

Senate Bill No. 275

Passed the Senate September 11, 2007

Secretary of the Senate

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 43.975 to the Civil Code, and to add Section 1262.3 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 275, Cedillo. Health facilities: patient transporting.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Care Services. A violation of these provisions is a crime.

Existing law requires each hospital to have in effect a written discharge planning policy and process that requires appropriate arrangements for posthospital care and a process that requires that each patient be informed, orally or in writing, of the continuing care requirements following discharge from the hospital, as specified.

Existing law also prohibits a hospital from causing the transfer of homeless patients from one county to another county for the purpose of receiving supportive services from a social service agency, health care service provider, or nonprofit social service agency within the other county, without prior notice and authorization, as specified.

This bill would prohibit a general acute care hospital, acute psychiatric hospital, or special hospital from causing a patient to be transported to a location other than the residence of the patient without the written consent of the patient, except when the patient is appropriately transferred to another health facility pursuant to other provisions of law. This bill would make the violation of this bill subject to civil penalties, as specified. This bill would declare that these civil penalties shall, upon appropriation, be used exclusively for the provision of posthospital recuperative beds, transitional housing, and mental health counseling programs for the homeless.

By changing the definition of an existing crime, this bill would result in 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 no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 43.975 is added to the Civil Code, immediately following Section 43.97, to read:

43.975. (a) Upon a second violation of subdivision (a) of Section 1262.3 of the Health and Safety Code, a general acute care hospital, acute psychiatric hospital, or special hospital, shall be subject to a civil penalty of one hundred fifty thousand dollars (\$150,000) for the second violation. The Attorney General, a district attorney, a city attorney of a city having a population in excess of 750,000, or a city attorney of a city and county, may bring a civil action in the name of the people of the State of California seeking civil penalties, preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the health facility.

(b) Any general acute care hospital, acute psychiatric hospital, or special hospital convicted of a violation of subdivision (a) of Section 1262.3 of the Health and Safety Code, that has been previously penalized for two separate violations of subdivision (a) of Section 1262.3 of the Health and Safety Code may be subject to civil penalties of no less than three hundred thousand dollars (\$300,000).

(c) In determining the civil penalty to be imposed pursuant to this section, the court shall consider all relevant facts, including, but not limited to, all of the following:

(1) Whether the violation exposed the patient to a risk of death or serious physical harm.

(2) Whether the violation had a direct or immediate relationship to the health, safety, or security of the patient.

(3) Evidence, if any, of willfulness.

(4) The number of repeated violations.

(5) The presence or absence of good faith efforts by the defendant to prevent the violation.

(d) Any investigative costs incurred in the enforcement of this section, including, but not limited to, experts and attorney's fees

incurred by the Attorney General, district attorney, or city attorney in carrying out this section shall be recoverable from the liable general acute care hospital, acute psychiatric hospital, or special hospital.

(e) If the action authorized by this section is brought by the Attorney General, the civil penalty collected shall be paid to the General Fund. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the civil penalty collected shall be paid to the treasurer of the city in which the judgment was entered. The funds described pursuant to this subdivision shall, upon appropriation, be used exclusively for the provision of post-hospital recuperative beds, transitional housing and mental health counseling programs for the homeless.

(f) Nothing in this section shall preclude criminal prosecution or civil action under any other provision of law. Furthermore, nothing in this section shall limit or abridge the authority of any city or county to adopt an ordinance authorizing investigations or inspections, or implementing and enforcing restrictions dealing with patient transportation.

SEC. 2. Section 1262.3 is added to the Health and Safety Code, to read:

1262.3. (a) No general acute care hospital, acute psychiatric hospital, or special hospital may cause a patient to be transported to a location other than the residence of the patient without the patient's written consent, except when the patient is appropriately transferred to another licensed health facility pursuant to other provisions of law.

(b) For the purposes of this section, "written consent" means written consent signed by the patient or the patient's legal representatives, that shall be knowingly and voluntarily given.

(c) For purposes of this section, "residence of the patient" means the home of the patient, the fixed and regular nighttime residence or domicile of the patient, or, in the case of a homeless patient, as defined in Section 1262.4, the location given to the hospital by the patient as his or her principle dwelling.

(d) If the department determines that a hospital has violated subdivision (a), it shall consider, at a minimum, all of the following actions:

(1) Assessment of an administrative penalty pursuant to Section 1280.1 or Section 1280.3.

(2) Referral to appropriate authorities for consideration of commencing an action for violation of Section 1290.

(e) This section shall not apply to patients in state hospitals operated and administered by the State Department of Mental Health who are civilly or criminally committed and subject to transfer to the State Department of Corrections and Rehabilitation, the Forensic Conditional Release Program, or to a court for further proceedings.

(f) This section shall not apply to patients who remain under the jurisdiction of the State Department of Corrections and Rehabilitation.

(g) This section shall not apply to residents of state developmental centers operated and administered by the State Department of Developmental Services who are discharged to the community pursuant to the Lanterman Developmental Disabilities Services Act, and in accordance with an individual program plan, as defined in Section 4646 of the Welfare and Institutions Code, developed specifically for the resident.

SEC. 3. 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.

Approved _____, 2007

Governor