

**ASSEMBLY BILL**

**No. 1996**

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**Introduced by Assembly Member Brown**

February 20, 2014

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An act to amend Sections 1420 and 1422 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1996, as introduced, Brown. Long-term health care facilities: quality of care.

Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, the licensure and regulation of health facilities, including, but not limited to, long-term health care facilities, as defined.

Existing law requires inspection of a long-term health care facility at least once every 2 years.

This bill instead would require inspection at least once every year and would delete obsolete references to a health facility inspection pilot program.

Existing law authorizes the appointment of a temporary manager or receiver to operate a long-term health facility if certain conditions exist.

This bill would authorize the inspector to refer the matter for appointment of a temporary manager or receiver under those provisions if he or she finds that conditions at the facility indicate the need for the appointment.

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 24 hours of the receipt of the complaint. In any event, the  
15 complainant shall be promptly informed of the state department's  
16 proposed course of action and of the opportunity to accompany  
17 the inspector on the inspection or investigation of the facility. Upon  
18 the request of either the complainant or the state department, the  
19 complainant or his or her representative, or both, may be allowed  
20 to accompany the inspector to the site of the alleged violations  
21 during his or her tour of the facility, unless the inspector determines  
22 that the privacy of any patient would be violated thereby.

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

- 27 (A) Observed conditions.
- 28 (B) Statements of witnesses.
- 29 (C) Facility records.

30 (3) Within 10 working days of the completion of the complaint  
31 investigation, the state department shall notify the complainant  
32 and licensee in writing of the department's determination as a  
33 result of the inspection or investigation.

34 (4) *In addition, if the inspection demonstrates that conditions*  
35 *exist indicating the need for appointment of a temporary manager*  
36 *or receiver pursuant to Article 8 (commencing with Section 1325)*  
37 *of Chapter 2, the inspector shall immediately refer the matter to*  
38 *the director along with his or her findings and recommendations.*

1 (b) Upon being notified of the state department's determination  
2 as a result of the inspection or investigation, a complainant who  
3 is dissatisfied with the state department's determination, regarding  
4 a matter which would pose a threat to the health, safety, security,  
5 welfare, or rights of a resident, shall be notified by the state  
6 department of the right to an informal conference, as set forth in  
7 this section. The complainant may, within five business days after  
8 receipt of the notice, notify the director in writing of his or her  
9 request for an informal conference. The informal conference shall  
10 be held with the designee of the director for the county in which  
11 the long-term health care facility which is the subject of the  
12 complaint is located. The long-term health care facility may  
13 participate as a party in this informal conference. The director's  
14 designee shall notify the complainant and licensee of his or her  
15 determination within 10 working days after the informal conference  
16 and shall apprise the complainant and licensee in writing of the  
17 appeal rights provided in subdivision (c).

18 (c) If the complainant is dissatisfied with the determination of  
19 the director's designee in the county in which the facility is located,  
20 the complainant may, within 15 days after receipt of this  
21 determination, notify in writing the Deputy Director of the  
22 Licensing and Certification Division of the state department, who  
23 shall assign the request to a representative of the Complainant  
24 Appeals Unit for review of the facts that led to both determinations.  
25 As a part of the Complainant Appeals Unit's independent  
26 investigation, and at the request of the complainant, the  
27 representative shall interview the complainant in the district office  
28 where the complaint was initially referred. Based upon this review,  
29 the Deputy Director of the Licensing and Certification Division  
30 of the state department shall make his or her own determination  
31 and notify the complainant and the facility within 30 days.

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

39 (e) A miniexit conference shall be held with the administrator  
40 or his or her representative upon leaving the facility at the

1 completion of the investigation to inform him or her of the status  
2 of the investigation. The department shall also state the items of  
3 noncompliance and compliance found as a result of a complaint  
4 and those items found to be in compliance, provided the disclosure  
5 maintains the anonymity of the complainant. In any matter in which  
6 there is a reasonable probability that the identity of the complainant  
7 will not remain anonymous, the state department shall also notify  
8 the facility that it is unlawful to discriminate or seek retaliation  
9 against a resident, employee, or complainant.

10 (f) For purposes of this section, “complaint” means any oral or  
11 written notice to the state department, other than a report from the  
12 facility of an alleged violation of applicable requirements of state  
13 or federal law or any alleged facts that might constitute such a  
14 violation.

15 SEC. 2. Section 1422 of the Health and Safety Code is amended  
16 to read:

17 1422. (a) The Legislature finds and declares that it is the public  
18 policy of this state to ensure that long-term health care facilities  
19 provide the highest level of care possible. The Legislature further  
20 finds that inspections are the most effective means of furthering  
21 this policy. It is not the intent of the Legislature by the amendment  
22 of subdivision (b) enacted by Chapter 1595 of the Statutes of 1982  
23 to reduce in any way the resources available to the state department  
24 for inspections, but rather to provide the state department with the  
25 greatest flexibility to concentrate its resources where they can be  
26 most effective. It is the intent of the Legislature to create a survey  
27 process that includes state-based survey components and that  
28 determines compliance with federal and California requirements  
29 for certified long-term health care facilities. It is the further intent  
30 of the Legislature to execute this inspection in the form of a single  
31 survey process, to the extent that this is possible and permitted  
32 under federal law. The inability of the state to conduct a single  
33 survey in no way exempts the state from the requirement under  
34 this section that state-based components be inspected in long-term  
35 health care facilities as required by law.

36 (b) (1) ~~(A)~~ Notwithstanding Section 1279 or any other  
37 provision of law, without providing notice of these inspections,  
38 the department, in addition to any inspections conducted pursuant  
39 to complaints filed pursuant to Section 1419, shall conduct  
40 inspections annually, except with regard to those facilities which

1 have no class “AA,” class “A,” or class “B” violations in the past  
2 12 months. The state department shall also conduct inspections as  
3 may be necessary to ensure the health, safety, and security of  
4 patients in long-term health care facilities. Every facility shall be  
5 inspected at least once every ~~two years~~ *year*. The department shall  
6 vary the cycle in which inspections of long-term health care  
7 facilities are conducted to reduce the predictability of the  
8 inspections.

9 ~~(B)~~

10 (2) Inspections and investigations of long-term health care  
11 facilities that are certified by the Medicare Program or the Medicaid  
12 Program shall determine compliance with federal standards and  
13 California statutes and regulations to the extent that California  
14 statutes and regulations provide greater protection to residents, or  
15 are more precise than federal standards, as determined by the  
16 department. Notwithstanding any other provision of law, the  
17 department may, without taking regulatory action pursuant to  
18 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
19 3 of Title 2 of the Government Code, implement, interpret, or make  
20 specific this paragraph by means of an All Facilities Letter (AFL)  
21 or similar instruction. Prior to issuing an AFL or similar instruction,  
22 the department shall consult with interested parties and shall inform  
23 the appropriate committees of the Legislature. The department  
24 shall also post the AFL or similar instruction on its Web site so  
25 that any person may observe which California laws and regulations  
26 provide greater protection to its residents or are more precise than  
27 federal standards. Nothing in this subdivision is intended to change  
28 existing statutory or regulatory requirements governing the care  
29 provided to long-term health care facility residents.

30 ~~(C)~~

31 (3) In order to ensure maximum effectiveness of inspections  
32 conducted pursuant to this article, the department shall identify all  
33 state law standards for the staffing and operation of long-term  
34 health care facilities. Costs of the additional survey and inspection  
35 activities required by Chapter 895 of the Statutes of 2006 shall be  
36 included as Licensing and Certification Program activities for the  
37 purposes of calculating fees in accordance with Section 1266.

38 ~~(2) The state department shall submit to the federal Department~~  
39 ~~of Health and Human Services on or before July 1, 1985, for review~~  
40 ~~and approval, a request to implement a three-year pilot program~~

1 ~~designed to lessen the predictability of the long-term health care~~  
2 ~~facility inspection process. Two components of the pilot program~~  
3 ~~shall be (A) the elimination of the present practice of entering into~~  
4 ~~a one-year certification agreement, and (B) the conduct of~~  
5 ~~segmented inspections of a sample of facilities with poor inspection~~  
6 ~~records, as defined by the state department. At the conclusion of~~  
7 ~~the pilot project, an analysis of both components shall be conducted~~  
8 ~~by the state department to determine effectiveness in reducing~~  
9 ~~inspection predictability and the respective cost benefits.~~  
10 ~~Implementation of this pilot project is contingent upon federal~~  
11 ~~approval.~~

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

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

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

30 (f) If a change in a nursing home administrator occurs and the  
31 Board of Nursing Home Administrators notifies the state  
32 department that the new administrator is on probation or has had  
33 his or her license suspended within the previous three years, the  
34 state department shall conduct an abbreviated survey of the  
35 long-term health care facility employing that administrator within  
36 90 days of notification.