

AMENDED IN ASSEMBLY JUNE 14, 2012

AMENDED IN SENATE MAY 25, 2012

AMENDED IN SENATE APRIL 11, 2012

**SENATE BILL**

**No. 1318**

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**Introduced by Senator Wolk  
(Coauthor: Senator Anderson)**

February 23, 2012

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An act to amend, repeal, and add Section 1288.7 of, and to add Sections 1228.3, 1228.5, and 1288.65 to, the Health and Safety Code, relating to infectious diseases.

LEGISLATIVE COUNSEL'S DIGEST

SB 1318, as amended, Wolk. Health facilities: influenza vaccinations.

Existing law imposes on the State Department of Public Health various duties and responsibilities regarding the regulation of clinics and health facilities, including general acute care hospitals, as defined.

Existing law requires a general acute care hospital to annually offer onsite influenza vaccinations, if available, to all hospital employees. Existing law requires a general acute care hospital to require its employees to be vaccinated, or if the employee elects not to be vaccinated, to declare in writing that he or she declined the vaccination. A violation of these provisions is punishable as a misdemeanor.

This bill would require licensed clinics and health facilities to institute measures, including aerosol transmissible diseases training, designed to maximize influenza vaccination rates and to prevent onsite health care workers affiliated with the clinic or health facility and persons with privileges on the medical staff from contracting, and transmitting to patients, the influenza virus.

This bill would require, commencing January 1, 2015, each clinic and health facility to annually offer onsite influenza vaccinations to its employees and to require its onsite health care workers affiliated with the clinic or health facility, as defined, and persons with privileges on the medical staff, as defined, to be vaccinated. This bill would require licensed clinics and health facilities to maintain vaccination records of their employees and permit licensed clinics and health facilities to require documentation of vaccination or vaccination refusal from an onsite health care worker or person with privileges on the medical staff. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would also require, on and after January 1, 2015, each clinic and health facility to develop policies to implement these provisions and to ensure nonmedical staff, as defined, compliance with vaccination requirements. This bill would require, on and after that date, the medical staff to develop separate policies to ensure compliance with vaccination requirements imposed by the clinic or health facility. This bill would require clinics and health facilities to report their percentage of employees and medical staff and of medical staff who have been vaccinated for that year to the State Department of Public Health. This bill would provide that a clinic or health facility that reports a combined average of 90% or higher vaccination rate for its employees and medical staff shall not be subject to specified implementation and compliance requirements.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. The Legislature hereby declares that mandatory  
2 mask-wearing policies for health care workers who have not been  
3 immunized have proven effective to increase vaccination rates in  
4 health care workers. While studies have not yet proven that  
5 masking is effective to protect transmission of influenza in the  
6 asymptomatic phase of the influenza illness, wearing a mask has

1 proven effective in preventing the transmission of other respiratory  
2 pathogens.

3 SEC. 2. Section 1228.3 is added to the Health and Safety Code,  
4 to read:

5 1228.3. (a) A licensed clinic shall institute measures designed  
6 to maximize influenza vaccination rates and to prevent persons  
7 with privileges on the medical staff and onsite health care workers  
8 affiliated with the clinic from contracting, and transmitting to  
9 patients, the influenza virus to patients. These measures shall  
10 include, but not be limited to, aerosol transmissible diseases  
11 training as described in Section 5199(i) of Title 8 of the California  
12 Code of Regulations, as in effect on January 1, 2013.

13 (b) For purposes of this section, the following definitions shall  
14 apply:

15 (1) "Medical staff" shall have the same meaning provided in  
16 Section 1228.5.

17 (2) "Onsite health care worker affiliated with the clinic" shall  
18 have the same meaning provided in Section 1228.5.

19 (c) Notwithstanding Chapter 3.5 (commencing with Section  
20 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
21 the department may implement this section by sending letters or  
22 similar instruction to all applicable facilities without taking  
23 regulatory action.

24 SEC. 3. Section 1228.5 is added to the Health and Safety Code,  
25 to read:

26 1228.5. (a) A licensed clinic shall annually offer its employees  
27 onsite influenza vaccinations, if available, at no cost to the  
28 employee.

29 (b) A licensed clinic shall require all onsite health care workers  
30 affiliated with the clinic and persons with privileges on the medical  
31 staff to either annually receive an influenza vaccination or, as an  
32 alternative to the annual influenza vaccination, wear a  
33 clinic-provided surgical or procedural mask, or other mask that  
34 covers the mouth and nose area of the face, while this person is  
35 performing his or her duties in any patient care area of the clinic  
36 during the influenza season, as defined by the State Health Officer  
37 or a local health officer, or both.

38 (c) (1) In meeting the requirements of subdivision (b), the clinic  
39 shall maintain influenza vaccination records of employees and  
40 may maintain influenza vaccination records of the other onsite

1 health care workers affiliated with, but not an employee of, the  
2 clinic and of persons with privileges on the medical staff. If the  
3 clinic does not have records of an onsite health care worker or  
4 person with privileges on the medical staff being vaccinated onsite,  
5 the clinic may require the worker or medical staff person to either  
6 provide documentation of vaccination or documentation that he  
7 or she refused the vaccination.

8 (2) The clinic may include language in its business contracts to  
9 require a contract worker to maintain records of the verification  
10 of offsite vaccination or documentation that he or she refused the  
11 vaccination, which shall be available to the clinic upon request.  
12 Nothing in this section shall be construed to require a clinic to  
13 maintain separate vaccination records or to provide vaccinations  
14 at no cost to a contract worker who is not an employee of the clinic.

15 (d) Each licensed clinic shall develop policies to implement this  
16 section and to ensure its onsite health care workers affiliated with  
17 the clinic are in compliance with the vaccination requirements  
18 imposed by this section. The medical staff shall also develop  
19 policies to ensure that persons who have privileges on the medical  
20 staff are in compliance with the vaccination requirements of this  
21 section that have been implemented by the clinic.

22 (e) For purposes of this section, the following definitions shall  
23 apply:

24 (1) “Employee” means an individual who works for the clinic,  
25 is listed on the clinic’s payroll records, and is under the clinic’s  
26 direction and control.

27 (2) “Medical staff” means professional medical personnel who  
28 are approved and given privileges to provide health care to patients  
29 while onsite in a clinic and who are responsible for the adequacy  
30 and quality of care rendered to patients. Medical staff includes,  
31 but is not limited to, physicians and surgeons, and, if dental or  
32 podiatric services are provided, dentists or podiatrists.

33 (3) “Onsite health care worker affiliated with the clinic” means  
34 a person who is either a volunteer or is employed by, paid by, or  
35 receives credit or any other form of compensation from the clinic,  
36 who performs some or all of his or her duties in a patient care area  
37 of the facility. The patient care area of the facility shall be  
38 determined by the clinic and is where onsite health care workers  
39 and medical staff are within close proximity to patients receiving  
40 care. An onsite health care worker affiliated with the clinic

1 includes, but is not limited to, employees, physicians, nurses,  
2 nursing assistants, therapists, technicians, emergency medical  
3 service personnel, dental personnel, pharmacists, laboratory  
4 personnel, autopsy personnel, students and trainees, contractual  
5 staff, and registry staff who perform direct patient care duties but  
6 are not employed by the clinic.

7 (f) Notwithstanding Chapter 3.5 (commencing with Section  
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
9 the department may implement this section by sending letters or  
10 similar instruction to all applicable facilities without taking  
11 regulatory action.

12 (g) A clinic shall annually report its average vaccination  
13 compliance rate for onsite health care workers who are employees  
14 and of medical staff who have been vaccinated for that year to the  
15 State Department of Public Health.

16 (h) This section, with the exception of *subdivision (a) and* the  
17 reporting requirement of subdivision (g), shall not apply to a clinic  
18 that have a combined average vaccination compliance rate of 90  
19 percent or higher for its onsite health care workers who are  
20 employees and medical staff.

21 (i) This section shall become operative on January 1, 2015.

22 SEC. 4. Section 1288.65 is added to the Health and Safety  
23 Code, to read:

24 1288.65. A licensed health facility shall institute measures  
25 designed to maximize influenza vaccination rates and to prevent  
26 persons with privileges on the medical staff and onsite health care  
27 workers affiliated with the health facility from contracting, and  
28 transmitting to patients, the influenza virus. These measures shall  
29 include, but not be limited to, aerosol transmissible diseases  
30 training, as described in Section 5199(i) of Title 8 of the California  
31 Code of Regulations, as in effect January 1, 2013.

32 (b) For purposes of this section, the following definitions shall  
33 apply:

34 (1) “Medical staff” means professional medical personnel who  
35 are approved and given privileges to provide health care to patients  
36 in a health facility and who are responsible for the adequacy and  
37 quality of care rendered to patients. Medical staff includes, but is  
38 not limited to, physicians and surgeons, and, if dental or podiatric  
39 services are provided, dentists or podiatrists.

1 (2) “Onsite health care worker affiliated with the health facility”  
2 means a person who is either a volunteer or is employed by, paid  
3 by, or receives credit or any other form of compensation from the  
4 health facility, who performs some or all of his or her duties in a  
5 patient care area of the facility. The patient care area of the facility  
6 shall be determined by the health facility and is where onsite health  
7 care workers and medical staff are within close proximity to  
8 patients receiving care. An onsite health care worker affiliated  
9 with the health facility includes, but is not limited to, employees,  
10 physicians, nurses, nursing assistants, therapists, technicians,  
11 emergency medical service personnel, dental personnel,  
12 pharmacists, laboratory personnel, autopsy personnel, students  
13 and trainees, contractual staff, and registry staff who perform direct  
14 patient care duties but are not employed by the health facility.

15 (c) Notwithstanding Chapter 3.5 (commencing with Section  
16 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
17 the department may implement this section by sending letters or  
18 similar instruction to all applicable facilities without taking  
19 regulatory action.

20 SEC. 5. Section 1288.7 of the Health and Safety Code is  
21 amended to read:

22 1288.7. By July 1, 2007, the department shall require that each  
23 general acute care hospital, in accordance with the Centers for  
24 Disease Control and Prevention guidelines, take all of the following  
25 actions:

26 (a) Annually offer onsite influenza vaccinations, if available,  
27 to all hospital employees at no cost to the employee. Each general  
28 acute care hospital shall require its employees to be vaccinated,  
29 or if the employee elects not to be vaccinated, to declare in writing  
30 that he or she has declined the vaccination.

31 (b) Institute respiratory hygiene and cough etiquette protocols,  
32 develop and implement procedures for the isolation of patients  
33 with influenza, and adopt a seasonal influenza plan.

34 (c) Revise an existing or develop a new disaster plan that  
35 includes a pandemic influenza component. The plan shall also  
36 document any actual or recommended collaboration with local,  
37 regional, and state public health agencies or officials in the event  
38 of an influenza pandemic.

1 (d) This section shall remain in effect only until January 1, 2015,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2015, deletes or extends that date.

4 SEC. 6. Section 1288.7 is added to the Health and Safety Code,  
5 to read:

6 1288.7. (a) A licensed health facility shall annually offer its  
7 employees onsite influenza vaccinations, if available, at no cost  
8 to the employee.

9 (b) A licensed health facility shall require all onsite health care  
10 workers affiliated with the health facility and persons with  
11 privileges on the medical staff to either annually receive an  
12 influenza vaccination or, as an alternative to the annual influenza  
13 vaccination, wear a health facility-provided surgical or procedural  
14 mask, or other mask that covers the mouth and nose area of the  
15 face while this person is performing his or her duties in any patient  
16 care area of the health facility during the influenza season, as  
17 defined by the State Health Officer or a local health officer, or  
18 both.

19 (c) (1) In meeting the requirements of subdivision (b), the health  
20 facility shall maintain influenza vaccination records of employees  
21 and may maintain influenza vaccination records of the other onsite  
22 health care workers who are affiliated with, but are not employees  
23 of, the health facilities and of persons with privileges on the  
24 medical staff. If the health facility does not have records of an  
25 onsite health care worker or person with privileges on the medical  
26 staff being vaccinated, the health facility may require the worker  
27 or medical staff person to either provide documentation of  
28 vaccination or documentation that he or she refused the vaccination.

29 (2) The health facility may include language in its business  
30 contracts to require a contract worker to maintain records of the  
31 verification of offsite vaccination or documentation that he or she  
32 refused the vaccination, which shall be available to the health  
33 facility upon request. Nothing in this section shall be construed to  
34 require a health facility to maintain separate vaccination records  
35 or to provide vaccinations at no cost to a contract worker who is  
36 not an employee of the health facility.

37 (d) Each licensed health facility shall develop policies to  
38 implement this section and to ensure its onsite health care workers  
39 affiliated with the health facility are in compliance with the  
40 vaccination requirements imposed by this section. The medical

1 staff shall develop policies to ensure that persons who have  
2 privileges on the medical staff are in compliance with the  
3 vaccination requirements of this section that have been  
4 implemented by the health facility.

5 (e) In addition to other requirements of this section, general  
6 acute care hospitals shall take all of the following actions:

7 (1) Institute respiratory hygiene and cough etiquette protocols,  
8 develop and implement procedures for the isolation of patients  
9 with influenza, and adopt a seasonal influenza plan.

10 (2) Revise an existing or develop a new disaster plan that  
11 includes a pandemic influenza component. The plan shall also  
12 document any actual or recommended collaboration with local,  
13 regional, and state public health agencies or officials in the event  
14 of an influenza pandemic.

15 (f) For purposes of this section, the following definitions shall  
16 apply:

17 (1) “Employee” means an individual who works for the health  
18 facility, is listed on the health facility’s payroll records, and is  
19 under the health facility’s direction and control.

20 (2) “Medical staff” means professional medical personnel who  
21 are approved and given privileges to provide health care to patients  
22 in a health facility and who are responsible for the adequacy and  
23 quality of care rendered to patients. Medical staff include  
24 physicians and if dental or podiatric services are provided, dentists  
25 or podiatrists.

26 (3) “Onsite health care worker affiliated with the health facility”  
27 means a person who is either a volunteer or is employed by, paid  
28 by, or receives credit or any other form of compensation from the  
29 health facility, who performs some or all of his or her duties in a  
30 patient care area of the facility. The patient care area of the facility  
31 shall be determined by the health facility and is where onsite health  
32 care workers and medical staff are within close proximity to  
33 patients receiving care. An onsite health care worker affiliated  
34 with the health facility includes, but is not limited to, physicians,  
35 nurses, nursing assistants, therapists, technicians, emergency  
36 medical service personnel, dental personnel, pharmacists,  
37 laboratory personnel, autopsy personnel, students and trainees,  
38 contractual staff and registry staff performing direct patient care  
39 duties but are not employed by the health facility.

1 (g) Notwithstanding Chapter 3.5 (commencing with Section  
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
3 the department may implement this section by sending letters or  
4 similar instruction to all applicable facilities without taking  
5 regulatory action.

6 (h) A health facility shall annually report its average vaccination  
7 compliance rate of onsite health care workers that are employees  
8 and of medical staff who have been vaccinated for that year to the  
9 State Department of Public Health.

10 (i) This section, with the exception of *subdivisions (a) and (e)*,  
11 *and* the reporting requirement of subdivision (h), shall not apply  
12 to health facilities that have a combined average vaccination  
13 compliance rate of 90 percent or higher for its onsite health care  
14 workers that are employees and medical staff.

15 (j) This section shall become operative on January 1, 2015.

16 SEC. 7. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.