

ASSEMBLY BILL

No. 348

Introduced by Assembly Member Brown

February 17, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 348, as introduced, Brown. 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, on or before July 1, 2016, would require the department to set a performance benchmark for completing its investigations within a defined number of days after receiving the complaint, not to exceed 60 working days. The bill would require the department, if it extends an investigation beyond the number of days specified in the benchmark, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2016, and upon request of the complainant, that the department provide specific findings concerning an 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. The bill would require the department to analyze its compliance with the benchmark in its annual system and staffing analysis, to make that analysis available to the relevant fiscal and policy committees of the Legislature, and to post it on the department’s Internet Web site.

(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.

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

5 (A) Observed conditions.

6 (B) Statements of witnesses.

7 (C) Facility records.

8 (3) *On or before July 1, 2016, the department shall set a*
9 *performance benchmark for completing its investigation within a*
10 *defined number of days after receiving the complaint. The*
11 *performance benchmark may be less than, but shall not exceed,*
12 *60 working days.*

13 (4) *If the department extends an investigation beyond the number*
14 *of days specified in the performance benchmark, it shall notify the*
15 *complainant, in writing, of the basis for the extension, and shall*
16 *include in the notice the status of the investigation and the*
17 *anticipated completion date. The department shall, thereafter,*
18 *complete the investigation as expeditiously as possible.*

19 ~~(3)~~

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

24 (6) *Effective July 1, 2016, upon request of the complainant, the*
25 *department shall provide specific findings concerning an alleged*
26 *violation, and shall include a summary of the evidence upon which*
27 *the determination is made. The written determination shall not*
28 *disclose the names of individual residents.*

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

1 participate as a party in this informal conference. The director's
2 designee shall notify the complainant and licensee of his or her
3 determination within 10 working days after the informal conference
4 and shall apprise the complainant and licensee in writing of the
5 appeal rights provided in subdivision (c).

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

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

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

38 (f) For purposes of this section, "complaint" means any oral or
39 written notice to the ~~state~~ department, other than a report from the
40 ~~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.

8 (h) It is the intent of the Legislature in enacting the amendments
9 that added this subdivision that the department endeavor to
10 complete investigations of complaints within the benchmark
11 established pursuant to this section.

12 (i) The department shall analyze its compliance with the
13 benchmark developed pursuant to paragraph (3) of subdivision
14 (a) in its annual system and staffing analysis prepared pursuant
15 to paragraph (2) of subdivision (d) of Section 1266. The analysis
16 required pursuant to this subdivision shall be made available to
17 the relevant fiscal and policy committees of the Legislature and
18 shall be posted on the department's Internet Web site. The analysis
19 shall provide data on the department's performance and shall
20 include, at a minimum, a tabulation of all of the following:

21 (1) Open investigations.

22 (2) Completed investigations.

23 (3) Number and percentage of investigations that meet the
24 benchmark.

25 (4) Average length of time to complete an investigation.

26 (j) Nothing in this section shall be interpreted to diminish the
27 department's authority and obligation to investigate and enforce
28 any alleged violation of applicable requirements of state or federal
29 law, or any alleged facts that might constitute a violation of
30 applicable requirements of state or federal law.

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