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THE HONORABLE MARIO G. OBLEDO, SECRETARY, HEALTH AND WELFARE AGENCY, has requested our opinion on the following questions:

1. May the California Health Facilities Authority lawfully make a loan to or issue tax exempt revenue bonds on behalf of a participating health institution if that institution has not given the Office of Statewide Health Planning and Development the assurance required by Government Code section 15459?

2. If such assurance is required, does Government Code section 15459 permit the Office of Statewide Health Planning and Development to require that it include compliance with sections 436.81 through 436.84 of the Health and Safety Code?

CONCLUSION

1. The California Health Facilities Authority may not lawfully make a loan to or issue tax exempt revenue bonds on behalf of a participating health institution if that institution has not given the Office of Statewide Health Planning and Development the assurance required by Government Code section 15459.

2. Government Code section 15459 does not permit the Office of Statewide Health Planning and Development to require a health institution to comply with sections 436.81 through 436.84 of the Health and Safety Code as part of the assurance required by that section.

ANALYSIS

This opinion discusses the import of the reference found in section 15459 of the California Health Facilities Authority Act (Gov. Code, tit. 2, div. 3, pt. 7.2, § 15430 et seq.) to section 436.8, subdivision (j) and section 436.82 of the California Health Facilities Construction Loan Insurance Law. (Health & Saf. Code, pt. 1, ch. 4, § 436 et seq.) The former Act is designed to *finance* health facilities projects and is administered by the California Health Facilities Authority (Gov. Code, § 15437); the latter is designed to *insure* loans for them and is administered by the Office of Statewide Health Planning and Development. (Health & Saf. Code, § 436.4.) In essence we are asked whether, and to what extent, the reference in section 15459 gives the Office a role to play in the review and approval of applications for health facility *financing* from the Authority under the former Act where the insurance program it administers under the latter law is not involved.

In 1979 the Legislature adopted the California Health Facilities Authority Act (Stats. 1979, ch. 1033, p. 3558, § 1) to provide financing, under the aegis of the California Health Facilities Authority (Gov. Code, § 15437; cf. *id.*; §§ 15431, 15432(b), 15433, 15438), for the construction, expansion, remodeling, renovation, furnishing or equipping of health facilities[1], through, inter alia, the issuance of tax-exempt revenue bonds (*id.*, §§ 15438.5, 15448, 15432, subd. (f); cf., *id.*, §§ 15441-15447) and the making of loans (*id.*, § 15438, subds. (i), (j), (k)). It was hoped that the savings experienced by participating health institutions as a result of the tax-exempt revenue bond funding would be passed on to the consuming public through lower charges or containment of the rate increase in hospital rates. (*Id.*, § 15438.5, subd. (a).)

[1] That activity is how the Act defines a health facility "project." (Gov. Code, § 15432, subd. (j).)

While responsibility for administering the Act is vested in the *Authority* (*id.*, § 15437), its provisions also bring the *Office* of Statewide Health Planning and Development into its processes. Thus, section 15438.1 provides that no project is eligible for approval unless a certificate of need or exemption has first been obtained from that office pursuant to section 437 et seq. of the Health and Safety Code. And section 15459, the subject of this opinion, provides in part that:

> "*As a condition of participation under this part*, each participating health institution *shall give assurance to the Office of Statewide Health Planning and Development* regarding availability of its services to community residents in the manner set forth in subdivision (j) of Section 436.8 of the Health and Safety Code and shall provide notice of such availability as set forth in Section 436.82 of the Health and Safety Code."

The sections referred to therein are part of the California Health Facilities Construction Loan Insurance Law which the Legislature enacted in 1969 (Stats. 1969, ch. 970, p. 1920, § 1) to provide, without cost to the state, an insurance program (commonly called Cal-Mortgage) under the aegis of the Office of Statewide Health Planning and Development for health facility construction [improvement and expansion][2] loans. (Health & Saf. Code, §§ 436.1, 436.4, 436.2(h).) Its purpose was to stimulate the flow of private capital into health facilities construction [improvement and expansion][3] in order to meet the need for new, expanded and modernized public and non-profit health facilities necessary to protect the health of all the people of this state. (*Id.*, § 436.1.) Section 436.8 of the Law sets forth various conditions to be met for a loan to be eligible for insurance *thereunder*. Pertinent

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[2] The bracketed reference to "improvement and expansion" of health facilities was added in 1979. (Stats. 1979, ch. 1047, p. 3689, § 1.) At that time, the Legislature found that since the enactment of chapter 4 in 1969, the need for health facilities had substantially shifted from the need for *the construction of new facilities* to one for *the consolidation or merger of existing facilities* and the inducement of fiscal economics within them. (*Id.*, at pp. 3696-3697, § 8.) There were many areas of the state where a substantial portion of health facilities was distributed among a number of small, inefficient facilities with the result that their cost of providing health care was unnecessarily high. (*Ibid.*) By the 1979 amendment, the Legislature sought to promote efficiency, economy of scale, cost containment *and enhanced accessibility to high quality health care services* by encouraging acquisition of the small facilities by existent larger ones for the purpose of consolidation. (*Ibid.*; see also *id.*, § 3, pp. 3691-3692 amending the definition of "construction" in Health & Saf. Code, § 436.2(c) to be one of "construction, improvement or expansion" and to include "the acquisition of existing buildings or health facilities.") The Legislature also expressed its intent at the time that those health facilities which would receive the public benefit of loan insurance under the Law for the acquisition and consolidation of health facilities should pass on the consequential cost savings to the consuming public. (Stats. 1979, ch. 1047, § 8, *supra*.)

[3] See footnote 2, *supra*.

to our discussion, subdivision (j) of that section, added in 1978 (Stats. 1978, ch. 1290, § 1, pp. 4219, 4220), requires that a borrower[4] provide a community service obligation assurance, thus:

> "The borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility."

In 1978 the Legislature also added sections 436.81 through 436.84 to the Loan Insurance Law which, generally speaking, detail a borrower's community service obligation under section 436.8, subdivision (j) primarily by setting forth specific actions it must take in regard to providing nondiscriminatory availability of services to MediCal and MediCare patients in the "community." (Stats. 1978, ch. 1290, §§ 2-5, pp. 4220-4221.)

Against this scenario our questions are posed: First we are asked whether the California Health Facilities Authority may lawfully make a loan to or issue tax-exempt revenue bonds on behalf of a participating health institution under the California Health Facilities Authority Act if the facility has not given the Office of Statewide Health Planning and Development the assurance required by Government Code section 15459, and second, if that assurance is necessary for a loan to be made or bonds to be issued, whether section 15459 permits the Office to require that it include compliance with the provisions of Health and Safety Code sections 436.81 through 436.84. We conclude that a health facility's giving assurance of fulfilling a "community service obligation" to the Office of Statewide Health Planning and Development under Government Code section 15459 *is* a *sine qua non* for its participating under the California Health Facilities Authority Act by which the California Health Facilities Authority would make a loan to or issue tax-exempt revenue bonds on its behalf. We also conclude that while such assurance is necessary, Government Code section 15459 does not permit the Office of Statewide Health Planning and Development to require that it include compliance with the obligations set forth in sections 436.81 through 436.84 of the Health and Safety Code.

I

We first address the question of whether the California Health Facilities Authority (hereinafter, "the Authority") may lawfully make a loan to or issue tax-exempt revenue bonds on behalf of a participating health institution under the California Health Facilities Authority Act (hereinafter, "the Authority Act") where the institution has not

[4] The term "borrower" is defined to mean "a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the construction of a health facility." (Health & Saf. Code, § 436.2, subd. (b).)

given the Office of Statewide Health Planning and Development (hereinafter, "the Office" or "Planning") the assurance required by Government Code section 15459. We conclude that it may not.

As noted preliminarily, Government Code section 15459 provides that as a *condition* of a health institution participating under the Authority Act, i.e., as a *condition* for the Authority's issuing tax-exempt bonds or making a loan on its behalf, a health institution *must* give the Office an assurance that it will fulfill a "community service obligation." The section provides in full as follows:

> "*As a condition of participation under this part*, *each participating health institution shall give assurance to the Office of Statewide Health Planning and Development regarding availability of its services to community residents* in the manner set forth in subdivision (j) of Section 436.8 of the Health and Safety Code and shall provide notice of such availability as set forth in Section 436.82 of the Health and Safety Code. The remedies and sanctions available to the office against the borrower for failure to adhere to the assurance given to the office shall include the following:
>
> "(a) Rendering the borrower ineligible for federal and state financial assistance under the Hill-Burton Program.
>
> "(b) Requiring a borrower that had originally met the conditions of community service to submit a plan that is satisfactory to the office which details the reasonable steps and timetables that the borrower agrees to take to bring the facility back into compliance with the assurances given to the office.
>
> "(c) Referring the violation to the office of the Attorney General of California for legal action authorized under existing law or other remedy at law or equity, when a facility fails to carry out the actions agreed to in a plan approved by the office pursuant to subdivision (b) of this section.
>
> "However, the remedies obtainable by such legal action shall not include withdrawal or cancellation of the project or projects financed or to be financed under this part."

We believe it clear from the face of the statute that the Legislature intended that a health institution's giving "assurance to the Office . . . regarding availability of its services to community residents . . ." be a *precondition* for the Authority acting on its behalf.

The section provides that the giving of that community service obligation assurance is a *condition* of a health institution's participation under the Act. The ordinary meaning of the term "condition", which we are constrained to follow unless otherwise directed (*People* v. *Belleci* (1979) 24 Cal.3d 879, 884), is "something established or agreed upon as a requisite to the doing . . . of something else" or "a circumstance that is essential to the . . . occurrence of something else." (Webster's *Third New Internat. Dict.* (1971 ed.) at p. 473; *Matter of Russell* (1912) 163 Cal. 668, 673; *State* v. *Community Distributors, Inc.* (N.J. 1973) 304 A.2d 213, 218.) Thus while conditions may be precedent, concurrent or subsequent (Civ. Code, § 1435; cf. *id.*, §§ 1436-1438),[5] the term is *ordinarily* used to describe acts or events which must occur *before* a duty of performance arises (*Hardin* v. *Cliff Petit Motors, Inc.* (E.D. Tenn. 1976) 407 F.Supp. 297, 300; cf. Civ. Code, § 1439 (so with conditions precedent and concurrent)) and we believe it is so used in section 15459. (Cf. *People* v. *Belleci*, *supra*.)

The section differentiates between *an assurance (or promise or pledge) being given* by an institution to Planning regarding a community service obligation and *the performance of that assurance* by the institution, and it contemplates a different time frame for the rendering of each. That the former was meant to *antedate* an institution's participation under the Authority Act, in contrast to the latter, is seen from the provisions of the section itself. Thus it makes remedies and sanctions available to Planning against a borrower "for failure to adhere to the *assurance given* [it]." The use of the *past* participle ("given") to describe "assurance" indicates that the Legislature envisioned that the time for an assurance to be given was to be sometime in the *past*. That it would *precede* an institution's participating under the Authority Act and the Authority's making a loan to or issuing tax-exempt bonds on its behalf is made clear from the remedy provided in clause (b) of the section which permits Planning to require "a borrower that *had originally* met the conditions of community service to submit a [satisfactory plan detailing the steps and timetables] that it agrees to take to bring the facility *back into compliance with the assurances given* to the Office." That an assurance being given was meant to precede participation under the Authority Act is also seen in the fact that the section contrasts that activity which it deems a *condition of participation* with the actual *performance of the assurance given* which it contemplates taking place *only after* participation is secured since it provides that the legal remedies available to Planning against a borrower for failure to adhere to its assurance may *not* "*include withdrawal or cancellation* of the project . . .

[5] "A *condition precedent* is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed." (Civ. Code, § 1436.) "*Conditions concurrent* are those which are mutually dependent, and are to be performed at the same time." (*Id.*, § 1437.) "*A condition subsequent* is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition." (*Id.*, § 1438.)

financed or to be financed . . . ." The section's legislative development reinforces that conclusion. When the Authority Act was originally introduced in the Assembly on March 29, 1979 (as Assem. Bill No. 1558) it did not contain a proposed section 15459 with a provision for an institution giving a community service obligation assurance. That requirement was added when the bill was amended on May 9, 1979, after discussion in the Assembly's Committee on Health. We believe that development to have been the result of a deliberate legislative decision to require an institution to provide an affirmative showing of the availability of its services to community residents for the Authority to be able to make loans to it or to issue tax-exempt revenue bonds on its behalf. (Cf. *California Mfrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) The importance that the Legislature attached to that assurance being given thus gleaned from its legislative history, together with the fact that the requirement for it is cast in the mandatory terms "as a condition of participation . . . each participating health institution *shall* give assurance" (cf. Gov. Code, § 14), leaves no room for a construction of the statute which would admit the possibility of the Authority making a loan to an institution or issuing bonds on its behalf, on the expectancy that that assurance might come later.[6] We therefore conclude that the California Health Facilities Authority may not lawfully make a loan to, or issue tax-exempt revenue bonds on behalf of, a participating health institution if that participating health institution has not given the Office of Statewide Health Planning and Development the assurance required by Government Code section 15459. Just what that assurance is to consist of, however, is quite another matter and it is to that more difficult question that we now turn.

II

Addressing the question of whether Government Code section 15459 permits the Office of Statewide Health Planning and Development to require a facility giving its assurance pursuant to that section to comply with the detailed specific obligations set forth in sections 436.81 through 436.84 of the Health and Safety Code, we first turn to those sections. In paraphrase,

—Section 436.81 requires that "*in order to comply with subdivision (j) of section 436.8*," a borrower *shall demonstrate* that its facility is utilized by MediCal and Medicare patients in a proportion that is reasonable based upon their proportion in the community served by the borrower.

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[6] The fact that the requirement *is* cast in the mandatory terms, "*shall* give assurance," removes any discretion in the Office not to enforce it (*REA Enterprises* v. *California Coastal Zone Conservation Comm.* (1975) 52 Cal.App.3d 596, 606) and thus prevents the act of giving the assurance from being classified as a condition subsequent. (Civ. Code, § 1438; see fn. 5, *ante*.)

—Section 436.82 provides that "as *part of its assurance under subdivision (j) of section 436.8*," the borrower shall agree (a) *to advise* each person seeking services at the borrower's facility as to his or her potential eligibility for MediCal and Medicare benefits; (b) *to make available* to the Office and any interested person a list of the physicians with staff privileges at the borrower's facility which includes their names, addresses, telephone numbers, specialties, language proficiency, and whether they accept MediCal and Medicare patients; (c) *to inform* all practitioners of the healing arts having staff privileges in the borrower's facility as to the existence of the facility's community service obligation, which notice must include a prescribed statement;[7] and (d) to *post a prescribed "Notice of Community Service Obligation"* in appropriate areas within the facility (e.g., admissions and business offices, emergency rooms) and to provide copies of it to all welfare offices in the county where the borrower's facility is located.[8]

—Section 436.83 provides that in the event a borrower cannot demonstrate that it meets the requirement of section 436.81, "it may nonetheless be eligible for a loan . . . *if it presents a plan* that is satisfactory to the Office which details the reasonable steps and timetables that [it] agrees to take to bring the facility into compliance with [that] Section."

—Finally, section 436.84 provides that each borrower must *make available* to the Office (and to the public upon request) *an annual report* containing prescribed statistical data with sufficient information and verification to substantiate its compliance with the requirements of subdivision (j) of section 436.8.[9]

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[7] The prescribed statement which must be contained in a borrower's required notice to practitioners is as follows:

"This hospital has agreed to provide a community service and to accept Medi-Cal and Medicare patients. The administration and enforcement of this agreement is the responsibility of the Office of Statewide Health Planning and Development and this facility." (§ 436.82, subd. (c).)

[8] The prescribed Notice of Community Service Obligation is the following:

"NOTICE OF COMMUNITY SERVICE OBLIGATION

"This facility has agreed to make its services available to all persons residing or employed in this area. This facility is prohibited by law from discriminating against Medi-Cal and Medicare patients. Should you believe you may be eligible for Medi-Cal or Medicare, you should contact our business office (or designated person or office) for assistance in applying. You should also contact our business office (or designated person or office) if you are in need of a physician to provide you with services at this facility. If you believe that you have been refused services at this facility in violation of the community service obligation you should inform (designated person or office) and the Office of Statewide Health Planning and Development." (§ 436.82, subd. (d).)

[9] The annual compliance report must include at least the following:

Did the Legislature intend the detailed provisions of these sections to be part of the assurance an institution must give to Planning under section 15459 of the Health Facilities Authority Act? (Gov. Code, § 15459.) We believe not.

We must not forget that the general power to enforce the provisions of the Authority Act vested in the Authority (Gov. Code, § 15437) and that Planning's role is only as is specifically set forth therein. Returning once again to the language of Government Code section 15459 (*supra*, at p. *), we see that *it* requires *two* undertakings from a health institution as a condition of participation under the Authority Act: first, its giving "assurance *to the Office* . . . regarding availability of its services to community residents *in the manner set forth in subdivision (j) of section 436.8 of the Health and Safety Code*" and second, its providing "notice of such availability as set forth in section 436.82 of [that] Code." (Gov. Code, § 15459.) By terms of the section, the fount of the Planning's involvement and the extent of its authority revolves about the first obligation set forth therein. The Office's charge to obtain an assurance, as well as its remedial powers against a borrower for failure to adhere to the assurance given, is related *only* thereunto.

The answer to the question of Planning's authority under Government Code section 15459 to compel compliance with sections 436.81 through 436.84 of the Health and Safety Code thus resolves to deciphering the meaning of the first obligation - a health institution's giving it an assurance "regarding [the] availability of its services to community residents *in the manner set forth in section 436.8, subdivision (j)*." Once again, subdivision (j) provides that in order for a facility's loan to be eligible for insurance under the Health Facility Construction Loan Law "[t]he borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility." At first its language might not appear to help matters, for it merely seems to paraphrase Government Code section 15459's description of the assurance to be given. But it does clarify what is meant by the term "community residents" and by setting forth to whom services must be made available, thus explains the "manner"

"(a) By category for inpatient admissions, emergency admission, and where the facility has a separate identifiable out- patient service:

"(1) The total number of patients receiving services.

"(2) The total number of Medi-Cal patients served.

"(3) The total number of Medicare patients served.

"(4) Total dollar volume of services provided to each patient category listed in paragraphs (1), (2), and (3) of this subdivision.

"(b) Where appropriate, the actions taken pursuant to Section 436.83 and the effect such actions have had on the data specified in subdivision (a) of this section.

"(c) Such other information as the office may reasonably require." (§ 436.84.)

of their availability. Is further amplification to be had by incorporating sections 436.81 through 436.84?

To be sure, subdivision (j) does *not* contain an incorporation of the detailed undertakings specified in sections 436.81 through 436.84 of the Health and Safety Code, enacted at the same time. (Stats. 1978, ch. 1290, *supra*.) *Those sections*, however, do refer to subdivision (j) and tie their requirements to compliance with it. (E.g., § 436.81 ("*In order to comply with subdivision (j)* [a borrower shall demonstrate that its facility is reasonably proportionally used by MediCal and Medicare patients]"; cf. § 436.83); § 436.82 ("*As part of its assurance under subdivision (j)* [a borrower shall agree to advise about MediCal and Medicare benefits, and to give a "Notice of Community Service Obligation]"; § 436.84 ("Each borrower shall make available . . . an annual report *substantiating compliance with the requirements of subdivision (j)* . . .").) We are therefore invited to construe the reference to subdivision (j) found in Government Code section 15459 so as to take account of those other sections of the Health and Safety Code which do mention it (*Stafford* v. *LA, etc. Retirement Board* (1954) 42 Cal.2d 795, 799; *People* v. *Shirokow* (1980) 26 Cal.3d 301, 306-307; *Tripp* v. *Swoap* (1976) 17 Cal.3d 671, 679; *Fuentes* v. *Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7) and interpret it together with them as a unitary system (*People* v. *LaBarre* (1924) 193 Cal. 388, 391; *People* v. *Ashley* (1971) 17 Cal.App.3d 1122, 1126). But we hesitate to do so.

The Legislature has declared the Authority Act, in which Government Code section 15459's reference to subdivision (j) is found, to be "a complete, additional, *and alternative method* for doing the things authorized [thereby]" (Gov. Code, § 15455) and to the extent its provisions are inconsistent with any other provisions of any general statute or special act or parts thereof, has provided that "[its] provisions shall be deemed controlling." (*Id.*, § 15456.) With respect to the conditions for participation under *that Act*, the Legislature has specifically mentioned Health and Safety Code section 436.82 in Government Code section 15459 *but has omitted any and all reference to sections 436.81*, *436.83 and 436.84*, and they can only be brought into section 15459 by way of implication. But "an intention to legislate by implication is not to be presumed." (*First M.E. Church* v. *Los Angeles Co.* (1928) 204 Cal. 201, 204.) Furthermore, "[w]here a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is *not* applicable to the statute from which it was omitted." (*Marsh* v. *Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881, 891.) This is especially true where the omitted provision is in a later-enacted statute. (*Kaiser Steel Corp.* v. *County of Solano* (1979) 90 Cal.App.3d 662, 667.) Thus it is noteworthy that section 15459 of the Government Code *only* mentions section 436.8*2* (and section 436.8(j)) and is devoid of any and all mention of sections 436.81, 436.83 and 436.84. Accordingly, we would be doubly hard pressed to say that the reference to giving "assurance regarding the availability of its services to community residents in the

manner set forth in subdivision (j) of section 436.8 of the Health and Safety Code" was meant to include compliance with those sections which were omitted. Certainly too it would not have been necessary to specifically mention section 436.8*2* in section 15459, if the simple reference to subdivision (j) was meant to embrace the provisions of sections 436.81 through 436.84 of the Loan Insurance Law, for it would have been already included thereby along with the kindred others.[10]

From this we perceive that the Legislature was well aware of those provisions of the Health Facility Construction Loan Insurance Law (Stats. 197*8*, ch. 1290, *supra*) detailing the assurance to be given to Planning *thereunder* when it enacted the Health Facilities Authority Act the following year (Stats. 197*9*, ch. 1033, *supra*) but that it deliberately chose to limit the type of assurance that an institution must provide to Planning in order to participate under *the Authority Act*. Thus while there is no question that the Legislature intended the assurance of a community service obligation required of an institution under section 15459 to involve the facility's being available to MediCal and Medicare patients on a nondiscriminatory basis, that being contemplated in the reference to the notice requirement of section 436.82 found in that section, we do *not* believe that the

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[10] That fact also answers the argument that those sections can be brought into subdivision (j)'s assurance through the back door, i.e., *their* declarations that complying *with their terms* is necessary to comply with the assurance obligation of subdivision (j). That may well be valid with respect The annual compliance report must include at least the following:

"(a) By category for inpatient admissions, emergency admission, and where the facility has a separate identifiable out- patient service:

"(1) The total number of patients receiving services.

"(2) The total number of Medi-Cal patients served.

"(3) The total number of Medicare patients served.

"(4) Total dollar volume of services provided to each patient category listed in paragraphs (1), (2), and (3) of this subdivision.

"(b) Where appropriate, the actions taken pursuant to Section 436.83 and the effect such actions have had on the data specified in subdivision (a) of this section.

"(c) Such other information as the office may reasonably require." (§ 436.84.)to the Loan Insurance Law but it is *not* viable as far as the Authorities Act is concerned. Section 436.82 contains a declaration along those lines as well ("As part of its assurance under subdivision (j) the borrower shall agree to . . . .") yet in section *15459*, the Legislature felt it necessary nonetheless to specifically provide that compliance with *its* notice provisions was a condition for participation *under the Authority Act*. Obviously, not only was the mere reference to subdivision (j) in section 15499 deemed insufficient, but the recital in section 436.82 about subdivision (j) was as well. So too with the similar recitals about subdivision (j) contained in sections 436.81, 436.83 and 436.84.

Legislature intended a health institution to have to comply with the detailed requirements set forth in sections 436.81, 436.83 and 436.84 as part of that *assurance*. Those sections were designed to monitor a facility's *adhering to the assurance* it had given, which as we have seen is different from the *giving of the assurance itself*, and toward that end we presume the Legislature felt the notice provisions of section 436.82, inviting reporting to Planning by persons aggrieved by a facility's discriminatory treatment, would suffice to monitor a facility for the purpose of the Authority Act and that the interposition of the detail required by those other sections of the Loan Insurance Law was not necessary.[11]

This is all the more apparent when one compares the specific remedies and sanctions made available to Planning against a borrower which does not keep its community service obligation assurance under each enactment, i.e., by comparing Government Code section 15459 with Health and Safety Code section 436.85. When a borrower fails to keep its obligation under the Loan Insurance Law, Health and Safety Code section 436.85 provides as follows:

> "The office may impose appropriate remedies and sanctions against a borrower *when the office determines that the annual compliance report required in Section 436.84* indicates that the borrower is out of compliance with subdivision (j) of Section 436.8. The sanctions shall include, but not be limited to, the following:
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> "(a) Rendering the borrower ineligible for federal and state financial assistance under the Hill-Burton Program.
>
> "(b) Requiring a borrower that had *originally met the conditions of Section 436.81*, but who no longer does, to submit a plan that is satisfactory to the office which details the reasonable steps and timetables that the borrower agrees to take to bring the *facility back into compliance with Section 436.81*.

[11] It has been pointed out that although the Loan Insurance Law and the Authority Act were each intended to reduce the cost of health care (compare Gov. Code, § 15438.5, subd. (a) with fn. 2, *supra*) they are not so *in pari materia* as to be clones since they are different in design and content and the state plays a different role in each. For example, under the Authority Act, revenue bonds are not deemed to constitute a debt, liability, or pledge of the full faith and credit of the state or any political subdivision thereof and the bonds must contain on their face a statement declaring that the state and the Authority are not obligated to pay the principal or interest on the bonds. (Gov. Code, § 15443.) In contrast, under the Loan Insurance Law, a lender who forecloses and takes possession of a defaulting institution *is* entitled to receive the benefit of the insurance upon the conveyance of title and assignment of claims against the borrower to the Office of Statewide Health Planning and Development. (Health & Saf. Code, § 436.12.)

"(c) Referring the violation to the office of Attorney General of California for legal action authorized under existing law or other remedy at law or equity, *when a facility fails to carry out the actions agreed to in a plan approved by the office pursuant to Section 436.83* or subdivision (b) of this section, or when the *facility fails to submit compliance reports as required by Section 436.84*.

"However, the remedies obtainable by such legal action shall not include withdrawal or cancellation of the loan insurance provided under this chapter."

With *almost* parallel language, Government Code section 15459 quoted above (*supra*, at p. *) sets forth remedies and sanctions against the reneging "borrower" under the Authority Act. But *it* speaks in terms of a "failure to adhere to the assurance given the Office" as opposed to a determination "that the annual compliance report required as section 436.84 indicates that the borrower is out of compliance with subdivision (j) of section 436.8" and unlike section 436.85 *it omits all reference* in the sanctions it provides Planning to activity related to Health and Safety Code sections 436.81, 436.83 and 436.84. (E.g., see § 436.85(b): "steps the borrower agrees to take . . . to bring the facility back into compliance with Section 436.81," § 436.85(c): "when a facility fails to carry out the actions agreed to in a plan approved by the Office pursuant to Section 436.83 . . . or when the facility fails to submit compliance reports as required by Section 436.84.") We can only presume again that the omission of such references was deliberate and that the different language used in these related statutes indicates that different consequences were intended by the Legislature. (*Safer* v. *Superior Court* (1975) 15 Cal.3d 230, 238; *In re Dees* (1920) 50 Cal.App. 11, 19; *McCarthy* v. *Board of Fire Commrs.* (1918) 37 Cal.App. 495, 498.) That we see to be another legislative determination that the provisions of sections 436.81, 436.83 and 436.84 were *not* to play a part in *monitoring* the assurance given by a health institution under the Authority Act, the notice provisions of section 436.82 being deemed sufficient for that end. And from their not being meant to be part of monitoring performance of an assurance given as a condition of participation under the Authority Act we find they were not intended to be part of the assurance itself. We therefore conclude that Government Code section 15459 does not permit Planning to require a health facility to comply with *those* three sections (i.e., Health & Saf. Code, §§ 436.81, 436.83, 436.84) as part of the assurance it is to receive for a health institution to participate under the Authority Act.

The matter of Health and Safety Code section 436.82 remains to be resolved. Government Code section 15459 as we have seen requires compliance with the notice provisions of that section by a health institution as a condition of its participating under the Authority Act. But as we have also seen, under section 15459 that requirement is found as

a separate and distinct undertaking required of a health institution from its giving Planning an assurance of a community service obligation and that Planning's charge under the section revolves about the latter. Thus under section 15459 it is the *Authority* by virtue of its general authority to administer the provisions of the Authority Act (Gov. Code, § 15437) and *not* Planning that oversees the notice provisions of section 436.82 incorporated therein. Planning's role is limited by section 15459 to receiving an assurance of a community service obligation and to taking specified actions if that assurance is not kept.

Accordingly we conclude that Government Code section 15459 does not permit the Office of Statewide Health Planning and Development to require a health institution to comply with the provisions of Health and Safety Code sections 436.81 through 436.84 as part of the assurance it must give to that Office as a condition of participation under the California Health Facilities Authority Act.

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