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**Senate Bill No. 275**

CHAPTER 301

An act to add Section 131021 to the Health and Safety Code, and to add Section 6403.1 to the Labor Code, relating to personal protective equipment.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 275, Pan. Health Care and Essential Workers: personal protective equipment.

Existing law establishes the State Department of Public Health to implement various programs throughout the state relating to public health, including licensing and regulating health facilities and control of infectious diseases.

This bill would require the State Department of Public Health and the Office of Emergency Services, in coordination with other state agencies, to, upon appropriation and as necessary, establish a personal protective equipment (PPE) stockpile. The bill would require the department to establish guidelines for the procurement, management, and distribution of PPE, taking into account, among other things, the amount of each type of PPE that would be required for all health care workers and essential workers in the state during a 90-day pandemic or other health emergency.

Existing law requires every employer to furnish and use safety devices and safeguards, and to adopt and use practices that are reasonably adequate to render the employment and place of employment safe and healthful.

The bill would, commencing January 1, 2023, or one year after the adoption of specified regulations, whichever is later, require health care employers, including clinics, health facilities, and home health agencies, to maintain an inventory of new, unexpired PPE for use in the event of a declared state of emergency and would require the inventory to be at least sufficient for 45 days of surge consumption, as determined by regulation, as specified. The bill would assess a civil penalty on a health care employer who violates that requirement, as specified. The bill would authorize the Department of Industrial Relations to exempt a health care employer from the above-required civil penalties if the department determines that supply chain limitations make meeting the mandated level of supplies for a specific type of PPE infeasible and the health care employer has made a reasonable attempt to obtain PPE, or if the health care employer has made a showing that they are not in possession of the mandated level of supplies due to reasons beyond their control, as specified.

The bill would require the Department of Industrial Relations to adopt regulations, in consultation with the State Department of Public Health, setting forth requirements for determining 45-day surge capacity levels, as specified, for a health care employer's PPE inventory.

The bill would also establish the Personal Protective Equipment Advisory Committee, consisting of representatives from an association representing skilled nursing facilities, a statewide association representing physicians, and labor organizations that represent health care workers, among other groups, to make recommendations for the development of guidelines for the procurement, management, and distribution of PPE, as specified.

Vote Required: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO Immediate Effect NO Urgency: NO Tax Levy: NO Election: NO Usual Current Expenses: NO Budget Bill: NO Prop 25 Trailer Bill: NO

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

SECTION 1. Section 131021 is added to the Health and Safety Code, to read:

131021. (a) The Legislature finds that having access to a statewide stockpile of personal protective equipment in the event of a pandemic or other health emergency is vital to the health and safety of its health care and essential workers, as well as the general population, which both relies on this workforce and is susceptible to disease transmission should members of this workforce needlessly be infected with transmissible disease.

(b) The following definitions apply for purposes of this section:

(1) "Department" means the State Department of Public Health.

(2) "Office" means the Office of Emergency Services.

(3) "Essential workers" means primary and secondary school workers, workers at detention facilities, as defined in Section 9500 of the Penal Code, in-home support providers, childcare providers, government workers whose work with the public continues throughout the crisis, and workers in other positions that the State Public Health Officer or the Director of the Office of Emergency Services deems vital to public health and safety, as well as economic and national security.

(4) "Health care worker" means any worker who provides direct patient care and services directly supporting patient care, including, but not limited, to physicians, pharmacists, clinicians, nurses, aides, technicians, janitorial and housekeeping staff, food services workers, and nonmanagerial administrative staff.

(5) "Personal protective equipment" or "PPE" means protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, including, but not limited to, N95 and other filtering facepiece respirators, elastomeric air-purifying respirators with appropriate particulate filters or cartridges, powered air purifying respirators, disinfecting and sterilizing devices and supplies, medical gowns and apparel, face masks, surgical masks, face shields, gloves, shoe coverings, and the equipment identified by or otherwise necessary to comply with Section 5199 of Title 8 of the California Code of Regulations.

(6) "Provider" means a licensed clinic, as described in Chapter 1 (commencing with Section 1200), an outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of, a health facility as described in Chapter 2 (commencing with Section 1250) of, or a county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of, Division 2, a home health agency, a physician's office, a professional medical corporation, a medical partnership, a medical foundation, a rural health clinic, as defined in Section 1395x(aa)(2) of Title 42 of the United States Code, or a federally qualified health center, as defined in Section 1395x(aa)(4) of Title 42 of the United States Code, and any other entity that provides medical services in California.

(7) "Stockpile" means the personal protective equipment stockpile created pursuant to subdivision (c).

(c) Within one year of the effective date of this section, the department and office, in coordination with other state agencies, shall establish a PPE stockpile, upon appropriation and as necessary.

(d) The department shall also establish guidelines for procurement, management, and distribution of PPE from the department. The department and office shall consider the recommendations of the Personal Protective Equipment Advisory Committee created pursuant to subdivision (f) in developing these guidelines. At a minimum, the guidelines shall take into account all of the following:

(1) The various types of PPE that may be required during a pandemic or other health emergency.

(2) The shelf life of each type of PPE that may be obtained from the department and how to restock a portion of each type of PPE to ensure the procurements consist of unexpired PPE.

(3) The amount of each type of PPE that would be required for all health care workers and essential workers in the state during a 90-day pandemic or other health emergency.

(4) Lessons learned from previous pandemics and state emergencies, including but not limited to, supply procurement, management, and distribution.

(5) Guidance on how to define essential workers based upon different hazards.

(6) Geographical distribution of PPE storage.

(7) Guidance on how to establish policies and standards for PPE surge capacity to ensure that workers have access to an adequate supply of PPE during a pandemic or other health emergency.

(8) The policies and funding that would be required for the state to establish a PPE stockpile.

(9) How distribution from any procurement shall be prioritized in the event that there is insufficient PPE to meet the needs of providers or employers of essential workers, including consideration of the following:

(A) The provider or employer is in a location with a high share of low-income residents.

(B) The provider or employer is in a medically underserved area, as designated by the United States Department of Health and Human Services, Health Resources and Services Administration.

(C) The provider or employer disproportionately serves a medically underserved population, as designated by the United States Department of Health and Human Services, Health Resources and Services Administration.

(D) The provider or employer is in a county with a high infection rate or high hospitalization rate related to the declared emergency.

(e) The development of the guidelines shall be informed by the recommendations of the Personal Protective Equipment Advisory Committee pursuant to subdivision (f). The guidelines shall not establish policies or standards that are less protective or prescriptive than any federal, state, or local law on PPE standards.

(f) The Personal Protective Equipment Advisory Committee is hereby established. The advisory committee shall consist of the following:

(1) One representative of an association representing multiple types of hospitals and health systems.

(2) One representative of an association representing skilled nursing facilities.

(3) One representative of an association representing primary care clinics.

(4) One representative of a statewide association representing physicians.

(5) Two representatives of labor organizations that represent health care workers.

(6) Two representatives of labor organizations that represent essential workers, as defined by paragraph (3) of subdivision (b).

(7) One representative from the personal protective equipment manufacturing industry.

(8) One consumer representative.

(9) One representative from an association representing counties.

(10) One representative from the State Department of Public Health.

(11) One representative from the Office of Emergency Services.

(12) One representative from the Emergency Medical Services Authority.

(13) One representative from the State Department of Social Services.

(g) The Director of the Office of Emergency Services or their designee shall appoint the representatives from paragraphs (1) through (9), inclusive.

(h) The Personal Protective Equipment Advisory Committee shall make recommendations to the office and department necessary to develop the guidelines required pursuant to subdivision (d).

SEC. 2. Section 6403.1 is added to the Labor Code, to read:

6403.1. (a) The Legislature hereby finds that having access to a health care employer-level inventory of personal protective equipment in the event of a pandemic or other health emergency is vital to the health and safety of its health care workforce, as well as the general population, who both rely on the state's health care workforce for care and are susceptible to disease transmission should members of the health care workforce needlessly be infected with transmissible disease.

(b) For purposes of this section:

(1) "Department" means the Department of Industrial Relations.

(2) (A) "Health care employer" means a person or organization that employs workers in the public or private sector to provide direct patient care in a general acute care hospital setting as defined in subdivision (a) of Section 1250 of the Health and Safety Code, a health facility as defined in paragraphs (1) and (2) of subdivision (c) of Section 1250 of the Health and Safety Code, a medical practice that is operated or maintained as part of an integrated health system or health facility, or a dialysis clinic licensed in accordance with paragraph (2) of subdivision (b) of Section 1204 of the Health and Safety Code.

(B) "Health care employer" does not include an independent medical practice that is owned and operated, or maintained as a clinic or office, by one or more licensed physicians and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment unless the medical practice is operated or maintained exclusively as part of an integrated health system or health facility or is an entity described in subdivision (*l*) of Section 1206 of the Health and Safety Code.

(3) "PPE" and "health care worker" have the same meanings as defined in subdivision (c) of Section 131021 of the Health and Safety Code.

(c) Except as provided in paragraphs (1) and (2) of subdivision (h), a health care employer shall maintain an inventory of unexpired PPE, as specified in this section, for use in the event of a state of emergency declaration by the Governor, or a local emergency for a pandemic or other health emergency. Personal protective equipment in the inventory shall be new and not previously worn or used. A health care employer who violates the requirement to maintain an inventory of unexpired personal protective equipment prescribed by this section shall be assessed a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation, as specified in Section 6428.

(d) (1) Commencing January 1, 2023, or 365 days after regulations are adopted pursuant to subdivision (h), whichever is later, health care employers shall have an inventory at least sufficient for 45 days of surge consumption, as determined by those regulations. The regulations shall not establish policies or standards that are less protective or prescriptive than any federal, state, or local law on PPE standards.

(2) A health care employer shall provide an inventory of its PPE to the Division of Occupational Safety and Health upon request. An employer who violates this requirement shall be assessed a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation. This subdivision does not apply to a health care employer that provides services in a facility or other setting controlled or owned by another health care employer that is obligated to maintain a PPE inventory and report that inventory pursuant to this subdivision for all its owned or controlled facilities and settings.

(e) (1) If a health care employer provides services in a facility or other setting controlled or owned by another health care employer who is obligated to maintain a PPE inventory, the health care employer who controls or owns the facility or other setting shall be required to maintain the required PPE for the health care employer providing services in that facility or setting.

(2) A health care employer may apply for a waiver of some or all of the PPE inventory requirements of subdivision (d) by writing to the department, which may approve the waiver if the facility has 25 or fewer employees and the employer agrees to close in-person operations during a public health emergency in which increased use of PPE is recommended by the public health officer until sufficient PPE becomes available to return to in-person operations. This provision does not apply to health facilities as described in subdivisions (a), (b), and (c) of Section 1250 of the Health and Safety Code.

(3) If a health care employer's inventory of a type of PPE dips below the mandated level of supplies as a result of the health care employer's distribution of that type of PPE to its health care workers or another health care employer's workers during a state of emergency declared by the Governor or a declared local emergency for a pandemic or other health emergency, the health care employer shall not be subject to the civil penalty established by subdivision (c) for 30 days, provided the health care employer replenishes its inventory to the mandated level within 30 days if the department has determined there is not a supply limitation.

(f) The department may exempt a health care employer from a civil penalty prescribed by subdivision (c) if the department determines that supply chain limitations make meeting the mandated level of supplies infeasible and a health care employer has made a reasonable attempt, in the discretion of the department, to obtain PPE, or if the health care employer makes a showing that meeting the mandated level of supplies is not possible due to issues beyond their control, such as if the equipment was ordered from a manufacturer or distributor but the order was not fulfilled, or if the equipment was damaged or stolen.

(g) Consistent with existing law, a designated health care employer shall supply appropriate PPE to its health care workers, ensure that its health care workers use the PPE supplied to them, and provide appropriate PPE to its health care workers upon their request. This paragraph is declaratory of existing law.

(h) The department, by regulation and in consultation with the State Department of Public Health, shall set forth requirements for determining 45-day surge capacity levels for health care employer inventory as required by paragraph (1) of subdivision (d), including, but not limited to, the types and amount of PPE to be maintained by the health care employer based on the type and size of each health care employer, as well as the composition of health care workers in its workforce. The regulations shall require each health care employer to maintain sufficient PPE for all health care workers. The regulations shall consider the recommendations of the Personal Protective Equipment Advisory Committee established pursuant to Section 6403.2.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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