

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 348

Introduced by Assembly Member Brown
(~~Coauthor:~~ *Coauthors: Assembly Member Members Gipson and Mathis*)

February 17, 2015

An act to amend ~~Section~~ *Sections 1266, 1279.2, and 1420* of the Health and Safety Code, relating to ~~long-term~~ health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 348, as amended, Brown. ~~Long-term health care facilities.~~ *Health facilities: complaints: investigations.*

~~(1) Existing~~

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~~ 45 working days of its receipt, except that this period may be extended up to an additional 30 working days if the department has diligently attempted, but has not been able, to ~~obtain,~~

obtain necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond ~~40~~ 45 working days, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2016, 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. The bill would also require the department to analyze its compliance with the timeframes for investigations on a quarterly basis and post those findings on its Internet Web site.

~~(2) Existing~~

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, as specified.

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

Existing law requires the department, when it receives a complaint or report involving a general acute care hospital, acute psychiatric hospital, or special hospital, that indicates a specified level of danger, to complete an investigation of the complaint or report within 45 days. Existing law also requires the department to submit to the Legislature, and publish on its Internet Web site, a staffing and systems analysis that includes the number and timeliness of complaint investigations, among other things.

This bill would authorize a 30-day extension to the time period to complete the investigation 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 45 days, to notify the complainant, in writing, of the basis for the extension. The bill would also require the staffing and systems analysis prepared by the department to include data regarding the department's compliance with these 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 1266 of the Health and Safety Code is*
2 *amended to read:*

3 1266. (a) The Licensing and Certification Division shall be
4 supported entirely by federal funds and special funds by no earlier
5 than the beginning of the 2009–10 fiscal year unless otherwise
6 specified in statute, or unless funds are specifically appropriated
7 from the General Fund in the annual Budget Act or other enacted
8 legislation. For the 2007–08 fiscal year, General Fund support
9 shall be provided to offset licensing and certification fees in an
10 amount of not less than two million seven hundred eighty-two
11 thousand dollars (\$2,782,000).

12 (b) (1) The Licensing and Certification Program fees for the
13 2006–07 fiscal year shall be as follows:

Type of Facility	Fee	
General Acute Care Hospitals	\$ 134.10	per bed
Acute Psychiatric Hospitals	\$ 134.10	per bed
Special Hospitals	\$ 134.10	per bed
Chemical Dependency Recovery Hospitals	\$ 123.52	per bed
Skilled Nursing Facilities	\$ 202.96	per bed
Intermediate Care Facilities	\$ 202.96	per bed
Intermediate Care Facilities- Developmentally Disabled	\$ 592.29	per bed
Intermediate Care Facilities- Developmentally Disabled-Habilitative	\$1,000.00	per facility
Intermediate Care Facilities- Developmentally Disabled-Nursing	\$1,000.00	per facility
Home Health Agencies	\$2,700.00	per facility
Referral Agencies	\$5,537.71	per facility
Adult Day Health Centers	\$4,650.02	per facility
Congregate Living Health Facilities	\$ 202.96	per bed
Psychology Clinics	\$ 600.00	per facility
Primary Clinics- Community and Free Specialty Clinics- Rehab Clinics	\$ 600.00	per facility
(For profit)	\$2,974.43	per facility
(Nonprofit)	\$ 500.00	per facility
Specialty Clinics- Surgical and Chronic	\$1,500.00	per facility
Dialysis Clinics	\$1,500.00	per facility

1	Pediatric Day Health/Respite Care	\$ 142.43	per bed
2	Alternative Birthing Centers	\$2,437.86	per facility
3	Hospice	\$1,000.00	per provider
4	Correctional Treatment Centers	\$ 590.39	per bed

5

6 (2) (A) In the first year of licensure for intermediate care
7 facility/developmentally disabled-continuous nursing (ICF/DD-CN)
8 facilities, the licensure fee for those facilities shall be equivalent
9 to the licensure fee for intermediate care facility/developmentally
10 disabled-nursing facilities during the same year. Thereafter, the
11 licensure fee for ICF/DD-CN facilities shall be established pursuant
12 to the same procedures described in this section.

13 (B) In the first year of licensure for hospice facilities, the
14 licensure fee shall be equivalent to the licensure fee for congregate
15 living health facilities during the same year. Thereafter, the
16 licensure fee for hospice facilities shall be established pursuant to
17 the same procedures described in this section.

18 (c) Commencing February 1, 2007, and every February 1
19 thereafter, the department shall publish a list of estimated fees
20 pursuant to this section. The calculation of estimated fees and the
21 publication of the report and list of estimated fees shall not be
22 subject to the rulemaking requirements of Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code.

25 (d) Notwithstanding Section 10231.5 of the Government Code,
26 by February 1 of each year, the department shall prepare the
27 following reports and shall make those reports, and the list of
28 estimated fees required to be published pursuant to subdivision
29 (c), available to the public by submitting them to the Legislature
30 and posting them on the department’s Internet Web site:

31 (1) A report of all costs for activities of the Licensing and
32 Certification Program. At a minimum, this report shall include a
33 narrative of all baseline adjustments and their calculations, a
34 description of how each category of facility was calculated,
35 descriptions of assumptions used in any calculations, and shall
36 recommend Licensing and Certification Program fees in accordance
37 with the following:

38 (A) Projected workload and costs shall be grouped for each fee
39 category, including workload costs for facility categories that have

1 been established by statute and for which licensing regulations
2 and procedures are under development.

3 (B) Cost estimates, and the estimated fees, shall be based on
4 the appropriation amounts in the Governor’s proposed budget for
5 the next fiscal year, with and without policy adjustments to the fee
6 methodology.

7 (C) The allocation of program, operational, and administrative
8 overhead, and indirect costs to fee categories shall be based on
9 generally accepted cost allocation methods. Significant items of
10 costs shall be directly charged to fee categories if the expenses can
11 be reasonably identified to the fee category that caused them.
12 Indirect and overhead costs shall be allocated to all fee categories
13 using a generally accepted cost allocation method.

14 (D) The amount of federal funds and General Fund moneys to
15 be received in the budget year shall be estimated and allocated to
16 each fee category based upon an appropriate metric.

17 (E) The fee for each category shall be determined by dividing
18 the aggregate state share of all costs for the Licensing and
19 Certification Program by the appropriate metric for the category
20 of licensure. Amounts actually received for new licensure
21 applications, including change of ownership applications, and late
22 payment penalties, pursuant to Section 1266.5, during each fiscal
23 year shall be calculated and 95 percent shall be applied to the
24 appropriate fee categories in determining Licensing and
25 Certification Program fees for the second fiscal year following
26 receipt of those funds. The remaining 5 percent shall be retained
27 in the fund as a reserve until appropriated.

28 (2) (A) A staffing and systems analysis to ensure efficient and
29 effective utilization of fees collected, proper allocation of
30 departmental resources to licensing and certification activities,
31 survey schedules, complaint investigations, enforcement and appeal
32 activities, data collection and dissemination, surveyor training,
33 and policy development.

34 (B) The analysis under this paragraph shall be made available
35 to interested persons and shall include all of the following:

36 (i) The number of surveyors and administrative support
37 personnel devoted to the licensing and certification of health care
38 facilities.

39 (ii) The percentage of time devoted to licensing and certification
40 activities for the various types of health facilities.

- 1 (iii) The number of facilities receiving full surveys and the
2 frequency and number of followup visits.
- 3 (iv) The number and timeliness of complaint investigations,
4 *including data on the department's compliance with the*
5 *requirements of Section 1279.2.*
- 6 (v) Data on deficiencies and citations issued, and numbers of
7 citation review conferences and arbitration hearings.
- 8 (vi) Other applicable activities of the licensing and certification
9 division.
- 10 (3) The annual program fee report described in subdivision (d)
11 of Section 1416.36.
- 12 (e) The reports required pursuant to subdivision (d) shall be
13 submitted in compliance with Section 9795 of the Government
14 Code.
- 15 (f) (1) The department shall adjust the list of estimated fees
16 published pursuant to subdivision (c) if the annual Budget Act or
17 other enacted legislation includes an appropriation that differs
18 from those proposed in the Governor's proposed budget for that
19 fiscal year.
- 20 (2) The department shall publish a final fee list, with an
21 explanation of any adjustment, by the issuance of an all facilities
22 letter, by posting the list on the department's Internet Web site,
23 and by including the final fee list as part of the licensing application
24 package, within 14 days of the enactment of the annual Budget
25 Act. The adjustment of fees and the publication of the final fee list
26 shall not be subject to the rulemaking requirements of Chapter 3.5
27 (commencing with Section 11340) of Part 1 of Division 3 of Title
28 2 of the Government Code.
- 29 (g) (1) Fees shall not be assessed or collected pursuant to this
30 section from any state department, authority, bureau, commission,
31 or officer, unless federal financial participation would become
32 available by doing so and an appropriation is included in the annual
33 Budget Act for that state department, authority, bureau,
34 commission, or officer for this purpose. Fees shall not be assessed
35 or collected pursuant to this section from any clinic that is certified
36 only by the federal government and is exempt from licensure under
37 Section 1206, unless federal financial participation would become
38 available by doing so.

1 (2) For the 2006–07 state fiscal year, a fee shall not be assessed
2 or collected pursuant to this section from any general acute care
3 hospital owned by a health care district with 100 beds or less.

4 (h) The Licensing and Certification Program may change annual
5 license expiration renewal dates to provide for efficiencies in
6 operational processes or to provide for sufficient cashflow to pay
7 for expenditures. If an annual license expiration date is changed,
8 the renewal fee shall be prorated accordingly. Facilities shall be
9 provided with a 60-day notice of any change in their annual license
10 renewal date.

11 *SEC. 2. Section 1279.2 of the Health and Safety Code is*
12 *amended to read:*

13 1279.2. (a) (1) In any case in which the department receives
14 a report from a facility pursuant to Section 1279.1, or a written or
15 oral complaint involving a health facility licensed pursuant to
16 subdivision (a), (b), or (f) of Section 1250, that indicates an
17 ongoing threat of imminent danger of death or serious bodily harm,
18 the department shall make an onsite inspection or investigation
19 within 48 hours or two business days, whichever is greater, of the
20 receipt of the report or complaint and shall complete that
21 investigation within 45 days.

22 (2) Until the department has determined by onsite inspection
23 that the adverse event has been resolved, the department shall, not
24 less than once a year, conduct an unannounced inspection of any
25 health facility that has reported an adverse event pursuant to
26 Section 1279.1.

27 (b) In any case in which the department is able to determine
28 from the information available to it that there is no threat of
29 imminent danger of death or serious bodily harm to that patient or
30 other patients, the department shall complete an investigation of
31 the report within 45 days.

32 (c) *The 45-day period may be extended up to an additional 30*
33 *days if the department has diligently attempted, but has not been*
34 *able, to obtain necessary evidence related to the investigation. If*
35 *the department extends an investigation beyond 45 days, it shall*
36 *notify the complainant, in writing, of the basis for the extension,*
37 *and shall include in the notice any outstanding evidence and the*
38 *sources from which the evidence has been sought, and the*
39 *anticipated completion date.*

40 (e)

1 (d) The department shall notify the complainant and licensee
2 in writing of the department’s determination as a result of an
3 inspection or report.

4 ~~(d)~~

5 (e) For purposes of this section, “complaint” means any oral or
6 written notice to the department, other than a report from the health
7 facility, of an alleged violation of applicable requirements of state
8 or federal law or an allegation of facts that might constitute a
9 violation of applicable requirements of state or federal law.

10 ~~(e)~~

11 (f) The costs of administering and implementing this section
12 shall be paid from funds derived from existing licensing fees paid
13 by general acute care hospitals, acute psychiatric hospitals, and
14 special hospitals.

15 ~~(f)~~

16 (g) In enforcing this section and Sections 1279 and 1279.1, the
17 department shall take into account the special circumstances of
18 small and rural hospitals, as defined in Section 124840, in order
19 to protect the quality of patient care in those hospitals.

20 ~~(g)~~

21 (h) In preparing the staffing and systems analysis required
22 pursuant to Section 1266, the department shall also report regarding
23 the number and timeliness of investigations of adverse events
24 initiated in response to reports of adverse events.

25 ~~SECTION 1.~~

26 *SEC. 3.* Section 1420 of the Health and Safety Code is amended
27 to read:

28 1420. (a) (1) Upon receipt of a written or oral complaint, the
29 department shall assign an inspector to make a preliminary review
30 of the complaint and shall notify the complainant within two
31 working days of the receipt of the complaint of the name of the
32 inspector. Unless the department determines that the complaint is
33 willfully intended to harass a licensee or is without any reasonable
34 basis, it shall make an onsite inspection or investigation within 10
35 working days of the receipt of the complaint. In any case in which
36 the complaint involves a threat of imminent danger of death or
37 serious bodily harm, the department shall make an onsite inspection
38 or investigation as soon as practicable, and in no case more than
39 24 hours of the receipt of the complaint. In any event, the
40 complainant shall be promptly informed of the department’s

1 proposed course of action and of the opportunity to accompany
2 the inspector on the inspection or investigation of the facility. Upon
3 the request of either the complainant or the department, the
4 complainant or his or her representative, or both, may be allowed
5 to accompany the inspector to the site of the alleged violations
6 during his or her tour of the facility, unless the inspector determines
7 that the privacy of any patient would be violated thereby.

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

12 (A) Observed conditions.

13 (B) Statements of witnesses.

14 (C) Facility records.

15 (3) The department shall complete its investigation within ~~40~~
16 ~~45~~ working days from receipt of the complaint. The
17 ~~40-working-day~~ ~~45-working-day~~ period may be extended up to an
18 additional 30 working days if the department has diligently
19 attempted, but has not been able, to ~~obtain~~, *obtain* necessary
20 evidence related to the investigation.

21 (4) If the department extends an investigation beyond ~~40~~ ~~45~~
22 working days, it shall notify the complainant, in writing, of the
23 basis for the extension, and shall include in the notice any
24 outstanding evidence and the sources from which the evidence has
25 been sought, and the anticipated completion date.

26 (5) Within 10 working days of the completion of the complaint
27 investigation, the department shall notify the complainant and
28 licensee, in writing, of the department's determination as a result
29 of the inspection or investigation.

30 (6) Effective July 1, 2016, the department's written
31 determination shall provide specific findings concerning each
32 alleged violation, and shall include a summary of the evidence
33 upon which the determination is made. The written determination
34 shall not disclose the names of individual residents.

35 (b) Upon being notified of the department's determination as a
36 result of the inspection or investigation, a complainant who is
37 dissatisfied with the department's determination, regarding a matter
38 which would pose a threat to the health, safety, security, welfare,
39 or rights of a resident, shall be notified by the department of the
40 right to an informal conference, as set forth in this section. The

1 complainant may, within 15 days after receipt of the notice, notify
2 the director in writing of his or her request for an informal
3 conference. The informal conference shall be held with the
4 designee of the director for the county in which the long-term
5 health care facility that is the subject of the complaint is located.
6 The long-term health care facility may participate as a party in this
7 informal conference. The director's designee shall notify the
8 complainant and licensee of his or her determination within 10
9 working days after the informal conference and shall apprise the
10 complainant and licensee in writing of the appeal rights provided
11 in subdivision (c).

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

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

33 (e) A miniexit conference shall be held with the administrator
34 or his or her representative upon leaving the facility at the
35 completion of the investigation to inform him or her of the status
36 of the investigation. The department shall also state the items of
37 noncompliance and compliance found as a result of a complaint
38 and those items found to be in compliance, provided the disclosure
39 maintains the anonymity of the complainant. In any matter in which
40 there is a reasonable probability that the identity of the complainant

1 will not remain anonymous, the department shall also notify the
2 facility that it is unlawful to discriminate or seek retaliation against
3 a resident, employee, or complainant.

4 (f) For purposes of this section, “complaint” means any oral or
5 written notice to the department, other than a report from the
6 facility, of an alleged violation of applicable requirements of state
7 or federal law or any alleged facts that might constitute a violation
8 of these requirements.

9 (g) The department shall apply the timeframes for investigation
10 or inspection established in this section to a report from the facility
11 of an alleged violation of applicable requirements of state or federal
12 law or any alleged facts that might constitute a violation of those
13 requirements.

14 (h) The department shall analyze its compliance with the
15 timeframes for investigations established in this section on a
16 quarterly basis, and shall, on a quarterly basis, post findings from
17 the analysis on its Internet Web site. The analysis shall provide
18 data on the department’s performance, and shall include, at a
19 minimum, all of the following data elements:

- 20 (1) The number of open investigations.
- 21 (2) The number of completed investigations.
- 22 (3) The number and percentage of investigations completed
23 within the ~~40-working-day~~ *45-working-day* timeframe.
- 24 (4) The number and percentage of investigations that required
25 a 30-working-day extension.
- 26 (5) The number and percentage of investigations that required
27 a 30-working-day extension and were completed within the
28 extended time period.
- 29 (6) The average length of time to complete an investigation.
- 30 (7) The average length of time to complete an investigation that
31 was not completed by the end of the 30-working-day extended
32 time period.

33 (i) Nothing in this section shall be interpreted to diminish the
34 department’s authority and obligation to investigate any alleged
35 violation of applicable requirements of state or federal law, or any
36 alleged facts that might constitute a violation of applicable
37 requirements of state or federal law, and to enforce applicable
38 requirements of law.

O