

AMENDED IN SENATE MAY 25, 2012

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1318

Introduced by Senator Wolk
(Coauthor: Senator Anderson)

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

This bill would require, commencing ~~July 1, 2013~~ *January 1, 2015*, each clinic and health facility to annually offer onsite influenza

vaccinations to its employees and to require its ~~employees, contractors, students, volunteers, persons with privileges on the medical staff, and other~~ onsite health care workers affiliated with the clinic or health facility, as defined, *and persons with privileges on the medical staff, as defined*, to be vaccinated. This bill would require ~~each of the above-listed persons who has received a vaccination from another health facility to present verification to the clinic or health facility. This bill would require each of the above-listed persons who elects not to be vaccinated or does not provide proof of vaccination to wear a clinic-~~ or health facility-provided protective mask, as specified, while serving his or her duties at the clinic or health facility ~~during the influenza season~~ *licensed clinics and health facilities to maintain vaccination records of their employees and permit licensed clinics and health facilities to require documentation of vaccination or vaccination refusal from an onsite health care worker or person with privileges on the medical staff*. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would also require, on and after ~~July 1, 2013~~ *January 1, 2015*, each clinic and health facility to develop policies to *implement these provisions and to ensure nonmedical staff, as defined, compliance with vaccination requirements*. This bill would require, on and after that date, the medical staff to develop separate policies to ensure compliance with vaccination requirements *imposed by the clinic or health facility. This bill would require clinics and health facilities to report their percentage of employees and medical staff and of medical staff who have been vaccinated for that year to the State Department of Public Health. This bill would provide that a clinic or health facility that reports a combined average of 90% or higher vaccination rate for its employees and medical staff shall not be subject to specified implementation and compliance requirements*.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

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

9 **SEC. 2.** *Section 1228.3 is added to the Health and Safety Code,*
10 *to read:*

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

19 (b) *For purposes of this section, the following definitions shall*
20 *apply:*

21 (1) *“Medical staff” shall have the same meaning provided in*
22 *Section 1228.5.*

23 (2) *“Onsite health care worker affiliated with the clinic” shall*
24 *have the same meaning provided in Section 1228.5.*

25 (c) *Notwithstanding Chapter 3.5 (commencing with Section*
26 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
27 *the department may implement this section by sending letters or*
28 *similar instruction to all applicable facilities without taking*
29 *regulatory action.*

30 **SECTION 1.**

31 **SEC. 3.** *Section 1228.5 is added to the Health and Safety Code,*
32 *to read:*

33 1228.5. (a) *A licensed clinic shall annually offer its employees*
34 *onsite influenza vaccinations, if available, at no cost to the*
35 *employee.*

36 (b) *A licensed clinic shall require all employees, contractors,*
37 *students, volunteers, persons with privileges on the medical staff,*
38 *and all other onsite health care workers affiliated with the clinic*

1 *and persons with privileges on the medical staff* to either annually
2 receive an influenza vaccination or, as an alternative to the annual
3 influenza vaccination, wear a clinic-provided surgical or procedural
4 mask, or other mask that covers the mouth and nose area of the
5 face, while this person is performing his or her duties in any patient
6 care area of the clinic during the influenza season, as defined by
7 the State Health Officer or a local health officer, or both.

8 (c) (1) In meeting the requirements of subdivision (b), the clinic
9 shall maintain influenza vaccination records of ~~employees,~~
10 ~~contractors, students, volunteers, persons with privileges on the~~
11 ~~medical staff, and all other onsite health care workers affiliated~~
12 ~~with the clinic who were vaccinated onsite or offsite~~ *employees*
13 *and may maintain influenza vaccination records of the other onsite*
14 *health care workers affiliated with, but not an employee of, the*
15 *clinic and of persons with privileges on the medical staff.* If the
16 clinic does not have records of ~~a an onsite health care worker or~~
17 ~~person with privileges on the medical staff~~ being vaccinated onsite,
18 the clinic ~~shall~~ *may* require the worker *or medical staff person* to
19 either provide documentation of ~~an offsite~~ vaccination or
20 documentation that he or she refused the vaccination.

21 (2) *The clinic may include language in its business contracts*
22 *to require a contract worker to maintain records of the verification*
23 *of offsite vaccination or documentation that he or she refused the*
24 *vaccination, which shall be available to the clinic upon request.*
25 *Nothing in this section shall be construed to require a clinic to*
26 *maintain separate vaccination records or to provide vaccinations*
27 *at no cost to a contract worker who is not an employee of the clinic.*

28 (d) Each *licensed clinic* shall develop policies to *implement this*
29 *section and to ensure its* ~~employees, contractors, students,~~
30 ~~volunteers, and other~~ onsite health care workers affiliated with the
31 clinic, ~~not including medical staff,~~ are in compliance with the
32 vaccination requirements imposed by this section. The medical
33 staff shall *also* develop policies ~~independent of the policies~~
34 ~~established by the clinic~~ to ensure that persons who have privileges
35 on the medical staff are in compliance with the vaccination
36 requirements of this section *that have been implemented by the*
37 *clinic.*

38 (e) ~~Nothing in this section shall be construed to prevent a clinic~~
39 ~~from instituting additional measures to maximize influenza~~

1 vaccination rates and to prevent health care workers affiliated with
2 the clinic from contracting and transmitting the influenza virus.

3 (f)

4 (e) For purposes of this section, the following definitions shall
5 apply:

6 (1) ~~“Health~~

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

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

16 (3) “Onsite health care worker affiliated with the clinic” means
17 a person who is either a volunteer or is employed by, paid by, or
18 receives credit or any other form of compensation from the
19 ~~clinic.~~ Health clinic, who performs some or all of his or her duties
20 in a patient care area of the facility. The patient care area of the
21 facility shall be determined by the clinic and is where onsite health
22 care workers and medical staff are within close proximity to
23 patients receiving care. An onsite health care worker affiliated
24 with the clinic includes, but is not limited to, employees, physicians,
25 nurses, nursing assistants, therapists, technicians, emergency
26 medical service personnel, dental personnel, pharmacists,
27 laboratory personnel, autopsy personnel, students and trainees,
28 ~~and contractual staff, and registry staff who perform direct patient~~
29 ~~care duties but are not employed by the clinic.~~

30 (2) ~~“Medical staff” means professional medical personnel who~~
31 ~~are approved and given privileges to provide health care to patients~~
32 ~~in a clinic and who are responsible for the adequacy and quality~~
33 ~~of care rendered to patients. Medical staff include physicians and~~
34 ~~surgeons, and, where dental or podiatric services are provided,~~
35 ~~dentists or podiatrists.~~

36 (f) Notwithstanding Chapter 3.5 (commencing with Section
37 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
38 the department may implement this section by sending letters or
39 similar instruction to all applicable facilities without taking
40 regulatory action.

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

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

10 ~~(g)~~
 11 (i) This section shall become operative on ~~July 1, 2013~~ January
 12 1, 2015.

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

15 1288.65. A licensed health facility shall institute measures
 16 designed to maximize influenza vaccination rates and to prevent
 17 persons with privileges on the medical staff and onsite health care
 18 workers affiliated with the health facility from contracting, and
 19 transmitting to patients, the influenza virus. These measures shall
 20 include, but not be limited to, aerosol transmissible diseases
 21 training, as described in Section 5199(i) of Title 8 of the California
 22 Code of Regulations, as in effect January 1, 2013.

23 (b) For purposes of this section, the following definitions shall
 24 apply:

25 (1) "Medical staff" means professional medical personnel who
 26 are approved and given privileges to provide health care to patients
 27 in a health facility and who are responsible for the adequacy and
 28 quality of care rendered to patients. Medical staff includes, but is
 29 not limited to, physicians and surgeons, and, if dental or podiatric
 30 services are provided, dentists or podiatrists.

31 (2) "Onsite health care worker affiliated with the health facility"
 32 means a person who is either a volunteer or is employed by, paid
 33 by, or receives credit or any other form of compensation from the
 34 health facility, who performs some or all of his or her duties in a
 35 patient care area of the facility. The patient care area of the facility
 36 shall be determined by the health facility and is where onsite health
 37 care workers and medical staff are within close proximity to
 38 patients receiving care. An onsite health care worker affiliated
 39 with the health facility includes, but is not limited to, employees,
 40 physicians, nurses, nursing assistants, therapists, technicians,

1 *emergency medical service personnel, dental personnel,*
2 *pharmacists, laboratory personnel, autopsy personnel, students*
3 *and trainees, contractual staff, and registry staff who perform*
4 *direct patient care duties but are not employed by the health*
5 *facility.*

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

11 ~~SEC. 2.~~

12 *SEC. 5.* Section 1288.7 of the Health and Safety Code is
13 amended to read:

14 1288.7. By July 1, 2007, the department shall require that each
15 general acute care hospital, in accordance with the Centers for
16 Disease Control and Prevention guidelines, take all of the following
17 actions:

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

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

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

31 ~~(d) This section shall become inoperative on July 1, 2013, and,~~
32 ~~as of January 1, 2013, is repealed, unless a later enacted statute,~~
33 ~~that becomes operative on or before January 1, 2013, deletes or~~
34 ~~extends the dates on which it becomes inoperative and is repealed.~~

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

38 ~~SEC. 3.~~

39 *SEC. 6.* Section 1288.7 is added to the Health and Safety Code,
40 to read:

1 1288.7. (a) A *licensed* health facility shall annually offer its
2 employees onsite influenza vaccinations, if available, at no cost
3 to the employee.

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

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

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

37 (d) Each *licensed* health facility shall develop policies to
38 *implement this section and to ensure its* ~~employees, contractors,~~
39 ~~students, volunteers, and other~~ onsite health care workers affiliated
40 with the health facility, ~~not including medical staff,~~ are in

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

7 ~~(e) Nothing in this section shall be construed to prevent a health~~
8 ~~facility from instituting additional measures to maximize influenza~~
9 ~~vaccination rates and to prevent health care workers affiliated with~~
10 ~~the health facility from contracting and transmitting the influenza~~
11 ~~virus.~~

12 ~~(f)~~

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

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

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

23 ~~(g)~~

24 (f) For purposes of this section, the following definitions shall
25 apply:

26 ~~(1) “Health~~

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

30 (2) “Medical staff” means professional medical personnel who
31 are approved and given privileges to provide health care to patients
32 in a health facility and who are responsible for the adequacy and
33 quality of care rendered to patients. Medical staff include
34 physicians and if dental or podiatric services are provided, dentists
35 or podiatrists.

36 (3) “Onsite health care worker affiliated with the health facility”
37 means a person who is either a volunteer or is employed by, paid
38 by, or receives credit or any other form of compensation from the
39 health facility. ~~Health facility, who performs some or all of his or~~
40 ~~her duties in a patient care area of the facility. The patient care~~

1 *area of the facility shall be determined by the health facility and*
 2 *is where onsite health care workers and medical staff are within*
 3 *close proximity to patients receiving care. An onsite health care*
 4 *worker affiliated with the health facility includes, but is not limited*
 5 *to, physicians, nurses, nursing assistants, therapists, technicians,*
 6 *emergency medical service personnel, dental personnel,*
 7 *pharmacists, laboratory personnel, autopsy personnel, students*
 8 *and trainees, and contractual staff and registry staff performing*
 9 *direct patient care duties but are not employed by the health*
 10 *facility.*

11 ~~(2) “Medical staff” means professional medical personnel who~~
 12 ~~are approved and given privileges to provide health care to patients~~
 13 ~~in a health facility and who are responsible for the adequacy and~~
 14 ~~quality of care rendered to patients. Medical staff include~~
 15 ~~physicians, and, where dental or podiatric services are provided,~~
 16 ~~dentists or podiatrists.~~

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

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

26 *(i) This section, with the exception of the reporting requirement*
 27 *of subdivision (h), shall not apply to health facilities that have a*
 28 *combined average vaccination compliance rate of 90 percent or*
 29 *higher for its onsite health care workers that are employees and*
 30 *medical staff.*

31 ~~(h)~~

32 *(j) This section shall become operative on July 1, 2013 January*
 33 *1, 2015.*

34 ~~SEC. 4.~~

35 *SEC. 7. No reimbursement is required by this act pursuant to*
 36 *Section 6 of Article XIII B of the California Constitution because*
 37 *the only costs that may be incurred by a local agency or school*
 38 *district will be incurred because this act creates a new crime or*
 39 *infraction, eliminates a crime or infraction, or changes the penalty*
 40 *for a crime or infraction, within the meaning of Section 17556 of*

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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