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**SB-1354 Long-term health care facilities: payment source and resident census.** (2023-2024)

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**Senate Bill No. 1354**

**CHAPTER 339**

An act to amend Section 1599.78 of, and to add Section 1439.9 to, the Health and Safety Code, and to amend Sections 14005.19 and 14124.10 of the Welfare and Institutions Code, relating to health facilities.

[ Approved by Governor September 21, 2024. Filed with Secretary of State September 21, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1354, Wahab. Long-term health care facilities: payment source and resident census.

Existing law provides for the licensing and regulation of long-term health care facilities, including, among others, skilled nursing facilities and intermediate care facilities, by the State Department of Public Health. A violation of those provisions is generally a crime. Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions.

Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from discriminating against a Medi-Cal patient on the basis of the source of payment for the facility's services that are required to be provided to individuals entitled to services under the Medi-Cal program. Existing law prohibits that facility from seeking to evict out of the facility, or transfer within the facility, any resident as a result of the resident changing their manner of purchasing the services from private payment or Medicare to Medi-Cal, except as specified.

This bill would require the facility to provide aid, care, service, and other benefits available under Medi-Cal to Medi-Cal beneficiaries in the same manner, by the same methods, and at the same scope, level, and quality as provided to the general public, regardless of payment source. The bill would find and declare that this requirement is declaratory of existing law and thus not reimbursable under the Medi-Cal Long-Term Care Reimbursement Act or any other Medi-Cal ratesetting provisions, as specified. The bill would specify that if reimbursement is found to be required by state or federal law or regulation, as specified, the above requirement shall only become operative upon appropriation by the Legislature. The bill would also provide that this requirement and the above-described prohibition against discrimination on the basis of payment source be implemented only to the extent that these provisions do not conflict with federal law, that any necessary federal approvals are obtained, and that federal financial participation for the Medi-Cal program is available and is not otherwise jeopardized.

Existing federal regulations require certain nursing facilities to post their resident census and specified nurse staffing data on a daily basis.

This bill would require a skilled nursing facility that participates as a provider under the Medi-Cal program to make publicly available its current daily resident census and nurse staffing data, as defined. The bill would require the facility to make the information available either by posting it on the facility's internet website or by providing the information to a requester by telephone or email, as specified. The bill would exempt these requirements from the above-described and other related criminal

penalties. The bill would find and declare that these requirements are not reimbursable under the Medi-Cal Long-Term Care Reimbursement Act, but that if reimbursement is found to be required by state or federal law or regulation, as specified, the above provision shall only become operative upon appropriation by the Legislature.

Existing law requires that a contract of admission to a long-term health care facility state that, except in an emergency, a resident may not be involuntarily transferred or discharged from the facility unless the resident and, if applicable, the resident's representative, are given reasonable notice in writing and transfer or discharge planning as required by law. Existing law requires that the written notice state the reason for the transfer or discharge.

This bill would require that the notice also include a specified statement relating to, among other things, restrictions on discharge from the facility or transfer within the facility solely as a result of changing the manner of purchasing services from private payment or Medicare to Medi-Cal payment, and certain resource information about facilities participating in Medi-Cal.

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

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

**SECTION 1.** Section 1439.9 is added to the Health and Safety Code, to read:

**1439.9.** (a) A skilled nursing facility, as defined in subdivision (c) of Section 1250, participating as a provider under the Medi-Cal program shall make publicly available its current daily resident census and nurse staffing data by meeting either of the following conditions:

(1) The facility posts on its internet website the facility's current daily resident census and nurse staffing data.

(2) Upon request by telephone, the facility meets one or both of the following, based on the preference of the requester:

(A) Within 24 hours of the request, the facility provides the facility's current daily resident census and nurse staffing data to the requester verbally by means of telephone.

(B) Within two business days of the request, the facility provides the facility's current daily resident census and nurse staffing data to the requester in writing by means of email. To comply with a request to provide current daily resident census and nurse staffing data by means of email, the facility may email a photograph of its posted current daily resident census and nurse staffing data.

(b) For purposes of this section, "current daily resident census" and "nurse staffing data" mean the data required to be posted by the facility pursuant to Section 483.35(g) of Title 42 of the Code of Federal Regulations corresponding to a given day in the case of paragraph (1) of subdivision (a), or corresponding to the day a request is made in the case of paragraph (2) of subdivision (a).

(c) This section shall not be construed as precluding the provision of any information by a skilled nursing facility otherwise required by state or federal law, including, but not limited to, Section 483.35 of Title 42 of the Code of Federal Regulations.

(d) A violation of this section is exempt from Sections 1290 and 1431.

(e) (1) The Legislature hereby finds and declares that the estimated cost of complying with this section is de minimis and therefore the requirements imposed by this section shall not be reimbursable as a new state mandate pursuant to Article 3.8 (commencing with Section 14126) of this chapter or any other Medi-Cal ratesetting provisions of any law, regulation, or the California Medicaid State Plan.

(2) In the event of a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party or a final determination by the administrator of the Centers for Medicare and Medicaid Services, that reimbursement by the Medi-Cal program to long-term health care facilities for costs associated with this section is required by state or federal law or regulation, this section shall become operative only upon appropriation by the Legislature.

**SEC. 2.** Section 1599.78 of the Health and Safety Code is amended to read:

**1599.78.** (a) A contract of admission shall state that, except in an emergency, a resident may not be involuntarily transferred or discharged from a long-term health care facility unless the resident and, if applicable, the resident's representative, are given reasonable notice in writing and transfer or discharge planning as required by law. The written notice shall meet both of the following conditions:

(1) The notice shall state the reason for the transfer or discharge.

(2) The notice shall include the following statement:

"At the time of admission, this facility is an enrolled provider with the following: \_\_\_\_ Medi-Cal \_\_\_\_ Medicare.

If we participate in Medi-Cal, you will not be discharged from the facility or transferred within the facility, solely as a result of changing your manner of purchasing the services from private payment or Medicare to Medi-Cal, except for a potential transfer within the facility from a private room to a semiprivate room.

If we participate in Medi-Cal, you may be eligible for the Long-Term Care Medi-Cal program to help pay for your stay in the facility. For more information, refer to the attached notice DHCS 7077, Notice Regarding Standards for Medi-Cal Eligibility, from the State Department of Health Care Services. Medi-Cal, Medicare, or a private payor may require that the resident pay a copayment, coinsurance, or a deductible, all of which the facility considers to be the resident's share of cost."

(b) The facility shall promptly notify the Office of the State Long-Term Care Ombudsman in every case of involuntary discharge as specified in Section 1439.7.

(c) The provisions of this section are intended to be consistent with federal law and regulations.

**SEC. 3.** Section 14005.19 of the Welfare and Institutions Code is amended to read:

**14005.19.** The receipt of respite care, as defined in Section 1418.1 of the Health and Safety Code, shall not affect the eligibility of any individual with respect to benefits under this chapter, except as subject to the limitations of subdivision (c) of Section 14124.7.

**SEC. 4.** Section 14124.10 of the Welfare and Institutions Code is amended to read:

**14124.10.** (a) No licensed long-term health care facility participating as a provider under the Medi-Cal program shall discriminate against a Medi-Cal patient on the basis of the source of payment for the facility's services that are required to be provided to individuals entitled to services under the Medi-Cal program. Nothing in this section shall be construed to prohibit a facility from charging private-pay patients for services required to be provided to Medi-Cal patients or which are in addition to those required under the Medi-Cal program.

(b) (1) A long-term health care facility participating as a provider under the Medi-Cal program shall provide aid, care, service, and other benefits available under Medi-Cal to Medi-Cal beneficiaries in the same manner, by the same methods, and at the same scope, level, and quality as provided to the general public, regardless of payment source. This subdivision applies to, but is not limited to, admission practices, room selection and placements except as specified in subdivisions (a) and (c) of Section 14124.7, and meal provision.

(2) The Legislature hereby finds and declares that this subdivision does not constitute a change in law and policy, but is declaratory of existing law and the Medi-Cal Provider Agreement and therefore the requirements imposed by this subdivision shall not be considered a new state mandate for the purposes of reimbursement pursuant to Article 3.8 (commencing with Section 14126) of this chapter or any other Medi-Cal ratesetting provisions of any law, regulation, or the California Medicaid State Plan.

(3) In the event of a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party or a final determination by the administrator of the Centers for Medicare and Medicaid Services, that reimbursement by the Medi-Cal program to long-term health care facilities for costs associated with this section is required by state or federal law or regulation, this subdivision shall become operative only upon appropriation by the Legislature.

(c) Nothing in this section shall limit a facility's ability to provide aid, care, service, and other benefits available under Medi-Cal in the manner, method, scope, and level appropriate based upon resident acuity and health care needs.

(d) This section shall be implemented only to the extent that it does not conflict with federal law and that any necessary federal approvals are obtained and federal financial participation for the Medi-Cal program is available and is not otherwise jeopardized.