

Senate Bill No. 1312

CHAPTER 895

An act to amend Sections 1266.9, 1279, and 1422 of, to amend and repeal Section 1280.1 of, and to add Sections 1280.3 and 1280.6 to, the Health and Safety Code, relating to health care facilities.

[Approved by Governor September 30, 2006. Filed with
Secretary of State September 30, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1312, Alquist. Health care facilities.

(1) Under existing law, the State Department of Health Services regulates the licensure and operation of various health facilities, including long-term health care facilities, some of which are collectively classified as nursing homes. Existing law requires the department to conduct periodic inspections of health facilities for which a license or special permit has been issued, to ensure the quality of care. Existing law exempts certain health facilities that are certified to participate in the federal Medicare and Medicaid Programs from these inspections.

Existing law establishes the State Department of Health Services, Licensing, and Certification Program Account within the Special Deposit Fund, and requires that specified revenues collected from fees for new and renewal applications for health facility licenses be deposited in the account and be available for expenditure upon appropriation to support the Licensing and Certification Program, as provided.

This bill would revise those provisions to instead create the State Department of Health Services, Licensing and Certification Program Fund in the State Treasury.

(2) Existing law, the Long-Term Care, Health, Safety and Security Act of 1973, requires the State Department of Health Services to conduct annual inspections, without notice, of long-term health care facilities, except facilities that have not had serious violations within the last 12 months, and in any case to inspect every facility at least once every 2 years, and further requires the department to vary the cycle for conducting these inspections to reduce the predictability of the inspections.

This bill would delete the above inspection exemption for federally certified health facilities. The bill would require the department to ensure that a periodic inspection required to be conducted pursuant to those provisions is not announced in advance of the date of the inspection.

This bill would specify that inspections and investigations of long-term health care facilities that are certified by the Medicare Program and the Medicaid Program shall determine compliance with federal standards and California statutes and regulations.

This bill would require the department, for purposes of inspecting those long-term health care facilities, to identify state law standards for the staffing and operation of long-term health care facilities. The bill would authorize the department to increase initial licensure and renewal fees for long-term health care facilities in order to recover any additional costs incurred by these requirements.

The bill would specify that the aforementioned provisions relating to the inspection of long-term health facilities shall become operative on July 1, 2007.

(3) Existing law authorizes the department to assess against a health facility licensee, including a hospital, who has failed to correct a deficiency a civil penalty in an amount not to exceed \$50 per patient affected by the deficiency.

This bill would revise the circumstances under which the department is authorized to assess civil penalties against licensee hospitals, including increasing the maximum penalty amount, and applying the provisions to deficiencies constituting immediate jeopardy, as defined.

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

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

(a) The protection of residents in California's long-term health care facilities is of paramount importance to the citizens of California.

(b) During the last two decades, the Legislature has enacted numerous nursing home reform measures designed to improve residents' rights, increase minimum staffing levels, and protect residents from abuse, neglect, and exploitation.

(c) While federal regulations and state statutory provisions overlap in some areas, there are numerous state requirements that exceed federal law and provide greater protection to residents of long-term health care facilities.

(d) The State Department of Health Services has not developed survey protocols for examining compliance with state regulatory and statutory standards during regular inspections.

(e) Nursing homes that do not participate in the federal Medicare Program or Medicaid Program are not being inspected on a regular basis.

(f) Existing state law requires the State Department of Health Services to establish and maintain an inspection and reporting system to ensure that long-term health care facilities are in compliance with California statutes and regulations.

(g) Therefore, it is the intent of the Legislature to enact legislation to do both of the following:

(1) Ensure that California's standards for licensure of long-term health care facilities are maintained.

(2) Ensure that long-term health care facilities are inspected for compliance with state standards to the extent that those standards provide greater protection to residents, or are more precise than federal standards.

SEC. 2 Section 1266.9 of the Health and Safety Code is amended to read:

1266.9. There is hereby created in the State Treasury the State Department of Health Services, Licensing and Certification Program Fund. The revenue collected in accordance with Section 1266 shall be deposited in the Licensing and Certification Program Fund and shall be available for expenditure, upon appropriation by the Legislature, to support the Licensing and Certification Program's operation. Interest earned on the funds in the Licensing and Certification Program Fund shall be deposited as revenue into the account to support the Licensing and Certification Program's operation.

SEC. 3. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.

(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.

(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct

an additional periodic inspection that is not announced or noticed to the health facility.

(g) Notwithstanding any other provision of law, the department shall inspect for compliance with provisions of state law and regulations during a state or federal periodic inspection, including, but not limited to, an inspection required under this section.

SEC. 4. Section 1280.1 of the Health and Safety Code is amended to read:

1280.1. (a) If a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 receives a notice of deficiency constituting an immediate jeopardy to the health or safety of a patient and is required to submit a plan of correction, the department may assess the licensee an administrative penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation.

(b) If the licensee disputes a determination by the department regarding the alleged deficiency or the alleged failure to correct a deficiency, or regarding the reasonableness of the proposed deadline for correction or the amount of the penalty, the licensee may, within 10 days, request a hearing pursuant to Section 100171. Penalties shall be paid when appeals have been exhausted and the department's position has been upheld.

(c) For purposes of this section "immediate jeopardy" means a situation in which the licensee's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury or death to the patient.

(d) This section shall apply only to incidents occurring on or after January 1, 2007.

(e) No new regulations are required or authorized for implementation of this section.

SEC. 5. Section 1280.3 is added to the Health and Safety Code, to read:

1280.3. (a) Commencing on the effective date of the regulations adopted pursuant to this section, the director may assess an administrative penalty in an amount of up to fifty thousand dollars (\$50,000) per immediate jeopardy violation, as defined in Section 1280.1, against a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250.

(b) Except as provided in subdivision (c), for a violation of this chapter or the rules and regulations promulgated thereunder that does not constitute a violation of subdivision (a), the department may assess an administrative penalty in an amount of up to seventeen thousand five hundred dollars (\$17,500) per violation.

The department shall promulgate regulations establishing the criteria to assess an administrative penalty against a health facility licensed pursuant to subdivisions (a), (b), or (f) of Section 1250. The criteria shall include, but need not be limited to, the following:

- (1) The patient's physical and mental condition.

(2) The probability and severity of the risk that the violation presents to the patient.

(3) The actual financial harm to patients, if any.

(4) The nature, scope, and severity of the violation.

(5) The facility's history of compliance with related state and federal statutes and regulations.

(6) Factors beyond the facility's control that restrict the facility's ability to comply with this chapter or the rules and regulations promulgated thereunder.

(7) The demonstrated willfulness of the violation.

(8) The extent to which the facility detected the violation and took steps to immediately correct the violation and prevent the violation from recurring.

(c) The department shall not assess an administrative penalty for minor violations.

(d) The regulations shall not change the definition of immediate jeopardy as established in Section 1280.1.

(e) The regulations shall apply only to incidents occurring on or after the effective date of the regulations.

(f) If the licensee disputes a determination by the department regarding the alleged deficiency or alleged failure to correct a deficiency, or regarding the reasonableness of the proposed deadline for correction or the amount of the penalty, the licensee may, within 10 working days, request a hearing pursuant to Section 100171. Penalties shall be paid when all appeals have been exhausted and the department's position has been upheld.

(g) Moneys collected by the department as a result of administrative penalties imposed under this section and Section 1280.1 shall be deposited into the Licensing and Certification Program Fund established pursuant to Section 1266.9. These moneys shall be tracked and available for expenditure, upon appropriation by the Legislature, to support internal departmental quality improvement activities.

SEC. 5.5. Section 1280.6 is added to the Health and Safety Code, to read:

1280.6. In assessing an administrative penalty pursuant to Section 1280.1 or Section 1280.3 against a licensee of a health facility licensed under subdivision (a) of Section 1250 owned by a nonprofit corporation that shares an identical board of directors with a nonprofit health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340), the director shall consider whether the deficiency arises from an incident that is the subject of investigation of, or has resulted in a fine to, the health care service plan by the Department of Managed Health Care. If the deficiency results from the same incident, the director shall limit the administrative penalty to take into consideration the penalty imposed by the Department of Managed Health Care.

SEC. 6. Section 1422 of the Health and Safety Code is amended to read:

1422. (a) The Legislature finds and declares that it is the public policy of this state to ensure that long-term health care facilities provide the highest level of care possible. The Legislature further finds that inspections are the most effective means of furthering this policy. It is not the intent of the Legislature by the amendment of subdivision (b) enacted by Chapter 1595 of the Statutes of 1982 to reduce in any way the resources available to the state department for inspections, but rather to provide the state department with the greatest flexibility to concentrate its resources where they can be most effective. It is the intent of the Legislature to create a survey process that includes state-based survey components and that determines compliance with federal and California requirements for certified long-term health care facilities. It is the further intent of the Legislature to execute this inspection in the form of a single survey process, to the extent that this is possible and permitted under federal law. The inability of the state to conduct a single survey in no way exempts the state from the requirement under this section that state-based components be inspected in long-term health care facilities as required by law.

(b) (1) (A) Notwithstanding Section 1279 or any other provision of law, without providing notice of these inspections, the state department, in addition to any inspections conducted pursuant to complaints filed pursuant to Section 1419, shall conduct inspections annually, except with regard to those facilities which have no class "AA," class "A," or class "B" violations in the past 12 months. The state department shall also conduct inspections as may be necessary to ensure the health, safety, and security of patients in long-term health care facilities. Every facility shall be inspected at least once every two years. The department shall vary the cycle in which inspections of long-term health care facilities are conducted to reduce the predictability of the inspections.

(B) Inspections and investigations of long-term health care facilities that are certified by the Medicare Program or the Medicaid Program shall determine compliance with federal standards and California statutes and regulations.

(C) In order to ensure maximum effectiveness of inspections conducted pursuant to this article, the department shall identify all state law standards for the staffing and operation of long-term health care facilities. Initial license and renewal fees for long-term health care facilities may be increased pursuant to Section 1266 in order to recover any additional costs incurred by the department as a result of this subparagraph.

(2) The state department shall submit to the federal Department of Health and Human Services on or before July 1, 1985, for review and approval, a request to implement a three-year pilot program designed to lessen the predictability of the long-term health care facility inspection process. Two components of the pilot program shall be (A) the elimination of the present practice of entering into a one-year certification agreement, and (B) the conduct of segmented inspections of a sample of facilities with poor inspection records, as defined by the state department. At the conclusion of the pilot project, an analysis of both components shall be

conducted by the state department to determine effectiveness in reducing inspection predictability and the respective cost benefits. Implementation of this pilot project is contingent upon federal approval.

(c) Except as otherwise provided in subdivision (b), the state department shall conduct unannounced direct patient care inspections at least annually to inspect physician and surgeon services, nursing services, pharmacy services, dietary services, and activity programs of all the long-term health care facilities. Facilities evidencing repeated serious problems in complying with this chapter or a history of poor performance, or both, shall be subject to periodic unannounced direct patient care inspections during the inspection year. The direct patient care inspections shall assist the state department in the prioritization of its efforts to correct facility deficiencies.

(d) All long-term health care facilities shall report to the state department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.

(e) Within 90 days after the receipt of notice of a change in the nursing home administrator or the director of nursing services, the state department may conduct an abbreviated inspection of the long-term health care facilities.

(f) If a change in a nursing home administrator occurs and the Board of Nursing Home Administrators notifies the state department that the new administrator is on probation or has had his or her license suspended within the previous three years, the state department shall conduct an abbreviated survey of the long-term health care facility employing that administrator within 90 days of notification.

SEC. 7. Sections 3 and 6 of this act shall become operative on July 1, 2007.