

ASSEMBLY BILL

No. 1816

Introduced by Assembly Member Yamada

February 18, 2014

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1816, as introduced, Yamada. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill would require the department to complete its investigation of the complaint within 40 working days of its receipt, except that this period may be extended up to an additional 30 days if the department has diligently attempted, but has not been able to obtain, necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond 40 working days, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2015, that the department's written determination provide specific findings concerning each alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and

inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements.

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department’s determination in which to request an informal conference.

This bill would, instead, provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

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 1420 of the Health and Safety Code is
2 amended to read:

3 1420. (a) (1) Upon receipt of a written or oral complaint, the
4 state department shall assign an inspector to make a preliminary
5 review of the complaint and shall notify the complainant within
6 two working days of the receipt of the complaint of the name of
7 the inspector. Unless the ~~state~~ department determines that the
8 complaint is willfully intended to harass a licensee or is without
9 any reasonable basis, it shall make an onsite inspection or
10 investigation within 10 working days of the receipt of the
11 complaint. In any case in which the complaint involves a threat of
12 imminent danger of death or serious bodily harm, the ~~state~~
13 department shall make an onsite inspection or investigation ~~within~~
14 *as soon as practicable, and in no case more than 24* hours of the
15 receipt of the complaint. In any event, the complainant shall be
16 promptly informed of the ~~state~~ department’s proposed course of
17 action and of the opportunity to accompany the inspector on the
18 inspection or investigation of the facility. Upon the request of
19 either the complainant or the ~~state~~ department, the complainant or
20 his or her representative, or both, may be allowed to accompany
21 the inspector to the site of the alleged violations during his or her
22 tour of the facility, unless the inspector determines that the privacy
23 of any patient would be violated thereby.

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

1 (A) Observed conditions.

2 (B) Statements of witnesses.

3 (C) Facility records.

4 (3) *The department shall complete its investigation within 40*
5 *working days from receipt of the complaint. The 40-working-day*
6 *period may be extended up to an additional 30 days if the*
7 *department has diligently attempted, but has not been able to*
8 *obtain, necessary evidence related to the investigation. The*
9 *department shall analyze its compliance with this requirement in*
10 *its annual system and staffing analysis prepared pursuant to*
11 *subparagraph (B) of paragraph (2) of subdivision (d) of Section*
12 *1266.*

13 (4) *If the department extends an investigation beyond 40 working*
14 *days, it shall notify the complainant, in writing, of the basis for*
15 *the extension, and shall include in the notice any outstanding*
16 *evidence and the sources from which the evidence has been sought,*
17 *and the anticipated completion date.*

18 ~~(3)~~

19 (5) *Within 10 working days of the completion of the complaint*
20 *investigation, the state department shall notify the complainant*
21 *and licensee licensee, in writing writing, of the department's*
22 *determination as a result of the inspection or investigation.*

23 (6) *Effective July 1, 2015, the department's written*
24 *determination shall provide specific findings concerning each*
25 *alleged violation, and shall include a summary of the evidence*
26 *upon which the determination is made. The written determination*
27 *shall not disclose the names of individual residents.*

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

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

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

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

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

37 (f) For purposes of this section, "complaint" means any oral or
38 written notice to the ~~state~~ department, other than a report from the
39 ~~facility~~ *facility*, of an alleged violation of applicable requirements

1 of state or federal law or any alleged facts that might constitute
2 ~~such a violation.~~ *violation of these requirements.*
3 (g) *The department shall apply the timeframes for investigation*
4 *or inspection established in this section to a report from the facility*
5 *of an alleged violation of applicable requirements of state or*
6 *federal law or any alleged facts that might constitute a violation*
7 *of those requirements.*

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