

AMENDED IN SENATE JULY 14, 2011
AMENDED IN SENATE JUNE 28, 2011
AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 14, 2011
AMENDED IN ASSEMBLY APRIL 6, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 641

**Introduced by Assembly Member Feuer
(Coauthors: Assembly Members Ammiano, Blumenfield, and
Huffman)**

February 16, 2011

An act to amend Sections 1423, 1424, 1424.5, 1428, 1428.2, and 1429 of, and to repeal Section 1417.5 of, the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as amended, Feuer. Long-term health care facilities: civil penalties.

The existing Long-Term Care, Health, Safety, and Security Act of 1973 establishes an inspection and reporting system and a provisional licensing mechanism, administered by the State Department of Public Health, to ensure that long-term health care facilities, as defined, are in compliance with state statutes, regulations, and federal standards pertaining to patient care. The act requires the department, if it determines that a violation of any state or federal law or regulation

relating to the operation or maintenance of the facility warrants the issuance of a citation, to take specified actions regarding federal enforcement remedies and citations. The act prohibits the issuance of both a citation pursuant to state laws and the recommendation that a federal civil monetary penalty be imposed.

This bill would delete this prohibition.

The act establishes a citation and appeals process, that includes a citation review conference.

This bill would repeal the citation review conference process and make conforming changes.

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 1417.5 of the Health and Safety Code is
2 repealed.

3 SEC. 2. Section 1423 of the Health and Safety Code is amended
4 to read:

5 1423. (a) If upon inspection or investigation the director
6 determines that any nursing facility is in violation of any state or
7 federal law or regulation relating to the operation or maintenance
8 of the facility, or determines that any other long-term health care
9 facility is in violation of any statutory provision or regulation
10 relating to the operation or maintenance of the facility, the director
11 shall promptly, but not later than 24 hours, excluding Saturday,
12 Sunday, and holidays, after the director determines or has
13 reasonable cause to determine that an alleged violation has
14 occurred, issue a notice to correct the violation and of intent to
15 issue a citation to the licensee. Before completing the investigation
16 and making the determination whether to issue a citation, the
17 department shall hold an exit conference with the licensee to
18 identify the potential for issuing a citation for any violation, discuss
19 investigative findings, and allow the licensee to provide the
20 department with additional information related to the violation.
21 The department shall consider this additional information, in
22 conjunction with information from the inspection or investigation,
23 in determining whether to issue a citation, or whether other action
24 would be appropriate. If the department determines that the

1 violation warrants the issuing of a citation and an exit conference
2 has been completed it shall either:

3 (1) Recommend the imposition of a federal enforcement remedy
4 or remedies on a nursing facility in accordance with federal law;
5 or

6 (2) Issue a citation pursuant to state licensing laws, and if the
7 facility is a nursing facility, may recommend the imposition of a
8 federal enforcement remedy.

9 A state citation shall be served upon the licensee within three
10 days after completion of the investigation, excluding Saturday,
11 Sunday, and holidays, unless the licensee agrees in writing to an
12 extension of time. Service shall be effected either personally or
13 by registered or certified mail. A copy of the citation shall also be
14 sent to each complainant. Each citation shall be in writing and
15 shall describe with particularity the nature of the violation,
16 including a reference to the statutory provision, standard, rule, or
17 regulation alleged to have been violated, the particular place or
18 area of the facility in which it occurred, as well as the amount of
19 any proposed assessment of a civil penalty. The name of any patient
20 jeopardized by the alleged violation shall not be specified in the
21 citation in order to protect the privacy of the patient. However, at
22 the time the licensee is served with the citation, the licensee shall
23 also be served with a written list of each of the names of the
24 patients alleged to have been jeopardized by the violation, that
25 shall not be subject to disclosure as a public record. The citation
26 shall fix the earliest feasible time for the elimination of the
27 condition constituting the alleged violation, when appropriate.

28 (b) Where no harm to patients, residents, or guests has occurred,
29 a single incident, event, or occurrence shall result in no more than
30 one citation for each statute or regulation violated.

31 (c) No citation shall be issued for a violation that has been
32 reported by the licensee to the state department, or its designee,
33 as an “unusual occurrence,” if all of the following conditions are
34 met:

35 (1) The violation has not caused harm to any patient, resident,
36 or guest, or significantly contributed thereto.

37 (2) The licensee has promptly taken reasonable measures to
38 correct the violation and to prevent a recurrence.

1 (3) The unusual occurrence report was the first source of
2 information reported to the state department, or its designee,
3 regarding the violation.

4 ~~SEC. 3. Section 1424 of the Health and Safety Code is amended~~
5 ~~to read:~~

6 ~~1424. Citations issued pursuant to this chapter shall be~~
7 ~~classified according to the nature of the violation and shall indicate~~
8 ~~the classification on the face thereof.~~

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

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

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

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

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

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

20 ~~(b) Relevant facts considered by the department in determining~~
21 ~~the amount of the civil penalty shall be documented by the~~
22 ~~department on an attachment to the citation and available in the~~
23 ~~public record. This requirement shall not preclude the department~~
24 ~~or a facility from introducing facts not listed on the citation to~~
25 ~~support or challenge the amount of the civil penalty in any~~
26 ~~proceeding set forth in Section 1428.~~

27 ~~(c) Class "AA" violations are violations that meet the criteria~~
28 ~~for a class "A" violation and that the state department determines~~
29 ~~to have been a direct proximate cause of death of a patient or~~
30 ~~resident of a long-term health care facility. Except as provided in~~
31 ~~Section 1424.5, a class "AA" citation is subject to a civil penalty~~
32 ~~in the amount of not less than five thousand dollars (\$5,000) and~~
33 ~~not exceeding twenty-five thousand dollars (\$25,000) for each~~
34 ~~citation. In any action to enforce a citation issued under this~~
35 ~~subdivision, the state department shall prove all of the following:~~

36 ~~(1) The violation was a direct proximate cause of death of a~~
37 ~~patient or resident.~~

38 ~~(2) The death resulted from an occurrence of a nature that the~~
39 ~~regulation was designed to prevent.~~

1 ~~(3) The patient or resident suffering the death was among the~~
2 ~~class of persons for whose protection the regulation was adopted.~~

3 ~~If the state department meets this burden of proof, the licensee~~
4 ~~shall have the burden of proving that the licensee did what might~~
5 ~~reasonably be expected of a long-term health care facility licensee,~~
6 ~~acting under similar circumstances, to comply with the regulation.~~
7 ~~If the licensee sustains this burden, then the citation shall be~~
8 ~~dismissed.~~

9 ~~Except as provided in Section 1424.5, for each class “AA”~~
10 ~~citation within a 12-month period that has become final, the state~~
11 ~~department shall consider the suspension or revocation of the~~
12 ~~facility’s license in accordance with Section 1294. For a third or~~
13 ~~subsequent class “AA” citation in a facility within that 12-month~~
14 ~~period that has been sustained, the state department shall commence~~
15 ~~action to suspend or revoke the facility’s license in accordance~~
16 ~~with Section 1294.~~

17 ~~(d) Class “A” violations are violations which the state~~
18 ~~department determines present either (1) imminent danger that~~
19 ~~death or serious harm to the patients or residents of the long-term~~
20 ~~health care facility would result therefrom, or (2) substantial~~
21 ~~probability that death or serious physical harm to patients or~~
22 ~~residents of the long-term health care facility would result~~
23 ~~therefrom. A physical condition or one or more practices, means,~~
24 ~~methods, or operations in use in a long-term health care facility~~
25 ~~may constitute a class “A” violation. The condition or practice~~
26 ~~constituting a class “A” violation shall be abated or eliminated~~
27 ~~immediately, unless a fixed period of time, as determined by the~~
28 ~~state department, is required for correction. Except as provided in~~
29 ~~Section 1424.5, a class “A” citation is subject to a civil penalty in~~
30 ~~an amount not less than one thousand dollars (\$1,000) and not~~
31 ~~exceeding ten thousand dollars (\$10,000) for each and every~~
32 ~~citation.~~

33 ~~If the state department establishes that a violation occurred, the~~
34 ~~licensee shall have the burden of proving that the licensee did what~~
35 ~~might reasonably be expected of a long-term health care facility~~
36 ~~licensee, acting under similar circumstances, to comply with the~~
37 ~~regulation. If the licensee sustains this burden, then the citation~~
38 ~~shall be dismissed.~~

39 ~~(e) Class “B” violations are violations that the state department~~
40 ~~determines have a direct or immediate relationship to the health,~~

1 safety, or security of long-term health care facility patients or
2 residents, other than class “AA” or “A” violations. Unless
3 otherwise determined by the state department to be a class “A”
4 violation pursuant to this chapter and rules and regulations adopted
5 pursuant thereto, any violation of a patient’s rights as set forth in
6 Sections 72527 and 73523 of Title 22 of the California Code of
7 Regulations, that is determined by the state department to cause
8 or under circumstances likely to cause significant humiliation,
9 indignity, anxiety, or other emotional trauma to a patient is a class
10 “B” violation. A class “B” citation is subject to a civil penalty in
11 an amount not less than one hundred dollars (\$100) and not
12 exceeding one thousand dollars (\$1,000) for each and every
13 citation. A class “B” citation shall specify the time within which
14 the violation is required to be corrected. If the state department
15 establishes that a violation occurred, the licensee shall have the
16 burden of proving that the licensee did what might reasonably be
17 expected of a long-term health care facility licensee, acting under
18 similar circumstances, to comply with the regulation. If the licensee
19 sustains this burden, then the citation shall be dismissed.

20 In the event of any citation under this paragraph, if the state
21 department establishes that a violation occurred, the licensee shall
22 have the burden of proving that the licensee did what might
23 reasonably be expected of a long-term health care facility licensee,
24 acting under similar circumstances, to comply with the regulation.
25 If the licensee sustains this burden, then the citation shall be
26 dismissed.

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

30 (2) “Willful material falsification,” as used in this section, means
31 any entry in the patient health care record pertaining to the
32 administration of medication, or treatments ordered for the patient,
33 or pertaining to services for the prevention or treatment of
34 decubitus ulcers or contractures, or pertaining to tests and
35 measurements of vital signs, or notations of input and output of
36 fluids, that was made with the knowledge that the records falsely
37 reflect the condition of the resident or the care or services provided.

38 (3) “Willful material omission,” as used in this section, means
39 the willful failure to record any untoward event that has affected
40 the health, safety, or security of the specific patient, and that was

1 omitted with the knowledge that the records falsely reflect the
2 condition of the resident or the care or services provided.

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

7 (1) The willful material falsification or willful material omission
8 is subject to a civil penalty of not less than two thousand five
9 hundred dollars (\$2,500) or more than ten thousand dollars
10 (\$10,000) in instances where the health care record is relied upon
11 by a health care professional to the detriment of a patient by
12 affecting the administration of medications or treatments, the
13 issuance of orders, or the development of plans of care. In all other
14 cases, violations of this subdivision are subject to a civil penalty
15 not exceeding two thousand five hundred dollars (\$2,500).

16 (2) Where the penalty assessed is one thousand dollars (\$1,000)
17 or less, the violation shall be issued and enforced, except as
18 provided in this subdivision, in the same manner as a class "B"
19 violation, and shall include the right of appeal as specified in
20 Section 1428. Where the assessed penalty is in excess of one
21 thousand dollars (\$1,000), or for skilled nursing facilities or
22 intermediate care facilities as specified in paragraphs (1) and (2)
23 of subdivision (a) of Section 1418, in excess of two thousand
24 dollars (\$2,000), the violation shall be issued and enforced, except
25 as provided in this subdivision, in the same manner as a class "A"
26 violation, and shall include the right of appeal as specified in
27 Section 1428.

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

31 (3) Nothing in this subdivision shall preclude the state
32 department from issuing a class "A" or class "B" citation for any
33 violation that meets the requirements for that citation, regardless
34 of whether the violation also constitutes a violation of this
35 subdivision. However, no single act, omission, or occurrence may
36 be cited both as a class "A" or class "B" violation and as a violation
37 of this subdivision.

38 (h) Where the licensee has failed to post the notices as required
39 by Section 9718 of the Welfare and Institutions Code in the manner
40 required under Section 1422.6, the state department shall assess

1 the licensee a civil penalty in the amount of one hundred dollars
2 (\$100) for each day the failure to post the notices continues. Where
3 the total penalty assessed is less than two thousand dollars (\$2,000);
4 the violation shall be issued and enforced in the same manner as
5 a class “B” violation, and shall include the right of appeal as
6 specified in Section 1428. Where the assessed penalty is equal to
7 or in excess of two thousand dollars (\$2,000), the violation shall
8 be issued and enforced in the same manner as a class “A” violation
9 and shall include the right of appeal as specified in Section 1428.
10 Any fines collected pursuant to this subdivision shall be used to
11 fund the costs incurred by the California Department of Aging in
12 producing and posting the posters.

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

16 (j) The department shall provide a copy of all citations issued
17 under this section to the affected residents whose treatment was
18 the basis for the issuance of the citation, to the affected residents’
19 designated family member or representative of each of the
20 residents, and to the complainant if the citation was issued as a
21 result of a complaint.

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

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

31 SEC. 4. Section 1424.5 of the Health and Safety Code is
32 amended to read:

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

37 (1) A class “AA” citation is subject to a civil penalty in an
38 amount not less than twenty-five thousand dollars (\$25,000) and
39 not exceeding one hundred thousand dollars (\$100,000) for each
40 and every citation. For a second or subsequent class “AA” citation

1 in a skilled nursing facility or intermediate care facility within a
2 24-month period, the state department shall commence action to
3 suspend or revoke the facility's license in accordance with Section
4 1294.

5 (2) A class "A" citation is subject to a civil penalty in an amount
6 not less than two thousand dollars (\$2,000) and not exceeding
7 twenty thousand dollars (\$20,000) for each and every citation.

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

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

20 *SEC. 3. Section 1424 of the Health and Safety Code, as*
21 *amended by Section 6 of Chapter 4 of the First Extraordinary*
22 *Session of the Statutes of 2011, is amended to read:*

23 1424. Citations issued pursuant to this chapter shall be
24 classified according to the nature of the violation and shall indicate
25 the classification on the face thereof.

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

29 (1) The probability and severity of the risk that the violation
30 presents to the patient's or resident's mental and physical condition.

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

32 (3) The patient's or resident's mental condition and his or her
33 history of mental disability or disorder.

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

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

37 (b) Relevant facts considered by the department in determining
38 the amount of the civil penalty shall be documented by the
39 department on an attachment to the citation and available in the
40 public record. This requirement shall not preclude the department

1 or a facility from introducing facts not listed on the citation to
2 support or challenge the amount of the civil penalty in any
3 proceeding set forth in Section 1428.

4 (c) Class “AA” violations are violations that meet the criteria
5 for a class “A” violation and that the state department determines
6 to have been a direct proximate cause of death of a patient or
7 resident of a long-term health care facility. Except as provided in
8 Section 1424.5, a class “AA” citation is subject to a civil penalty
9 in the amount of not less than five thousand dollars (\$5,000) and
10 not exceeding twenty-five thousand dollars (\$25,000) for each
11 citation. In any action to enforce a citation issued under this
12 subdivision, the state department shall prove all of the following:

13 (1) The violation was a direct proximate cause of death of a
14 patient or resident.

15 (2) The death resulted from an occurrence of a nature that the
16 regulation was designed to prevent.

17 (3) The patient or resident suffering the death was among the
18 class of persons for whose protection the regulation was adopted.

19 If the state department meets this burden of proof, the licensee
20 shall have the burden of proving that the licensee did what might
21 reasonably be expected of a long-term health care facility licensee,
22 acting under similar circumstances, to comply with the regulation.
23 If the licensee sustains this burden, then the citation shall be
24 dismissed.

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

33 (d) Class “A” violations are violations which the state
34 department determines present either (1) imminent danger that
35 death or serious harm to the patients or residents of the long-term
36 health care facility would result therefrom, or (2) substantial
37 probability that death or serious physical harm to patients or
38 residents of the long-term health care facility would result
39 therefrom. A physical condition or one or more practices, means,
40 methods, or operations in use in a long-term health care facility

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

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

15 (e) Except as provided in paragraph (4) of subdivision (a) of
16 Section 1424.5, class “B” violations are violations that the state
17 department determines have a direct or immediate relationship to
18 the health, safety, or security of long-term health care facility
19 patients or residents, other than class “AA” or “A” violations.
20 Unless otherwise determined by the state department to be a class
21 “A” violation pursuant to this chapter and rules and regulations
22 adopted pursuant thereto, any violation of a patient’s rights as set
23 forth in Sections 72527 and 73523 of Title 22 of the California
24 Code of Regulations, that is determined by the state department
25 to cause or under circumstances likely to cause significant
26 humiliation, indignity, anxiety, or other emotional trauma to a
27 patient is a class “B” violation. A class “B” citation is subject to
28 a civil penalty in an amount not less than one hundred dollars
29 (\$100) and not exceeding one thousand dollars (\$1,000) for each
30 and every citation. A class “B” citation shall specify the time within
31 which the violation is required to be corrected. If the state
32 department establishes that a violation occurred, the licensee shall
33 have the burden of proving that the licensee did what might
34 reasonably be expected of a long-term health care facility licensee,
35 acting under similar circumstances, to comply with the regulation.
36 If the licensee sustains this burden, then the citation shall be
37 dismissed.

38 In the event of any citation under this paragraph, if the state
39 department establishes that a violation occurred, the licensee shall
40 have the burden of proving that the licensee did what might

1 reasonably be expected of a long-term health care facility licensee,
2 acting under similar circumstances, to comply with the regulation.
3 If the licensee sustains this burden, then the citation shall be
4 dismissed.

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

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

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

21 (g) Except as provided in subdivision (a) of Section 1424.5, a
22 violation of subdivision (f) may result in a civil penalty not to
23 exceed ten thousand dollars (\$10,000), as specified in paragraphs
24 (1) to (3), inclusive.

25 (1) The willful material falsification or willful material omission
26 is subject to a civil penalty of not less than two thousand five
27 hundred dollars (\$2,500) or more than ten thousand dollars
28 (\$10,000) in instances where the health care record is relied upon
29 by a health care professional to the detriment of a patient by
30 affecting the administration of medications or treatments, the
31 issuance of orders, or the development of plans of care. In all other
32 cases, violations of this subdivision are subject to a civil penalty
33 not exceeding two thousand five hundred dollars (\$2,500).

34 (2) Where the penalty assessed is one thousand dollars (\$1,000)
35 or less, the violation shall be issued and enforced, except as
36 provided in this subdivision, in the same manner as a class “B”
37 violation, and shall include the right of appeal as specified in
38 Section 1428. Where the assessed penalty is in excess of one
39 thousand dollars (\$1,000), or for skilled nursing facilities or
40 intermediate care facilities as specified in paragraphs (1) and (2)

1 of subdivision (a) of Section 1418, in excess of two thousand
2 dollars (\$2,000), the violation shall be issued and enforced, except
3 as provided in this subdivision, in the same manner as a class “A”
4 violation, and shall include the right of appeal as specified in
5 Section 1428.

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

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

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

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

34 (j) The department shall provide a copy of all citations issued
35 under this section to the affected residents whose treatment was
36 the basis for the issuance of the citation, to the affected residents’
37 designated family member or representative of each of the
38 residents, and to the complainant if the citation was issued as a
39 result of a complaint.

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

4 (l) The department shall ensure that district office activities
5 performed under Sections 1419 to 1424, inclusive, are consistent
6 with the requirements of these sections and all applicable laws and
7 regulations. To ensure the integrity of these activities, the
8 department shall establish a statewide process for the collection
9 of postsurvey evaluations from affected facilities.

10 *SEC. 4. Section 1424.5 of the Health and Safety Code, as*
11 *amended by Section 7 of Chapter 4 of the First Extraordinary*
12 *Session of the Statutes of 2011, is amended to read:*

13 1424.5. (a) In lieu of the fines specified in subdivisions (c),
14 (d), (e), and (g) of Section 1424, fines imposed on skilled nursing
15 facilities or intermediate care facilities, as specified in paragraphs
16 (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

17 (1) A class “AA” citation is subject to a civil penalty in an
18 amount not less than twenty-five thousand dollars (\$25,000) and
19 not exceeding one hundred thousand dollars (\$100,000) for each
20 and every citation. For a second or subsequent class “AA” citation
21 in a skilled nursing facility or intermediate care facility within a
22 24-month period ~~that has been sustained following a citation review~~
23 ~~conference, or where the licensee has chosen not to exercise its~~
24 ~~right to a citation review conference~~, the state department shall
25 commence action to suspend or revoke the facility’s license in
26 accordance with Section 1294.

27 (2) A class “A” citation is subject to a civil penalty in an amount
28 not less than two thousand dollars (\$2,000) and not exceeding
29 twenty thousand dollars (\$20,000) for each and every citation.

30 (3) Any “willful material falsification” or “willful material
31 omission,” as those terms are defined in subdivision (f) of Section
32 1424, in the health record of a resident is subject to a civil penalty
33 in an amount not less than two thousand dollars (\$2,000) and not
34 exceeding twenty thousand dollars (\$20,000) for each and every
35 citation.

36 (4) A class “B” citation is subject to a civil penalty in an amount
37 not less than one hundred dollars (\$100) and not exceeding two
38 thousand dollars (\$2,000) for each and every citation. Class “B”
39 violations are violations that the state department determines have
40 a direct or immediate relationship to the health, safety, or security

1 of long-term health care facility patients or residents, other than
2 class “AA” or “A” violations. Unless otherwise determined by the
3 state department to be a class “A” violation pursuant to this chapter
4 and rules and regulations adopted pursuant thereto, any violation
5 of a patient’s rights as set forth in Sections 72527 and 73523 of
6 Title 22 of the California Code of Regulations, that is determined
7 by the state department to cause, or under circumstances to be
8 likely to cause, significant humiliation, indignity, anxiety, or other
9 emotional trauma to a patient is a class “B” violation. A class “B”
10 citation shall specify the time within which the violation is required
11 to be corrected. If the state department establishes that a violation
12 occurred, the licensee shall have the burden of proving that the
13 licensee did what might reasonably be expected of a long-term
14 health care facility licensee, acting under similar circumstances,
15 to comply with the regulation. If the licensee sustains this burden,
16 then the citation shall be dismissed.

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

23 SEC. 5. Section 1428 of the Health and Safety Code is amended
24 to read:

25 1428. (a) If the licensee desires to contest a citation or the
26 proposed assessment of a civil penalty therefor, the licensee shall
27 use the processes described in subdivisions (b) and (c) for classes
28 “AA,” “A,” or “B” citations.

29 (b) If a licensee intends to contest a class “AA” or a class “A”
30 citation, the licensee shall inform the director in writing, within
31 15 business days of the service of the citation of the licensee’s
32 intent to adjudicate the validity of the citation in the superior court
33 in the county in which the long-term health care facility is located.
34 In order to perfect a judicial appeal of a contested citation, a
35 licensee shall file a civil action in the superior court in the county
36 in which the long-term health care facility is located. The action
37 shall be filed no later than 90 calendar days after a licensee notifies
38 the director that he or she intends to contest the citation, and served
39 not later than 90 days after filing. Notwithstanding any other
40 provision of law, a licensee prosecuting a judicial appeal shall file

1 and serve a case management statement pursuant to Rule 212 of
2 the California Rules of Court within six months after the
3 department files its answer in the appeal. Notwithstanding
4 subdivision (d), the court shall dismiss the appeal upon motion of
5 the department if the case management statement is not filed by
6 the licensee within the period specified. The court may affirm,
7 modify, or dismiss the citation, the level of the citation, or the
8 amount of the proposed assessment of the civil penalty.

9 (c) If a licensee desires to contest a class “B” citation, the
10 licensee shall, within 15 working days after service of the citation,
11 notify the director or the director’s designee that he or she wishes
12 to appeal the citation through the procedures set forth in Section
13 100171 or elects to submit the matter to binding arbitration in
14 accordance with subdivision (d). The administrative law judge
15 may affirm, modify, or dismiss the citation or the proposed
16 assessment of a civil penalty. The licensee may choose to have his
17 or her appeal heard by the administrative law judge or submit the
18 matter to binding arbitration by notifying the director in writing
19 within 15 business days of the service of the citation.

20 (d) If a licensee is dissatisfied with the decision of the
21 administrative law judge, the licensee may, in lieu of seeking
22 judicial review of the decision as provided in Section 1094.5 of
23 the Code of Civil Procedure, elect to submit the matter to binding
24 arbitration by filing, within 60 days of its receipt of the decision,
25 a request for arbitration with the American Arbitration Association.
26 The parties shall agree upon an arbitrator designated from the
27 American Arbitration Association in accordance with the
28 association’s established rules and procedures. The arbitration
29 hearing shall be set within 45 days of the election to arbitrate, but
30 in no event less than 28 days from the date of selection of an
31 arbitrator. The arbitration hearing may be continued up to 15
32 additional days if necessary at the arbitrator’s discretion. Except
33 as otherwise specifically provided in this subdivision, the
34 arbitration hearing shall be conducted in accordance with the
35 American Arbitration Association’s established rules and
36 procedures. The arbitrator shall determine whether the licensee
37 violated the regulation or regulations cited by the department, and
38 whether the citation meets the criteria established in Sections 1423
39 and 1424. If the arbitrator determines that the licensee has violated
40 the regulation or regulations cited by the department, and that the

1 class of the citation should be upheld, the proposed assessment of
2 a civil penalty shall be affirmed, subject to the limitations
3 established in Section 1424. The licensee and the department shall
4 each bear its respective portion of the cost of arbitration. A resident,
5 or his or her designated representative, or both, may make an oral
6 or written statement regarding the citation, at any arbitration
7 hearing to which the matter has been submitted.

8 (e) If an appeal is prosecuted under this section, including an
9 appeal taken in accordance with Section 100171, the department
10 shall have the burden of establishing by a preponderance of the
11 evidence that (1) the alleged violation did occur, (2) the alleged
12 violation met the criteria for the class of citation alleged, and (3)
13 the assessed penalty was appropriate. The department shall also
14 have the burden of establishing by a preponderance of the evidence
15 that the assessment of a civil penalty should be upheld. If a licensee
16 appeals a contested citation or the assessment of a civil penalty,
17 no civil penalty shall be due and payable unless and until the appeal
18 is terminated in favor of the department.

19 (f) In assessing the civil penalty for a violation, all relevant facts
20 shall be considered, including, but not limited to, all of the
21 following:

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

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

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

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

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

30 (g) Except as otherwise provided in this subdivision, an
31 assessment of civil penalties for a class "A" or class "B" violation
32 shall be trebled and collected for a second and subsequent violation
33 for which a citation of the same class was issued within any
34 12-month period. Trebling shall occur only if the first citation
35 issued within the 12-month period was issued in the same class, a
36 civil penalty was assessed, and a plan of correction was submitted
37 for the previous same-class violation occurring within the period,
38 without regard to whether the action to enforce the previous citation
39 has become final. However, the increment to the civil penalty
40 required by this subdivision shall not be due and payable unless

1 and until the previous action has terminated in favor of the
2 department.

3 If the class “B” citation is issued for a patient’s rights violation,
4 as defined in subdivision (e) of Section 1424, it shall not be trebled
5 unless the department determines the violation has a direct or
6 immediate relationship to the health, safety, security, or welfare
7 of long-term health care facility residents.

8 (h) The director shall prescribe procedures for the issuance of
9 a notice of violation with respect to violations having only a
10 minimal relationship to safety or health.

11 (i) Actions brought under this chapter shall be set for trial at the
12 earliest possible date and shall take precedence on the court
13 calendar over all other cases except matters to which equal or
14 superior precedence is specifically granted by law. Times for
15 responsive pleading and for hearing the proceeding shall be set by
16 the judge of the court with the object of securing a decision as to
17 subject matters at the earliest possible time.

18 (j) If the citation is dismissed, the department shall take action
19 immediately to ensure that the public records reflect in a prominent
20 manner that the citation was dismissed.

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

31 (l) The amendments made to subdivisions (a) and (c) of this
32 section by Chapter 84 of the Statutes of 1988, to extend the number
33 of days allowed for the provision of notification to the director,
34 do not affect the right, that is also contained in those amendments,
35 to request judicial relief from these time limits.

36 (m) If a licensee exercises its right to a citation review
37 conference prior to January 1, 2012, the citation review conference
38 and all notices, reviews, and appeals thereof shall be conducted
39 pursuant to this section as it read on December 31, 2011.

1 SEC. 6. Section 1428.2 of the Health and Safety Code is
2 amended to read:

3 1428.2. In the case of a class “A” or class “AA” citation issued
4 to a long-term health care facility which is appealed, the citation
5 shall expire and have no further legal effect, if the Attorney General
6 has not filed an action in the court of competent jurisdiction, within
7 one year from the date the facility notifies the State Department
8 of Public Health of its intent to contest the citation in court.

9 SEC. 7. Section 1429 of the Health and Safety Code is amended
10 to read:

11 1429. (a) Each class “AA” and class “A” citation specified in
12 subdivisions (c) and (d) of Section 1424 that is issued, or a copy
13 or copies thereof, shall be prominently posted for 120 days. The
14 citation or copy shall be posted in a place or places in plain view
15 of the patients or residents in the long-term health care facility,
16 persons visiting those patients or residents, and persons who inquire
17 about placement in the facility.

18 (1) The citation shall be posted in at least the following locations
19 in the facility:

20 (A) An area accessible and visible to members of the public.

21 (B) An area used for employee breaks.

22 (C) An area used by residents for communal functions, such as
23 dining, resident council meetings, or activities.

24 (2) The citation, along with a cover sheet, shall be posted on a
25 white or light-colored sheet of paper, at least 8 ½ by 11 inches in
26 size, that includes all of the following information:

27 (A) The full name of the facility, in a clear and easily readable
28 font in at least 28-point type.

29 (B) The full address of the facility, in a clear and easily readable
30 font in at least 20-point type.

31 (C) Whether the citation is class “AA” or class “A.”

32 (3) The facility may post the plan of correction.

33 (4) The facility may post a statement disputing the citation or
34 a statement showing the appeal status, or both.

35 (5) The facility may remove and discontinue the posting required
36 by this section if the citation is withdrawn or dismissed by the
37 department.

38 (b) Each class “B” citation specified in subdivision (e) of Section
39 1424 that is issued pursuant to this section and that has become
40 final, or a copy or copies thereof, shall be retained by the licensee

1 at the facility cited until the violation is corrected to the satisfaction
2 of the department. Each citation shall be made promptly available
3 by the licensee for inspection or examination by any member of
4 the public who so requests. In addition, every licensee shall post
5 in a place or places in plain view of the patient or resident in the
6 long-term health care facility, persons visiting those patients or
7 residents, and persons who inquire about placement in the facility,
8 a prominent notice informing those persons that copies of all final
9 uncorrected citations issued by the department to the facility will
10 be made promptly available by the licensee for inspection by any
11 person who so requests.

12 (c) A violation of this section shall constitute a class “B”
13 violation, and shall be subject to a civil penalty in the amount of
14 one thousand dollars (\$1,000), as provided in subdivision (e) of
15 Section 1424. Notwithstanding Section 1290, a violation of this
16 section shall not constitute a crime. Fines imposed pursuant to this
17 section shall be deposited into the State Health Facilities Citation
18 Penalties Account, created pursuant to Section 1417.2.

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