

**Introduced by Senator Alquist**

February 18, 2005

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An act to amend Sections 1324.25, 1420, 1424 and 1599.1 of, and to repeal Section 1419 of, the Health and Safety Code, and to amend Sections 14124.10 and 14126.023 of the Welfare and Institutions Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 526, as introduced, Alquist. Long-term health care.

Existing law provides for the licensure and regulation by the State Department of Health Services of health care facilities, including long-term health care facilities.

Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility.

Existing law requires the department to establish a centralized consumer response unit within the Licensing and Certification Division of the department to respond to consumer inquiries and complaints.

This bill would repeal this provision. The bill would, instead, require, by January 1, 2007, the department to establish and operate a dedicated complaint response unit in each district office of the Licensing and Certification division of the department to respond to consumer inquiries and complaints. The bill would require the department to submit a report to the Legislature, on or before January 1, 2006, about the necessary workforce and projected costs associated with the dedicated complaint response units. The bill would make other changes to the complaint procedures.

Existing law provides for the imposition of a quality assurance fee on each skilled nursing facility, with some exemptions, to be

administered by the director and deposited in the State Treasury. Existing law requires that funds assessed pursuant to these provisions be available to enhance federal financial participation in the Medi-Cal program or to provide additional reimbursement to, and support facility quality improvement efforts in, licensed skilled nursing facilities. Existing law provides that these provisions are to be implemented as long as 2 conditions are met, including federal approval, specifies 4 circumstances under which these provisions would become inoperative, makes these provisions inoperative on July 1, 2008, and repeals them on January 1, 2009.

This bill would provide that the dedicated complaint response unit provisions provided under the bill shall only be implemented to the extent that the provisions imposing the quality assurance fee for skilled nursing facilities are implemented and operative. The bill would provide that the quality assurance fee assessment shall be available to support the costs of implementing and operating the complaint response units established under the bill.

Existing law prescribes procedures for the issuance of a citation, classified according to the nature of the violation, and the imposition of a civil penalty against a long-term health care facility. Existing law provides that a Class “A” violation is a violation that the department determines presents either an imminent danger or substantial probability that death or serious harm to the patients or residents of the facility would result from the violation.

This bill would provide, instead, that a Class “A” violation is a violation that the department determines presents or involves, in addition to the situations presented, a nonconsensual sexual encounter between a patient or resident of the facility and any staff member currently employed by the same facility.

Existing law requires that written policies and procedures of a skilled nursing and intermediate care facility ensure that each patient admitted to the facility has prescribed rights.

This bill would add to these rights, among others, reasonable accommodation of individual needs and preferences, the right to choose an attending physician, the right to discharge oneself, bed hold options for hospitalized residents, and transfer and discharge rights.

Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from discriminating against a Medi-Cal patient on the basis of the source of

payment for the facility's services that are required to be provided to individuals entitled to services under the Medi-Cal program.

This bill, instead, would prohibit discrimination under this provision against a Medi-Cal resident or prospective Medi-Cal resident.

This bill would prohibit each skilled nursing facility, with exceptions, from discriminating, on the basis of source of payment, against a current or prospective Medi-Cal beneficiary who seeks admission. The bill would require that all applicants for admission be admitted in the order in which they first request admission, with exceptions, and would establish additional requirements of a skilled nursing facility to provide certain notice, provide receipts of requests seeking admission, and maintain a dated list of applications. The bill would authorize the department to decrease the daily Medi-Cal reimbursement rate to a long-term health care facility for one year for a violation of this provision.

Existing law requires the department to establish the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

Existing law provides for the Medi-Cal program, which is administered by the department and under which qualified low-income persons receive health care benefits. Existing law provides for a Medi-Cal long-term care reimbursement methodology, that includes a facility-specific ratesetting system. Existing law provides for a labor-driven operating allocation under the methodology.

This bill would provide that the labor-driven operating allocation shall not be paid to facilities that, on an annual basis, fail to comply with the minimum staffing hours per patient required in skilled nursing and intermediate care facilities. The bill would require a skilled nursing facility to submit electronic payroll records to the department on a quarterly basis to document labor costs. The bill would require the department, on or before July 1, 2006, to devise and implement a uniform system for collecting and evaluating payroll data. The bill would require the administrator of the facility to sign and certify the accuracy of the payroll records, under penalty of perjury. Because this requirement would expand the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Over 14,000 oral and written complaints are filed each year  
4 with the Licensing and Certification division of the State  
5 Department of Health Services.

6 (b) Currently, the department is required to respond to all  
7 complaints within statutory timelines with an onsite investigation  
8 to determine if the complaint is substantiated.

9 (c) As a result of the high volume of complaints, the lack of  
10 coordinated efforts among district offices of the Licensing and  
11 Certification division of the department, and the lack of adequate  
12 staff, complaints are frequently not resolved within statutory  
13 timelines, resulting in violation of state laws, consumer  
14 dissatisfaction and frustration, and an estimated 73 percent of  
15 complaints being found to be unsubstantiated as a result of  
16 inadequate investigations.

17 SEC. 2. Section 1324.25 of the Health and Safety Code is  
18 amended to read:

19 1324.25. The funds assessed pursuant to this article shall be  
20 available to enhance federal financial participation in the  
21 Medi-Cal program ~~or~~, to provide additional reimbursement to,  
22 and to support facility quality improvement efforts in, licensed  
23 skilled nursing facilities, *and to support the costs of*  
24 *implementing and operating the complaint response units*  
25 *established under subdivision (a) of Section 1420.*

26 SEC. 3. Section 1419 of the Health and Safety Code is  
27 repealed.

28 ~~1419. (a) The department shall establish a centralized~~  
29 ~~consumer response unit within the Licensing and Certification~~  
30 ~~Division of the department to respond to consumer inquiries and~~  
31 ~~complaints.~~

1 ~~(b) Upon receipt of consumer inquiries, the unit shall offer~~  
2 ~~assistance to consumers in resolving concerns about the quality~~  
3 ~~of care and the quality of life in long-term health care facilities.~~

4 ~~This assistance may include, but shall not be limited to, all of~~  
5 ~~the following:~~

6 ~~(1) Offering to provide to consumers education and~~  
7 ~~information about state licensing and federal certification~~  
8 ~~standards, resident rights, name and address of facilities, referral~~  
9 ~~to other entities as appropriate, and facility compliance history.~~

10 ~~(2) Offering to participate in telephone conference calls~~  
11 ~~between consumers and providers to resolve concerns within the~~  
12 ~~scope of the authority of the department. If the inquiry or concern~~  
13 ~~is determined to warrant an onsite investigation, the inquiry or~~  
14 ~~concern shall be considered a complaint and handled pursuant to~~  
15 ~~the complaint investigation process set forth in Section 1420.~~

16 ~~(3) Initiating onsite investigations in response to oral or~~  
17 ~~written complaints made pursuant to this section if the unit~~  
18 ~~determines that there is a reasonable basis to believe that the~~  
19 ~~allegations in the complaints describe one or more violations of~~  
20 ~~state law by a long-term care facility.~~

21 ~~(c) Nothing in subdivision (a) or (b) shall preclude the~~  
22 ~~department from taking any or all enforcement actions available~~  
23 ~~under state or federal law.~~

24 ~~(d) Any person may request an inspection of any long-term~~  
25 ~~health care facility in accordance with this chapter by giving to~~  
26 ~~the department oral or written notice of an alleged violation of~~  
27 ~~applicable requirements of state law. Any written notice may be~~  
28 ~~signed by the complainant setting forth with reasonable~~  
29 ~~particularity the matters complained of. Oral notice may be made~~  
30 ~~by telephone or personal visit. Any oral complaint shall be~~  
31 ~~reduced to writing by the department. The substance of the~~  
32 ~~complaint shall be provided to the licensee no earlier than at the~~  
33 ~~commencement of the inspection.~~

34 ~~(e) Neither the substance of the complaint provided the~~  
35 ~~licensee nor any copy of the complaint or record published,~~  
36 ~~released, or otherwise made available to the licensee shall~~  
37 ~~disclose the name of any individual complainant or other person~~  
38 ~~mentioned in the complaint, except the name or names of any~~  
39 ~~duly authorized officer, employee, or agent of the state~~  
40 ~~department conducting the investigation or inspection pursuant to~~

1 ~~this chapter, unless the complainant specifically requests the~~  
2 ~~release of the name or names or the matter results in a judicial~~  
3 ~~proceeding.~~

4 SEC. 4. Section 1420 of the Health and Safety Code is  
5 amended to read:

6 1420. (a) (1) *By January 1, 2007, the department shall*  
7 *establish and operate a dedicated complaint response unit in*  
8 *each district office of the Licensing and Certification division of*  
9 *the department to respond to consumer inquiries and complaints.*  
10 *Each complaint unit shall include a sufficient number of*  
11 *appropriately trained and qualified staff necessary to ensure*  
12 *thorough investigation of complaints and facility reports of*  
13 *suspected abuse, neglect, and unusual occurrence within the*  
14 *timelines established under this section.*

15 (2) *Not later than January 1, 2006, the department shall*  
16 *provide a report to the Legislature that includes a review of the*  
17 *appropriate workforce necessary to implement the dedicated*  
18 *complaint response units and the projected costs of*  
19 *implementation.*

20 (3) *The department shall demonstrate good faith efforts to*  
21 *comply with the requirements of this section, including hiring*  
22 *any additional staff necessary. The department shall develop a*  
23 *plan for full compliance by January 1, 2007.*

24 (4) *The requirements of this subdivision shall only be*  
25 *implemented to the extent that Article 7.6 (commencing with*  
26 *Section 1324.20) of Chapter 2 is implemented and operative.*

27 (5) *Nothing in this section shall preclude the department from*  
28 *taking any and all enforcement actions available under state and*  
29 *federal law.*

30 (b) (1) ~~Upon receipt of a written or oral complaint, the state~~  
31 ~~department shall assign an inspector to make a preliminary~~  
32 ~~review of the complaint and shall notify the complainant within~~  
33 ~~two working days of the receipt of the complaint of the name of~~  
34 ~~the inspector. Unless the state department determines that the~~  
35 ~~complaint is willfully intended to harass a licensee or is without~~  
36 ~~any reasonable basis, it shall make an onsite inspection or~~  
37 ~~investigation within 10 working days of the receipt of the~~  
38 ~~complaint. In any case in which the complaint involves a threat~~  
39 ~~of imminent danger of death or serious bodily harm, the state~~  
40 ~~department shall make an onsite inspection or investigation~~

1 within 24 hours of the receipt of the complaint. In any event, the  
2 complainant shall be promptly informed, *in no case later than 10*  
3 *working days of receipt of the complaint*, of the ~~state~~  
4 department's proposed course of action and of the opportunity to  
5 accompany the inspector on the inspection or investigation of the  
6 facility. Upon the request of either the complainant or the ~~state~~  
7 department, the complainant or his or her representative, or both,  
8 may be allowed to accompany the inspector to the site of the  
9 alleged violations during his or her tour of the facility, unless the  
10 inspector determines that the privacy of any patient would be  
11 violated thereby.

12 (2) When conducting an onsite inspection or investigation  
13 pursuant to this section, the ~~state~~ department shall collect and  
14 evaluate all available evidence and may issue a citation based  
15 upon, but not limited to, all of the following:

16 (A) Observed conditions.

17 (B) Statements of witnesses.

18 (C) Facility records.

19 (3) *A final determination as a result of the inspection or*  
20 *investigation shall be completed within 90 days of receipt of the*  
21 *complaint by the department.*

22 (4) Within 10 working days of the completion of the complaint  
23 investigation, the ~~state~~ department shall notify the complainant  
24 and licensee in writing of the department's determination as a  
25 result of the inspection or investigation.

26 ~~(b)~~

27 (c) Upon being notified of the ~~state~~ department's  
28 determination as a result of the inspection or investigation, a  
29 complainant who is dissatisfied with the state department's  
30 determination, regarding a matter which would pose a threat to  
31 the health, safety, security, welfare, or rights of a resident, shall  
32 be notified by the ~~state~~ department of the right to an informal  
33 conference, as set forth in this section. The complainant may,  
34 within ~~five~~ 15 business days after receipt of the notice, notify the  
35 director in writing of his or her request for an informal  
36 conference. The informal conference shall be held with the  
37 designee of the director for the county in which the long-term  
38 health care facility which is the subject of the complaint is  
39 located. The long-term health care facility may participate as a  
40 party in this informal conference. The director's designee shall

1 notify the complainant and licensee of his or her determination  
2 within 10 working days after the informal conference and shall  
3 apprise the complainant and licensee in writing of the appeal  
4 rights provided in subdivision-~~(e)~~ (d).

5 ~~(e)~~

6 (d) If the complainant is dissatisfied with the determination of  
7 the director's designee in the county in which the facility is  
8 located, the complainant may, within 15 days after receipt of this  
9 determination, notify in writing the Deputy Director of the  
10 Licensing and Certification Division of the ~~state~~ department, who  
11 shall assign the request to a representative of the Complainant  
12 Appeals Unit for review of the facts that led to both  
13 determinations. As a part of the Complainant Appeals Unit's  
14 independent investigation, and at the request of the complainant,  
15 the representative shall interview the complainant in the district  
16 office where the complaint was initially referred. Based upon this  
17 review, the Deputy Director of the Licensing and Certification  
18 Division of the ~~state~~ department shall make his or her own  
19 determination and notify the complainant and the facility within  
20 30 days.

21 ~~(d)~~

22 (e) Any citation issued as a result of a conference or review  
23 provided for in subdivision-~~(b)~~ (c) or ~~(e)~~ (d) shall be issued and  
24 served upon the facility within three working days of the final  
25 determination, unless the licensee agrees in writing to an  
26 extension of this time. Service shall be effected either personally  
27 or by registered or certified mail. A copy of the citation shall also  
28 be sent to each complainant by registered or certified mail.

29 ~~(e)~~

30 (f) A miniexit conference shall be held with the administrator  
31 or his or her representative upon leaving the facility at the  
32 completion of the investigation to inform him or her of the status  
33 of the investigation. The department shall also state the items of  
34 noncompliance and compliance found as a result of a complaint  
35 and those items found to be in compliance, provided the  
36 disclosure maintains the anonymity of the complainant. In any  
37 matter in which there is a reasonable probability that the identity  
38 of the complainant will not remain anonymous, the ~~state~~  
39 department shall also notify the facility that it is unlawful to

1 discriminate or seek retaliation against a resident, employee, or  
2 complainant.

3 ~~(f)~~

4 (g) For purposes of this section, “complaint” means any oral  
5 or written notice to the ~~state~~ department, other than a report from  
6 the facility of an alleged violation of applicable requirements of  
7 state or federal law or any alleged facts that might constitute such  
8 a violation.

9 SEC. 5. Section 1424 of the Health and Safety Code is  
10 amended to read:

11 1424. Citations issued pursuant to this chapter shall be  
12 classified according to the nature of the violation and shall  
13 indicate the classification on the face thereof.

14 (a) In determining the amount of the civil penalty, all relevant  
15 facts shall be considered, including, but not limited to, the  
16 following:

17 (1) The probability and severity of the risk that the violation  
18 presents to the patient’s or resident’s mental and physical  
19 condition.

20 (2) The patient’s or resident’s medical condition.

21 (3) The patient’s or resident’s mental condition and his or her  
22 history of mental disability or disorder.

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

25 (5) The licensee’s history of compliance with regulations.

26 (b) Relevant facts considered by the department in  
27 determining the amount of the civil penalty shall be documented  
28 by the department on an attachment to the citation and available  
29 in the public record. This requirement shall not preclude the  
30 department or a facility from introducing facts not listed on the  
31 citation to support or challenge the amount of the civil penalty in  
32 any proceeding set forth in Section 1428.

33 (c) (1) Class “AA” violations are violations that meet the  
34 criteria for a class “A” violation and that the state department  
35 determines to have been a direct proximate cause of death of a  
36 patient or resident of a long-term health care facility. Except as  
37 provided in Section 1424.5, a class “AA” citation is subject to a  
38 civil penalty in the amount of not less than five thousand dollars  
39 (\$5,000) and not exceeding twenty-five thousand dollars  
40 (\$25,000) for each citation. In any action to enforce a citation

1 issued under this subdivision, the state department shall prove all  
2 of the following:

3 ~~(1)~~

4 (A) The violation was a direct proximate cause of death of a  
5 patient or resident.

6 ~~(2)~~

7 (B) The death resulted from an occurrence of a nature that the  
8 regulation was designed to prevent.

9 ~~(3)~~

10 (C) The patient or resident suffering the death was among the  
11 class of persons for whose protection the regulation was adopted.

12 If

13 (2) If the state department meets ~~this~~ *the* burden of proof  
14 *required under paragraph (1)*, the licensee shall have the burden  
15 of proving that the licensee did what might reasonably be  
16 expected of a long-term health care facility licensee, acting under  
17 similar circumstances, to comply with the regulation. If the  
18 licensee sustains this burden, then the citation shall be dismissed.

19 ~~Except~~

20 (3) *Except* as provided in Section 1424.5, for each class “AA”  
21 citation within a 12-month period that has become final, the state  
22 department shall consider the suspension or revocation of the  
23 facility’s license in accordance with Section 1294. For a third or  
24 subsequent class “AA” citation in a facility within that 12-month  
25 period that has been sustained following a citation review  
26 conference, the state department shall commence action to  
27 suspend or revoke the facility’s license in accordance with  
28 Section 1294.

29 (d) (1) Class “A” violations are violations ~~which~~ *that* the state  
30 department determines present ~~either (1) imminent or involve any~~  
31 *of the following*:

32 (A) *Imminent* danger that death or serious harm to the patients  
33 or residents of the long-term health care facility would result  
34 therefrom; ~~or (2) substantial~~.

35 (B) *Substantial* probability that death or serious physical harm  
36 to patients or residents of the long-term health care facility would  
37 result therefrom. ~~A~~

38 (C) *A nonconsensual sexual encounter between a patient or*  
39 *resident of the long-term health care facility and any staff*  
40 *member currently employed by the same facility.*

1 (2) A physical condition or one or more practices, means,  
2 methods, or operations in use in a long-term health care facility  
3 may constitute a class “A” violation. ~~The~~

4 (3) The condition or practice constituting a class “A” violation  
5 shall be abated or eliminated immediately, unless a fixed period  
6 of time, as determined by the state department, is required for  
7 correction. Except as provided in Section 1424.5, a class “A”  
8 citation is subject to a civil penalty in an amount not less than  
9 one thousand dollars (\$1,000) and not exceeding ten thousand  
10 dollars (\$10,000) for each and every citation.

11 ~~If~~

12 (4) If the state department establishes that a violation occurred,  
13 the licensee shall have the burden of proving that the licensee did  
14 what might reasonably be expected of a long-term health care  
15 facility licensee, acting under similar circumstances, to comply  
16 with the regulation. If the licensee sustains this burden, then the  
17 citation shall be dismissed.

18 (e) (1) Class “B” violations are violations that the state  
19 department determines have a direct or immediate relationship to  
20 the health, safety, or security of long-term health care facility  
21 patients or residents, other than class “AA” or “A” violations.  
22 Unless otherwise determined by the state department to be a class  
23 “A” violation pursuant to this chapter and rules and regulations  
24 adopted pursuant thereto, any violation of a patient’s rights as set  
25 forth in Sections 72527 and 73523 of Title 22 of the California  
26 Code of Regulations, that is determined by the state department  
27 to cause or under circumstances likely to cause significant  
28 humiliation, indignity, anxiety, or other emotional trauma to a  
29 patient is a class “B” violation. A class “B” citation is subject to  
30 a civil penalty in an amount not less than one hundred dollars  
31 (\$100) and not exceeding one thousand dollars (\$1,000) for each  
32 and every citation. A class “B” citation shall specify the time  
33 within which the violation is required to be corrected. If the state  
34 department establishes that a violation occurred, the licensee  
35 shall have the burden of proving that the licensee did what might  
36 reasonably be expected of a long-term health care facility  
37 licensee, acting under similar circumstances, to comply with the  
38 regulation. If the licensee sustains this burden, then the citation  
39 shall be dismissed.

40 ~~If~~

1 (2) *In* the event of any citation under this paragraph, if the  
2 state department establishes that a violation occurred, the  
3 licensee shall have the burden of proving that the licensee did  
4 what might reasonably be expected of a long-term health care  
5 facility licensee, acting under similar circumstances, to comply  
6 with the regulation. If the licensee sustains this burden, then the  
7 citation shall be dismissed.

8 (f) (1) Any willful material falsification or willful material  
9 omission in the health record of a patient of a long-term health  
10 care facility is a violation.

11 (2) “Willful material falsification,” as used in this section,  
12 means any entry in the patient health care record pertaining to the  
13 administration of medication, or treatments ordered for the  
14 patient, or pertaining to services for the prevention or treatment  
15 of decubitus ulcers or contractures, or pertaining to tests and  
16 measurements of vital signs, or notations of input and output of  
17 fluids, that was made with the knowledge that the records falsely  
18 reflect the condition of the resident or the care or services  
19 provided.

20 (3) “Willful material omission,” as used in this section, means  
21 the willful failure to record any untoward event that has affected  
22 the health, safety, or security of the specific patient, and that was  
23 omitted with the knowledge that the records falsely reflect the  
24 condition of the resident or the care or services provided.

25 (g) Except as provided in subdivision (a) of Section 1425.5, a  
26 violation of subdivision (f) may result in a civil penalty not to  
27 exceed ten thousand dollars (\$10,000), as specified in paragraphs  
28 (1) to (3), inclusive.

29 (1) The willful material falsification or willful material  
30 omission is subject to a civil penalty of not less than two  
31 thousand five hundred dollars (\$2,500) or more than ten thousand  
32 dollars (\$10,000) in instances where the health care record is  
33 relied upon by a health care professional to the detriment of a  
34 patient by affecting the administration of medications or  
35 treatments, the issuance of orders, or the development of plans of  
36 care. In all other cases, violations of this subdivision are subject  
37 to a civil penalty not exceeding two thousand five hundred  
38 dollars (\$2,500).

39 (2) (A) Where the penalty assessed is one thousand dollars  
40 (\$1,000) or less, the violation shall be issued and enforced,

1 except as provided in this subdivision, in the same manner as a  
2 class “B” violation, and shall include the right of appeal as  
3 specified in Section 1428. Where the assessed penalty is in  
4 excess of one thousand dollars (\$1,000), or for skilled nursing  
5 facilities or intermediate care facilities as specified in paragraphs  
6 (1) and (2) of subdivision (a) of Section 1418, in excess of two  
7 thousand dollars (\$2,000), the violation shall be issued and  
8 enforced, except as provided in this subdivision, in the same  
9 manner as a class “A” violation, and shall include the right of  
10 appeal as specified in Section 1428.

11 ~~Nothing~~

12 (B) *Nothing* in this section shall be construed as a change in  
13 previous law enacted by Chapter 11 of the Statutes of 1985  
14 relative to this paragraph, but merely as a clarification of existing  
15 law.

16 (3) Nothing in this subdivision shall preclude the state  
17 department from issuing a class “A” or class “B” citation for any  
18 violation that meets the requirements for that citation, regardless  
19 of whether the violation also constitutes a violation of this  
20 subdivision. However, no single act, omission, or occurrence  
21 may be cited both as a class “A” or class “B” violation and as a  
22 violation of this subdivision.

23 (h) Where the licensee has failed to post the notices as  
24 required by Section 9718 of the Welfare and Institutions Code in  
25 the manner required under Section 1422.6, the state department  
26 shall assess the licensee a civil penalty in the amount of one  
27 hundred dollars (\$100) for each day the failure to post the notices  
28 continues. Where the total penalty assessed is less than two  
29 thousand dollars (\$2,000), the violation shall be issued and  
30 enforced in the same manner as a class “B” violation, and shall  
31 include the right of appeal as specified in Section 1428. Where  
32 the assessed penalty is equal to or in excess of two thousand  
33 dollars (\$2,000), the violation shall be issued and enforced in the  
34 same manner as a class “A” violation and shall include the right  
35 of appeal as specified in Section 1428. Any fines collected  
36 pursuant to this subdivision shall be used to fund the costs  
37 incurred by the California Department of Aging in producing and  
38 posting the posters.

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

4 (j) The department shall provide a copy of all citations issued  
5 under this section to the affected residents whose treatment was  
6 the basis for the issuance of the citation, to the affected residents'  
7 designated family member or representative of each of the  
8 residents, and to the complainant if the citation was issued as a  
9 result of a complaint.

10 (k) Nothing in this section is intended to change existing  
11 statutory or regulatory requirements governing the ability of a  
12 licensee to contest a citation pursuant to Section 1428.

13 (l) The department shall ensure that district office activities  
14 performed under Sections 1419 to 1424, inclusive, are consistent  
15 with the requirements of these sections and all applicable laws  
16 and regulations. To ensure the integrity of these activities, the  
17 department shall establish a statewide process for the collection  
18 of postsurvey evaluations from affected facilities.

19 SEC. 6. Section 1599.1 of the Health and Safety Code is  
20 amended to read:

21 1599.1. Written policies regarding the rights of ~~patients~~  
22 *residents* shall be established and shall be made available to the  
23 ~~patient resident~~, to any guardian, next of kin, sponsoring agency  
24 or representative payee, and to the public. Those policies and  
25 procedures shall ensure that each ~~patient resident~~ admitted to the  
26 facility has the following rights and is notified of the following  
27 facility obligations, in addition to those specified by regulation:

28 (a) The facility shall employ an adequate number of qualified  
29 personnel to carry out all of the functions of the facility.

30 (b) Each ~~patient resident~~ shall show evidence of good personal  
31 hygiene, be given care to prevent bedsores, and measures shall be  
32 used to prevent and reduce incontinence for each patient.

33 (c) The facility shall provide food of the quality and quantity  
34 to meet the ~~patients~~<sup>2</sup> *residents'* needs in accordance with  
35 physicians' orders.

36 (d) The facility shall provide an activity program staffed and  
37 equipped to meet the needs and interests of each ~~patient resident~~  
38 and to encourage self-care and resumption of normal activities.  
39 ~~Patients Residents~~ shall be encouraged to participate in activities  
40 suited to their individual needs.

1 (e) The facility shall be clean, sanitary, and in good repair at  
2 all times.

3 (f) A nurses' call system shall be maintained in operating  
4 order in all nursing units and provide visible and audible signal  
5 communication between nursing personnel and ~~patients~~  
6 *residents*. Extension cords to each ~~patient's~~ *resident's* bed shall  
7 be readily accessible to ~~patients~~ *residents* at all times.

8 (g) ~~(1)~~ *Each resident shall have the right to reside and*  
9 *receive services with reasonable accommodation of individual*  
10 *needs and preferences and to exercise choice about daily*  
11 *routines. This right shall include, but not be limited to, the right*  
12 *to reasonable accommodation of roommate preferences and the*  
13 *right to advance written notice before change of room or*  
14 *roommate.*

15 (h) *Each resident shall have the right to choose an attending*  
16 *physician and other health care providers. For purposes of this*  
17 *subdivision, an "attending physician" means the physician*  
18 *chosen by the resident or resident's representative to be*  
19 *responsible for the medical treatment of the resident in the*  
20 *facility. If a resident does not have an attending physician, the*  
21 *facility shall assist the resident in obtaining one.*

22 (i) *Each resident shall have the right to discharge himself or*  
23 *herself from the facility.*

24 (j) *Each resident shall have the right to receive long-term*  
25 *health care services in the most integrated setting appropriate.*  
26 *The facility shall provide assessment and discharge planning*  
27 *services that are designed to help residents return home or to*  
28 *home-like settings.*

29 (k) (1) If a facility has a significant beneficial interest in an  
30 ancillary health service provider or if a facility knows that an  
31 ancillary health service provider has a significant beneficial  
32 interest in the facility, as provided by subdivision (a) of Section  
33 1323, or if the facility has a significant beneficial interest in  
34 another facility, as provided by subdivision (c) of Section 1323,  
35 the facility shall disclose that interest in writing to the ~~patient~~  
36 *resident*, or his or her representative, and advise the ~~patient~~  
37 *resident*, or his or her representative, that the ~~patient~~ *resident*  
38 may choose to have another ancillary health service provider, or  
39 facility, as the case may be, provide any supplies or services  
40 ordered by a member of the medical staff of the facility.

1 (2) A facility is not required to make any disclosures required  
 2 by this subdivision to any ~~patient~~ *resident*, or his or her  
 3 representative, if the ~~patient~~ *resident* is enrolled in an  
 4 organization or entity ~~which~~ *that* provides or arranges for the  
 5 provision of health care services in exchange for a prepaid  
 6 capitation payment or premium.

7 ~~(h)~~

8 (l) (1) ~~If a~~ *A* resident of a long-term health care facility ~~has~~  
 9 ~~been~~ *who is* hospitalized in an acute care hospital ~~and has all of~~  
 10 ~~the following rights:~~

11 (A) *To receive written notice at the time of hospitalization*  
 12 *explaining his or her right to return to the facility.*

13 (B) *To have his or her bed held for up to seven days by giving*  
 14 *notice to the facility within 24 hours after being informed of the*  
 15 *right to have the bed held, if the resident desires to have his or*  
 16 *her bed held.*

17 (C) *To be readmitted to the first available bed at the facility if*  
 18 *the hospitalization exceeds the seven-day bed hold period or the*  
 19 *resident does not exercise the bed hold option.*

20 (2) *Except as provided in Section 51535.1 of Title 22 of the*  
 21 *California Code of Regulations, any resident who exercises the*  
 22 *bed hold option shall be liable to pay reasonable charges, not to*  
 23 *exceed the resident's daily rate for care in the facility.*

24 (3) *If a resident asserts his or her rights to readmission*  
 25 *pursuant to bed hold provisions or readmission rights of either*  
 26 *state or federal law and the facility refuses to readmit him or her,*  
 27 *the resident may appeal the facility's refusal.*

28 ~~(2)~~

29 (4) *The refusal of the facility as described in this subdivision*  
 30 *shall be treated as if it were an involuntary transfer under federal*  
 31 *law and the rights and procedures that apply to appeals of*  
 32 *transfers and discharges of nursing facility residents shall apply*  
 33 *to the resident's appeal under this subdivision.*

34 ~~(3)~~

35 (5) *If the resident appeals pursuant to this subdivision, and the*  
 36 *resident is eligible under the Medi-Cal program, the resident*  
 37 *shall remain in the hospital and the hospital may be reimbursed at*  
 38 *the administrative day rate, pending the final determination of the*  
 39 *hearing officer, unless the resident agrees to placement in another*  
 40 *facility.*

1 ~~(4)~~

2 (6) If the resident appeals pursuant to this subdivision, and the  
3 resident is not eligible under the Medi-Cal program, the resident  
4 shall remain in the hospital if other payment is available, pending  
5 the final determination of the hearing officer, unless the resident  
6 agrees to placement in another facility.

7 ~~(5)~~

8 (7) If the resident is not eligible for participation in the  
9 Medi-Cal program and has no other source of payment, the  
10 hearing and final determination shall be made within 48 hours.

11 *(m) (1) Each resident shall have all of the transfer and*  
12 *discharge rights described in this subdivision.*

13 *(2) For purposes of this subdivision, the following definitions*  
14 *shall apply:*

15 *(A) "Facility" means a skilled nursing facility or intermediate*  
16 *care facility, as defined in Section 1250.*

17 *(B) "Certified entity" means a Medi-Cal program certified*  
18 *facility, a Medicare Program certified facility, or a Medicare*  
19 *Program certified distinct part.*

20 *(C) "Discharge" means movement from a facility to a*  
21 *noninstitutional setting when the discharging facility ceases to be*  
22 *legally responsible for the care of the resident.*

23 *(D) "Transfer" means movement from a facility or certified*  
24 *entity to another institution when the legal responsibility for the*  
25 *care of the resident changes from the transferring facility to the*  
26 *receiving institution. A transfer includes movement of a resident*  
27 *from a bed in a certified entity to a bed in an entity that is*  
28 *certified as a different provider or to a bed that is not certified*  
29 *for the Medi-Cal program or the Medicare Program.*

30 *(3) The facility shall permit each resident to remain in the*  
31 *facility and not transfer or discharge the resident from the*  
32 *facility, unless one of the following circumstances exist:*

33 *(A) The transfer or discharge is necessary to meet the*  
34 *resident's welfare and the resident's welfare cannot be met in the*  
35 *facility.*

36 *(B) The transfer or discharge is appropriate because the*  
37 *resident's health has improved sufficiently so that the resident no*  
38 *longer needs the services provided by the facility.*

39 *(C) The safety of individuals in the facility is endangered.*

1     (D) The health of individuals in the facility would otherwise be  
2     endangered.

3     (E) The resident has failed, after reasonable and appropriate  
4     notice, to pay or have paid in his or her behalf, in the case of the  
5     Medi-Cal program or the Medicare Program, for a stay at the  
6     facility. As specified in Section 14124.7 of the Welfare and  
7     Institutions Code, a Medi-Cal certified facility may not discharge  
8     a resident who converts to coverage under the Medi-Cal  
9     program after admission or who has a Medi-Cal application  
10    pending.

11    (F) The facility ceases to operate.

12    (4) When the facility transfers or discharges a resident under  
13    any of the circumstances set forth in subparagraphs (A) to (E),  
14    inclusive, of paragraph (3), the resident's clinical record shall be  
15    documented. When transfer or discharge is necessary under  
16    subparagraph (A) or (B) of paragraph (3), the documentation  
17    shall be made by the resident's physician. When transfer or  
18    discharge is necessary under subparagraph (D) of paragraph  
19    (3), the documentation shall be made by a physician.

20    (5) The resident shall have the right to appeal a proposed or  
21    completed transfer or discharge. The appeal shall include the  
22    right to an informal hearing conducted by the department's  
23    administrative hearings and appeals unit prior to the proposed  
24    date of transfer or discharge. If the resident files the appeal  
25    within 10 days of receipt of the notice described in paragraph  
26    (6), the resident shall have the right to remain in the facility until  
27    a written determination is made on the appeal.

28    (6) Before a facility transfers or discharges a resident, the  
29    facility shall do all of the following:

30    (A) Notify the resident and, if known, a family member or legal  
31    representative of the resident, of the transfer or discharge and  
32    the reasons for the transfer or discharge in writing and in  
33    language and a manner the resident, family member, or legal  
34    representative understands.

35    (B) Record the reasons in the resident's clinical record.

36    (C) Include in the notice the items described in paragraph (8).

37    (D) Send a copy of the notice to the district office of the  
38    department's Licensing and Certification division and to the  
39    local office of the State Long-Term Care Ombudsman.

1 (7) (A) Except as provided in subparagraph (B), the notice of  
2 transfer or discharge required under paragraph (6) shall be  
3 made by the facility at least 30 days before the resident is  
4 transferred or discharged.

5 (B) Notice may be made as soon as practicable before transfer  
6 or discharge when any of the following conditions exist:

7 (i) The safety of individuals in the facility would be  
8 endangered under subparagraph (C) of paragraph (3).

9 (ii) The health of individuals in the facility would be  
10 endangered under subparagraph (D) of paragraph (3).

11 (iii) The resident's health improves sufficiently to allow a  
12 more immediate transfer or discharge and thus transfer or  
13 discharge is authorized under subparagraph (B) of paragraph  
14 (3).

15 (iv) An immediate transfer or discharge is required by the  
16 resident's urgent medical needs and thus transfer or discharge is  
17 authorized under subparagraph (A) of paragraph (3).

18 (v) The resident has not resided in the facility for 30 days.

19 (8) The written notice required under paragraph (6) shall  
20 include all of the following:

21 (A) The reason for transfer or discharge.

22 (B) The effective date of transfer or discharge.

23 (C) The location to which the resident will be transferred or  
24 discharged.

25 (D) The following statements:

26 (i) That the resident has the right to appeal the action to the  
27 State Department of Health Services and the name, address, and  
28 telephone number of the district office of the Licensing and  
29 Certification division of the department.

30 (ii) That the facility must permit the resident to remain until an  
31 appeal determination is issued if the appeal is filed within 10  
32 days of receipt of the notice.

33 (iii) That the resident may represent himself or herself or use  
34 legal counsel or a relative, friend, or other spokesperson at any  
35 appeal hearing.

36 (iv) That the resident or resident's representative shall be  
37 allowed to review, prior to and during the appeal hearing, the  
38 resident's medical records and documents to be used by the  
39 facility at any appeal hearing.

1 (v) That the resident may bring witnesses to any appeal  
2 hearing.

3 (E) The name, address, and telephone number of the local  
4 office of the State Long-Term Care Ombudsman.

5 (F) For nursing facility residents with developmental  
6 disabilities or who are mentally ill, the name, address, and  
7 telephone number of the protection and advocacy agency  
8 described in subdivision (i) of Section 4900 of the Welfare and  
9 Institutions Code.

10 (9) The department shall rescind a proposed transfer or  
11 discharge when the notice required in paragraph (6) does not  
12 meet the requirements set forth in paragraph (8). A facility that  
13 issues an invalid notice or fails to meet the requirements of  
14 subparagraph (D) of paragraph (6) is subject to a class B  
15 citation.

16 (10) A facility shall provide sufficient advance preparation  
17 and orientation to residents to ensure safe and orderly transfer  
18 or discharge from the facility. "Sufficient advance preparation"  
19 means the facility takes timely steps to protect the resident from  
20 unnecessary and avoidable anxiety and trauma related to the  
21 transfer or discharge. The facility shall actively involve the  
22 resident and the resident's family in the selection of any new  
23 residence or facility. The facility shall ensure that necessary care  
24 and services, including appropriate transportation to a new  
25 residence or facility, are available upon transfer or discharge.  
26 "Orientation" means the facility helps prepare the resident for  
27 the move to a new residence or facility by appropriate methods,  
28 including trial visits, and thoroughly informs staff at the  
29 receiving residence or facility about the resident's needs,  
30 strengths, routines, relationships, and preferences.

31 SEC. 7. Section 14124.10 of the Welfare and Institutions  
32 Code is amended to read:

33 14124.10. (a) No licensed long-term health care facility  
34 participating as a provider under the Medi-Cal program shall  
35 discriminate against a Medi-Cal resident or prospective  
36 Medi-Cal resident on the basis of the source of payment for the  
37 facility's services that are required to be provided to individuals  
38 entitled to services under the Medi-Cal program. Nothing in this  
39 section shall be construed to prohibit a facility from charging  
40 private-pay residents for services required to be provided to

1 *Medi-Cal residents or which are in addition to those required*  
2 *under the Medi-Cal program.*

3 *(b) For purposes of this section, the following definitions shall*  
4 *apply:*

5 *(1) "Skilled nursing facility" means a licensed facility as*  
6 *defined in subdivision (c) of Section 1250 of the Health and*  
7 *Safety Code.*

8 *(2) "Exempt facility" means a skilled nursing facility that is*  
9 *part of a continuing care retirement community as defined in*  
10 *Section 1771 or a skilled nursing facility that is a distinct part of*  
11 *a facility that is licensed as a general acute care hospital.*

12 *(c) A skilled nursing facility certified for participation in the*  
13 *Medi-Cal program that is not an exempt facility shall not*  
14 *discriminate on the basis of source of payment against a current*  
15 *or prospective Medi-Cal beneficiary who seeks admission.*  
16 *Except as otherwise provided by law or as specified in*  
17 *subdivision (d), all applicants for admission shall be admitted in*  
18 *the order in which they first request admission. Each skilled*  
19 *nursing facility shall do all of the following:*

20 *(1) Provide a copy of the notice described in paragraph (4) to*  
21 *each person who requests information about admission.*

22 *(2) Provide to each person seeking admission a receipt*  
23 *recording the date and time of the request.*

24 *(3) Maintain a dated list of applications that shall be available*  
25 *at all times to any applicant, his or her legal representative, and*  
26 *authorized personnel from the department. If a skilled nursing*  
27 *facility desires to remove the name of an applicant who is*  
28 *unresponsive to facility telephone calls and letters from its*  
29 *waiting list, the skilled nursing facility may, no sooner than 90*  
30 *days after initial placement of the person's name on the waiting*  
31 *list, inquire by letter to that applicant and any one person if*  
32 *designated by that applicant whether the applicant desires*  
33 *continuation of his or her name on the waiting list. If the*  
34 *applicant does not respond and an additional 30 days passes, the*  
35 *facility may remove the applicant's name from its waiting list. A*  
36 *skilled nursing facility may annually send a waiting list*  
37 *placement continuation letter to each person who has been on*  
38 *the waiting list for at least 90 days to inquire as to whether that*  
39 *person desires continuation of his or her name on the waiting list*  
40 *if that letter is also sent to any one person designated by the*

1 applicant. If an applicant to whom the letter was sent does not  
2 respond and at least 30 days passes, the facility may remove the  
3 person's name from its waiting list.

4 (4) Post in a conspicuous place a notice in plain language  
5 informing persons seeking admission that the facility is  
6 prohibited from discriminating against applicants for admission  
7 on the basis of their current or future Medi-Cal eligibility. The  
8 notice shall advise persons seeking admission about the facility's  
9 application procedures and describe the complaint options and  
10 remedies available under this section. The notice shall also list  
11 the name, address, and telephone number of the local office of  
12 the State Long-Term Care Ombudsman.

13 (d) Notwithstanding the requirements of subdivision (c), a  
14 skilled nursing facility may disregard its waiting list to admit an  
15 applicant whose spouse is a current resident of the facility or to  
16 admit a person who lives within a retirement community located  
17 on the same campus as the skilled nursing facility. Residents of  
18 the skilled nursing facility who are hospitalized or away from the  
19 facility on authorized leaves shall not be subject to the waiting  
20 list and shall be readmitted in accordance with state and federal  
21 laws, including the rights provided under subdivision (h) of  
22 Section 1599.1 of the Health and Safety Code.

23 (e) Upon the receipt of a complaint concerning a violation of  
24 this section, the department shall conduct an investigation into  
25 the complaint in accordance with Section 1420 of the Health and  
26 Safety Code.

27 (f) The department may decrease the daily Medi-Cal  
28 reimbursement rate to a long-term health care facility for one  
29 year for a violation of this section. The per diem rate shall be  
30 reduced by one-quarter of 1 percent for an initial violation of this  
31 section and 1 percent for each additional violation.

32 SEC. 8. Section 14126.023 of the Welfare and Institutions  
33 Code is amended to read:

34 14126.023. (a) The methodology developed pursuant to this  
35 article shall be facility specific and reflect the sum of the  
36 projected cost of each cost category and passthrough costs, as  
37 follows:

- 38 (1) Labor costs limited as specified in subdivision (c).
- 39 (2) Indirect care nonlabor costs limited to the 75th percentile.
- 40 (3) Administrative costs limited to the 50th percentile.

1 (4) Capital costs based on a fair rental value system (FRVS)  
2 limited as specified in subdivision (d).

3 (5) Direct passthrough of proportional Medi-Cal costs for  
4 property taxes, facility license fees, new state and federal  
5 mandates, caregiver training costs, and liability insurance  
6 projected on the prior year's costs.

7 (b) The percentiles in paragraphs (1) through (3) of  
8 subdivision (a) shall be based on annualized costs divided by  
9 total resident days and computed on a specific geographic peer  
10 group basis. Costs within a specific cost category shall not be  
11 shifted to any other cost category.

12 (c) The labor costs category shall be comprised of a direct  
13 resident care labor cost category, an indirect care labor cost  
14 category, and a labor-driven operating allocation cost category,  
15 as follows:

16 (1) Direct resident care labor cost category which shall include  
17 all labor costs related to routine nursing services including all  
18 nursing, social services, activities, and other direct care  
19 personnel. These costs shall be limited to the 90th percentile.

20 (2) Indirect care labor cost category which shall include all  
21 labor costs related to staff supporting the delivery of patient care  
22 including, but not limited to, housekeeping, laundry and linen,  
23 dietary, medical records, inservice education, and plant  
24 operations and maintenance. These costs shall be limited to the  
25 90th percentile.

26 (3) Labor-driven operating allocation shall include an amount  
27 equal to 8 percent of labor costs, minus expenditures for  
28 temporary staffing, which may be used to cover allowable  
29 Medi-Cal expenditures. In no instance shall the operating  
30 allocation exceed 5 percent of the facility's total Medi-Cal  
31 reimbursement rate. *The labor-driven operating allocation shall*  
32 *not be paid to facilities that, on an annual basis, fail to comply*  
33 *with the minimum staffing requirements established pursuant to*  
34 *Section 1276.5 of the Health and Safety Code.*

35 (d) The capital cost category shall be based on a FRVS that  
36 recognizes the value of the capital related assets necessary to care  
37 for Medi-Cal residents. The capital cost category includes  
38 mortgage principal and interest, leases, leasehold improvements,  
39 depreciation of real property, equipment, and other capital related  
40 expenses. The FRVS methodology shall be based on the formula

1 developed by the department that assesses facility value based on  
2 age and condition and uses a recognized market interest factor.  
3 Capital investment and improvement expenditures included in  
4 the FRVS formula shall be documented in cost reports or  
5 supplemental reports required by the department. The capital  
6 costs based on FRVS shall be limited as follows:

7 (1) For the 2005–06 rate year, the capital cost category for all  
8 facilities in the aggregate shall not exceed the department’s  
9 estimated value for this cost category for the 2004–05 rate year.

10 (2) For the 2006–07 rate year and subsequent rate years, the  
11 maximum annual increase for the capital cost category for all  
12 facilities in the aggregate shall not exceed 8 percent of the prior  
13 rate year’s FRVS cost component.

14 (3) If the total capital costs for all facilities in the aggregate for  
15 the 2005–06 rate year exceeds the value of the capital costs for  
16 all facilities in the aggregate for the 2004–05 rate year, or if that  
17 capital cost category for all facilities in the aggregate for the  
18 2006–07 rate year or any rate year thereafter exceeds 8 percent of  
19 the prior rate year’s value, the department shall reduce the capital  
20 cost category for all facilities in equal proportion in order to  
21 comply with paragraphs (1) and (2).

22 (e) For the 2005–06 and 2006–07 rate years, the facility  
23 specific Medi-Cal reimbursement rate calculated under this  
24 article shall not be less than the Medi-Cal rate that the specific  
25 facility would have received under the rate methodology in effect  
26 as of July 31, 2005, plus Medi-Cal’s projected proportional costs  
27 for new state or federal mandates for rate years 2005–06 and  
28 2006–07, respectively.

29 (f) The department shall update each facility specific rate  
30 calculated under this methodology annually. The update process  
31 shall be prescribed in the Medicaid state plan, regulations, and  
32 the provider bulletins or similar instructions described in Section  
33 14126.027, and shall be adjusted in accordance with the results  
34 of facility specific audit and review findings in accordance with  
35 subdivisions (h) and (i).

36 (g) The department shall establish rates pursuant to this article  
37 on the basis of facility cost data reported in the integrated  
38 long-term care disclosure and Medi-Cal cost report required by  
39 Section 128730 of the Health and Safety Code for the most  
40 recent reporting period available, and cost data reported in other

1 facility financial disclosure reports or supplemental information  
2 required by the department in order to implement this article.

3 (h) The department shall conduct financial audits of facility  
4 and home office cost data as follows:

5 (1) The department shall audit facilities a minimum of once  
6 every three years to ensure accuracy of reported costs. *Audits*  
7 *shall examine the accuracy of payroll records described in*  
8 *subdivision (l). Fraudulently reported labor costs shall be subject*  
9 *to all of the following:*

10 (A) *Referral to the Franchise Tax Board and Internal Revenue*  
11 *Service for investigation.*

12 (B) *Recovery of overpayments through a retroactive*  
13 *adjustment of the facility-specific reimbursement rate.*

14 (C) *Assessment of a penalty equal to 200 percent of the*  
15 *fraudulently reported direct care staffing hours times the average*  
16 *hourly wage of the direct care staff at the time the fraudulent*  
17 *activity occurred.*

18 (2) It is the intent of the Legislature that the department  
19 develop and implement limited scope audits of key cost centers  
20 or categories to assure that the rate paid in the years between  
21 each full scope audit required in paragraph (1) accurately reflects  
22 actual costs.

23 (3) For purposes of updating facility specific rates, the  
24 department shall adjust or reclassify costs reported consistent  
25 with applicable requirements of the Medicaid state plan as  
26 required by Part 413 (commencing with Section 413.1) of Title  
27 42 of the Code of Federal Regulations.

28 (4) Overpayments to any facility shall be recovered in a  
29 manner consistent with applicable recovery procedures and  
30 requirements of state and federal laws and regulations.

31 (i) (1) On an annual basis, the department shall use the results  
32 of audits performed pursuant to subdivision (h), the results of any  
33 federal audits, and facility cost reports, including supplemental  
34 reports of actual costs incurred in specific cost centers or  
35 categories as required by the department, to determine any  
36 difference between reported costs used to calculate a facility's  
37 rate and audited facility expenditures in the rate year.

38 (2) If the department determines that there is a difference  
39 between reported costs and audited facility expenditures pursuant  
40 to paragraph (1), the department shall adjust a facility's

1 reimbursement prospectively over the intervening years between  
2 audits by an amount that reflects the difference, consistent with  
3 the methodology specified in this article.

4 (j) For nursing facilities that obtain an audit appeal decision  
5 that results in revision of the facility’s allowable costs, the  
6 facility shall be entitled to seek a retroactive adjustment in its  
7 facility specific reimbursement rate.

8 (k) Compliance by each facility with state laws and  
9 regulations regarding staffing levels shall be documented  
10 annually either through facility cost reports, including  
11 supplemental reports, or through the annual licensing inspection  
12 process specified in Section 1422 of the Health and Safety Code.

13 (l) *For purposes of documenting labor costs described in*  
14 *subdivision (c), a skilled nursing facility shall submit electronic*  
15 *payroll records to the department on a quarterly basis. Under*  
16 *penalty of perjury, the administrator of the facility shall sign and*  
17 *certify the accuracy of the payroll records. On or before July 1,*  
18 *2006, the department shall devise and implement a uniform*  
19 *system for collecting and evaluating payroll data.*

20 SEC. 9. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the  
25 penalty for a crime or infraction, within the meaning of Section  
26 17556 of the Government Code, or changes the definition of a  
27 crime within the meaning of Section 6 of Article XIII B of the  
28 California Constitution.

O