

Assembly Bill No. 1147

Passed the Assembly July 16, 2015

Chief Clerk of the Assembly

Passed the Senate July 13, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1760.2 and 1760.4 of, and to add Sections 1760.7, 1760.9, 1761.85, 1762, 1762.2, 1762.4, 1762.6, 1762.8, 1763, 1763.2, and 1763.4 to, the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, Maienschein. Health facilities: pediatric day health and respite care facilities.

Under existing law, the State Department of Public Health licenses and regulates health facilities, including, among others, pediatric day health and respite care facilities. Existing law defines “pediatric day health and respite care facility” as a facility that provides an organized program of therapeutic social and day health activities and services and limited 24-hour inpatient respite care to medically fragile children 21 years of age or younger, including terminally ill and technology-dependent children.

This bill would authorize an individual who is 22 years of age or older to continue to receive care in a pediatric day health and respite care facility, if the facility receives approval from the State Department of Public Health for a Transitional Health Care Needs Optional Service Unit. The bill would also authorize a patient who previously received services from a pediatric day health and respite care facility and who is 22 years of age or older to receive care in an optional service unit, as provided. The bill would establish a licensing process for a pediatric day health and respite care facility to operate an optional service unit, and would impose certain requirements on those optional service units, including, among others, that the optional service unit provide care for patients who are 22 years of age or older in a distinct part of the pediatric day health and respite care facility or optional service unit, separate from the area where care is provided to younger patients, except under specified circumstances.

This bill would authorize a pediatric day health and respite care facility to implement policies and procedures that prohibit smoking by patients, parents, staff, visitors, or consultants within the facility

or on the premises, if the prohibition is clearly stated in the admission agreement and notices are posted at the facility.

This bill would establish procedures for the issuance of a provisional license to a pediatric day health and respite care facility. The bill would specify additional procedures relating to the licensure of a pediatric day health and respite care facility and renewals of those licenses, including, among others, requiring the department to initiate an initial licensing inspection of an optional service unit within 60 days of receipt of a pediatric day health and respite care facility's completed application and requiring periodic inspections by a duly authorized representative of the department and specified reports related to those inspections. The bill would authorize the department to make reasonable accommodation for exceptions to the licensing standards if the health, safety, and quality of patient care is not compromised. The bill would also specify the grounds upon which those licenses may be revoked, including, among others, willful omission or falsification of a material fact in the application for a license. The bill would require proceedings for the denial, suspension, or revocation of licenses, or denial or withdrawal of approval, to be conducted in accordance with specified provisions of law.

Existing law requires facilities serving persons who are terminally ill, catastrophically and severely disabled, mentally alert but physically disabled, or any combination of these persons, to comply with specified provisions of the California Code of Regulations, and exempts those facilities from certain requirements of that code relating to required services for skilled nursing facilities.

This bill would provide additional exemptions from that code for a pediatric day health and respite care facility.

Existing law specifies the services that a pediatric day health and respite care facility is required to provide, including, among others, pharmacy services.

This bill would require that pharmacy services by a pediatric day health and respite care facility satisfy certain requirements, including, among others, that medications be administered only upon written and signed orders of the patient's attending physician.

This bill would require a pediatric day health and respite care facility to have a patient care committee to address quality of care provided in the facility, including, but not limited to, patient care

policies, pharmacy services, and infection control. The bill would specify the composition of the committee, impose specified meeting requirements, and outline the committee's responsibilities.

Existing law requires pediatric day health and respite care facilities to meet the same fire safety standards adopted by the State Fire Marshal and the same seismic safety standards that apply to community care facilities. Existing law provides that a pediatric day health and respite care facility is not subject to architectural plan review or field inspection by the Office of Statewide Health Planning and Development, and requires, as part of the application for licensure, an applicant to submit evidence of compliance with local building code requirements and that the physical environment is adequate to provide the level of care and service required by the clients of the facility as determined by the department.

This bill would provide that those provisions do not prohibit the use of alternate space utilization, new concepts of design, treatment techniques, equipment and alternate finish materials, or other flexibility, if written approval is granted by the local building authority.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 1760.2 of the Health and Safety Code is amended to read:

1760.2. As used in this chapter, the following definitions shall apply:

(a) (1) "Pediatric day health and respite care facility" means a facility that provides an organized program of therapeutic social and day health activities and services and limited 24-hour inpatient respite care to medically fragile children 21 years of age or younger, including terminally ill and technology-dependent patients, except as provided in paragraph (2) and Section 1763.4.

(2) An individual who is 22 years of age or older may continue to receive care in a pediatric day health and respite care facility if the facility receives approval from the state department for a Transitional Health Care Needs Optional Service Unit pursuant to Section 1763.4. A patient who previously received services from a pediatric day health and respite care facility, who is 22 years of

age or older, and who satisfies the requirements of Section 1763.4, may also receive services in an optional service unit.

(b) “Medically fragile” means having an acute or chronic health problem that requires therapeutic intervention and skilled nursing care during all or part of the day. Medically fragile problems include, but are not limited to, HIV disease, severe lung disease requiring oxygen, severe lung disease requiring ventilator or tracheostomy care, complicated spina bifida, heart disease, malignancy, asthmatic exacerbations, cystic fibrosis exacerbations, neuromuscular disease, encephalopathies, and seizure disorders.

(c) “Technology-dependent patient” means a person who, from birth, has a chronic disability, requires the routine use of a specific medical device to compensate for the loss of use of a life sustaining body function, and requires daily, ongoing care or monitoring by trained personnel.

(d) “Respite care” means day and 24-hour relief for the parent or guardian and care for the patient. 24-hour inpatient respite care includes, but is not limited to, 24-hour nursing care, meals, socialization, and developmentally appropriate activities. As used in this chapter, “24-hour inpatient respite care” is limited to no more than 30 intermittent or continuous whole calendar days per patient per calendar year.

(e) “Comprehensive case management” means locating, coordinating, and monitoring services for the eligible patient population and includes all of the following:

(1) Screening of patient referrals to identify those persons who can benefit from the available services.

(2) Comprehensive patient assessment to determine the services needed.

(3) Coordinating the development of an interdisciplinary comprehensive care plan.

(4) Determining individual case cost effectiveness and available sources of funding.

(5) Identifying and maximizing informal sources of care.

(6) Ongoing monitoring of service delivery to determine the optimum type, amount, and duration of services provided.

(f) “License” means a basic permit to operate a pediatric day health and respite care facility. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), “license” means a special permit authorizing the health facility to

provide pediatric day health and respite care services as a separate program in a distinct part of the facility.

(g) “State department” means the State Department of Public Health.

SEC. 2. Section 1760.4 of the Health and Safety Code is amended to read:

1760.4. (a) The state department shall develop and adopt regulations for the licensure of, and shall license, pediatric day health and respite care facilities. The regulations shall include minimum standards for the following:

- (1) Adequacy, safety, and sanitation of the physical plant and equipment.
- (2) Staffing with duly qualified personnel.
- (3) Training of the staff.
- (4) Providing the services offered.

These regulations shall be filed with the Secretary of State no later than July 1, 1993.

(b) The state department shall establish within the state department an advisory committee of experts to assist in the development of the regulations required pursuant to this section. A representative of the state department shall act as chairperson of the committee. The members of the committee shall serve without compensation, but shall be reimbursed by the state department for all necessary expenses incurred in the actual performance of their duties. To the extent sufficient funds have been appropriated in the Budget Act, the state department may provide staff support to the committee as the state department deems is necessary for the conduct of the committee’s business. The committee shall meet at the state director’s pleasure until the time that the proposed regulations are presented for adoption at the public hearing.

(c) Pending adoption of the regulations pursuant to subdivision (b), an entity may be licensed as a pediatric day health and respite care facility if it meets interim regulations administered by the state department for congregate living health facilities pursuant to Section 1267.13.

(d) (1) In addition to the exceptions from regulations described in subdivision (n) of Section 1267.13, a pediatric day health and respite care facility shall not be required to conform to the following regulations contained in Chapter 3 of Division 5 of Title

22 of the California Code of Regulations: 72329.1, 72353, 72359, 72363, 72365, 72371, subdivisions (b) and (c) of Section 72375, subdivision (b) of Section 72377, 72516, 72525, and 72531.

(2) A pediatric day health and respite care facility shall not be required to meet the requirements of Section 72367 of Article 3 of Chapter 3 of Division 5 of Title 22 of the California Code of Regulations, except that medications brought by or with the patient on admission to the facility shall not be used unless, after admission by the facility, the contents of the containers have been examined and positively identified by a licensed nurse, in accordance with his or her scope of practice.

(e) A pediatric day health and respite care facility shall have a patient care committee to address quality of care provided in the facility, including, but not limited to, patient care policies, pharmacy services, and infection control.

(1) The pediatric day health and respite care facility shall maintain minutes of every committee meeting and indicate the names of members present, the date, the length of the meeting, the subject matter discussed, and any action taken.

(2) The patient care committee shall include the medical director, dietician, pharmacist, nursing staff, nurse supervisor, center administrator or director, and other staff as may be required by facility policies and procedures.

(3) The patient care committee shall meet at least twice per year or more often if a need or problem is identified by the committee.

(4) The patient care committee shall be responsible for all of the following:

(A) Reviewing and approving all policies relating to patient care. Based on reports received from the pediatric day health and respite care facility's administrator, the committee shall review the effectiveness of policy implementation and shall make recommendations to the administrator of the facility for the improvement of patient care. The committee shall review patient care policies annually and revise the policies as necessary. The committee's minutes shall list the policies the committee reviewed.

(B) Infection control in the facility, which shall include, but not be limited to, establishing, reviewing, monitoring, and approving policies and procedures for investigating, controlling, and preventing infections in the facility, and maintaining, reviewing, and reporting statistics of the number, types, sources, and locations

of infections within the pediatric day health and respite care facility.

(C) Establishing, reviewing, and monitoring the storage and administration of drugs and biologicals, reviewing and taking appropriate action based on any findings from a pharmacist hired to consult with the committee and internal quality assurance reviews, and recommending improvements of services to the administrator of the facility.

(f) (1) A pediatric day health and respite care facility shall comply with licensing requirements. The state department may, upon written request of an applicant or licensee, approve the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications, or conducting pilot projects, provided those alternatives are carried out with safe and adequate care for the patients and with the prior written approval of the state department. The state department's approval shall provide for the terms and conditions under which the alternatives are granted. An applicant's or licensee's written request shall be accompanied by substantiating evidence supporting the request pursuant to this paragraph.

(2) The state department's review of written requests submitted under this subdivision shall consider the unique nature of services provided to individuals served by the pediatric day health and respite care facility when compared to the requirements for congregate living health facilities for individuals requiring inpatient care.

(3) If the state department grants an approval under this subdivision, a pediatric day health and respite care facility shall immediately post that approval, or a true copy of that approval, adjacent to the facility's license.

SEC. 3. Section 1760.7 is added to the Health and Safety Code, to read:

1760.7. A pediatric day health and respite care facility shall provide pharmacy services that satisfy all of the following:

(a) (1) Medications shall be supplied to the licensed nursing personnel of the pediatric day health and respite care facility by the patient's parent, foster parent, or legal guardian in the original dispensing container that specifies administration instructions.

(2) Medications shall be administered only upon written and signed orders of the patient's attending physician.

(3) The pediatric day health and respite care facility shall not order medications from a pharmacy or take delivery of medications from a pharmacy.

(4) The pediatric day health and respite care facility shall not accept a patient into the facility if the patient's medications have expired or are scheduled to expire during the patient's stay at the facility.

(b) (1) Physician orders shall be current and maintained in the patient's medical record at the pediatric day health and respite care facility. Verbal orders from the attending physician for services to be rendered at the facility may be received and recorded by licensed nursing personnel in the patient's medical record at the facility and shall be signed by the attending physician within 30 working days.

(2) Medications shall not be administered to a patient unless the facility first verifies that the medication was ordered by a physician. Verification may be obtained by contacting the physician's office or by being provided with a copy of the physician's order for the medication.

(c) The pediatric day health and respite care facility shall maintain records of medication administered for at least one year, unless a longer period is required by state or federal law. The records of medication administered shall be a part of the patient's plan of care.

(d) The pediatric day health and respite care facility may treat changes in the patient's condition, such as new onset pain, nausea, diarrhea, infections, or other similar changes, in accordance with the patient's plan of care if the patient has been prescribed medications to treat these anticipated symptoms, and the treatment does not present a risk to the health and safety of themselves, other patients, staff, or other individuals with whom the patient may come into contact. A patient who presents with symptoms that are not anticipated or planned for in the plan of care shall not remain in the facility.

(e) Other requirements as specified in subdivision (a) of Section 72375, and subdivision (a) of Section 72377, of Article 3 of Chapter 3 of Division 5 of Title 22 of the California Code of Regulations.

(f) Only licensed nursing personnel, acting in accordance with their scope of practice, may accept, inspect the condition of medical

containers, and record the receipt and the return of all medications in a pediatric day health and respite care facility. The facility shall comply with Section 72313 of Title 22 of the California Code of Regulations with regard to the administration of medication.

(g) A pediatric day health and respite care facility shall comply with all applicable state and federal laws regarding the labeling condition of medication containers.

SEC. 4. Section 1760.9 is added to the Health and Safety Code, to read:

1760.9. A pediatric day health and respite care facility may implement policies and procedures that prohibit smoking by patients, parents, staff, visitors, or consultants within the facility or on the premises, if the prohibition is clearly stated in the admission agreement, and notices are posted at the facility.

SEC. 5. Section 1761.85 is added to the Health and Safety Code, to read:

1761.85. Sections 1761.2, 1761.4, and 1761.8 do not prohibit the use of alternate space utilization, new concepts of design, treatment techniques, equipment and alternate finish materials, or other flexibility, if written approval is granted by the local building authority.

SEC. 6. Section 1762 is added to the Health and Safety Code, to read:

1762. (a) In order to obtain a license under the provisions of this chapter to establish, conduct, or maintain a pediatric day health and respite care facility, a person, entity, political subdivision of the state, or governmental agency shall file with the state department a verified application on a form prescribed, prepared, and furnished by the state department, containing information as may be required by the state department for the proper administration and enforcement of this chapter.

(b) The state department shall initiate an initial licensing inspection of a Transitional Health Care Needs Optional Service Unit within 60 days of receipt of a completed application.

SEC. 7. Section 1762.2 is added to the Health and Safety Code, to read:

1762.2. (a) If a pediatric day health and respite care facility or an applicant for a license has not been previously licensed, the state department shall issue a provisional license to the facility only as provided in this section.

(b) The state department shall not issue a provisional license unless, after an onsite survey by the state department, the state department finds that the pediatric day health and respite care facility is in substantial compliance with the requirements of this chapter.

(c) A provisional license to operate a pediatric day health and respite care facility shall terminate six months from the date of issuance, or the date that the state department is able to conduct a full and complete inspection, whichever is later.

(d) Within 30 days prior to the termination of a provisional license, the state department shall give the facility a full and complete inspection, and, if the facility meets all applicable requirements for licensure, a regular license shall be issued. If the facility does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the state department, the initial provisional license shall be renewed for six months.

(e) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is lack of full compliance with the requirements, the state department shall not issue a further license.

(f) If an applicant for a provisional license to operate a pediatric day health and respite care facility has been denied provisional licensing by the state department, the applicant may contest the denial by filing a request for a hearing pursuant to Section 131071.

(g) The state department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

SEC. 8. Section 1762.4 is added to the Health and Safety Code, to read:

1762.4. (a) A license issued under this chapter shall expire 12 months from the date of its issuance. The licensee shall pay a fee, not to exceed the reasonable regulatory cost to the state department, to the state department annually, not less than 30 days prior to expiration date, subject to the state department mailing the notice of renewal in accordance with subdivision (b).

(b) (1) At least 45 days prior to the expiration of a license issued pursuant to this chapter, the state department shall mail a notice for renewal to the licensee.

(2) A license renewal shall be submitted with the necessary fee in accordance with subdivision (a). A license shall be deemed renewed upon payment of the necessary fee, commencing from the license's expiration date. If the requirements of this section are satisfied, the state department shall issue a license to the facility by the expiration date of the license to ensure the provider remains in good standing. The facility's license shall be mailed within 15 calendar days after the date the state department receives the renewal fee.

SEC. 9. Section 1762.6 is added to the Health and Safety Code, to read:

1762.6. Every pediatric day health and respite care facility for which a license has been issued shall be periodically inspected by a duly authorized representative of the state department. Reports of each inspection shall be prepared by the representative upon forms prepared and furnished by the state department and filed with the state department. The inspection shall be for the purpose of ensuring that the pediatric day health and respite care facility is complying with the provisions of this chapter and the rules and regulations of the state department.

SEC. 10. Section 1762.8 is added to the Health and Safety Code, to read:

1762.8. The state department may deny an application for, or suspend or revoke a license issued under the provisions of this chapter in the manner provided in Section 1763 upon, any of the following grounds:

(a) A serious violation by the licensee of any of the provisions of this chapter, of any other law, or of the rules and regulations promulgated under this chapter that jeopardizes the health and safety of patients.

(b) Aiding, abetting, or permitting the commission of any illegal act.

(c) Willful omission or falsification of a material fact in the application for a license.

SEC. 11. Section 1763 is added to the Health and Safety Code, to read:

1763. Proceedings for the denial, suspension, or revocation of licenses, or denial or withdrawal of approval under this chapter shall be conducted in accordance with Section 131071. The suspension, expiration, or forfeiture by operation of law of a license issued by the state department, its suspension, forfeiture, or cancellation by order of the state department or by order of a court, or its surrender without the written consent of the state department, shall not deprive the state department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any of those grounds.

SEC. 12. Section 1763.2 is added to the Health and Safety Code, to read:

1763.2. The state department has authority to make reasonable accommodation for exceptions to the standards in this chapter if the health, safety, and quality of patient care is not compromised. Prior written approval communicating the terms and conditions under which the exception is granted shall be required. An applicant shall request an exception in writing accompanied by detailed supporting documentation.

SEC. 13. Section 1763.4 is added to the Health and Safety Code, to read:

1763.4. (a) For purposes of this chapter, the following definitions shall apply:

(1) “Distinct part” means an identifiable unit accommodating beds or patient space, including, but not limited to, contiguous beds or patient space, a wing, floor, or building approved by the state department for a specific purpose.

(2) “Older children” means patients who are 18 to 21 years of age, inclusive.

(3) “Transitional Health Care Needs Optional Service Unit” or “optional service unit” means a functional unit of a pediatric day health and respite care facility that is organized, staffed, and equipped to provide care to individuals who are 22 years of age or older.

(A) Patients receiving care in the optional service unit shall be in age-appropriate groupings as provided for in the pediatric day health and respite care facility’s policies and procedures. Older children are not precluded from being cared for in the same optional

service unit as the patients who are 22 years of age or older. If a pediatric day health and respite care facility proposes to provide care to older children in the optional service unit, the facility shall have policies, procedures, equipment, and supplies to meet the needs of those patients. Patients who are 15 to 17 years of age, inclusive, may also be considered for care in the optional service unit if the pediatric day health and respite care facility obtains an individual age waiver from the regional center, with the concurrence of the department. A pediatric day health and respite care facility is not required to operate an optional service unit.

(B) In order to continue receiving care in the pediatric day health and respite care facility, patients who are 22 years of age or older shall have a developmental age of 18 years of age or younger, as evidenced by the patient's Individual Education Plan (IEP), Regional Center Assessment, physician's assessment, or other assessment using a standardized assessment tool that is nationally recognized in the field. A patient who previously received services from a pediatric day health and respite care facility, who is 22 years of age or older, and who satisfies the requirements of this subparagraph may also receive services in an optional service unit.

(b) An optional service unit shall be subject to the approval of the state department. A pediatric day health and respite care facility desiring approval for an optional service unit shall file an application on forms furnished by the state department. The state department shall list on the facility license each optional service for which approval is granted.

(c) Except as provided in subparagraph (A) of paragraph (3) of subdivision (a), care for patients who are 22 years of age or older shall be provided in a distinct part of the pediatric day health and respite care facility or optional service unit, separate from the area where care is provided to patients who are 21 years of age or younger. The facility shall establish and implement policies and procedures for determining the age ranges of patients who are cared for in the optional service unit. These policies and procedures shall include, but not be limited to, consideration of the patient's chronological age, developmental age, and size, and shall reflect the needs of individual patients through a comprehensive assessment.

(d) The pediatric day health and respite care facility shall ensure that its staffing and equipment are sufficient to provide services to patients who are 22 years of age or older.

(e) A Transitional Health Care Needs Optional Service Unit shall have written policies and procedures for the management of the service. The policies and procedures shall be established and implemented by the patient care policy committee described in Section 1760.4

(f) (1) The state department may review and approve the policies and procedures for an optional service unit.

(2) The State Department of Developmental Services and the regional centers may review the policies and procedures for an optional service unit.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect, at the earliest possible time, the health and safety of medically fragile adults who are at imminent risk of aging out of pediatric day health and respite care facilities, it is necessary that this act take effect immediately.

Approved _____, 2015

Governor