


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: July 24, 2017

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst Council File No.: 17-0002-S59
Assignment No.: 17-04-0452

SUBJECT: Resolution to SUPPORT AB 1102 (Rodriguez) Related to Nurse-To-Patient Ratios

CLA RECOMMENDATION: Adopt Resolution (Ryu – O’Farrell) to include in the City’s 2017-18 State Legislative Program SUPPORT for AB 1102 (Rodriguez) which would prohibit a health facility from discriminating or retaliating in any manner against any patient, employee, member of the medical staff, or any other health care worker of the facility because that person has refused an assignment that violates nurse-to-patient ratio regulations.

SUMMARY

The Resolution (Ryu – O’Farrell) states that the California Department of Public Health enforces nurse-to-patient ratios as required by State law. The Resolution indicates that there is great concern that hospitals often violate State law by requiring nurses to assume responsibility for their colleague’s patients during break periods, and in doing so, violates the State’s maximum allowable nurse-to-patient ratios. According to the Resolution, nurses report these violations to State regulators, but face discipline or termination for doing so.

Currently pending in the Legislature is AB 1102 (Rodriguez), which would prohibit a health facility from discriminating or retaliating against any health care worker for refusing an assignment that violates nurse-to-patient ratio regulations. The bill would also increase the maximum civil penalty (from \$20,000 to \$75,000) for willful violations of existing whistleblower protection laws. The Resolution advises that AB 1102 would protect nurses, enhance patient safety, and place the responsibility for proper staffing back upon the employer. The Resolution recommends that the City support AB 1102.

BACKGROUND

The California Department of Public Health (CDPH) licenses and regulates health facilities and establishes minimum nurse-to-patient ratios. In addition, health facilities cannot discriminate or retaliate against employees, patients, and other “whistleblowers” for reporting violations to the CDPH. Under current law, the CDPH is allowed to levy a maximum civil penalty of \$20,000 against health facilities for willful violations of these requirements.

AB 1102, as introduced on February 17, 2017, would prohibit a health facility from discriminating or retaliating against health workers for refusing an assignment that violates nurse-to-patient ratio regulations. The bill would also increase the maximum civil penalty (from \$20,000 to \$75,000) for willful violations of existing health worker whistleblower protection laws. AB 1102 is sponsored by SEIU California and the California Nurses Association.

On April 24, 2017, the Assembly Judiciary Committee amended AB 1102 by removing all references to nurse-to-patient ratios. The provisions that increase penalties for retaliation against whistleblowers are unchanged in the amended bill.

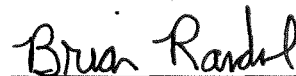
AB 1102 is consistent with existing policies and programs that safeguard the health and safety of City residents.

DEPARTMENT NOTIFIED

Personnel

BILL STATUS

02/17/17 Introduced.
03/09/17 Referred to Committees on Health and Judiciary
03/29/17 From committee: Do pass and re-refer to Committee on Judiciary (Ayes 9. Noes 1.)
04/17/17 In committee: Set, first hearing. Hearing canceled at the request of author.
04/20/17 From committee chair, with author's amendments: Amend, and re-refer to Committee on Judiciary. Read second time and amended.
04/24/17 Re-referred to Committee on Judiciary.
04/25/17 From committee: Do pass and re-refer to Committee on Appropriations. (Ayes 11. Noes 0.)
05/24/17 From committee: Do pass (Ayes 17. Noes 0).
05/25/17 Read second time. Ordered to third reading.
05/26/17 Read third time. Passed. Ordered to the Senate.
05/26/17 In Senate. Read first time. To Committee on Rules for assignment.
06/08/17 Referred to Committees on Health and Judiciary.
06/22/17 From committee: Do pass and re-refer to Committee on Judiciary. (Ayes 9. Noes 0.) (June 21). Re-referred to Committee on Judiciary.



Brian Randol

Analyst

Attachment: 1. Resolution
2. Text of AB 1102

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the California Department of Public Health enforces nurse-to-patient ratios as required by State law; and

WHEREAS, adherence to the required nurse-to-patient ratio is critical for the delivery of quality medical care and patient safety; and

WHEREAS, nurse-to-patient ratios are required to be followed at all times; however, there is great concern that hospitals often violate State law by requiring nurses to assume responsibility for their colleague's patients during break periods, and in doing so, results in the relieving nurse exceeding the State's maximum nurse-to-patient ratios and may place the patient in danger as a result of the improper staffing assignment; and

WHEREAS, nurses regularly report these violations to State regulators but face discipline or even termination of employment if they refuse these assignments; and

WHEREAS, pending in the Legislature is AB 1102 (Rodriguez), which would prohibit a health facility from discriminating or retaliating, in any manner against any patient, employee, member of the medical staff, or any other health care worker of the facility for refusing an assignment or change in assignment on the basis that it would violate nurse-to-patient ratio regulations; and

WHEREAS, this bill would prevent nurses from being forced to choose between the safety of their patients and losing their job if they refuse an assignment which violates California's nurse staffing laws; and

WHEREAS, AB 1102 would protect nurses, enhance patient safety, and place the responsibility for proper staffing back upon the employer;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-18 State Legislative Program SUPPORT for AB 1102 (Rodriguez), which would prohibit a health facility from discriminating or retaliating, in any manner against any patient, employee, member of the medical staff, or any other health care worker of the facility because that person has refused an assignment on the basis that it would violate State nurse-to-patient ratio regulations.

PRESENTED BY: 
DAVID E. RYU
Councilmember, 4th District

SECONDED BY: 

APR 19 2017

BMR

AMENDED IN ASSEMBLY APRIL 20, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1102

Introduced by Assembly Member Rodriguez

February 17, 2017

An act to amend Section 1278.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as amended, Rodriguez. Health facilities: whistleblower protections.

~~Existing law requires the State Department of Public Health to adopt regulations that establish minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit, as defined, for all licensed health facilities, as specified. Existing law requires additional staff to be assigned in accordance with a documented patient classification system for determining nursing care requirements, as specified. Existing law prohibits a registered nurse from being assigned to a nursing unit or clinical area unless that nurse has first received sufficient orientation in that clinical area and has demonstrated current competence, as specified.~~

Existing law provides for the licensure and regulation of health facilities, as defined, by the department. Existing law prohibits a health facility from discriminating or retaliating against a patient, employee, member of the medical staff, or any other health care worker of the health facility because that person has presented a grievance, complaint, or report to the facility, as specified, or has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility, as specified.

Existing law makes a person who willfully violates those provisions guilty of a misdemeanor *punishable by a fine of not more than \$20,000* and makes a violation of those provisions subject to a civil penalty.

~~This bill would additionally prohibit a health facility from discriminating or retaliating against any of the above-described persons because that person has refused an assignment or change in assignment on the basis that it would violate requirements set forth pursuant to regulations adopted under the provisions described above relating to nursing. By expanding the scope of a crime, this bill would impose a state-mandated local program. The bill would also make technical, nonsubstantive changes to those provisions.~~

~~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.~~

This bill would increase the maximum fine for a misdemeanor violation of these provisions to \$75,000.

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

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

1 SECTION 1. Section 1278.5 of the Health and Safety Code is
2 amended to read:

3 1278.5. (a) The Legislature finds and declares that it is the
4 public policy of the State of California to encourage patients,
5 nurses, members of the medical staff, and other health care workers
6 to notify government entities of suspected unsafe patient care and
7 conditions. The Legislature encourages this reporting in order to
8 protect patients and in order to assist those accreditation and
9 government entities charged with ensuring that health care is safe.
10 The Legislature finds and declares that whistleblower protections
11 apply primarily to issues relating to the care, services, and
12 conditions of a facility and are not intended to conflict with existing
13 provisions in state and federal law relating to employee and
14 employer relations.

15 (b) (1) No health facility shall discriminate or retaliate, in any
16 manner, against any patient, employee, member of the medical

1 staff, or any other health care worker of the health facility because
2 that person has done ~~any~~ *either* of the following:

3 (A) Presented a grievance, complaint, or report to the facility,
4 to an entity or agency responsible for accrediting or evaluating the
5 facility, or the medical staff of the facility, or to any other
6 governmental entity.

7 (B) Has initiated, participated, or cooperated in an investigation
8 or administrative proceeding related to the quality of care, services,
9 or conditions at the facility that is carried out by an entity or agency
10 responsible for accrediting or evaluating the facility or its medical
11 staff, or governmental entity.

12 ~~(C) Has refused an assignment or change in assignment on the~~
13 ~~basis that it would violate requirements set forth pursuant to~~
14 ~~regulations adopted under Section 1276.4, including any~~
15 ~~requirements related to nurse assignments.~~

16 (2) No entity that owns or operates a health facility, or that owns
17 or operates any other health facility, shall discriminate or retaliate
18 against any person because that person has taken any actions
19 pursuant to this subdivision.

20 (3) A violation of this section shall be subject to a civil penalty
21 of not more than twenty-five thousand dollars (\$25,000). The civil
22 penalty shall be assessed and recovered through the same
23 administrative process set forth in Chapter 2.4 (commencing with
24 Section 1417) for long-term health care facilities.

25 (c) Any type of discriminatory treatment of a patient by whom,
26 or upon whose behalf, a grievance or complaint has been submitted,
27 directly or indirectly, to a governmental entity or received by a
28 health facility administrator within 180 days of the filing of the
29 grievance or complaint, shall raise a rebuttable presumption that
30 the action was taken by the health facility in retaliation for the
31 filing of the grievance or complaint.

32 (d) (1) There shall be a rebuttable presumption that
33 discriminatory action was taken by the health facility, or by the
34 entity that owns or operates that health facility, or that owns or
35 operates any other health facility, in retaliation against an
36 employee, member of the medical staff, or any other health care
37 worker of the facility, if responsible staff at the facility or the entity
38 that owns or operates the facility had knowledge of the actions,
39 participation, or cooperation of the person responsible for any acts
40 described in paragraph (1) of subdivision (b), and the

1 discriminatory action occurs within 120 days of the filing of the
2 grievance or complaint by the employee, member of the medical
3 staff or any other health care worker of the facility.

4 (2) For purposes of this section, discriminatory treatment of an
5 employee, member of the medical staff, or any other health care
6 worker includes, but is not limited to, discharge, demotion,
7 suspension, or any unfavorable changes in, or breach of, the terms
8 or conditions of a contract, employment, or privileges of the
9 employee, member of the medical staff, or any other health care
10 worker of the health care facility, or the threat of any of these
11 actions.

12 (e) The presumptions in subdivisions (c) and (d) shall be
13 presumptions affecting the burden of producing evidence as
14 provided in Section 603 of the Evidence Code.

15 (f) Any person who willfully violates this section is guilty of a
16 misdemeanor punishable by a fine of not more than ~~twenty~~
17 ~~thousand dollars (\$20,000)~~. *seventy-five thousand dollars*
18 *(\$75,000), in addition to the civil penalty provided in paragraph*
19 *(3) of subdivision (b).*

20 (g) An employee who has been discriminated against in
21 employment pursuant to this section shall be entitled to
22 reinstatement, reimbursement for lost wages and work benefits
23 caused by the acts of the employer, and the legal costs associated
24 with pursuing the case, or to any remedy deemed warranted by the
25 court pursuant to this chapter or any other applicable provision of
26 statutory or common law. A health care worker who has been
27 discriminated against pursuant to this section shall be entitled to
28 reimbursement for lost income and the legal costs associated with
29 pursuing the case, or to any remedy deemed warranted by the court
30 pursuant to this chapter or other applicable provision of statutory
31 or common law. A member of the medical staff who has been
32 discriminated against pursuant to this section shall be entitled to
33 reinstatement, reimbursement for lost income resulting from any
34 change in the terms or conditions of his or her privileges caused
35 by the acts of the facility or the entity that owns or operates a health
36 facility or any other health facility that is owned or operated by
37 that entity, and the legal costs associated with pursuing the case,
38 or to any remedy deemed warranted by the court pursuant to this
39 chapter or any other applicable provision of statutory or common
40 law.

1 (h) The medical staff of the health facility may petition the court
2 for an injunction to protect a peer review committee from being
3 required to comply with evidentiary demands on a pending peer
4 review hearing from the member of the medical staff who has filed
5 an action pursuant to this section, if the evidentiary demands from
6 the complainant would impede the peer review process or endanger
7 the health and safety of patients of the health facility during the
8 peer review process. Prior to granting an injunction, the court shall
9 conduct an in camera review of the evidence sought to be
10 discovered to determine if a peer review hearing, as authorized in
11 Section 805 and Sections 809 to 809.5, inclusive, of the Business
12 and Professions Code, would be impeded. If it is determined that
13 the peer review hearing will be impeded, the injunction shall be
14 granted until the peer review hearing is completed. Nothing in this
15 section shall preclude the court, on motion of its own or by a party,
16 from issuing an injunction or other order under this subdivision in
17 the interest of justice for the duration of the peer review process
18 to protect the person from irreparable harm.

19 (i) For purposes of this section, “health facility” means any
20 facility defined under this chapter, including, but not limited to,
21 the facility’s administrative personnel, employees, boards, and
22 committees of the board, and medical staff.

23 (j) This section shall not apply to an inmate of a correctional
24 facility or juvenile facility of the Department of Corrections and
25 Rehabilitation, or to an inmate housed in a local detention facility
26 including a county jail or a juvenile hall, juvenile camp, or other
27 juvenile detention facility.

28 (k) This section shall not apply to a health facility that is a
29 long-term health care facility, as defined in Section 1418. A health
30 facility that is a long-term health care facility shall remain subject
31 to Section 1432.

32 (l) Nothing in this section shall be construed to limit the ability
33 of the medical staff to carry out its legitimate peer review activities
34 in accordance with Sections 809 to 809.5, inclusive, of the Business
35 and Professions Code.

36 (m) Nothing in this section abrogates or limits any other theory
37 of liability or remedy otherwise available at law.

38 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

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