

**ASSEMBLY BILL**

**No. 505**

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**Introduced by Assembly Member Robert Pacheco**

February 21, 2001

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An act to amend Section 1428 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 505, as introduced, Robert Pacheco. Long-term health care facilities: citations and penalties.

Existing law specifies the procedures for a licensee of a long-term health care facility to contest a citation or the proposed assessment of a civil penalty, which includes the option to adjudicate the validity of the citation in the municipal or superior court in the county in which the facility is located.

This bill would authorize a licensee, in lieu of seeking to adjudicate the validity of a class "AA" or "A" citation in the municipal or superior court, to elect to submit the matter to binding arbitration as provided under the bill.

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

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

- 1 SECTION 1. Section 1428 of the Health and Safety Code is  
2 amended to read:  
3 1428. (a) If the licensee desires to contest a citation or the  
4 proposed assessment of a civil penalty therefor, the licensee shall  
5 use the processes described in subdivisions (b) and (c) for classes

1 “AA,” “A,” or “B” citations. As a result of a citation review  
2 conference, a citation or the proposed assessment of a civil penalty  
3 may be affirmed, modified, or dismissed by the director or the  
4 director’s designee. If the director’s designee affirms, modifies, or  
5 dismisses the citation or proposed assessment of a civil penalty, he  
6 or she shall state with particularity in writing his or her reasons for  
7 that action, and shall immediately transmit a copy thereof to each  
8 party to the original complaint. If the licensee desires to contest a  
9 decision made after the citation review conference, the licensee  
10 shall inform the director in writing within 15 business days after  
11 he or she receives the decision by the director’s designee.

12 (b) (1) If a licensee notifies the director that he or she intends  
13 to contest a class “AA” or a class “A” citation, the licensee may  
14 first, within 15 business days after service of the citation, notify the  
15 director in writing of his or her request for a citation review  
16 conference. ~~The~~

17 (2) *The licensee shall inform the director in writing, within 15*  
18 *business days of the service of the citation or the receipt of the*  
19 *decision of the director’s designee after the citation review*  
20 *conference, of the licensee’s intent to adjudicate the validity of the*  
21 *citation in the municipal or superior court in the county in which*  
22 *the long-term health care facility is located or to submit the matter*  
23 *to binding arbitration.* ~~It~~

24 (3) (A) *In lieu of seeking to adjudicate the citation in the*  
25 *municipal or superior court, the licensee may elect to submit the*  
26 *matter to binding arbitration in accordance with the procedures*  
27 *established in subdivision (d). In reviewing the level of the citation*  
28 *and penalty, the arbitrator shall strictly apply Sections 1423,*  
29 *1424, and 1424.5 to the facts of the case and issue a written*  
30 *decision on the merits with findings of fact and conclusions of law*  
31 *that consider, at a minimum, all of the following:*

32 (i) *Whether the alleged violation occurred.*

33 (ii) *Whether the alleged violation met the criteria for the*  
34 *specified class.*

35 (iii) *Whether the assessed penalty was appropriate.*

36 (B) *Based upon specific findings and conclusions, the*  
37 *arbitrator may affirm, modify, or dismiss the citation, the level of*  
38 *the citation, or the proposed assessment of the penalty.*

39 (4) (A) *In order to perfect a judicial appeal of a contested*  
40 *citation, a licensee shall file a civil action in the municipal or*



1 superior court in the county in which the long-term health care  
2 facility is located. The action shall be filed no later than 90  
3 calendar days after a licensee notifies the director that he or she  
4 intends to contest the citation, or no later than 90 days after the  
5 receipt of the decision by the director’s designee after the citation  
6 review conference, and served not later than 90 days after filing.

7 ~~Notwithstanding~~

8 (B) *Notwithstanding* any other provision of law, a licensee  
9 prosecuting a judicial appeal shall file and serve an at-issue  
10 memorandum pursuant to Rule 209 of the California Rules of  
11 Court within six months after the state department files its answer  
12 in the appeal. Notwithstanding subdivision (d), the court shall  
13 dismiss the appeal upon motion of the state department if the  
14 at-issue memorandum is not filed by the facility within the period  
15 specified. ~~The~~

16 (C) *The court, hearing a judicial appeal,* may affirm, modify,  
17 or dismiss the citation, the level of the citation, or the amount of  
18 the proposed assessment of the civil penalty.

19 (c) If a licensee desires to contest a class “B” citation, the  
20 licensee may request, within 15 business days after service of the  
21 citation, a citation review conference, by writing the director or the  
22 director’s designee of the licensee’s intent to appeal the citation  
23 through the citation review conference. If the licensee wishes to  
24 appeal the citation which has been upheld in a citation review  
25 conference, the licensee shall, within 15 working days from the  
26 date the citation review conference decision was rendered, notify  
27 the director or the director’s designee that he or she wishes to  
28 ~~appeal the decision—seek judicial review of the decision, as~~  
29 *provided in Section 1094.5 of the Code of Civil Procedure,* through  
30 the procedures set forth in Section 100171 or elects to submit the  
31 matter to binding arbitration in accordance with subdivision (d).  
32 The administrative law judge may affirm, modify, or dismiss the  
33 citation or the proposed assessment of a civil penalty. The licensee  
34 may choose to have his or her appeal heard by the administrative  
35 law judge or submit the matter to binding arbitration without  
36 having first appealed the decision to a citation review conference  
37 by notifying the director in writing within 15 business days of the  
38 service of the citation.

39 (d) ~~If a licensee is dissatisfied with the decision of the~~  
40 ~~administrative law judge, the licensee may, in lieu of seeking~~



1 ~~judicial review of the decision as provided in Section 1094.5 of the~~  
2 ~~Code of Civil Procedure, elect who elects~~ to submit the matter to  
3 binding arbitration ~~by filing under this section shall file~~, within 60  
4 days of ~~its~~ the receipt of the citation or decision rendered pursuant  
5 to a citation review conference, a request for arbitration with the  
6 American Arbitration Association. The parties shall agree upon an  
7 arbitrator designated from the American Arbitration Association  
8 in accordance with the association's established rules and  
9 procedures. The arbitration hearing shall be set within 45 days of  
10 the election to arbitrate, but in no event less than 28 days from the  
11 date of selection of an arbitrator. The arbitration hearing may be  
12 continued up to 15 additional days if necessary at the arbitrator's  
13 discretion. Except as otherwise specifically provided in this  
14 subdivision, the arbitration hearing shall be conducted in  
15 accordance with the American Arbitration Association's  
16 established rules and procedures. The arbitrator shall determine  
17 whether the licensee violated the regulation or regulations cited by  
18 the department, and whether the citation meets the criteria  
19 established in Sections 1423 and 1424. If the arbitrator determines  
20 that the licensee has violated the regulation or regulations cited by  
21 the department, and that the class of the citation should be upheld,  
22 the proposed assessment of a civil penalty shall be affirmed,  
23 subject to the limitations established in Section 1424. The licensee  
24 and the department shall each bear its respective portion of the cost  
25 of arbitration. A resident, or his or her designated representative,  
26 or both, entitled to participate in the citation review conference  
27 pursuant to subdivision (f), may make an oral or written statement  
28 regarding the citation, at any arbitration hearing to which the  
29 matter has been submitted after the citation review conference.

30 (e) If an appeal is prosecuted under this section, including an  
31 appeal taken in accordance with Section 100171, the state  
32 department shall have the burden of establishing by a  
33 preponderance of the evidence that (1) the alleged violation did  
34 occur, (2) the alleged violation met the criteria for the class of  
35 citation alleged, and (3) the assessed penalty was appropriate. The  
36 state department shall also have the burden of establishing by a  
37 preponderance of the evidence that the assessment of a civil  
38 penalty should be upheld. If a licensee fails to notify the director  
39 in writing that he or she intends to contest the citation, or the  
40 proposed assessment of a civil penalty therefor, or the decision



1 made by the director's designee, after a citation review conference,  
2 within the time specified in this section, the decision by the  
3 director's designee after a citation review conference shall be  
4 deemed a final order of the state department and shall not be  
5 subject to further administrative review, except that the licensee  
6 may seek judicial relief from the time limits specified in this  
7 section. If a licensee appeals a contested citation or the assessment  
8 of a civil penalty, no civil penalty shall be due and payable unless  
9 and until the appeal is terminated in favor of the state department.

10 (f) The director or the director's designee shall establish an  
11 independent unit of trained citation review conference hearing  
12 officers within the state department to conduct citation review  
13 conferences. Citation review conference hearing officers shall be  
14 directly responsible to the deputy director for licensing and  
15 certification, and shall not be concurrently employed as  
16 supervisors, district administrators, or regional administrators  
17 with the licensing and certification division. Specific training shall  
18 be provided to members of this unit on conducting an informal  
19 conference, with emphasis on the regulatory and legal aspects of  
20 long-term health care.

21 Where the state department issues a citation as a result of a  
22 complaint or regular inspection visit, and a resident or residents are  
23 specifically identified in a citation by name as being specifically  
24 affected by the violation, then the following persons may attend  
25 the citation review conference:

- 26 (1) The complainant and his or her designated representative.
- 27 (2) A personal health care provider, designated by the resident.
- 28 (3) A personal attorney.
- 29 (4) Any person representing the Office of the State Long-Term  
30 Care Ombudsman, as referred to in subdivision (d) of Section 9701  
31 of the Welfare and Institutions Code.

32 Where the state department determines that residents in the  
33 facility were threatened by the cited violation but does not name  
34 specific residents, any person representing the Office of the State  
35 Long-Term Care Ombudsman, as referred to in subdivision (d) of  
36 Section 9701 of the Welfare and Institutions Code, and a  
37 representative of the residents or family council at the facility may  
38 participate to represent all residents. In this case, these  
39 representatives shall be the sole participants for the residents in the



1 conference. The residents or family council shall designate which  
2 representative will participate.

3 The complainant, affected resident, and their designated  
4 representatives shall be notified by the state department of the  
5 conference and their right to participate. The director's designee  
6 shall notify the complainant or his or her designated representative  
7 and the affected resident or his or her designated representative, of  
8 his or her determination based on the citation review conference.

9 (g) In assessing the civil penalty for a violation, all relevant  
10 facts shall be considered, including, but not limited to, all of the  
11 following:

12 (1) The probability and severity of the risk which the violation  
13 presents to the patient's or resident's mental and physical  
14 condition.

15 (2) The patient's or resident's medical condition.

16 (3) The patient's or resident's mental condition and his or her  
17 history of mental disability.

18 (4) The good faith efforts exercised by the facility to prevent  
19 the violation from occurring.

20 (5) The licensee's history of compliance with regulations.

21 (h) Except as otherwise provided in this subdivision, an  
22 assessment of civil penalties for a class "A" or class "B" violation  
23 shall be trebled and collected for a second and subsequent violation  
24 for which a citation of the same class was issued within any  
25 12-month period. Trebling shall occur only if the first citation  
26 issued within the 12-month period was issued in the same class, a  
27 civil penalty was assessed, and a plan of correction was submitted  
28 for the previous same-class violation occurring within the period,  
29 without regard to whether the action to enforce the previous  
30 citation has become final. However, the increment to the civil  
31 penalty required by this subdivision shall not be due and payable  
32 unless and until the previous action has terminated in favor of the  
33 state department.

34 If the class "B" citation is issued for a patient's rights violation,  
35 as defined in subdivision (c) of Section 1424, it shall not be trebled  
36 unless the state department determines the violation has a direct or  
37 immediate relationship to the health, safety, security, or welfare of  
38 long-term health care facility residents.



1 (i) The director shall prescribe procedures for the issuance of  
2 a notice of violation with respect to violations having only a  
3 minimal relationship to safety or health.

4 (j) Actions brought under this chapter shall be set for trial at the  
5 earliest possible date and shall take precedence on the court  
6 calendar over all other cases except matters to which equal or  
7 superior precedence is specifically granted by law. Times for  
8 responsive pleading and for hearing the proceeding shall be set by  
9 the judge of the court with the object of securing a decision as to  
10 subject matters at the earliest possible time.

11 (k) If the citation is dismissed, the state department shall take  
12 action immediately to ensure that the public records reflect in a  
13 prominent manner that the citation was dismissed.

14 (l) Penalties paid on violations under this chapter shall be  
15 applied against the state department's accounts to offset any costs  
16 incurred by the state pursuant to this chapter. Any costs or penalties  
17 assessed pursuant to this chapter shall be paid within 30 days of the  
18 date the decision becomes final. If a facility does not comply with  
19 this requirement, the state department shall withhold any payment  
20 under the Medi-Cal program until the debt is satisfied. No payment  
21 shall be withheld if the state department determines that it would  
22 cause undue hardship to the facility or to patients or residents of  
23 the facility.

24 (m) The amendments made to subdivisions (a) and (c) of this  
25 section by Chapter 84 of the Statutes of 1988, to extend the number  
26 of days allowed for the provision of notification to the director, do  
27 not affect the right, that is also contained in those amendments, to  
28 request judicial relief from these time limits.

