

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 773

Introduced by Assembly Member Lieu

February 26, 2009

An act to amend Sections 1424 and 1424.5 of *add Section 1424.6* to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 773, as amended, Lieu. Health facilities: fines.

Under existing law, the Long-Term, Health, Safety, and Security Act of 1973; the State Department of Public Health administers various requirements pertaining to long-term health care facilities. Violation of these provisions is punishable by various classes of administrative citations with corresponding administrative penalties. ~~A class "B" citation is subject to a civil penalty in an amount not less than \$100 and not exceeding \$1,000 for each and every citation. A class "AA" citation at a skilled nursing facility is subject to a civil penalty in an amount not less than \$25,000 and not exceeding \$100,000 for each and every citation, and a class "A" citation in a skilled nursing facility is subject to a civil penalty in an amount not less than \$2,000 and not exceeding \$20,000 for each and every citation.~~

~~This bill would increase the fine for a class "B" citation at a long-term health care facility to an amount not less than \$1,000 and not more than \$5,000 for each citation. The bill would also increase the fine for a class "AA" citation at a skilled nursing facility to an amount not less than \$50,000 and not more than \$125,000 for each citation, and the fine for~~

a class “A” citation at a skilled nursing facility to an amount not less than \$5,000 and not more than \$50,000 for each citation.

The

~~This bill would also~~ require, within 30 days of the issuance of a class “AA” or class “A” violation citation, that the cited facility send written notification to the last known address of the primary contact for all current residents and patients, as specified. The bill would allow the department to assess an administrative penalty of \$1,000 per day for each day following the end of the 30-day notification period, but would permit the department to waive or lower the penalty if it finds that the facility has made its best efforts to comply with the notification requirements.

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

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

1 SECTION 1. Section 1424.6 is added to the Health and Safety
2 Code, to read:

3 1424.6. Within 30 days of the issuance of a citation for a class
4 “AA” or class “A” violation pursuant to Section 1424 or 1424.5,
5 the cited facility shall send written notification to the last known
6 address of the primary contact for all current residents and
7 patients. The notice shall disclose the violation for which the
8 citation was issued, the date of the citation, a telephone number
9 or Internet Web site address for the department where more
10 information on the citation may be accessed. If the facility is
11 appealing the citation, the notice may also include that fact. If the
12 facility fails to send the notifications pursuant to this paragraph,
13 the department may assess an administrative penalty of one
14 thousand dollars (\$1,000) for each day following the end of the
15 30-day period. The department may waive or lower the penalty if
16 it finds that the facility has made its best efforts to comply with
17 this paragraph.

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

20 (a) ~~Senior citizens represent a large portion of California’s~~
21 ~~population; they include our aging mothers, fathers, grandparents,~~
22 ~~siblings, friends, and other loved ones. It is our responsibility as~~

1 a state to ensure the highest quality of life and care for our seniors
2 during their golden years.

3 ~~(b) On September 29, 2008, the United States Department of~~
4 ~~Health and Human Services Office of Inspector General released~~
5 ~~a report entitled “Trends in Nursing Home Deficiencies and~~
6 ~~Complaints.” In the report, the Inspector General found that 99.1~~
7 ~~percent of California nursing homes were cited over the past three~~
8 ~~years with deficiencies, a rate that is higher than the national~~
9 ~~average. The report makes it clear that improved quality of care~~
10 ~~for nursing home residents must be a priority.~~

11 ~~(c) While adequate advocacy and representation is important~~
12 ~~to all California seniors, it is especially important for those who~~
13 ~~reside in a care facility. Many seniors in care facilities are~~
14 ~~particularly vulnerable because they have no friends or family who~~
15 ~~visit or advocate for them. The mission of the State Ombudsman~~
16 ~~Program is to investigate elder abuse and other complaints on~~
17 ~~behalf of the 250,000 California residents living in skilled nursing~~
18 ~~facilities. In 2008, state funding was reduced from this vital~~
19 ~~program, leaving many residents without resources to report abuse,~~
20 ~~fraud, or neglect.~~

21 ~~(d) It is imperative that we continuously strive to improve~~
22 ~~nursing home care in California. As our population of aging~~
23 ~~residents increases, delinquency rates in nursing facilities become~~
24 ~~more frequent, and budget constraints limit advocacy programs,~~
25 ~~it is necessary to ensure the highest quality care and service to our~~
26 ~~state’s most vulnerable population.~~

27 ~~SEC. 2. Section 1424 of the Health and Safety Code is amended~~
28 ~~to read:~~

29 ~~1424. Citations issued pursuant to this chapter shall be~~
30 ~~classified according to the nature of the violation and shall indicate~~
31 ~~the classification on the face thereof.~~

32 ~~(a) In determining the amount of the civil penalty, all relevant~~
33 ~~facts shall be considered, including, but not limited to, the~~
34 ~~following:~~

35 ~~(1) The probability and severity of the risk that the violation~~
36 ~~presents to the patient’s or resident’s mental and physical condition.~~

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

38 ~~(3) The patient’s or resident’s mental condition and his or her~~
39 ~~history of mental disability or disorder.~~

1 ~~(4) The good faith efforts exercised by the facility to prevent~~
2 ~~the violation from occurring.~~
3 ~~(5) The licensee’s history of compliance with regulations.~~
4 ~~(b) Relevant facts considered by the department in determining~~
5 ~~the amount of the civil penalty shall be documented by the~~
6 ~~department on an attachment to the citation and available in the~~
7 ~~public record. This requirement shall not preclude the department~~
8 ~~or a facility from introducing facts not listed on the citation to~~
9 ~~support or challenge the amount of the civil penalty in any~~
10 ~~proceeding set forth in Section 1428.~~
11 ~~(c) Class “AA” violations are violations that meet the criteria~~
12 ~~for a class “A” violation and that the state department determines~~
13 ~~to have been a direct proximate cause of death of a patient or~~
14 ~~resident of a long-term health care facility. Except as provided in~~
15 ~~Section 1424.5, a class “AA” citation is subject to a civil penalty~~
16 ~~in the amount of not less than five thousand dollars (\$5,000) and~~
17 ~~not exceeding twenty-five thousand dollars (\$25,000) for each~~
18 ~~citation. In any action to enforce a citation issued under this~~
19 ~~subdivision, the department shall prove all of the following:~~
20 ~~(1) The violation was a direct proximate cause of death of a~~
21 ~~patient or resident.~~
22 ~~(2) The death resulted from an occurrence of a nature that the~~
23 ~~regulation was designed to prevent.~~
24 ~~(3) The patient or resident suffering the death was among the~~
25 ~~class of persons for whose protection the regulation was adopted.~~
26 ~~If the department meets this burden of proof, the licensee shall~~
27 ~~have the burden of proving that the licensee did what might~~
28 ~~reasonably be expected of a long-term health care facility licensee,~~
29 ~~acting under similar circumstances, to comply with the regulation.~~
30 ~~If the licensee sustains this burden, then the citation shall be~~
31 ~~dismissed.~~
32 ~~Except as provided in Section 1424.5, for each class “AA”~~
33 ~~citation within a 12-month period that has become final, the~~
34 ~~department shall consider the suspension or revocation of the~~
35 ~~facility’s license in accordance with Section 1294. For a third or~~
36 ~~subsequent class “AA” citation in a facility within that 12-month~~
37 ~~period that has been sustained following a citation review~~
38 ~~conference, the department shall commence action to suspend or~~
39 ~~revoke the facility’s license in accordance with Section 1294.~~

1 ~~(d) Class “A” violations are violations which the department~~
2 ~~determines present either (1) imminent danger that death or serious~~
3 ~~harm to the patients or residents of the long-term health care facility~~
4 ~~would result therefrom, or (2) substantial probability that death or~~
5 ~~serious physical harm to patients or residents of the long-term~~
6 ~~health care facility would result therefrom. A physical condition~~
7 ~~or one or more practices, means, methods, or operations in use in~~
8 ~~a long-term health care facility may constitute a class “A” violation.~~
9 ~~The condition or practice constituting a class “A” violation shall~~
10 ~~be abated or eliminated immediately, unless a fixed period of time,~~
11 ~~as determined by the department, is required for correction. Except~~
12 ~~as provided in Section 1424.5, a class “A” citation is subject to a~~
13 ~~civil penalty in an amount not less than one thousand dollars~~
14 ~~(\$1,000) and not exceeding ten thousand dollars (\$10,000) for each~~
15 ~~and every citation.~~

16 ~~If the department establishes that a violation occurred, the~~
17 ~~licensee shall have the burden of proving that the licensee did what~~
18 ~~might reasonably be expected of a long-term health care facility~~
19 ~~licensee, acting under similar circumstances, to comply with the~~
20 ~~regulation. If the licensee sustains this burden, then the citation~~
21 ~~shall be dismissed.~~

22 ~~(e) Class “B” violations are violations that the department~~
23 ~~determines have a direct or immediate relationship to the health,~~
24 ~~safety, or security of long-term health care facility patients or~~
25 ~~residents, other than class “AA” or “A” violations. Unless~~
26 ~~otherwise determined by the department to be a class “A” violation~~
27 ~~pursuant to this chapter and rules and regulations adopted pursuant~~
28 ~~thereto, any violation of a patient’s rights as set forth in Sections~~
29 ~~72527 and 73523 of Title 22 of the California Code of Regulations,~~
30 ~~that is determined by the department to cause or under~~
31 ~~circumstances likely to cause significant humiliation, indignity,~~
32 ~~anxiety, or other emotional trauma to a patient is a class “B”~~
33 ~~violation. A class “B” citation is subject to a civil penalty in an~~
34 ~~amount not less than one thousand dollars (\$1,000) and not~~
35 ~~exceeding five thousand dollars (\$5,000) for each and every~~
36 ~~citation. A class “B” citation shall specify the time within which~~
37 ~~the violation is required to be corrected. If the department~~
38 ~~establishes that a violation occurred, the licensee shall have the~~
39 ~~burden of proving that the licensee did what might reasonably be~~
40 ~~expected of a long-term health care facility licensee, acting under~~

1 similar circumstances, to comply with the regulation. If the licensee
2 sustains this burden, then the citation shall be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

39 (j) (1) The department shall provide a copy of all citations
40 issued under this section to the affected residents whose treatment

1 was the basis for the issuance of the citation, to the affected
2 residents' designated family member or representative of each of
3 the residents, and to the complainant if the citation was issued as
4 a result of a complaint.

5 (2) Within 30 days of the issuance of a citation for a class "AA"
6 or class "A" violation, the cited facility shall send written
7 notification to the last known address of the primary contact for
8 all current residents and patients. The notice shall disclose the
9 violation for which the citation was issued, the date of the citation,
10 a telephone number or Internet Web site address for the department
11 where more information on the citation may be accessed. If the
12 facility is appealing the citation, the notice may also include that
13 fact. If the facility fails to send the notifications pursuant to this
14 paragraph, the department may assess an administrative penalty
15 of one thousand dollars (\$1,000) for each day following the end
16 of the 30-day period. The department may waive or lower the
17 penalty if it finds that the facility has made its best efforts to
18 comply with this paragraph.

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

22 (l) The department shall ensure that district office activities
23 performed under Sections 1419 to 1424, inclusive, are consistent
24 with the requirements of these sections and all applicable laws and
25 regulations. To ensure the integrity of these activities, the
26 department shall establish a statewide process for the collection
27 of postsurvey evaluations from affected facilities.

28 SEC. 3. Section 1424.5 of the Health and Safety Code is
29 amended to read:

30 1424.5. (a) In lieu of the fines specified in subdivisions (e),
31 (d), and (c) of Section 1424, fines imposed on skilled nursing
32 facilities or intermediate care facilities, as specified in paragraphs
33 (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

34 (1) A class "AA" citation is subject to a civil penalty in an
35 amount not less than fifty thousand dollars (\$50,000) and not
36 exceeding one hundred twenty-five thousand dollars (\$125,000)
37 for each and every citation. For a second or subsequent class "AA"
38 citation in a skilled nursing facility or intermediate care facility
39 within a 24-month period that has been sustained following a
40 citation review conference, or where the licensee has chosen not

1 to exercise its right to a citation review conference, the state
2 department shall commence action to suspend or revoke the
3 facility's license in accordance with Section 1294.

4 (2) A class "A" citation is subject to a civil penalty in an amount
5 not less than five thousand dollars (\$5,000) and not exceeding fifty
6 thousand dollars (\$50,000) for each and every citation.

7 (3) Any "willful material falsification" or "willful material
8 omission," as those terms are defined in subdivision (f) of Section
9 1424, in the health record of a resident is subject to a civil penalty
10 in an amount not less than two thousand dollars (\$2,000) and not
11 exceeding twenty thousand dollars (\$20,000) for each and every
12 citation.

13 (b) A licensee may, in lieu of contesting a class "AA" or class
14 "A" citation pursuant to Section 1428, transmit to the state
15 department, the minimum amount specified by law, or 65 percent
16 of the amount specified in the citation, whichever is greater, for
17 each violation, within 30 business days after the issuance of the
18 citation.