



Office of the Mayor

ACTION CALENDAR

April 4, 2017

(Continued from March 14, 2017)

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Hahn

Subject: Support of SB 687 – Attorney General Authority on Hospital Closures

RECOMMENDATION

Adopt a Resolution in support of SB 687, authored by State Senator Nancy Skinner, which will give the Attorney General of California the authority to oversee and consent to the sale/closure of non-profit hospitals. Send a copy of the Resolution to Assemblymember Tony Thurmond, State Senator Nancy Skinner, and Governor Jerry Brown.

BACKGROUND

Between 1996-2009, the number of emergency department visits in California increased by 27% while the number of operating emergency departments shrank by 12%. This has resulted in overcrowding, longer waits, and diverted ambulances, which have led to a reduction in the quality of patient care. In 2014, a report by the American College of Emergency Physicians gave California an F grade for access to emergency care due to a lack of emergency room beds. California has the lowest number of emergency departments per capita in the country, with only 6.7 per 1 million people.

A study published in the Journal of Health Affairs looked into the impacts of emergency department closures between 1999-2010. They found that nearly a quarter of all hospital admissions during this period occurred near an emergency department closure, and that these admissions had a 5% higher chance of in-patient mortality (10% for patients under 65). Furthermore, the study found that African Americans, Latinos, women, people under 65, and those who were uninsured or on Medicaid were more likely to be affected by emergency department closures.

The closure of Doctors Medical Center in San Pablo in 2015 has resulted in a 5-11% increase in EMS ambulance transports to Alta Bates. Paramedics from the Berkeley Fire Department transport over 5,000 patients a year to Alta Bates, or 14 visits a day. It is estimated that taking those patients to Summit in Oakland would increase transportation times by 24 minutes.

SB 687, introduced by State Senator Nancy Skinner, would require any nonprofit that operates or controls a health facility to provide written notice and obtain consent of the

Attorney General prior to a reduction or elimination of the level of emergency services. At least one public hearing must be held before the Attorney General can make a decision on the issue. The bill would also give the Attorney General the authority to act on the public's behalf by assessing the negative impacts that a closure or reduction of services would have on the community.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

Jesse Arreguin, Mayor 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 687
- 3: SB 687 Factsheet

RESOLUTION NO. ##,###-N.S.

RESOLUTION IN SUPPORT OF SB 687

WHEREAS, between 1996-2009, the number of emergency department visits in California increased by 27% while the number of operating emergency departments shrank by 12%; and

WHEREAS, in 2014, a report by the American College of Emergency Physicians gave California an F grade for access to emergency care due to a lack of emergency room beds; and

WHEREAS, California has the lowest number of emergency departments per capita in the country, with only 6.7 per 1 million people; and

WHEREAS, a study in the Journal of Health Affairs found that nearly a quarter of hospital admissions between 1999-2010 occurred near an emergency department closure, and that these admissions had a 5% higher chance of inpatient mortality (10% for patients under 65); and

WHEREAS, African Americans, Latinos, women, people under 65, and those who were uninsured or on Medicaid are more likely to be affected by emergency department closures; and

WHEREAS, the closure of Doctors Medical Center in San Pablo in 2015 has resulted in a 5-11% increase in EMS ambulance transports to Alta Bates; and

WHEREAS, paramedics from the Berkeley Fire Department transport over 5,000 patients a year to Alta Bates, which is roughly 14 visits a day; and

WHEREAS, taking those patients to Summit in Oakland would increase transportation times by 24 minutes; and

WHEREAS, SB 687, introduced by State Senator Nancy Skinner, would require any nonprofit that operates or controls a health facility write notice to and obtain consent of the Attorney General prior to a reduction or elimination of the level of emergency services; and

WHEREAS, the bill would also give the Attorney General the authority to act on the public's behalf by assessing the negative impacts that a closure or reduction would have on the community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 687.

BE IT FURTHER RESOLVED that copies of the resolution be sent to Assemblymember Tony Thurmond, State Senator Nancy Skinner, and Governor Jerry Brown.

SENATE BILL

No. 687

Introduced by Senator Skinner

February 17, 2017

An act to amend Sections 5914 and 5920 of, and to add Chapter 9.2 (commencing with Section 5940) to Part 2 of Division 2 of the Corporations Code, and to amend Section 1255.1 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 687, as introduced, Skinner. Health facilities: emergency centers: Attorney General.

Existing law requires any nonprofit corporation that operates or controls a health facility or operates or controls a facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity, a mutual benefit corporation or entity, or another nonprofit corporation or entity. Existing law authorizes the Attorney General to consider, before consenting to an agreement to sell or dispose of assets to these corporations or entities, whether the terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation, and whether the agreement or transaction is at a fair market value, as specified.

This bill would apply the above notice and consent requirements to when the nonprofit corporation plans to sell, transfer, lease, exchange, option, convey, or otherwise dispose of a licensed emergency center within one year after the Attorney General gives a specified consent or conditional consent.

This bill, except as specified, also would require any nonprofit corporation that operates or controls a health facility or operates or

controls a facility that provides similar health care and that provides emergency services at a licensed emergency center to provide written notice to, and obtain written consent of, the Attorney General prior to a reduction of the level of emergency medical services provided or their elimination. This bill would require the written notice to contain the information that the Attorney General determines is required to make a decision in the public interest. The bill would require the Attorney General to notify the public benefit corporation of the decision to provide consent or conditional consent or withhold consent to the reduction in or elimination of emergency medical services within specified periods of time. This bill, among other things, would require the Attorney General to conduct one or more public hearings after providing public notice, as specified, before issuing the written notice.

Existing law requires emergency services and care to be provided to any person requesting the services or care, or for whom services or care is requested, for any condition in which the person is in danger of loss of life, or serious injury or illness, at any health facility licensed under this chapter that maintains and operates an emergency department to provide emergency services to the public when the health facility has appropriate facilities and qualified personnel available to provide the services or care. Existing law authorizes the Attorney General to bring a civil action against the responsible hospital or administrative or medical personnel to enjoin the violation of various provisions of existing law regarding the provision of emergency services at a licensed health facility.

Existing law requires a hospital that provides emergency medical services to, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the State Department of Public Health, among other entities. Violation of these requirements is a crime.

This bill would require the above-described notice to also be given to the Attorney General. By changing the definition of a crime, this bill would impose 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.

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. Section 5914 of the Corporations Code is
2 amended to read:

3 5914. (a) (1) Any nonprofit corporation that is defined in
4 Section 5046 and operates or controls a health facility, as defined
5 in Section 1250 of the Health and Safety Code, or operates or
6 controls a facility that provides similar health care, shall be required
7 to provide written notice to, and to obtain the written consent of,
8 the Attorney General prior to entering into any agreement or
9 transaction to do either any of the following:

10 (A) Sell, transfer, lease, exchange, option, convey, or otherwise
11 dispose of, its assets to a for-profit corporation or entity or to a
12 mutual benefit corporation or entity when a material amount of
13 the assets of the nonprofit corporation are involved in the
14 agreement or transaction.

15 (B) Transfer control, responsibility, or governance of a material
16 amount of the assets or operations of the nonprofit corporation to
17 any for-profit corporation or entity or to any mutual benefit
18 corporation or entity.

19 (C) *Sell, transfer, lease, exchange, option, convey, or otherwise*
20 *dispose of an emergency center licensed pursuant to Sections 1255*
21 *and 1277 of the Health and Safety Code to a for-profit corporation*
22 *or entity or to a mutual benefit corporation or entity within one*
23 *year after the Attorney General gives, pursuant to Section 5940,*
24 *consent or conditional consent to the reduction or elimination of*
25 *emergency medical services provided at the emergency center.*

26 (2) The substitution of a new corporate member or members
27 that transfers the control of, responsibility for, or governance of
28 the nonprofit corporation shall be deemed a transfer for purposes
29 of this article. The substitution of one or more members of the
30 governing body, or any arrangement, written or oral, that would
31 transfer voting control of the members of the governing body, shall
32 also be deemed a transfer for purposes of this article.

33 (b) The notice to the Attorney General provided for in this
34 section shall include and contain the information the Attorney
35 General determines is required. The notice, including any other

1 information provided to the Attorney General under this article,
2 and that is in the public file, shall be made available by the
3 Attorney General to the public in written form, as soon as is
4 practicable after it is received by the Attorney General.

5 (c) This section shall not apply to a nonprofit corporation if the
6 agreement or transaction is in the usual and regular course of its
7 activities or if the Attorney General has given the corporation a
8 written waiver of this section as to the proposed agreement or
9 transaction.

10 (d) This section shall apply to any foreign nonprofit corporation
11 that operates or controls a health facility, as defined in Section
12 1250 of the Health and Safety Code, or a facility that provides
13 similar health care.

14 SEC. 2. Section 5920 of the Corporations Code is amended to
15 read:

16 5920. (a) (1) Any nonprofit corporation that is defined in
17 Section 5046 and operates or controls a health care facility, as
18 defined in Section 1250 of the Health and Safety Code, or operates
19 or controls a facility that provides similar health care, shall be
20 required to provide written notice to, and to obtain the written
21 consent of, the Attorney General prior to entering into any
22 agreement or transaction to do ~~either~~ any of the following:

23 (A) Sell, transfer, lease, exchange, option, convey, or otherwise
24 dispose of, its assets to another nonprofit corporation or entity
25 when a material amount of the assets of the nonprofit corporation
26 are involved in the agreement or transaction.

27 (B) Transfer control, responsibility, or governance of a material
28 amount of the assets or operations of the nonprofit corporation to
29 another nonprofit corporation or entity.

30 (C) *Sell, transfer, lease, exchange, option, convey, or otherwise*
31 *dispose of an emergency center licensed pursuant to Sections 1255*
32 *and 1277 of the Health and Safety Code to another nonprofit*
33 *corporation or entity within one year after the Attorney General*
34 *gives, pursuant to Section 5940, consent or conditional consent*
35 *to the reduction or elimination of emergency medical services*
36 *provided at the emergency center.*

37 (2) The substitution of a new corporate member or members
38 that transfers the control of, responsibility for, or governance of
39 the nonprofit corporation, the substitution of one or more members
40 of the governing body that would transfer voting control of the

1 members of the governing body, or any arrangement, written or
2 oral, that would transfer voting control of the entity shall be deemed
3 a transfer for purposes of this article.

4 (b) The notice to the Attorney General provided for in this
5 section shall contain the information the Attorney General
6 determines is required. The notice, including any other information
7 provided to the Attorney General under this article, and that is the
8 public file, shall be made available by the Attorney General to the
9 public in written form, as soon as is practicable after it is received
10 by the Attorney General.

11 (c) This section shall not apply to a nonprofit corporation if the
12 agreement or transaction is in the usual and regular course of its
13 activities or if the Attorney General has given the corporation a
14 written waiver of this section as to the proposed agreement or
15 transaction.

16 (d) This section shall apply to any foreign nonprofit corporation
17 that operates or controls a health facility, as defined in Section
18 1250 of the Health and Safety Code, or a facility that provides
19 similar health care.

20 (e) This section shall not apply to an agreement or transaction
21 if the other party to the agreement or transaction is an affiliate, as
22 defined in Section 5031, of the transferring nonprofit corporation
23 or entity, and the corporation or entity has given the Attorney
24 General 20 days advance notice of the agreement or transaction.

25 SEC. 3. Chapter 9.2 (commencing with Section 5940) is added
26 to Part 2 of Division 2 of the Corporations Code, to read:

27

28

CHAPTER 9.2. EMERGENCY CENTER SERVICES

29

30 5940. (a) Except as provided in subdivision (b), a nonprofit
31 corporation that operates or controls a health facility, as defined
32 in Section 1250 of the Health and Safety Code, or operates or
33 controls a facility that provides similar health care, and that
34 provides emergency medical services at an emergency center
35 licensed under Sections 1255 and 1277 of the Health and Safety
36 Code, shall provide written notice to, and to obtain the written
37 consent of, the Attorney General as soon as possible, but not later
38 than 90 days prior to a planned reduction in the level of emergency
39 medical services provided or elimination of those services.

1 (b) (1) This section shall not apply to a nonprofit corporation
2 if the Attorney General has given the corporation a written waiver
3 of this section as to the planned elimination or reduction of the
4 level of emergency medical services.

5 (2) A health facility shall not be subject to this section if,
6 pursuant to subdivision (c) of Section 1255.1 of the Health and
7 Safety Code, the State Department of Public Health determines
8 that the use of resources to keep the emergency center open
9 substantially threatens the stability of the hospital as a whole, or
10 cites the emergency center for unsafe staffing practices.

11 (c) The notice to the Attorney General described in subdivision
12 (a) shall include and contain the information the Attorney General
13 determines is required to make a decision in the public interest
14 pursuant to this section. The notice, including any other information
15 provided to the Attorney General under this section, and that is in
16 the public file, shall be made available by the Attorney General to
17 the public in written form, as soon as is practicable after it is
18 received by the Attorney General.

19 (d) Within 90 days of the receipt of the written notice described
20 in subdivision (a), the Attorney General shall notify the nonprofit
21 corporation in writing of the decision to consent to, give conditional
22 consent to, or not consent to the reduction or elimination in
23 emergency medical services. The Attorney General may extend
24 this period for one additional 45-day period if either of the
25 following conditions is satisfied:

26 (1) The extension is necessary to obtain information to make a
27 determination pursuant to paragraph (1) of subdivision (f).

28 (2) The plan to reduce or eliminate emergency medical services
29 is substantially modified after the first public meeting conducted
30 by the Attorney General in accordance with subdivision (e).

31 (e) Prior to issuing any written decision referred to in subdivision
32 (a), the Attorney General shall conduct one or more public
33 meetings, one of which shall be in the county in which the facility
34 is located, to hear comments from interested parties. At least 14
35 days before conducting the public meeting, the Attorney General
36 shall provide written notice of the time and place of the meeting
37 through publication in one or more newspapers of general
38 circulation in the affected community and to the board of
39 supervisors of the county in which the facility is located. If a
40 substantive change in the plan to eliminate or reduce emergency

1 medical services is submitted to the Attorney General after the
2 initial public meeting, the Attorney General may conduct an
3 additional public meeting to hear comments from interested parties
4 with respect to that change.

5 (f) The Attorney General shall have discretion to consent to,
6 give conditional consent to, or not consent to any elimination or
7 reduction of emergency medical services described in subdivision
8 (a). In making the determination, the Attorney General shall
9 consider any factors that the Attorney General deems relevant,
10 including, but not limited to, whether any of the following apply:

11 (1) The planned elimination or reduction in the level of
12 emergency medical services is consistent with the charitable trust
13 on which the assets are held by the health facility or by the
14 affiliated nonprofit health system.

15 (2) The planned elimination or reduction involves or constitutes
16 any breach of trust.

17 (3) The Attorney General has been provided, pursuant to Section
18 5250, with sufficient information and data by the nonprofit
19 corporation to evaluate adequately the reduction or elimination of
20 emergency medical services, or the effects thereof on the public.

21 (4) The reduction or elimination of emergency medical services
22 may create a significant effect on the availability or accessibility
23 of health care services to the affected community.

24 (5) The proposed reduction or elimination of emergency medical
25 services is in the public interest.

26 (g) If the Attorney General gives consent or conditional consent
27 to the reduction or elimination of emergency medical services
28 pursuant to this section, and the assets resulting from the reduction
29 or elimination are to be sold, transferred, leased, exchanged,
30 optioned, conveyed, or otherwise disposed of within one year of
31 the date the Attorney General gives consent, the disposal of those
32 assets shall be subject to Sections 5914 or 5920.

33 (h) (1) Within the time periods designated in subdivision (d)
34 and relating to those factors specified in subdivision (f), the
35 Attorney General may do the following:

36 (A) Contract with, consult, and receive advice from any state
37 agency on those terms and conditions that the Attorney General
38 deems appropriate.

1 (B) In his or her sole discretion, contract with experts or
2 consultants to assist in reviewing the proposed changes to the level
3 of emergency services provided.

4 (2) Contract costs shall not exceed an amount that is reasonable
5 and necessary to conduct the review and evaluation. Any contract
6 entered into under this section shall be on a noncompetitive bid
7 basis and shall be exempt from Chapter 2 (commencing with
8 Section 10290) of Part 2 of Division 2 of the Public Contract Code.
9 The nonprofit corporation, upon request, shall pay the Attorney
10 General promptly for all contract costs.

11 (3) The Attorney General shall be entitled to reimbursement
12 from the nonprofit corporation for all actual, reasonable, direct
13 costs incurred in reviewing, evaluating, and making the
14 determination referred to in this chapter, including administrative
15 costs. The nonprofit corporation shall promptly pay the Attorney
16 General, upon request, for all of those costs.

17 (4) In order to monitor effectively ongoing compliance with
18 any terms and conditions that the Attorney General may impose
19 pursuant to this section, including, but not limited to, the ongoing
20 use of the charitable assets in a manner consistent with the trust
21 pursuant to which they are held, the Attorney General may, in his
22 or her sole discretion, contract with experts and consultants to
23 assist in this regard. Contract costs shall not exceed an amount
24 that is reasonable and necessary to conduct the review and
25 evaluation. Any contract entered into under this section shall be
26 on a noncompetitive bid basis and shall be exempt from Chapter
27 2 (commencing with Section 10290) of Part 2 of Division 2 of the
28 Public Contract Code. The nonprofit corporation shall pay the
29 Attorney General promptly for all contract costs. The Attorney
30 General shall be entitled to reimbursement from the corporation
31 for all actual, reasonable, and direct costs incurred in monitoring
32 ongoing compliance with the terms and conditions of the reduction
33 or elimination of emergency medical services, including contract
34 and administrative costs. The nonprofit corporation, upon request,
35 shall pay the Attorney General promptly for all contract costs.

36 (i) The Attorney General may adopt regulations implementing
37 this section.

38 (j) For purposes of this section, “nonprofit corporation” means
39 a corporation that is defined in Section 5046 or a foreign
40 corporation that is defined in Section 5053.

1 SEC. 4. Section 1255.1 of the Health and Safety Code is
2 amended to read:

3 1255.1. (a) Any hospital that provides emergency medical
4 services under Section 1255 shall, as soon as possible, but not later
5 than 90 days prior to a planned reduction or elimination of the
6 level of emergency medical services, provide notice of the intended
7 change to the state department, *the Attorney General*, the local
8 government entity in charge of the provision of health services,
9 and all health care service plans or other entities under contract
10 with the hospital to provide services to enrollees of the plan or
11 other entity.

12 (b) In addition to the notice required by subdivision (a), the
13 hospital shall, within the time limits specified in subdivision (a),
14 provide public notice of the intended change in a manner that is
15 likely to reach a significant number of residents of the community
16 serviced by that facility.

17 (c) A hospital shall not be subject to this section or Section
18 1255.2 if the state department does either of the following:

19 (1) Determines that the use of resources to keep the emergency
20 center open substantially threatens the stability of the hospital as
21 a whole.

22 (2) Cites the emergency center for unsafe staffing practices.

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

Summary

Should the Attorney General of California be given the authority to oversee and consent to the sale and transfer of nonprofit hospitals in order to curtail the reduction or elimination of emergency room services?

Background

The closures of nonprofit hospitals has resulted in overcrowding, longer waits, and diverted ambulances which have led to lower quality patient care.

Between 1996 and 2009 the annual number of emergency department visits in the U.S. increased by 51%; while the number of emergency departments decreased by 6%.¹

In California, these rates are even more striking, with a 12% reduction in emergency departments and a 27% increase in total patient visits per emergency department.² As of 2014, California has the lowest number of emergency departments per capita in the nation – 6.7 per 1 million people.³

A study published in the journal of Health Affairs analyzed the association of emergency department closures in California during the period of 1999-2010 and inpatient mortality rates at nearby hospitals. The study found that nearly one-quarter of hospital admissions during this period occurred near an emergency department closure and that these admissions had 5% higher odds of inpatient mortality than admissions not occurring near a closure, those under 65 faced higher risk at 10% compared to patients not affected by a closure.⁴

Nonprofit hospitals are heavily subsidized by taxpayers and have an obligation to their community. Given the startling statistics on

California's emergency service shortage, hospital decisions to further reduce emergency services should be heavily scrutinized.

Current Law

There are currently no restrictions in place on the closure of emergency services. Hospitals make the decision to reduce or eliminate regardless of the impact to the surrounding community.

The Attorney General already possesses the regulatory authority over nonprofit sales; this bill would expand on that power.

Proposal

The bill will require that any nonprofit corporation that operates or controls a health facility write notice to and obtain consent of the Attorney General prior to a reduction or elimination of the level of emergency services.

This bill gives the Attorney General the authority to act on the public's behalf by assessing the negative impacts that a closure or reduction would have on the community.

Support

SEIU California

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¹ Liu, C., Srebotnjak, T., & Hsia, R. Y. (2014). California Emergency Department Closures Are Associated With Increased Inpatient Mortality At Nearby Hospitals. *Health Affairs (Project Hope)*, 33(8), 1323–1329. <http://doi.org/10.1377/hlthaff.2013.1203>

² Hsia, R. Y., Kanzaria, H. K., Srebotnjak, T., Maselli, J., McCulloch, C., & Auerbach, A. D. (2012). Is Emergency Department Closure Resulting in Increased Distance to the Nearest Emergency Department Associated with Increased Inpatient Mortality? *Annals of Emergency Medicine*, 60(6), 707–715.e4. <http://doi.org/10.1016/j.annemergmed.2012.08.025>

³ American College of Emergency Physicians. (2014). *California*. Retrieved from <http://www.emreportcard.org/California/>

⁴ Liu, et al. (2014)

