

## Assembly Bill No. 1133

### CHAPTER 650

An act to amend Sections 1423, 1424, 1428, and 1428.1 of, and to add Section 1417.3 to, the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor September 20, 1998. Filed  
with Secretary of State September 21, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1133, 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.

This bill would require the State Department of Health Services to promote quality in long-term health care facility services through certain services.

(2) Existing law requires the State Director of Health Services, if upon inspection or investigation the director determines a facility is in violation of the law, to issue a notice to correct the violation and of intent to issue a citation to the licensee, except with respect to violations determined to have only a minimal relationship to safety or health.

This bill would delete that exception. The bill would require the department to hold an exit conference with the licensee before completing the investigation and making the determination whether to issue a citation.

(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) Existing law provides for civil penalties in an amount 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 requires a licensee, if the licensee intends to appeal a citation that has been upheld in a citation review conference, to appeal the decision through an administrative law

judge. Existing law authorizes a licensee to elect to submit the matter to binding arbitration if the licensee is dissatisfied with the decision of the administrative law judge.

This bill would also authorize the licensee to elect to submit the matter to binding arbitration before submitting the matter to an administrative law judge and would set forth additional requirements relating to the binding arbitration.

(6) 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) 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) 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 minimum amount specified by law, or 65% of the amount specified in the citation, whichever is greater, for each violation within 15 business days after the issuance of the citation. The bill would delete the provision that permits the licensee, if the penalty has been reduced by at least 30%, to pay the minimum amount specified by law, or 50% of the amount determined by the citation review conference, whichever is greater.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1417.3 is added to the Health and Safety Code, to read:



1417.3. The department shall promote quality in long-term health care facility services through specific activities that include, but are not limited to, all of the following:

(a) Research and evaluation of innovative facility resident care models.

(b) Provision of statewide training on effective facility practices.

(c) Response to facility requests for technical assistance regarding licensing and certification requirements, compliance with federal and state standards, and related operational issues.

SEC. 2. Section 1423 of the Health and Safety Code is amended to read:

1423. (a) If upon inspection or investigation the director determines that any nursing facility is in violation of any state or federal law or regulation relating to the operation or maintenance of the facility, or determines that any other long-term health care facility is in violation of any statutory provision or regulation relating to the operation or maintenance of the facility, the director shall promptly, but not later than 24 hours, excluding Saturday, Sunday, and holidays, after the director determines or has reasonable cause to determine that an alleged violation has occurred, issue a notice to correct the violation and of intent to issue a citation to the licensee. Before completing the investigation and making the determination whether to issue a citation, the department shall hold an exit conference with the licensee to identify the potential for issuing a citation for any violation, discuss investigative findings, and allow the licensee to provide the department with additional information related to the violation. The department shall consider this additional information, in conjunction with information from the inspection or investigation, in determining whether to issue a citation, or whether other action would be appropriate. If the department determines that the violation warrants the issuing of a citation and an exit conference has been completed it shall either:

(1) Recommend the imposition of a federal enforcement remedy or remedies on a nursing facility in accordance with federal law; or

(2) Issue a citation pursuant to state licensing laws, and if the facility is a nursing facility, may recommend the imposition of a federal enforcement remedy other than a federal civil monetary penalty for a federal violation.

No violation may result in the issuance of both a citation pursuant to state laws and the recommendation that a federal civil monetary penalty be imposed. If a state citation is issued it shall be served upon the licensee within three days after completion of the investigation, excluding Saturday, Sunday, and holidays, unless the licensee agrees in writing to an extension of time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant. Each citation shall be in writing and shall describe with particularity the nature of the



violation, including a reference to the statutory provision, standard, rule or regulation alleged to have been violated, the particular place or area of the facility in which it occurred, as well as the amount of any proposed assessment of a civil penalty. The name of any patient jeopardized by the alleged violation shall not be specified in the citation in order to protect the privacy of the patient. However, at the time the licensee is served with the citation, the licensee shall also be served with a written list of each of the names of the patients alleged to have been jeopardized by the violation, that shall not be subject to disclosure as a public record. The citation shall fix the earliest feasible time for the elimination of the condition constituting the alleged violation, when appropriate.

(b) Where no harm to patients, residents, or guests has occurred, a single incident, event, or occurrence shall result in no more than one citation for each statute or regulation violated.

(c) No citation shall be issued for a violation that has been reported by the licensee to the state department, or its designee, as an “unusual occurrence,” if all of the following conditions are met:

(1) The violation has not caused harm to any patient, resident, or guest, or significantly contributed thereto.

(2) The licensee has promptly taken reasonable measures to correct the violation and to prevent a recurrence.

(3) The unusual occurrence report was the first source of information reported to the state department, or its designee, regarding the violation.

SEC. 3. Section 1424 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

(b) Relevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record. This requirement shall not preclude the department or a facility from introducing facts not listed on the citation to support or challenge the amount of the civil penalty in any proceeding set forth in Section 1428.



(c) Class “AA” violations are violations that meet the criteria for a class “A” violation and that the state department determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. A class “AA” citation is subject to a civil penalty in the amount of not less than five thousand dollars (\$5,000) and not exceeding twenty-five thousand dollars (\$25,000) for each citation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

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

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

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

If the state department meets this burden of proof, the licensee shall have 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, then the citation shall be dismissed.

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

(d) Class “A” violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class “A” violation. The condition or practice constituting a class “A” violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. A class “A” citation is subject to a civil penalty in an amount not less than one thousand dollars (\$1,000) and not exceeding ten thousand dollars (\$10,000) for each and every citation.

If the state department establishes that a violation occurred, the licensee shall have 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, then the citation shall be dismissed.



(e) Class “B” violations are violations that the state department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility patients or residents, other than class “AA” or “A” violations. Unless otherwise determined by the state department to be a class “A” violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient’s rights as set forth in Sections 72527 and 73523 of Title 22 of the California Administrative Code, that is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class “B” violation. A class “B” citation is subject to a civil penalty in an amount not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) for each and every citation. A class “B” citation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have 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, then the citation shall be dismissed.

In the event of any citation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have 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, then the citation shall be dismissed.

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

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

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

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

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred



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

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

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

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

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

(i) Nothing in this section is intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.

(j) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities.

SEC. 4. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes “AA,” “A,” or “B” citations. As a result of a citation review conference, a citation or the proposed assessment of a civil penalty may be affirmed, modified, or dismissed by the director or the director’s designee. If the director’s designee affirms, modifies, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state



with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(b) If a licensee notifies the director that he or she intends to contest a class "AA" or a class "A" citation, the licensee may first, within 15 business days after service of the citation, notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director that he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court within six months after the state department files its answer in the appeal. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified.

(c) If a licensee desires to contest a class "B" citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director's designee of the licensee's intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171 or elects to submit the matter to binding arbitration in accordance with subdivision (d). The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge or submit the matter to binding arbitration without having first appealed the decision to a citation review conference by notifying



the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association's established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator's discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association's established rules and procedures. The arbitrator shall determine whether the licensee violated the regulation or regulations cited by the department, and whether the citation meets the criteria established in Sections 1423 and 1424. If the arbitrator determines that the licensee has violated the regulation or regulations cited by the department, and that the class of the citation should be upheld, the proposed assessment of a civil penalty shall be affirmed, subject to the limitations established in Section 1424. The licensee and the department shall each bear its respective portion of the cost of arbitration. A resident, or his or her designated representative, or both, entitled to participate in the citation review conference pursuant to subdivision (f), may make an oral or written statement regarding the citation, at any arbitration hearing to which the matter has been submitted after the citation review conference.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with Section 100171, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time



limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state 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, then the following persons may attend the citation review conference:

- (1) The complainant and his or her designated representative.
- (2) A personal health care provider, designated by the resident.
- (3) A personal attorney.
- (4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

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

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

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

- (1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.
- (2) The patient's or resident's medical condition.



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

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

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

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

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

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

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

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

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

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number



of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

SEC. 5. Section 1428.1 of the Health and Safety Code is amended to read:

1428.1. A licensee may, in lieu of contesting a citation pursuant to Section 1428, transmit to the state department the minimum amount specified by law, or 65 percent of the amount specified in the citation, whichever is greater, for each violation within 15 business days after the issuance of the citation.

