SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 3161 (Bonta)
Version: June 19, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Health and care facilities: patient safety and antidiscrimination

DIGEST

This bill requires hospitals to provide demographic information about patients when reporting adverse events. The bill requires the California Department of Public Health to revise the process for submitting complaints against hospitals and long-term care facilities by permitting complainants to include demographic information, requires the patient safety plan for hospitals and skilled nursing facilities to include a process for addressing racism and discrimination, and authorizes the imposition of a fine for failure to adopt, update, or submit patient safety plans.

EXECUTIVE SUMMARY

This bill seeks to address disparities in healthcare by requiring hospitals and other facilities to include specified demographic factors in data collected regarding adverse events in order to better identify and understand how disparities may be affecting these adverse events. This bill was previously analyzed by the Senate Health Committee—where it passed by a vote of 10 to 0—regarding issues relating to the public health implications of the bill's provisions, including the provisions related to safety plans and adverse event complaints. This analysis, however, is limited to the issues within this Committee's jurisdiction—namely, the demographic reporting provisions. The bill is sponsored by the California Pan-Ethnic Health Network, and supported by various organizations that advocate for equity in public health. No timely opposition was received by this Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Licenses and regulates general acute care hospitals, special hospitals, acute psychiatric hospitals, and chemical dependency recovery hospitals, as well as skilled nursing facilities, by the California Depart of Public Health (CDPH).([Health & Safe. Code § 1250(a)-(c) & (f); § 1250.3.)[1]

2) Requires a hospital to report an "adverse event" to CDPH no later than five days after the adverse event has been detected, or, if that event is an ongoing urgent or emergent threat to the welfare, health, or safety of patients, personnel, or visitors, no later than 24 hours after the adverse event has been detected. Requires disclosure of individually identifiable patient information to be consistent with applicable law. (§ 1279.1.)

3) Defines "adverse event," as:
   a) Surgical events, such as surgery performed on the wrong body part or on the wrong patient, the wrong surgical procedure, retention of a foreign object after surgery, and death during or up to 24 hours after induction of anesthesia after surgery of a normal, healthy patient;
   b) Product or device events, such as patient death or serious disability associated with the use of a contaminated drug or device, patient death or serious disability associated with the use or function of a device in which the device is used for functions other than as intended, or patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a hospital;
   c) Patient protection events, including an infant discharged to the wrong person, patient death or disability associated with patient disappearance for more than four hours, or a patient suicide or attempted suicide while being cared for in the hospital;
   d) Care management events, such as patient death or disability associated with a medication error, a hemolytic reaction due to the administration of incompatible blood, hypoglycemia leading to death or disability, failure to identify and treat high bilirubin levels during the first 28 days of life, a stage 3 or 4 ulcer acquired after admission to a hospital, or a death or disability due to spinal manipulative therapy performed at the hospital;
   e) Environmental events, including death or disability associated with an electric shock while being cared for in a hospital, any incident in which a line designated for oxygen or other gas contains the wrong gas or is contaminated by a toxic substance, a death or disability associated with a burn while in the hospital, a death associated with a fall while in the hospital, or a death or disability associated with the use of restraints or bedrails; and

[1] All further references are to the Health and Safety Code unless specified otherwise.

f) Criminal events, including any instance of care provided by someone impersonating a physician or other provider, the abduction of a patient, or the sexual or physical assault of a patient. (§ 1279.1(b).)

4) Requires hospitals to provide specified information when reporting adverse events, including the following: location and service area where the adverse event occurred; date and time the event was detected; name of each individual affected and any patients, personnel, and visitors involved or witness to the event; description of the circumstances surrounding the event; the date the patient was informed of the event; the hospital's immediate corrective or mitigating action; and, any additional information as it becomes available regarding the adverse event. (22 Cal. Code of Reg. § 70972 & 71567.)

5) Requires CDPH to provide information regarding reports of substantiated adverse events, and the outcomes of inspections and investigations of adverse events, on its website and in written form in a manner that is readily accessible to consumers in all parts of California, and that protects patient confidentiality. Requires this information to include, but not be limited to, information regarding each substantiated adverse event, and to include compliance information history. Prohibits the names of the health care professionals or workers from being included in the information released by CDPH to the public. (§ 1279.3.)

6) Requires a hospital and a skilled nursing facility to develop, implement, and comply with a patient safety plan to reduce preventable patient safety events. Requires this patient safety plan to provide for the establishment of a patient safety committee composed of the facility's various health care professionals to receive and review reports of patient safety events and make recommendations to eliminate future patient safety events. Additionally, requires the patient safety plan to include a reporting system for patient safety events that allows anyone involved, including health care practitioners, patients and visitors, to make a report of a patient safety event to the health facility. Defines "patient safety events" as including all adverse events as described in 3) above that are determined to be preventable, and health-care-associated infections that are determined to be preventable. (§1279.6.)

7) Requires CDPH to establish a centralized consumer response unit to respond to consumer inquiries and complaints concerning long-term care facilities, including skilled nursing facilities. (§ 1419.)

This bill:

1) Requires a licensed general acute care hospital, special hospital, or acute psychiatric hospital, in addition to existing reporting requirements regarding adverse events, to provide the following demographic information about the patient to CDPH: age,

race, ethnicity, gender identity, sexual orientation, primary language spoken, disability status, and expected payer.

a) A health facility is only required to disclose information related to gender identity or sexual orientation if that information was voluntarily provided by the patient or client.

2) Requires CDPH, beginning on January 1, 2026, and annually thereafter, to include the demographic information collected when providing information regarding reports of substantiated adverse events and the outcomes of inspections and investigations of those adverse events.

3) Revises the requirements relating to patient safety plans that hospitals and skilled nursing facilities are required to have by requiring the patient safety event reporting system to allow anyone involved to make a report of a patient safety event to include anonymous reporting options, and to require the process to conduct root cause analyses of patient safety events to also include analyses of patient safety events by sociodemographic factors to identify disparities in these events.

4) Requires the patient safety plan that hospitals and skilled nursing facilities are required to have to include a process for addressing racism and discrimination, and its impacts on patient health and safety, including:
   a) monitoring sociodemographic disparities in patient safety events and developing interventions to remedy known disparities; and
   b) encouraging facility staff to report suspected instances of racism and discrimination.

5) Requires, beginning on January 1, 2026, and biannually thereafter, hospitals and skilled nursing facilities to submit patient safety plans to CDPH, and permits CDPH to impose a fine of up to $5,000 on health facilities for failure to adopt, update, or submit patient safety plans. Permits CDPH to grant a health facility an automatic 60-day extension for submitting biannual patient safety plans. Requires CDPH to make all patient safety plans submitted by health facilities available to the public on its website.

6) Requires CDPH to include a section on the "Complaint Against a Health Care Facility/Provider" form on its website and for complaints submitted via mail, fax, or by telephone, for complaints involving a hospital, to collect the following information about the affected patient: age; race; ethnicity; gender identity; sexual orientation; primary language spoken; disability status; income; and, expected payer. Requires CDPH to inform complainants that this information is used to ensure all patients receive the best care possible, but to also inform complainants that providing this information is optional and will not affect its investigation process in any way.

7) Requires CDPH, with regard to its centralized consumer response unit for complaints regarding long-term health care facilities, which include skilled nursing facilities, to include a section for complaints to collect the same demographic data as in 6) above, and a statement indicating that the information is to ensure that all patients receive the best care possible, and that providing this information is optional and will not affect the investigation process in any way. Requires complainants to be provided with information on how to file a complaint with the Civil Rights Department, and that filing this complaint is optional and will not affect CDPH's investigation process.

COMMENTS

1. Stated need for the bill

The author writes:

> Racial bias in healthcare disproportionately affects communities of color. According to the National Institute of Health, racial and ethnic minority groups are more likely to live in segregated and disadvantaged neighborhoods, largely due to structural discrimination and racism. Structural discrimination and racism in health care leads to limited access to treatment and preventive health care, which in turn, increases risks for morbidity and mortality. Further, Black, Indigenous, People of Color (BIPOC) communities experience higher rates of medical misdiagnoses and patient adverse events when compared to white patients. This bill will require hospitals to analyze patient safety events by sociodemographic factors to identify disparities in these events. The author concludes that this bill also requires hospital safety plans to include a process for addressing racism and discrimination and its impacts on patient health and safety, including monitoring sociodemographic disparities in patient safety events and developing interventions to remedy known disparities, and encouraging facility staff to report suspected instances of racism and discrimination.

2. Demographic data reporting under the bill

The Senate Health Committee analysis of this bill notes that:

> In October of 2022, a study published in Medical Care, entitled "Racial Disparities in Preventable Adverse Events Attributed to Poor Care Coordination Reported in National Study of Older U.S. Adults," examined data from a survey that was administered to participants in the Reasons for Geographic and Racial Differences in Stroke study in 2017-2018. Looking at participants older than 65 years of age who reported more than one ambulatory visit and more than one provider in the prior 12 months (thus at risk for gaps in care coordination), and examining whether there was any repeat test, drug to drug interaction, or emergency department visit or hospitalization that respondents thought could have been prevented with better

> communication, the study found that Black participants were significantly more likely to report any preventable adverse events compared to Whites, independent of demographic and clinical characteristics. In another study, The Leapfrog Group worked with the Urban Institute to compare the rate of a defined set of dangerous, preventable patient safety problems, including dangerous blood clots or sepsis after surgery, among White, Black, and Hispanic patients at hospitals with varying levels of safety grades. The analysis included 2019 hospital discharge records from 15 states and more than 10 million patients. The study found that while high-graded hospitals were safer for all patients, Black and Hispanic patients experienced higher rates of many adverse surgery-related safety events relative to White patients across all safety grades. The Emergency Care Research Institute, which is an independent, not-for-profit organization that the U.S. Department of Health and Human Services has designated as a Patient Safety Organization, identified "bias and racism in addressing patient safety" as #3 on its list of the Top Ten Patient Safety Concerns for 2022.[2]

This bill seeks to address disparities in health care for BIPOC communities by requiring a licensed general acute care hospital, special hospital, or acute psychiatric hospital to provide the following demographic information about a patient to CDPH when reporting an adverse event under existing law: age, race, ethnicity, gender identity, sexual orientation, primary language spoken, disability status, and expected payer. The bill specifies that a health facility is only required to disclose information related to gender identity or sexual orientation if that information was voluntarily provided by the patient or client. The bill also Requires CDPH, beginning on January 1, 2026, and annually thereafter, to include the demographic information collected when providing information regarding reports of substantiated adverse events and the outcomes of inspections and investigations of those adverse events. Existing law already requires that any information on adverse events that is reported publicly must be done so in a manner that protects patient confidentiality.

3. Statements in support

The California Pan - Ethnic Health Network, a sponsor of the bill, writes:

> Implicit and racial bias is rampant in health care. Extensive research demonstrates that communities of color experience higher rates of patient safety events when compared to white patients. Current law requires hospitals to report patient adverse events to the California Department of Public Health (CDPH) and while CDPH has oversight of these facilities and must review reported cases, hospitals are not required to report patient demographic information with adverse events reports, leaving CDPH unable to track trends and address underlying behaviors that may be problematic. Furthermore, while current law allows an individual to pursue a civil

[2] Sen. Health Comm. analysis of AB 3161 (2023-24 reg. sess.) as amended May 16, 2024 at p. 4.

rights pathway to remedy their experience, there is no requirement to provide information or resources to families when they submit a complaint to CDPH.

AB 3161 will require hospitals to include self-reported patient demographics such as race, ethnicity, sexual orientation, gender identity, language, expected payer, and disability status when reporting patient safety events to CDPH. This will allow the Department to review and analyze trends based on demographics and begin to identify if there are facilities that may warrant further investigation. This bill would also require CDPH to publish demographic data related to adverse events in a manner that is consistent with patient confidentiality. Providing publicly available information to the public on any potential adverse event trends at their local hospital will enable community members to find a medical facility that best fits their needs.

SUPPORT

California Pan - Ethnic Health Network (sponsor)
ACLU California Action
Alliance of Californians for Community Empowerment (ACCE) Action
APLA Health
Asian Resources, INC.
California Immigrant Policy Center
California School-Based Health Alliance
California State Council of Service Employees International Union (SEIU California)
California Women's Law Center
Courage California
Equality California
Health Access California
Healthy Contra Costa
Latino Coalition for a Healthy California
Level Up NorCal
Maternal and Child Health Access
National Health Law Program
South Asian Network
Western Center on Law & Poverty

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 2319 (Wilson and Weber, 2024) AB 2319 is pending in this Committee and revises the California Dignity in Pregnancy and Childbirth Act by, among other things, specifying what providers are subject to implicit bias training in hospitals that provide perinatal care and alternative birth centers or primary care clinics involved in perinatal care.

Prior Legislation:

AB 1204 (Wicks, Ch. 751, Stats. 2021) established the Medical Equity Disclosure Act which requires hospitals to prepare and annually submit an equity report to the Department of Healthcare Access and Information and, expands the definition of "vulnerable populations" related to community benefit plans and reports, and required a hospital's equity report to include a health equity plan to achieve disparity reductions, with measurable objectives and specific timeframes.

SB 464 (Mitchell, Ch. 533, Stats. 2019) established the California Dignity in Pregnancy and Childbirth Act and required hospitals and alternative birth centers to implement an implicit bias program for all health care providers involved in the perinatal care of patients within those facilities, as specified.

PRIOR VOTES

Senate Health Committee (Ayes 10, Noes 0)
Assembly Floor (Ayes 70, Noes 0)
Assembly Appropriations Committee (Ayes 12, Noes 1)
Assembly Judiciary Committee (Ayes 11, Noes 0)
Assembly Health Committee (Ayes 15, Noes 0)

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