



April 5, 2024

The Honorable Jasmeet Bains  
Chair, Assembly Aging and Long-Term Care Committee  
1020 N Street, Room 153  
Sacramento, CA 95814

**SUBJECT: AB 2800 (Kalra) - OPPOSE**

Dear Assembly Member Bains:

California's hospitals and health systems are committed to providing safe and effective health care throughout the care continuum. The medical interventions and the rehabilitative services provided in both acute care hospitals and hospital-based skilled nursing facilities (SNFs) are critical to the patients' ability to achieve optimal medical and functional status. This is particularly true for elders and dependent adults. Patients deserve access to all the medical services they need, along with reasonable legal protections against abuse and neglect. However, Assembly Bill (AB) 2800 will dramatically increase the types of conduct that constitute elder abuse while lowering the standard of proof the plaintiff must meet to recover on such claims.

**This is why, the California Hospital Association (CHA), on behalf of more than 400 hospital and health system members, including approximately 100 hospital-operated SNFs, must oppose AB 2800 (Kalra, D-San Jose).**

AB 2800 would expand the definition of "neglect" to include failure to implement a treatment plan, provide or arrange for necessary services, and carelessness that could be expected to result in serious physical injury, mental suffering, or death. AB 2800 also lowers the evidentiary standard for determining elder abuse, neglect, or abandonment from clear and convincing evidence to a mere preponderance of evidence. Except for Section 2 of AB 2800 (which addresses specified uses of physical or chemical restraint or psychotropic medication by long-term care facilities or residential care facilities for the elderly), all remaining provisions of AB 2800 apply to elders and dependent adults in all settings, including hospitals.

AB 2800 will increase the frequency of elder abuse claims being made against California's hospitals and other providers. This is significant because elder abuse claims are not subject to the procedural and liability protections of California's Medical Injury Compensation Reform Act (MICRA). This will

increase liability costs for these providers, further jeopardizing access as physicians and other providers will either curtail their practice, retire early, or leave the state to practice elsewhere — the very risks that MICRA was enacted to minimize.

***AB 2800 will undermine the stabilizing influence of MICRA.*** MICRA was enacted in 1975 to address the impact of a medical malpractice insurance crisis in which runaway jury verdicts were causing malpractice insurance rates to skyrocket, resulting in many providers leaving the state entirely or curtailing their practice to limit or eliminate high-risk procedures. In 2022, the Legislature passed AB 35 (Reyes), MICRA Modernization, which reinforced stability around malpractice liability while striking a balance between compensatory justice for injured patients and maintaining a health care system that is accessible and affordable for Californians. Among other things, AB 35 created separate non-economic damages caps for malpractice injury cases and death cases and increased the limit on non-economic damages for each category of cases, with these limits increasing over time.

Since elder abuse claims are not subject to MICRA’s damages caps and procedural requirements, AB 2800 has the potential to create more and higher awards for damages against hospitals and other providers, further destabilizing the health care provider liability insurance market and driving individual providers to limit their practice or leave the state. This will result in further financial pressures on hospitals and other facilities and increase the cost of health care for Californians.

***Expanding elder abuse definitions and lowering the evidence standard for elder abuse claims are problematic and unnecessary.*** AB 2800 adds the following three new definitions to existing definitions of neglect for purposes of elder abuse:

*(5) Failure to implement a treatment plan.*

*(6) Failure to provide or arrange for services necessary for physical, mental, or emotional health.*

*(7) Carelessness that produces or could reasonably be expected to result in serious physical injury, mental suffering, or death.*

These proposed definitions could result in hospitals and providers being exposed to substantial civil liability risk for circumstances that may be outside of the provider’s control or, at most, constitute minor deviations from optimal care. For example, a patient’s treatment plan might include specific services that the patient’s insurer refuses to authorize; or it may require transfer to another facility that the insurer refuses to approve or that does not have an available bed for the patient. Similarly, a treatment plan may call for physical therapy daily, but staffing shortages only permit sessions three times per week. Yet under these definitions, the facility has engaged in elder abuse.

Additionally, what constitutes “carelessness” is not defined; moreover, defining “neglect” to include “carelessness that . . . could reasonably be expected” to result in harm appears to eliminate any requirement that the patient actually be harmed by such conduct.

Not only will these definitions significantly increase the number of elder abuse claims that can be brought—regardless of actual harm to the patient—but lowering the standard of proof to a mere “preponderance of evidence” (in other words, 50% plus 1) will increase the likelihood of verdicts against providers.

AB 2800 will increase the cost of liability insurance, which will result in an increase in the cost of health care, further reducing access.

For these reasons, CHA requests your “No” vote on AB 2800.

Sincerely,



Vanessa Gonzalez  
Vice President, State Advocacy

cc: The Honorable Ash Kalra  
The Honorable Members of the Assembly Aging and Long-Term Care Committee  
Elizabeth Fuller, Consultant Assembly Aging and Long-Term Care Committee  
Bob Becker, Consultant, Assembly Republican Caucus