b>
Main/Parent ICFs	1	0	3	4
Distinct Part ICFs	0	1	0	1
<b>Skilled Nursing Facility (SNF)</b>	<b>14</b>	<b>10</b>	<b>10</b>	<b>34</b>
Main/Parent SNFs	12	8	8	28
Distinct Part SNFs	2	2	2	6
<b>Grand Total</b>	<b>15</b>	<b>12</b>	<b>15</b>	<b>39</b>

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.

- b) **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.
- i) Keiro Nursing Home: a skilled nursing facility with 300 skilled nursing beds;
  - ii) South Bay Keiro Nursing Home: a skilled nursing facility with 98 skilled nursing beds;
  - iii) Keiro Intermediate Care Facility: an intermediate care facility with 90 intermediate care beds; and,
  - iv) 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 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.

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.

- c) **Culturally appropriate care.** As noted in Existing Law above, 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.

- d) Transfer trauma.** According to the 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.
- 3) 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.

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 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.

- 4) **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 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:
- a) Long term care 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;
  - b) 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,
  - c) 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 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 contends that DPH follows a very detailed and lengthy process in authorizing any change of ownership or closure of a facility. CAHF states that unfortunately, the cost of staffing, food, supplies and benefits have continued to rise and far exceed the frozen Medi-Cal reimbursement rate for these homes. In recent years, only certain ICF/DD (small 6 bed homes in the community) homes have received Proposition 56 supplemental funds that have helped keep them afloat. Currently, these homes are also receiving a 10% COVID 19 Medi-Cal increase, however, even with these small temporary increases, some homes have closed because the owners have been unable to make ends meet with the severely underfunded Medi-Cal reimbursement rate. 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.

## **5) RELATED LEGISLATION.**

- a) AB 323 (Kalra) changes the standard DPH 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 a hearing in the Assembly Health Committee.
- b) AB 749 (Nazarian) prohibits a SNF from contracting with a person as a medical director if the person is not, or will not be within 5 years, certified by the American Board of Post-Acute and Long-Term Care Medicine as a Certified Medical Director. AB 749 is pending a hearing in the Assembly Health Committee.
- c) AB 1042 (Jones-Sawyer) authorizes DPH, 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” (businesses in which the SNF owner has an ownership or control interest of 5% or more), that DPH may take legal action to recover the unpaid penalty amount from the SNFs’ financial interest in the related party. Requires DPH 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 a hearing in the Assembly Health Committee.
- d) AB 1502 (Muratsuchi), the Skilled Nursing Facility Ownership and Management Reform Act of 2021, re-writes current law with respect to SNF licensing by DPH. AB 1502 is pending a hearing in Assembly Health Committee.
- e) SB 650 (Stern) requires an organization that operates, conducts, owns, manages, or maintains a SNF to prepare and file with the Office of Statewide Health Planning and Development (OSHPD) an annual consolidated financial report that includes data from all operating entities, license holders, and related parties in which the organization has an ownership or control interest of 5% or more and that provides any service, facility, or supply to the skilled nursing facility. SB 650 also requires management companies and property companies that are not related by ownership or control to one of those organizations, but that contract with, or have entered into leases with, one of those organizations, to file an annual consolidated financial report. Requires OSHPD to post those reports and related documents to its internet website.

## **6) PREVIOUS LEGISLATION.**

- a) AB 2644 (Wood), Chapter 287, Statutes of 2020, requires a SNF, in the event of a declared emergency related to a communicable disease, to report each disease related death to DPH within 24 hours. Requires DPH to make the total number of disease related deaths reported, and the location at which they occurred, available on its internet website



on a weekly basis. Requires DPH to disclose the information in a manner that protects patients' privacy; authorizes DPH to require SNFs to report additional disease related information; require SNFs to notify residents and their representatives and family members about cases of the disease; and, require SNFs to have a full-time, dedicated Infection Preventionist.

- b) AB 275 (Wood), Chapter 185, Statutes of 2017, revises the procedures for when a LTC 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 DPH, including identifying the number of affected residents and identifying the availability of alternative beds within the community as part of the proposed relocation plan.

- 6) **SUGGESTED AMENDMENT.** As currently drafted this bill only allows for transfer of a resident when deemed medically necessary by a government agency. The Committee may wish to amend this bill to allow for the transfer of a resident when deemed medically necessary by an attending physician approved by the resident's legally authorized representative.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Advocates for Nursing Home Reform (sponsor)

Hilda L. Solis, Los Angeles County Board of Supervisors

AARP

Advocacy, Inc.

Asian Americans Advancing Justice – Los Angeles

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 Office of The State Long-Term Care Ombudsman

California Retired Teachers Association

Chinatown Community for Equitable Development

Consumer Federation of California

Essential Caregivers Association

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, Twin Cities Chapter

Keiro Pacifica Community Advisory Board

Koreisha Senior Care & Advocacy

National Association of Social Workers, California Chapter

National Health Law Program  
Nikkei Progressives  
Progressive Asian Network for Action  
Sakura ICF Family Council  
Save our Seniors Network  
SEIU California  
The Geriatric Circle  
Numerous individuals

**Opposition**

California Association of Health Facilities  
LeadingAge California

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