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SB-1280 Small house skilled nursing facilities. (2017-2018)

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Senate Bill No. 1280

CHAPTER 115

An act to amend Sections 1323.5 and 1323.6 of the Health and Safety Code, relating to health and care facilities.

[Approved by Governor July 16, 2018. Filed with Secretary of State July 16, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1280, Roth. Small house skilled nursing facilities.

Existing law provides for the licensure and regulation of health facilities, including skilled nursing facilities, as defined, by the State Department of Public Health. Violation of these provisions is a crime.

Existing law, until January 1, 2020, establishes the Small House Skilled Nursing Facilities Pilot Program within the department for the purposes of providing skilled nursing care in a homelike, noninstitutional setting. Existing law requires pilot facilities, as defined, to meet specified requirements and pay specified fees. Existing law required the department, by July 1, 2013, to issue one or more all-facility letters to provide the standards for the development and operation of all pilot facilities.

This bill would extend operation of the pilot program to January 1, 2026, and would delete the obsolete July 1, 2013, deadline for the department's issuance of the all-facility letters. By extending the operation of the pilot program, the bill would expand the scope of a crime, and thus would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 1323.5 of the Health and Safety Code is amended to read:

1323.5. (a) (1) The Small House Skilled Nursing Facilities Pilot Program (SHSNF PP) is hereby established within the department. The purpose of the pilot program is to allow the department to authorize the development and operation of up to 10 small house skilled nursing facilities that are licensed to provide skilled nursing care and supportive care to patients in small, homelike, residential settings that incorporate emerging patient-centered health care concepts. The long-range goal of the pilot program is to evaluate the models developed under the pilot program to determine if each model improves patient satisfaction and clinical outcomes in a cost-effective manner. The models developed shall also be eligible for certification for participation in

the federal Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) as skilled nursing facilities or in the federal Medicaid Program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), as nursing facilities, or as both.

(2) For purposes of the pilot program, the department shall permit the formulation of standards for long-term care that may extend beyond, or vary from, traditional long-term health care facility models, including, but not limited to, facility layout and design consistent with newly adopted revisions to the California Building Standards Code, nursing care levels, staffing levels, infection control, sanitation, dietary services, and other personal care and habilitation provisions that may be more flexible than those currently required in California for skilled nursing facilities and continuous nursing facilities.

(3) The department shall establish criteria to measure the benefits and successes of this type of long-term care facility, as a whole, and to compare the results achieved by each model variant. The department shall evaluate and analyze the emerging concepts in long-term skilled nursing care developed pursuant to the pilot program for purposes of considering future regulatory modification.

(b) Facilities that are eligible for participation in the pilot program shall have all of the following characteristics:

(1) To the extent permitted under federal law, each home shall consist of a homelike, rather than institutional, environment, including the following characteristics:

(A) The home shall be accessible to disabled persons, and shall be designed as a house, an apartment, or a distinct area within an existing skilled nursing facility that meets the standards described in paragraph (2) of subdivision (a) that is similar to housing available within the surrounding community, and that includes shared areas that would only be commonly shared in a private home or apartment.

(B) The home shall not, to the extent practicable, contain institutional features. These include, but are not limited to, nursing stations, medication carts, room numbers, and wall-mounted licenses or certificates that could appropriately be accessed through other means.

(C) (i) The home shall include resident rooms that accommodate not more than two residents per room. Facilities are encouraged to include private, single-occupancy bedrooms that are shared only at the request of a resident to accommodate a spouse, partner, family member, or friend, and that contain a full private and accessible bathroom.

(ii) Double-occupancy rooms shall contain a full private and accessible bathroom, and each resident's bedroom area shall be visually separated from the other by a full height wall or a permanently installed sliding door, folding door, or partition. Walls, doors, or partitions used to separate resident bedroom areas shall provide visual and acoustic separation. A door leading to each resident's bedroom area in addition to the corridor door is not required, unless needed to achieve visual or acoustic separation.

(iii) Each resident shall have direct use of, and access to, an exterior window at all times.

(D) The home shall contain a living area where residents and staff may socialize, dine, and prepare food together that provides, at a minimum, a living room seating area, and a dining area large enough to accommodate all residents and at least two staff members. The home shall contain a full kitchen open to the living and dining rooms that may be utilized by residents that shall provide for separation in accordance with the California Building Standards Code.

(E) The home shall contain ample natural light.

(F) The home shall have built-in safety features to allow all areas of the facility to be accessible to residents during the majority of the day and night.

(G) The home shall provide access to secured outdoor space.

(H) The home shall endeavor to create an aging-in-place environment where long-stay residents may form permanent homes with each other.

(I) The home shall prepare, cook, and serve meals on a daily basis for residents in the home. Nothing in this subparagraph shall prohibit a home from utilizing outside resources in a manner approved by the department.

(c) As used in this article, the following definitions apply:

(1) "Pilot facility" means a Small House Skilled Nursing Facility (SHSNF) participating in the Small House Skilled Nursing Facilities Pilot Program (SHSNF PP) established by this article.

(2) "Small house skilled nursing facility" (SHSNF) means a health facility that provides skilled nursing care and supportive care in a small, homelike, residential setting in an apartment, cottage, house, or similar residential unit, to patients whose primary need is for the availability of skilled nursing care on an extended basis. A SHSNF may consist of a group or cluster of such residential homes, each home having 12 or fewer beds, or a distinct area within an existing skilled nursing facility that otherwise meets the definition of a SHSNF, is physically separate and distinguishable from the remainder of the skilled nursing facility, and has a distinct entry with no through traffic of staff, residents, or visitors not affiliated with the SHSNF. A SHSNF may also be a distinct part of a general acute care hospital or an acute psychiatric hospital, pursuant to subdivision (c) of Section 1418. Regardless of location, all SHSNFs shall meet all standards.

(3) "Home" means an apartment, cottage, house, or other similar residential unit that serves 12 or fewer residents.

(4) "Supportive care" includes the provision of socialization, activity aide services, and homemaker services.

(5) "Homemaker services" means food preparation, housekeeping, laundry, and maintenance services.

(6) "Versatile worker" means a certified nursing assistant who provides personal care, socialization, activity aide services, meal preparation services, and laundry and housekeeping services.

(d) Each pilot facility shall be subject to all licensing enforcement provisions to which other skilled nursing facilities are subject, including, but not limited to, Section 1424.5, Article 7.6 (commencing with Section 1324.20), and Article 8 (commencing with Section 1325).

(e) Unless otherwise operating on an existing skilled nursing facility license, each pilot facility shall be subject to the Licensing and Certification program fee for skilled nursing facilities pursuant to Section 1266.

(f) Each pilot facility shall receive a peer group weighted average Medi-Cal reimbursement rate as calculated by the State Department of Health Care Services.

(g) (1) Each pilot facility shall provide for consistent staff assignments and self-managed work teams of direct care staff, including staff working as versatile workers. Licensed nursing staff shall direct the versatile workers in all activities delegated under the licensed nurses' scope of practice. A versatile worker may be supervised by nonclinical staff when performing nonclinical duties, at the discretion of the facility.

(2) (A) The pilot facility shall provide training for all staff involved in the operation of the home, to be completed prior to initial operation of the home, concerning the philosophy, operations, and skills required to implement and maintain self-directed care, self-managed work teams, a noninstitutional approach to long-term care, safety and emergency skills, food handling and safety, and other elements necessary for the successful operation of the home. Versatile workers and other staff interacting with residents in the homes shall demonstrate proficiency in these areas as well as the facility's policies and procedures, conflict resolution, and self-directed care principles.

(B) Replacement staff shall undergo the training described in subparagraph (A) within two weeks of commencing employment with the pilot facility.

(h) A facility may be licensed by the department as a pilot facility pursuant to this article if the facility meets both of the following requirements:

(1) The facility has been determined by the department to comply with all provisions necessary to be certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.) or as a nursing facility in the federal Medicaid Program under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), or as both.

(2) The facility has been determined by the department and the Office of Statewide Health Planning and Development (OSHPD) to fully comply with all pilot program requirements required under the provisions of this article, including payment of the licensing fee for a skilled nursing facility pursuant to Section 1266.

(i) In developing standards for this pilot program, the department shall, together with OSHPD and the Office of the State Long-Term Care Ombudsman, consult long-term care providers, health care advocacy organizations, health care employee organizations, consumer advocates, elder care advocates, and others identified as having a vested interest in long-term health care.

(j) The department shall issue one or more all-facility letters that provide the standards to be used by providers accepted into the pilot program for the development and operation of all pilot facilities.

(k) The department shall have authority to waive any standard for skilled nursing facilities established elsewhere in this chapter, Chapter 2.4 (commencing with Section 1417), and any regulations adopted thereunder, if the health, safety, and quality of patient care is not adversely affected. Prior written approval communicating the terms and conditions under which the waiver is granted shall be required. Applicants shall request the waiver in writing, accompanied by detailed, supporting documentation.

(l) (1) Consistent with this article, the department shall invite all eligible providers to submit an application to participate in the SHSNF PP at specified intervals over the first two years of the pilot program. The applications shall include sufficient information to demonstrate the provider's experience in establishing and operating one or more care facilities offering the level of care to be furnished by pilot facilities, including the name and location of each facility currently or previously licensed to the provider, whether within California or in another state.

(2) The department may require that additional information and documents be submitted with, or subsequently in support of, the application. Failure to provide any required information or documentation shall disqualify the applicant from the application process and from consideration for participation in the pilot program. The department may select providers for participation in the SHSNF PP based on the applicant's ability to meet or exceed the criteria described in this article.

(m) If, at any time, a pilot facility fails to meet the criteria set forth in this article for being a pilot facility, or fails to safeguard patient health, safety, welfare, and security as determined by the department, the department shall remove that pilot facility from participation in the pilot program.

(n) The costs of the creation, administration, and evaluation of the pilot program shall be borne by the facilities participating in the pilot project.

(o) Each pilot facility shall provide any reports to the department that the department deems necessary for modifications to the pilot program, the guidance or regulations governing the pilot facilities, and any other information the pilot facilities deem relevant in evaluating the success of the pilot program in delivering improved patient care. The department may inspect a participating pilot facility at any time.

(p) The department shall prepare and submit a report to the Legislature on the results of the SHSNF PP. The department may prepare the evaluation, analysis, and report itself, or may do so under contract. The report shall be submitted to the Legislature at least 24 months prior to the termination of the pilot program, and shall include an evaluation of the pilot program's cost, safety, and quality of care.

(q) This section and the pilot program shall not be construed to limit providers not participating in the pilot from pursuing approval for similar practices through program flexibility or similar existing process allowed by law.

SEC. 2. Section 1323.6 of the Health and Safety Code is amended to read:

1323.6. This article shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.