File No. 220410 **Committee Item No.** 3
Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

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Comm: Public Safety & Neighborhood Services **Date:** April 14, 2022
Board of Supervisors Meeting: **Date:** April 26, 2022

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Prepared by: Alisa Somera **Date:** April 8, 2022
Prepared by: **Date:**

[Health Code - ~~Subacute~~Skilled Nursing Care Transfer Reporting Requirements]

Ordinance amending the Health Code to require general acute care hospitals and hospital-based skilled nursing facilities in the City to report annually to the Department of Public Health the number of, and certain demographic information regarding, patients transferred to a health facility outside of the City to receive ~~subacute~~ skilled nursing care and patients who qualify for ~~subacute~~ skilled nursing care but are not transferred to a health facility outside of the City.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Article 3 of the Health Code is hereby amended by adding Sections 140 through 140.3, to read as follows:

SEC. 140. FINDINGS.

San Francisco has a shortage of subacute skilled nursing care beds in the City, which often necessitates transferring patients from general acute care hospitals in the City to subacute skilled nursing care facilities outside of the City. Some City residents who receive subacute skilled nursing care at facilities outside of the City, and their families, face hardships associated with traveling to, and receiving care at, these facilities. As the City strives to increase the number of subacute skilled nursing care beds in San Francisco, it is necessary to understand the full scope of the need for both *subacute* and general *skilled nursing care beds based on the number of patients who qualify for* either *subacute*

or general *skilled nursing care in an acute care hospital* or hospital-based skilled nursing facility *and are either transferred outside of the City or remain in the City in an acute care hospital* or hospital-based skilled nursing facility. *Accordingly, Section 140.2 requires public and private general acute care hospitals* and hospital-based skilled nursing facilities *in the City to report the number of and aggregated demographic information regarding qualified subacute* and general *skilled nursing care patients to the Department of Public Health.*

SEC. 140.1. DEFINITIONS.

For purposes of Sections 140 through 140.3 the following terms have the following meanings:

"City" means the City and County of San Francisco.

"Department" means the Department of Public Health.

"Director" means the Director of Health or the Director's designee.

"~~Subacute~~Out-of-County *Health Facility" means a* health *facility located outside of the City*, whether public or private, ~~and~~ *licensed* as a general acute care hospital or skilled nursing facility, as those two terms are defined by Section 1250 of the California Health and Safety Code, as amended from time to time, and providing Skilled Nursing Care.~~under Section 14132.25 of the California Welfare and Institutions Code, as amended from time to time, to provide Subacute Care.~~

"~~Hospital~~Reporting Health Facility*" means every health facility in the City, whether public or private, licensed as a general acute care hospital* or hospital-based skilled nursing facility, *as* those two terms are *defined by Section 1250*~~(a)~~ *of the California Health and Safety Code, as amended from time to time.*

"~~Subacute~~Skilled Nursing *Care" means* general *skilled nursing care* ~~consisting of~~including but not limited to *adult subacute care* as defined by Section 14132.25 of the California Welfare and Institutions Code, as amended from time to time, *which is a level of care designed for patients*

who have an acute illness, injury, or exacerbation of a disease process, and pediatric subacute care, which is a level of care for patients under 21 years of age who use a medical technology that compensates for the loss of a vital bodily function.

SEC. 140.2. REPORTING TO THE DEPARTMENT OF PUBLIC HEALTH.

(a) Reporting Health Facilities~~Hospitals~~ *owned by the City or private entities shall disclose to the Department the following information in the form of a report to be submitted annually to the Department by January 31 for the preceding calendar year, except that the submission deadline for calendar year 2021 shall be* October 1, 2022~~April 30, 2022~~*. The Department shall request such information from* Reporting Health Facilities~~Hospitals~~ *owned by non-City public entities. The report shall present patient information in aggregate, de-identified form consistent with state and federal laws governing the confidentiality of medical information.*

(1) The total number of patients who were City residents and the total number of patients who were not City residents, transferred by the Reporting Health Facility~~Hospital~~ *to a*n ~~Subacute~~Out-of-County *Health Facility for the purpose of receiving* ~~Subacute~~Skilled Nursing *Care.*

(2) The total number of patients who were City residents and the total number of patients who were not City residents, who qualified for ~~Subacute~~Skilled Nursing *Care while admitted to the* Reporting Health Facility~~Hospital~~ *but were not transferred by the* Reporting Health Facility~~Hospital~~ *to a*n ~~Subacute~~Out-of-County *Health Facility.*

(3) The following aggregate demographic information for each category of patient: age, race/ethnicity, gender (as well as sexual orientation and gender identity, if normally collected by the Reporting Health Facility~~Hospital~~*), patient's insurance provider (by way of example but not limitation, Medi-Cal, Medicare, or the specific private insurance provider), and housing status (by way*

of example but not limitation, people experiencing homelessness, marginally housed, or permanently housed).

(b) The Director may issue rules or guidelines regarding the information required by this Section 140.2 including the format by which Reporting Health Facilities~~Hospitals~~ *will transmit the report.*

(c) The Department shall make~~annually submit~~ *a* ~~written~~ *report* on an annual basis *to the Health Commission based on the annual reports submitted by the* Reporting Health Facilities~~Hospitals~~ *to the Department. The Department's report to the Health Commission shall include not only statistical information but also such future plans and/or recommendations, as the Department deems appropriate, for provision of* ~~Subacute~~Skilled Nursing *Care in the City.*

SEC. 140.3. **PROMOTION OF THE *GENERAL WELFARE.***

In enacting and implementing Sections 140–140.2, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Henry L. Lifton
HENRY L. LIFTON
Deputy City Attorney

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FILE NO. 220410

REVISED LEGISLATIVE DIGEST

(4/14/2022, Duplicated in Committee)

[Health Code - Skilled Nursing Care Transfer Reporting Requirements]

Ordinance amending the Health Code to require general acute care hospitals and hospital-based skilled nursing facilities in the City to report annually to the Department of Public Health the number of, and certain demographic information regarding, patients transferred to a health facility outside of the City to receive skilled nursing care and patients who qualify for skilled nursing care but are not transferred to a health facility outside of the City.

Existing Law

There is currently no legal requirement for hospitals or hospital-based skilled nursing facilities in the City to provide to the Department of Public Health ("DPH") information regarding patients transferred to health facilities outside of the City to receive subacute or general skilled nursing care or patients who qualify for subacute or general skilled nursing care but are not transferred to health facilities outside of the City.

Amendments to Current Law

The Proposed Legislation would amend the Health Code to require general acute care hospitals and hospital-based skilled nursing facilities owned either by the City or private entities to report on an annual basis to DPH the number and aggregated demographics of patients transferred to health facilities outside of the City for either subacute or general skilled nursing care, as well as the number and aggregated demographics of patients who are eligible for subacute or general skilled nursing care but are not transferred to health facilities outside of the City. The Proposed Legislation would require DPH to request the same information from hospitals and skilled nursing facilities owned by non-City (i.e., state or federal) public entities. The Proposed Legislation would also require DPH to make an annual report to the Health Commission based on the information received from reporting health facilities.

Background Information

San Francisco has a shortage of subacute skilled nursing care, which often necessitates discharging patients from hospitals in the City to subacute health facilities outside of the City. The Proposed Legislation would provide information for DPH, the Health Commission, and the Board of Supervisors to inform future planning related to the provision of subacute care beds in the City.

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January 14, 2022
To: Public Safety and Neighborhood Services Committee-Hearing Jan 27, 10 a.m.
c/o Clerk: Alisa Somera
Email: Alisa.Somera@sfgov.org
cc: Supervisors Safai and Ronen

MS. SOMERA:
Please put in
Legislative File for:

ile #:	211177	Name:	Health Code - Subacute Care Reporting Requirements
Title:	Ordinance amending the Health Code to require general acute care hospitals in the City to report annually to the Department of Public Health the number of, and certain demographic information regarding, patients transferred to a health facility outside of the City to receive subacute skilled nursing care and patients who qualify for subacute skilled nursing care but are not transferred to a health facility outside of the City.		
Sponsors:	Ahsha Safai, Hillary Ronen		

We need an ordinance assuring that SFBOS will receive regular reports about how many San Francisco residents are involuntarily discharged out of county from acute hospitals and acute psychiatric facilities due to lack of services in San Francisco.

This is an evidence based way of looking at the gaps in services and improving city-wide health planning. This information is easy to collect with modern hospital electronics records systems. SFDPH in past attempts was not able to get voluntary co-operation from some private hospitals, and has been less than co-operative in offering that information on a regular basis from ZSFGH with FOI requests.

Supervisors Safai and Ronen are commendably putting an ordinance about tracking out of county discharges from acute hospitals to Subacute Skilled Nursing Facility care. (These are ventilator dependent or high maintenance tracheostomy dependent people who need long term care. These facilities are for the medically complex people and are distinct from Subacute Psychiatric facilities).

CPMC/Sutter closed the last Subacute SNF facility in the city (at St. Luke's) in 2018 after stopping all new admissions for at least a year before that-so all new candidates for Subacute SNF care must leave the city and county.

However Subacute SNF hospital discharges are less than 1% of total hospital discharges. **What about other folks who are transferred away from their community and support system due to lack of adequate post-discharge/post acute services here in San Francisco?**

Supervisors Mar, Stefani and Haney: please speak to this on December 27. We need to do this right.

Thank you,

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February 9, 2022

Public Safety and Neighborhood Services Committee, Board of Supervisors
The Honorable Gordon Mar, Chair
The Honorable Catherine Stefani, Member
The Honorable Matt Haney, Member
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Agenda Item #1, Board File 211177: <u>Subacute Care Reporting Requirements</u>

Dear Chair Mar and Members of the Public Safety and Neighborhood Services Committee,

On November 9, 2021 Supervisor Ahsha Safai's introduced a draft Ordinance to require public- and private-sector hospitals operating in San Francisco report a limited amount of data about out-of-county discharges, but only for patients being discharged out-of-county who need sub-acute level of care.

While Safai's draft legislation may be a commendable and long-overdue first effort, it's woefully inadequate as currently written and introduced. And his legislation totally ignored previous testimony from community- and healthcare-advocates about what the legislation should include.

Along with other health care advocates including Dr. Palmer and others, I have been requesting this legislation since at least 2018. Indeed, for the Board of Supervisors PSNS Committee hearing on September 26, 2019, testimony was presented for agenda item #4 titled "*Hearing - Sub-Acute Care in San Francisco*" [File #190725].

For instance, *San Franciscans for Healthcare, Housing, Jobs and Justice* (SFHHJJ, or alternatively H2J2) submitted written testimony to the PSNS Committee dated June 18, 2019 urging that the Health Commission and Board of Supervisors:

> "*Direct the Department of Public Health to collect to the maximum extent feasible from all acute care hospitals and SNF facilities located within San Francisco comprehensive and specific data and information, for the past three years and prospectively, about all San Francisco residents who have been discharged to out-of-county facilities to receive SNF, Subacute SNF care, or RCFE care; to support the enactment of legislation by the Board of Supervisors to mandate all acute care hospitals and SNF facilities in San Francisco to provide such data and information; to prepare and publicly publish, within four months a written report covering all such data and information collected …*".

Of note, H2J2 specifically requested that SFDPH collect from all acute care hospitals and all SNF's, and obtain data for the previous three to five years to provide historical context about just how severe the out-of-county discharge problem is.

We need an ordinance assuring that SFBOS will receive regular reports about how many San Francisco residents are discharged out of county from acute hospitals and acute psychiatric facilities due to the lack of services and severe lack of appropriate facilities in San Francisco.

The importance of collecting out-of-county discharge data goes way beyond Safai's single focus on the issue of just requiring data reporting about the number of patients discharged out-of-county who need sub-acute SNF level of care. How can we know if we are properly planning to care for the longer term physical and mental health issues of our senior citizens and people with disabilities if we have no idea who — and how many people —are getting dumped out of county for sub-acute SNF, psychiatric, and all other types of long term care? This is an interest that seniors, disability, and mental health advocates all agree on.

This proposed legislation would go a long way toward helping collect evidence-based data for looking at the gaps in services, improving citywide healthcare planning, and help identify the types of in-county facilities that are in severely short supply to assist in finding sources of funding to build out additional in-county capacity. It would also go a long way towards helping City officials craft San Francisco's *Health Care Master Services Plan*, which identifies current and

projected needs for *health care* services for *San Franciscans*, with a focus on vulnerable populations.

Dr. Palmer has testified this information is easy to collect with modern hospital electronic healthcare records systems. She notes SFDPH's past attempts were unable to get voluntary cooperation on reporting out-of-county discharge data from private-sector hospitals, even though those hospitals have state-of-the-art EHR systems that could be easily mined to collect and report the data. Indeed, given SOTF's ruling DPH has refused to provide out-of-county discharge data for now two full years illustrates that SFDPH, itself, has been less than cooperative providing FOIA-requested information on a regular basis of SFGH's own out-of-county discharge data.

CPMC/Sutter closed the last remaining sub-acute SNF facility in the city at St. Luke's Hospital in 2018 after stopping all new admissions from only its affiliate CPMC hospital chain for at least a year before then, so all new patients — even from CPMC's affiliate hospitals who need sub-acute SNF level of care — were forced to leave the City and County of San Francisco for at least the past four years. But it's much worse than that, because CPMC stopped admitting patients from any other San Francisco hospital way back in 2012.

That means it has now been a full decade since patients needing sub-acute SNF level of care have endured being *dumped* out-of-county. No other county in California has ***zero*** in-county sub-acute facility capacity in their jurisdictions, as San Francisco now has.

And four years after CPMC shut down any new admissions to it's temporary replacement sub-acute SNF moved to CPMC's Davies Hospital campus, San Francisco has still not identified and opened yet any of the 70- to 90-projected sub-acute SNF beds anywhere else in the City that DPH has documented to the Board of Supervisors the City desperately needs. Efforts to open any new sub-acute SNF beds in San Francisco have stalled for four years, since former-Director of Public Health Barbara Garcia — who had been working to solve the problem — was unceremoniously fired.

Recommended Amendments to the Legislation

As Dr. Palmer recently testified to the PSNS Committee, hospital discharges to sub-acute SNF facilities "*are less than 1% of total hospital discharges*." Obviously, Safai's first draft of a proposed Ordinance requiring hospitals to report data only on the number of discharges to out-of-county facilities to receive sub-acute level of care is going to miss the vast universe of discharges to facilities that provide levels of healthcare *other than* sub-acute SNF care. The legislation should **not** apply only to patients needing sub-acute care.

Safai's legislation must be vastly amended — or replaced entirely with a revised Ordinance containing a much broader scope — while the Board of Supervisors has this long-overdue opportunity to do so.

Particular recommendations include, but are not limited to:

- **Require Data Reporting Focus on San Franciscans:** Safai's first draft requested stratifying the number of patients facing transfer out-of-county for sub-acute SNF level of care for both city residents and non-city residents. That stratification — which is rightfully important, and might help illuminate regional needs and trends particularly for out-of-county patients admitted to San Francisco's only Level 1 Trauma Center at SFGH — should focus primarily on San Francisco residents facing out-of-county disenfranchisement and displacement from their surrounding neighborhoods. The data to be collected should focus only on San Francisco residents at the time of their hospital, or other facility, admission. Filtering for only San Franciscans is thought to be accomplished easily.

- **Expand Facilities That Will Be Required to Report Data:** Safai's first draft required only "*general acute-care hospitals*" report out-of-county discharge data to San Francisco's Department of Public Health. That must be broadened to require all public- and private sector acute-care medical hospitals (including UCSF and Benioff Children's Hospital), acute psychiatric hospitals, Long-Term Care Acute Hospitals (LTACHs) like Kentfield on St. Mary's Hospital campus (think Ken Zhao, who Kentfield discharged out-of-county), and hospital-based skilled nursing facilities (LHH and the Jewish Home) report the same data.

- **Expand the Types of Facilities Patients Are Discharged To:** Safai's first draft required San Francisco facilities collect and report data on patients discharged out-of-county ***only*** for those who are discharged for sub-acute SNF level of care, and failed to stratify the types of care to be provided.

  Aggregate data must be reported on 1) The **types of facilities** patients are discharged to [including to other acute care facilities, long-term care acute hospitals, skilled nursing facilities (SNF), sub-acute skilled nursing units (sub-acute SNF), Residential Care Facilities for the elderly (RCFE's), other types of assisted living facilities, etc.]; 2) The **type and level of care to be provided** out-of-county (acute medical care vs. skilled nursing care, psychiatric care, custodial care, etc.); 3) The **number of patients discharged to each named facility** (aggregating data on the names of each facility); and 4) The **name of the City** patients are discharged to — all to identify trends.

- **Change "Request Data Reporting" to "Require Data Reporting":** Safai's first draft stipulated SFDPH would have to *request* the data annually from the reporting hospitals. That must be changed to require the reporting hospitals and facilities to provide the data annually, without DPH having to request annually that the reporting hospitals do so.

- **Require Data Mining from Hospital's Electronic Healthcare Records (EHR) Databases:** Given that hospitals are required to have robust electronic healthcare database as part of federal requirements for Medicare and Medicaid billing reimbursement, the legislation should direct all hospitals provide this data by "data mining" from their Electronic Healthcare Records (EHR) database systems such as "Epic," and Epic's "*Care Everywhere*" module that is widely used by hospitals across California and also used by SFDPH. Several hospitals in San Francisco also use Epic as their EHR database.

- **Require Annual Health Commission Public Hearings:** Although Supervisor Safai's first draft of this legislation stated DPH will have to deliver a written report to the Public Health Commission, there is no language clearly requiring the Health Commission hold a public hearing. There's also no requirement SFDPH or the Health Commission submit the data to the Board of Supervisors, as other legislation has done in the past. For instance, then-District 7 Supervisor Sean Elsbernd managed to pass a Board of Supervisors Ordinance requiring LHH to submit detailed quarterly and annual reports to the Board of Supervisors on the number of Laguna Honda Hospital admissions, discharges, and other patient demographic and outcome data to the Board of Supervisors, which was required and produced for over eight years.

- **Require Annual Board of Supervisors Public Hearings:** Safai's first draft of this legislation did not include — or bother to even mention — requiring the Board of Supervisors or its Public Safety and Neighborhood Services Committee to hold a public hearing on the out-of-county data collected to help identify and document the severe shortage of various types of in-county facilities available in San Francisco in order to assist with identifying potential sources of funding to build out additional capacity of facilities in-county.

- **Specified Reports Format:** Safai's first draft asserted the Director of Public Health could issue rules or guidelines regarding the amount of information and the format of the reports Hospitals would be required to report to DPH and the Health Commission. That provision must be struck out entirely, replaced with mandated report elements each hospital or other reporting facility is required to report.

- **Retrospective Data:** Despite many healthcare advocates' assertions for at least the past four years that data to be collected for previous years retrospectively to help identify trends, Safai's legislation ignored those advocates and requires nothing in the way of collecting retrospective data. That, too, must be corrected.

- **Create a "Certificates of Preference" Repatriation Program:** Safai's first draft of this legislation did not include creating a *Certificates of Preference* program to expatriate San Francisco residents involuntarily discharged out-of-county, so they have preference for being returned to San Francisco as additional facility capacity becomes available in-county.

Please incorporate these recommendations into this proposed Ordinance, either via substantial amendments or by introducing a completely revised replacement Ordinance.

Respectfully submitted,

Patrick Monette-Shaw
Columnist
Westside Observer Newspaper

cc: The Honorable Connie Chan, Supervisor, District 1
The Honorable Aaron Peskin, Supervisor, District 3
The Honorable Dean Preston, Supervisor, District 5
The Honorable Myrna Melgar, Supervisor, District 7
The Honorable Rafael Mandelman, Supervisor, District 8
The Honorable Hillary Ronen, Supervisor, District 9
The Honorable Shamann Walton, Supervisor, District 10
The Honorable Ahsha Safai, Supervisor, District 11
Angela Calvillo, Clerk of the Board
Alisa Somera, Clerk of the Public Safety and Neighborhood Services Committee
Daisy Quan, Legislative Aide to Supervisor Gordon Mar
Edward Wright, Legislative Aide to Supervisor Gordon Mar
Li Miao Lovett, Legislative Aide to Supervisor Gordon Mar
Alan Wong, Administrative Aide to Supervisor Gordon Mar
Lee Hepner, Legislative Aide to Supervisor Aaron Peskin

BOARD of SUPERVISORS

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M E M O R A N D U M

TO: Dr. Grant Colfax, Director, Department of Public Health

FROM: Alisa Somera, Clerk, Public Safety and Neighborhood Services Committee
Board of Supervisors

DATE: November 15, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Safai on November 9, 2021:

File No. 211177 Health Code - Subacute Care Reporting Requirements

Ordinance amending the Health Code to require general acute care hospitals in the City to report annually to the Department of Public Health the number of, and certain demographic information regarding, patients transferred to a health facility outside of the City to receive subacute skilled nursing care and patients who qualify for subacute skilled nursing care but are not transferred to a health facility outside of the City.

You are being provided this informational referral since the legislation may affect your department.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Ana Validzic, Department of Public Health