

Assembly Bill No. 1422

CHAPTER 716

An act to amend Section 1276 of the Health and Safety Code, relating to health facilities.

[Approved by Governor October 8, 2021. Filed with Secretary of State October 8, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1422, Gabriel. Health facilities: critical care units: critical care unit program flexibility.

Existing law requires the State Department of Public Health to license and regulate health facilities, and requires the department to define specified bed classifications for health facilities, including general acute care, intermediate care, and specialized care, among others. Existing law generally authorizes the department or the Department of Health Care Access and Information to permit program flexibility as to various prescribed standards relating to a health facility's physical plant or staffing as long as statutory requirements are met and the program flexibility has prior written approval. A person who violates specified licensing provisions related to these health facilities is guilty of a crime.

This bill would additionally require any program flexibility granted by the department or the Department of Health Care Access and Information to not jeopardize the health, safety, and well-being of patients. The bill would specifically authorize the department to grant a critical care unit program flexibility request pursuant to a prescribed procedure that includes, among other things, a requirement that, on and after January 1, 2023, the department post a critical care unit program flexibility request on the department's publicly accessible internet website and solicit public comment on the request. On and after January 1, 2023, the bill would also require a health facility that submits a critical care unit program flexibility request to also post its critical care unit program flexibility request form and immediately notify affected employees, as specified. The bill would require the department to post on its internet website specified information, including a list of health facilities with approved critical care unit program flexibility, on or before February 1, 2023.

This bill would incorporate additional changes to Section 1276 of the Health and Safety Code proposed by SB 637 to be operative only if this bill and SB 637 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 1276 of the Health and Safety Code is amended to read:

1276. (a) The building standards published in the California Building Standards Code by the Department of Health Care Access and Information, and the regulations adopted by the State Department of Public Health shall, as applicable, prescribe standards of adequacy, safety, and sanitation of the physical plant, of staffing with duly qualified licensed personnel, and of services, based on the type of health facility and the needs of the persons served thereby.

(b) These regulations shall permit program flexibility by the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications, bulk purchasing of pharmaceuticals, or conducting of pilot projects as long as statutory requirements are met and the use has the prior written approval of the State Department of Public Health or the Department of Health Care Access and Information, as applicable. The approval of the department or the Department of Health Care Access and Information shall provide for the terms and conditions under which the exception is granted. A written request plus supporting evidence shall be submitted by the applicant or licensee to the department or Department of Health Care Access and Information regarding the exception, as applicable.

(c) While it is the intent of the Legislature that health facilities shall maintain continuous, ongoing compliance with the licensing rules and regulations, it is the further intent of the Legislature that the State Department of Public Health expeditiously review and approve, if appropriate, applications for program flexibility. The Legislature recognizes that health care technology, practice, pharmaceutical procurement systems, and personnel qualifications and availability are changing rapidly. Therefore, requests for program flexibility require expeditious consideration.

(d) The department shall, on or before April 1, 1989, develop a standardized form and format for requests by health facilities for program flexibility. Health facilities shall thereafter apply to the department for program flexibility in the prescribed manner. After the department receives a complete application requesting program flexibility, it shall have 60 days within which to approve, approve with conditions or modifications, or deny the application. Denials and approvals with conditions or modifications shall be accompanied by an analysis and a detailed justification for any conditions or modifications imposed. Summary denials to meet the 60-day timeframe shall not be permitted.

(e) To the extent that an application by a health facility for program flexibility, or for an extension of program flexibility, includes a request to allow the health facility to designate a bed or multiple beds in a critical care unit as requiring a lower level of care, including, but not limited to, the level of care provided in an intermediate care, step-down, telemetry, medical-surgical, specialty care, or pediatric services unit, that application shall be referred to as a "critical care unit program flexibility request." This

subdivision and subdivision (f) do not confer on the department any new or additional authority to modify staffing ratios.

(f) (1) The department shall require, as support for a critical care unit program flexibility request, the applicant or licensee to submit supporting evidence that includes documentation establishing the need for program flexibility and that the proposed alternative will not jeopardize the health, safety, and well-being of patients and is needed for increased operational efficiency.

(A) Any critical care unit program flexibility request, including supporting evidence submitted with the request, shall be posted on the department's publicly accessible internet website within five calendar days of receipt by the department.

(B) The department, at the time it posts a health facility's critical care unit program flexibility request, shall provide a method to electronically collect public comment specifically on the application for a period of 30 days.

(C) The 60-day timeframe provided for in subdivision (d) shall not commence until a facility's critical care unit program flexibility request and supporting evidence have been posted on the department's internet website.

(2) (A) A health facility that makes a critical care unit program flexibility request shall comply with both of the following requirements:

(i) Conspicuously post the critical care unit program flexibility request form and a notice next to its license stating that a critical care unit program flexibility request and supporting evidence have been submitted to the department.

(ii) Immediately make its best effort to notify affected employees and employee representatives of the critical care unit program flexibility request and direction to where to find the request and supporting evidence, and where to provide public comment.

(B) A facility's critical care unit program flexibility request will not be deemed complete for purposes of the 60-day timeframe pursuant to subdivision (d) until the facility has complied with this paragraph.

(3) In no event shall the department approve a health facility's critical care unit program flexibility request for a period of more than one year.

(4) Any approval of a health facility's critical care unit program flexibility request may be revoked by the department at any time, including on the grounds that there is no longer a need for program flexibility, that the approved alternative jeopardizes the health, safety, and well-being of patients, or that the approved alternative does not adequately protect patient safety.

(5) (A) The 30-day comment period required by subparagraph (B) of paragraph (1) shall not apply when a hospital submits a critical care unit program flexibility request due to a health care emergency. Critical care unit program flexibility requests approved pursuant to this paragraph shall not be effective for more than 90 days, and any request to extend the term of critical care unit program flexibility that was approved pursuant to this

paragraph shall be subject to the regular process provided for in this subdivision.

(B) For purposes of this paragraph, “health care emergency” means an unpredictable or unavoidable occurrence at unscheduled or unpredictable intervals relating to health care delivery requiring immediate medical interventions and care.

(6) This subdivision shall become operative on January 1, 2023.

(g) Notwithstanding any other law or regulation, the State Department of Public Health shall provide flexibility in its pharmaceutical services requirements to permit any state department that operates state facilities subject to these provisions to establish a single statewide formulary or to procure pharmaceuticals through a departmentwide or multidepartment bulk purchasing arrangement. It is the intent of the Legislature that consolidation of these activities be permitted in order to allow the more cost-effective use and procurement of pharmaceuticals for the benefit of patients and residents of state facilities.

(h) On or before February 1, 2023, the department shall post all of the following information on its internet website:

(1) A list of applicants for critical care unit program flexibility and the date of the application.

(2) A list of health facilities with approved critical care unit program flexibility and the effective start and end date of the approval.

(3) If approved, the notification of approval for critical care unit program flexibility, which shall include the application for critical care unit program flexibility; the regulation or regulations impacted; beds, units, or departments affected; and any conditions placed on the approval.

(4) A department contact for the public to submit a complaint related to an approved critical care unit program flexibility.

SEC. 1.5. Section 1276 of the Health and Safety Code is amended to read:

1276. (a) The building standards published in the California Building Standards Code by the Department of Health Care Access and Information, and the regulations adopted by the State Department of Public Health shall, as applicable, prescribe standards of adequacy, safety, and sanitation of the physical plant, of staffing with duly qualified licensed personnel, and of services, based on the type of health facility and the needs of the persons served thereby.

(b) These regulations shall permit program flexibility by the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications, bulk purchasing of pharmaceuticals, or conducting of pilot projects as long as statutory requirements are met and the use has the prior written approval of the State Department of Public Health or the Department of Health Care Access and Information, as applicable. The approval of the department or the Department of Health Care Access and Information shall provide for the terms and conditions under which the exception is granted. A written request plus supporting evidence shall be submitted by the

applicant or licensee to the department or Department of Health Care Access and Information regarding the exception, as applicable.

(c) While it is the intent of the Legislature that health facilities shall maintain continuous, ongoing compliance with the licensing rules and regulations, it is the further intent of the Legislature that the State Department of Public Health expeditiously review and approve, if appropriate, applications for program flexibility. The Legislature recognizes that health care technology, practice, pharmaceutical procurement systems, and personnel qualifications and availability are changing rapidly. Therefore, requests for program flexibility require expeditious consideration.

(d) (1) The department shall, on or before April 1, 1989, develop a standardized form and format for requests by health facilities for program flexibility. Health facilities shall thereafter apply to the department for program flexibility in the prescribed manner. After the department receives a complete application requesting program flexibility, it shall have 60 days within which to approve, approve with conditions or modifications, or deny the application. Denials and approvals with conditions or modifications shall be accompanied by an analysis and a detailed justification for any conditions or modifications imposed. Summary denials to meet the 60-day timeframe shall not be permitted.

(2) A health facility shall post any approval by the department granted under this section, or a true copy thereof, immediately adjacent to the health facility's license and on the facility's internet website. The department may not waive or flex this requirement and may not permit health facilities to maintain program flexibility approvals only in a binder or other location separate from the location stated in this subdivision.

(e) To the extent that an application by a health facility for program flexibility, or for an extension of program flexibility, includes a request to allow the health facility to designate a bed or multiple beds in a critical care unit as requiring a lower level of care, including, but not limited to, the level of care provided in an intermediate care, step-down, telemetry, medical-surgical, specialty care, or pediatric services unit, that application shall be referred to as a "critical care unit program flexibility request." This subdivision and subdivision (f) do not confer on the department any new or additional authority to modify staffing ratios.

(f) (1) The department shall require, as support for a critical care unit program flexibility request, the applicant or licensee to submit supporting evidence that includes documentation establishing the need for program flexibility and that the proposed alternative will not jeopardize the health, safety, and well-being of patients and is needed for increased operational efficiency.

(A) Any critical care unit program flexibility request, including supporting evidence submitted with the request, shall be posted on the department's publicly accessible internet website within five calendar days of receipt by the department.

(B) The department, at the time it posts a health facility's critical care unit program flexibility request, shall provide a method to electronically

collect public comment specifically on the application for a period of 30 days.

(C) The 60-day timeframe provided for in subdivision (d) shall not commence until a facility's critical care unit program flexibility request and supporting evidence have been posted on the department's internet website.

(2) (A) A health facility that makes a critical care unit program flexibility request shall comply with both of the following requirements:

(i) Conspicuously post the critical care unit program flexibility request form and a notice next to its license stating that a critical care unit program flexibility request and supporting evidence have been submitted to the department.

(ii) Immediately make its best effort to notify affected employees and employee representatives of the critical care unit program flexibility request and direction to where to find the request and supporting evidence, and where to provide public comment.

(B) A facility's critical care unit program flexibility request will not be deemed complete for purposes of the 60-day timeframe pursuant to subdivision (d) until the facility has complied with this paragraph.

(3) In no event shall the department approve a health facility's critical care unit program flexibility request for a period of more than one year.

(4) Any approval of a health facility's critical care unit program flexibility request may be revoked by the department at any time, including on the grounds that there is no longer a need for program flexibility, that the approved alternative jeopardizes the health, safety, and well-being of patients, or that the approved alternative does not adequately protect patient safety.

(5) (A) The 30-day comment period required by subparagraph (B) of paragraph (1) shall not apply when a hospital submits a critical care unit program flexibility request due to a health care emergency. Critical care unit program flexibility requests approved pursuant to this paragraph shall not be effective for more than 90 days, and any request to extend the term of critical care unit program flexibility that was approved pursuant to this paragraph shall be subject to the regular process provided for in this subdivision.

(B) For purposes of this paragraph, "health care emergency" means an unpredictable or unavoidable occurrence at unscheduled or unpredictable intervals relating to health care delivery requiring immediate medical interventions and care.

(6) This subdivision shall become operative on January 1, 2023.

(g) Notwithstanding any other law or regulation, the State Department of Public Health shall provide flexibility in its pharmaceutical services requirements to permit any state department that operates state facilities subject to these provisions to establish a single statewide formulary or to procure pharmaceuticals through a departmentwide or multidepartment bulk purchasing arrangement. It is the intent of the Legislature that consolidation of these activities be permitted in order to allow the more cost-effective use

and procurement of pharmaceuticals for the benefit of patients and residents of state facilities.

(h) On or before February 1, 2023, the department shall post all of the following information on its internet website:

(1) A list of applicants for critical care unit program flexibility and the date of the application.

(2) A list of health facilities with approved critical care unit program flexibility and the effective start and end date of the approval.

(3) If approved, the notification of approval for critical care unit program flexibility, which shall include the application for critical care unit program flexibility; the regulation or regulations impacted; beds, units, or departments affected; and any conditions placed on the approval.

(4) A department contact for the public to submit a complaint related to an approved critical care unit program flexibility.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1276 of the Health and Safety Code proposed by both this bill and Senate Bill 637. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1276 of the Health and Safety Code, and (3) this bill is enacted after Senate Bill 637, in which case Section 1 of this bill shall not become operative.