

AMENDED IN ASSEMBLY MAY 15, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1133

**Introduced by Assembly Member Gallegos
(Coauthor: Assembly Member Keeley)**

February 28, 1997

An act to amend Sections 1424, 1428, and 1428.1 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1133, as amended, Gallegos. Long-term health care facilities.

(1) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, establishes an inspection and citations system for the imposition of civil sanctions against long-term health care facilities that are in violation of laws and regulations relating to patient care.

Existing law classifies violations and prescribes civil penalties based upon risk to the health, safety, or security of patients at a long-term health care facility. Existing law specifies civil penalties of at least \$5,000 not to exceed \$25,000 for class "AA" violations, at least \$1,000 not to exceed \$10,000 for class "A" violations, and at least \$100 not to exceed \$1,000 for class "B" violations.

This bill would increase the civil penalties for the above violations to at least ~~\$10,000~~ \$7,500 not to exceed ~~\$100,000~~

\$37,500, at least ~~\$2,000~~ \$1,500 not to exceed ~~\$20,000~~ \$15,000, and at least ~~\$200~~ \$150 not to exceed ~~\$2,000~~ \$1,500, respectively.

~~(2) Existing law requires the department to make certain proofs that establish a violation has occurred in any action to enforce a citation issued under these provisions. Existing law provides that if the department meets its burden of proof, the licensee has the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, the citation is dismissed.~~

~~This bill would delete these provisions:~~

~~(3) Existing law sets forth procedures under which the State Director of Health Services is authorized to waive the penalty for a class “B” violation if the violation is corrected within the time specified in the citation.~~

~~This bill would eliminate this authority of the director to waive the penalty for a class “B” violation.~~

~~(4)~~

~~(3) Existing law provides for civil penalties in an amount not less than \$2,500 and not to exceed \$10,000 for a willful material falsification, as defined, or willful material omission, as defined, in the health record of a patient of a long-term health care facility. Existing law provides that in no case shall the civil penalty be trebled.~~

~~This bill would delete the latter restriction.~~

~~(5) Existing law provides procedures under which a licensee may contest a citation or the proposed assessment of a civil penalty. These procedures include the right of a licensee to request a citation review conference. Existing law authorizes the director or the director’s designee to affirm, modify, or dismiss a citation or the proposed assessment of a civil penalty as a result of the conference.~~

~~This bill would instead authorize the director or director’s designee to affirm, increase, decrease, or dismiss the citation or proposed assessment of a civil penalty for purposes of these provisions:~~

~~(6)~~

~~(4) Existing law provides that where the department issues a citation as a result of a complaint or regular inspection visit,~~



and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, certain persons may attend the citation review conference, including a personal attorney, if the long-term health care facility has an attorney present.

This bill would delete the requirement that the long-term health care facility have an attorney present for a personal attorney to attend the citation review conference.

~~(7)~~

(5) Existing law requires the department to notify the complainant, affected resident, or their designated representatives of the citation review conference and their right to participate.

This bill would require the department to notify the complainant, affected resident, and their designated representatives of this right.

~~(8)~~

(6) Existing law authorizes a licensee, in lieu of contesting a citation, to transmit to the department the minimum amount assessed for each violation within 15 business days after the issuance of the citation. Existing law provides that if the licensee requests a citation review conference that results in the citation being sustained for the same class of violation for which the citation was issued but the penalty assessed is reduced to at least 30% less than the amount originally assessed, the licensee is authorized to pay the minimum amount specified by law, or 50% of the amount determined by the citation review conference, whichever is greater, for each violation within 15 business days after notice of the citation review conference determination.

This bill would revise these provisions to authorize the licensee, in lieu of contesting a citation, to transmit to the department the amount assessed for each violation within 15 business days after the issuance of the citation. The bill would delete the provision that permits the licensee to pay the minimum amount specified by law, or 50% of the amount determined by the citation review conference, whichever is greater.

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 1424 of the Health and Safety
2 Code is amended to read:

3 1424. Citations issued pursuant to this chapter shall be
4 classified according to the nature of the violation and shall
5 indicate the classification on the face thereof.

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

9 (1) The probability and severity of the risk that the
10 violation presents to the patient’s or resident’s mental and
11 physical condition.

12 (2) The patient’s or resident’s medical condition.

13 (3) The patient’s or resident’s mental condition and
14 his or her history of mental disability or disorder.

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

17 (5) The licensee’s history of compliance with
18 regulations.

19 (b) Class “AA” violations are violations that meet the
20 criteria for a class “A” violation and that the state
21 department determines to have been a direct proximate
22 cause of death of a patient or resident of a long-term
23 health care facility. A class “AA” citation is subject to a
24 civil penalty in the amount of not less than ~~ten thousand~~
25 ~~dollars~~ ~~(\$10,000)~~ *seven thousand five hundred dollars*
26 *(\$7,500)* and not exceeding ~~one hundred thousand dollars~~
27 ~~(\$100,000)~~ *thirty-seven thousand five hundred dollars*
28 *(\$37,500)* for each citation. In any action to enforce a
29 citation issued under this subdivision, the state
30 department shall prove all of the following:

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

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

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



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

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

17 (c) Class “A” violations are violations which the state
18 department determines present either (1) imminent
19 danger that death or serious harm to the patients or
20 residents of the long-term health care facility would
21 result therefrom, or (2) substantial probability that death
22 or serious physical harm to patients or residents of the
23 long-term health care facility would result therefrom. A
24 physical condition or one or more practices, means,
25 methods, or operations in use in a long-term health care
26 facility may constitute a class “A” violation. The condition
27 or practice constituting a class “A” violation shall be
28 abated or eliminated immediately, unless a fixed period
29 of time, as determined by the state department, is
30 required for correction. A class “A” citation is subject to
31 a civil penalty in an amount not less than ~~two thousand~~
32 ~~dollars~~ ~~(\$2,000)~~ *one thousand five hundred dollars*
33 *(\$1,500)* and not exceeding ~~twenty thousand dollars~~
34 ~~(\$20,000)~~ *fifteen thousand dollars (\$15,000)* for each and
35 every citation.

36 *If the state department establishes that a violation*
37 *occurred, the licensee shall have the burden of proving*
38 *that the licensee did what might reasonably be expected*
39 *of a long-term health care facility licensee, acting under*
40 *similar circumstances, to comply with the regulation. If*



1 *the licensee sustains this burden, then the citation shall be*
2 *dismissed.*

3 (d) Class “B” violations are violations that the state
4 department determines have a direct or immediate
5 relationship to the health, safety, or security of long-term
6 health care facility patients or residents, other than class
7 “AA” or “A” violations. Unless otherwise determined by
8 the state department to be a class “A” violation pursuant
9 to this chapter and rules and regulations adopted
10 pursuant thereto, any violation of a patient’s rights as set
11 forth in Sections 72527 and 73523 of Title 22 of the
12 California Administrative Code, that is determined by
13 the state department to cause or under circumstances
14 likely to cause significant humiliation, indignity, anxiety,
15 or other emotional trauma to a patient is a class “B”
16 violation. A class “B” citation is subject to a civil penalty
17 in an amount not less than ~~two hundred dollars (\$200)~~ *one*
18 *hundred fifty dollars (\$150)* and not exceeding ~~two~~
19 ~~thousand dollars (\$2,000)~~ *one thousand five hundred*
20 *dollars (\$1,500)* for each and every citation. A class “B”
21 citation shall specify the time within which the violation
22 is required to be corrected. *If the state department*
23 *establishes that a violation occurred, the licensee shall*
24 *have the burden of proving that the licensee did what*
25 *might reasonably be expected of a long-term health care*
26 *facility licensee, acting under similar circumstances, to*
27 *comply with the regulation. If the licensee sustains this*
28 *burden, then the citation shall be dismissed.*

29 *At the citation review conference, the director’s*
30 *designee may, utilizing the criteria set forth in*
31 *subdivision (a), waive or reduce the penalty as specified*
32 *in subdivision (a) of Section 1428, taking into*
33 *consideration the seriousness of the previous and present*
34 *violations, the similarity between the two violations, the*
35 *extent to which there is a direct relationship to the health*
36 *and safety or security of patients, and the good faith*
37 *exercised by the licensee in correcting the problem. The*
38 *decision to waive or not to waive these penalties shall not*
39 *be reviewable. In the event of any citation under this*
40 *paragraph, if the state department establishes that a*



1 violation occurred, the licensee shall have the burden of
2 proving that the licensee did what might reasonably be
3 expected of a long-term health care facility licensee,
4 acting under similar circumstances, to comply with the
5 regulation. If the licensee sustains this burden, then the
6 citation shall be dismissed.

7 ~~At the citation review conference, the director's~~
8 ~~designee may, utilizing the criteria set forth in~~
9 ~~subdivision (a), affirm, increase, decrease, or dismiss the~~
10 ~~penalty as specified in subdivision (a) of Section 1428,~~
11 ~~taking into consideration the seriousness of the previous~~
12 ~~and present violations, the extent to which there is a~~
13 ~~direct relationship to the health and safety or security of~~
14 ~~patients, and the good faith exercised by the licensee in~~
15 ~~correcting the problem.~~

16 (e) (1) Any willful material falsification or willful
17 material omission in the health record of a patient of a
18 long-term health care facility is a violation.

19 (2) "Willful material falsification," as used in this
20 section, means any entry in the patient health care record
21 pertaining to the administration of medication, or
22 treatments ordered for the patient, or pertaining to
23 services for the prevention or treatment of decubitus
24 ulcers or contractures, or pertaining to tests and
25 measurements of vital signs, or notations of input and
26 output of fluids, that was made with the knowledge that
27 the records falsely reflect the condition of the resident or
28 the care or services provided.

29 (3) "Willful material omission," as used in this section,
30 means the willful failure to record any untoward event
31 that has affected the health, safety, or security of the
32 specific patient, and that was omitted with the knowledge
33 that the records falsely reflect the condition of the
34 resident or the care or services provided.

35 (f) A violation of subdivision (e) may result in a civil
36 penalty not to exceed ten thousand dollars (\$10,000), as
37 specified in paragraphs (1) to (3), inclusive.

38 (1) The willful material falsification or willful material
39 omission is subject to a civil penalty of not less than two
40 thousand five hundred dollars (\$2,500) or more than ten



1 thousand dollars (\$10,000) in instances where the health
2 care record is relied upon by a health care professional to
3 the detriment of a patient by affecting the administration
4 of medications or treatments, the issuance of orders, or
5 the development of plans of care. In all other cases,
6 violations of this subdivision are subject to a civil penalty
7 not exceeding two thousand five hundred dollars
8 (\$2,500).

9 (2) Where the penalty assessed is one thousand dollars
10 (\$1,000) or less, the violation shall be issued and enforced,
11 except as provided in this subdivision, in the same
12 manner as a class “B” violation, and shall include the right
13 of appeal as specified in Section 1428. Where the assessed
14 penalty is in excess of one thousand dollars (\$1,000), the
15 violation shall be issued and enforced, except as provided
16 in this subdivision, in the same manner as a class “A”
17 violation, and shall include the right of appeal as specified
18 in Section 1428.

19 Nothing in this section shall be construed as a change
20 in previous law enacted by Chapter 11 of the Statutes of
21 1985 relative to this paragraph, but merely as a
22 clarification of existing law.

23 (3) Nothing in this subdivision shall preclude the state
24 department from issuing a class “A” or class “B” citation
25 for any violation that meets the requirements for that
26 citation, regardless of whether the violation also
27 constitutes a violation of this subdivision. However, no
28 single act, omission, or occurrence may be cited both as
29 a class “A” or class “B” violation and as a violation of this
30 subdivision.

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

35 (h) *Nothing in this section is intended to change*
36 *existing statutory or regulatory requirements governing*
37 *the ability of a licensee to contest a citation pursuant to*
38 *Section 1428.*

39 SEC. 2. Section 1428 of the Health and Safety Code is
40 amended to read:



1 1428. (a) If the licensee desires to contest a citation
2 or the proposed assessment of a civil penalty therefor, the
3 licensee shall use the processes described in subdivisions
4 (b) and (c) for classes “AA,” “A,” or “B” citations.

5 As a result of a citation review conference, a citation or
6 the proposed assessment of a civil penalty may be
7 affirmed, ~~increased, decreased~~ *modified*, or dismissed by
8 the director or the director’s designee. If the director’s
9 designee affirms, ~~increases, decreases~~ *modifies*, or
10 dismisses the citation or proposed assessment of a civil
11 penalty, he or she shall state with particularity in writing
12 his or her reasons for that action, and shall immediately
13 transmit a copy thereof to each party to the original
14 complaint. If the licensee desires to contest a decision
15 made after the citation review conference, the licensee
16 shall inform the director in writing within 15 business
17 days after he or she receives the decision by the director’s
18 designee.

19 (b) If a licensee notifies the director that he or she
20 intends to contest a class “AA” or a class “A” citation, the
21 licensee may first, within 15 business days after service of
22 the citation, notify the director in writing of his or her
23 request for a citation review conference. The licensee
24 shall inform the director in writing, within 15 business
25 days of the service of the citation or the receipt of the
26 decision of the director’s designee after the citation
27 review conference, of the licensee’s intent to adjudicate
28 the validity of the citation in the municipal or superior
29 court in the county in which the long-term health care
30 facility is located. In order to perfect a judicial appeal of
31 a contested citation, a licensee shall file a civil action in
32 the municipal or superior court in the county in which the
33 long-term health care facility is located. The action shall
34 be filed no later than 90 calendar days after a licensee
35 notifies the director he or she intends to contest the
36 citation, or no later than 90 days after the receipt of the
37 decision by the director’s designee after the citation
38 review conference, and served not later than 90 days after
39 filing. Notwithstanding any other provision of law, for
40 those citations issued after January 1, 1993, a licensee



1 prosecuting a judicial appeal shall file and serve an
2 at-issue memorandum pursuant to Rule 209 of the
3 California Rules of Court by July 1, 1993, or within six
4 months after the state department files its answer in the
5 appeal, whichever is later. Notwithstanding subdivision
6 (d), the court shall dismiss the appeal upon motion of the
7 state department if the at-issue memorandum is not filed
8 by the facility within the period specified.

9 (c) If a licensee desires to contest a class “B” citation,
10 the licensee may request, within 15 business days after
11 service of the citation, a citation review conference, by
12 writing the director or the director’s designee of the
13 licensee’s intent to appeal the citation through the
14 citation review conference. If the licensee wishes to
15 appeal the citation which has been upheld in a citation
16 review conference, the licensee shall, within 15 working
17 days from the date the citation review conference
18 decision was rendered, notify the director or the
19 director’s designee that he or she wishes to appeal the
20 decision through the procedures set forth in subdivision
21 (c) of Section 14123 of the Welfare and Institutions Code.
22 The administrative law judge may affirm, ~~increase,~~
23 ~~decrease~~ *modify*, or dismiss the citation or the proposed
24 assessment of a civil penalty. The licensee may choose to
25 have his or her appeal heard by the administrative law
26 judge without having first appealed the decision to a
27 citation review conference by notifying the director in
28 writing within 15 business days of the service of the
29 citation.

30 (d) If a licensee is dissatisfied with the decision of the
31 administrative law judge, the licensee may, in lieu of
32 seeking judicial review of the decision as provided in
33 Section 1094.5 of the Code of Civil Procedure, elect to
34 submit the matter to binding arbitration by filing, within
35 60 days of its receipt of the decision, a request for
36 arbitration with the American Arbitration Association.
37 The parties shall agree upon an arbitrator designated
38 from the American Arbitration Association in accordance
39 with the association’s established rules and procedures.
40 The arbitration hearing shall be set within 45 days of the



1 election to arbitrate, but in no event less than 28 days
2 from the date of selection of an arbitrator. The arbitration
3 hearing may be continued up to 15 additional days if
4 necessary at the arbitrator's discretion. Except as
5 otherwise specifically provided in this subdivision, the
6 arbitration hearing shall be conducted in accordance
7 with the American Arbitration Association's established
8 rules and procedures.

9 (e) If an appeal is prosecuted under this section,
10 including an appeal taken in accordance with subdivision
11 (c) of Section 14123 of the Welfare and Institutions Code,
12 the state department shall have the burden of
13 establishing by a preponderance of the evidence that (1)
14 the alleged violation did occur, (2) the alleged violation
15 met the criteria for the class of citation alleged, and (3)
16 the assessed penalty was appropriate. The state
17 department shall also have the burden of establishing by
18 a preponderance of the evidence that the assessment of
19 a civil penalty should be upheld. If a licensee fails to notify
20 the director in writing that he or she intends to contest
21 the citation, or the proposed assessment of a civil penalty
22 therefor, or the decision made by the director's designee,
23 after a citation review conference, within the time
24 specified in this section, the decision by the director's
25 designee after a citation review conference shall be
26 deemed a final order of the state department and shall not
27 be subject to further administrative review, except that
28 the licensee may seek judicial relief from the time limits
29 specified in this section. If a licensee appeals a contested
30 citation or the assessment of a civil penalty, no civil
31 penalty shall be due and payable unless and until the
32 appeal is terminated in favor of the state department.

33 (f) The director or the director's designee shall
34 establish an independent unit of trained citation review
35 conference hearing officers within the state department
36 to conduct citation review conferences. Citation review
37 conference hearing officers shall be directly responsible
38 to the deputy director for licensing and certification, and
39 shall not be concurrently employed as supervisors,
40 district administrators, or regional administrators with



1 the licensing and certification division. Specific training
2 shall be provided to members of this unit on conducting
3 an informal conference, with emphasis on the regulatory
4 and legal aspects of long-term health care.

5 Where the state department issues a citation as a result
6 of a complaint or regular inspection visit, and a resident
7 or residents are specifically identified in a citation by
8 name as being specifically affected by the violation, then
9 the following persons may attend the citation review
10 conference:

11 (1) The complainant and his or her designated
12 representative.

13 (2) A personal health care provider, designated by the
14 resident.

15 (3) A personal attorney.

16 (4) Any person representing the Office of the State
17 Long-Term Care Ombudsman, as defined in subdivision
18 (c) of Section 9701 of the Welfare and Institutions Code.

19 Where the state department determines that residents
20 in the facility were threatened by the cited violation but
21 does not name specific residents, any person representing
22 the Office of the State Long-Term Care Ombudsman, as
23 defined in subdivision (c) of Section 9701 of the Welfare
24 and Institutions Code, and a representative of the
25 residents or family council at the facility may participate
26 to represent all residents. In this case, these
27 representatives shall be the sole participants for the
28 residents in the conference. The residents or family
29 council shall designate which representative will
30 participate.

31 The complainant, affected resident, and their
32 designated representatives shall be notified by the state
33 department of the conference and their right to
34 participate. The director's designee shall notify the
35 complainant or his or her designated representative and
36 the affected resident and his or her designated
37 representative, of his or her determination based on the
38 citation review conference.



1 (g) In assessing the civil penalty for a violation, all
2 relevant facts shall be considered, including, but not
3 limited to, all of the following:

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

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

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

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

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

14 (h) Except as otherwise provided in this subdivision,
15 an assessment of civil penalties for a class "A" or class "B"
16 violation shall be trebled and collected for a second and
17 subsequent violation for which a citation of the same class
18 was issued within any 12-month period. Trebling shall
19 occur only if the first citation issued within the 12-month
20 period was issued in the same class, a civil penalty was
21 assessed, and a plan of correction was submitted for the
22 previous same-class violation occurring within the period,
23 without regard to whether the action to enforce the
24 previous citation has become final. However, the
25 increment to the civil penalty required by this
26 subdivision shall not be due and payable unless and until
27 the previous action has terminated in favor of the state
28 department.

29 If the class "B" citation is issued for a patient's rights
30 violation, as defined in subdivision (d) of Section 1424, it
31 shall not be trebled unless the state department
32 determines the violation has a direct or immediate
33 relationship to the health, safety, security, or welfare of
34 long-term health care facility residents.

35 (i) The director shall prescribe procedures for the
36 issuance of a notice of violation with respect to violations
37 having only a minimal relationship to safety or health.

38 (j) Actions brought under this chapter shall be set for
39 trial at the earliest possible date and shall take
40 precedence on the court calendar over all other cases



1 except matters to which equal or superior precedence is
2 specifically granted by law. Times for responsive pleading
3 and for hearing the proceeding shall be set by the judge
4 of the court with the object of securing a decision as to
5 subject matters at the earliest possible time.

6 (k) If the citation is dismissed, the state department
7 shall take action immediately to ensure that the public
8 records reflect in a prominent manner that the citation
9 was dismissed.

10 (l) Penalties paid on violations under this chapter shall
11 be applied against the state department's accounts to
12 offset any costs incurred by the state pursuant to this
13 chapter. Any costs or penalties assessed pursuant to this
14 chapter shall be paid within 30 days of the date the
15 decision becomes final. If a facility does not comply with
16 this requirement, the state department shall withhold
17 any payment under the Medi-Cal program until the debt
18 is satisfied. No payment shall be withheld if the state
19 department determines that it would cause undue
20 hardship to the facility or to patients or residents of the
21 facility.

22 (m) The amendments made to subdivisions (a) and
23 (c) of this section by Chapter 84 of the Statutes of 1988,
24 to extend the number of days allowed for the provision of
25 notification to the director, do not affect the right, that is
26 also contained in those amendments, to request judicial
27 relief from these time limits.

28 SEC. 3. Section 1428.1 of the Health and Safety Code
29 is amended to read:

30 1428.1. A licensee may, in lieu of contesting a citation
31 pursuant to Section 1428, transmit to the state
32 department the amount assessed for each violation within
33 15 business days after the issuance of the citation.

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