

AMENDED IN SENATE MARCH 30, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 799

Introduced by Senator Negrete McLeod

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 799, as amended, Negrete McLeod. Long-term care.

Existing law provides for the licensing and regulation of health facilities by the State Department of Public Health.

Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, in part, requires the department to investigate complaints relating to long-term health facilities, as defined.

This bill would require the department, with certain exceptions, to complete its investigation within 90 working days. The bill would require the department to assess its compliance with this requirement in prescribed annual reports to the Legislature. *The bill would also require the department to apply the timeframes for investigation or inspection when a report is made by a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation of those requirements.*

Existing law authorizes a complainant who is dissatisfied with the department's inspection or investigation to, within 5 business days, notify the director in writing of his or her request for an informal conference.

This bill would change that time period from 5 business days to 15 working days.

Existing law requires a miniexit conference to be held with the administrator or his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation.

This bill would, instead, require a miniexit conference to be held upon leaving the facility and at the completion of the investigation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1420 of the Health and Safety Code is
2 amended to read:

3 1420. (a) (1) Upon receipt of a written or oral complaint, the
4 state department shall assign an inspector to make a preliminary
5 review of the complaint and shall notify the complainant within
6 two working days of the receipt of the complaint of the name of
7 the inspector. Unless the state department determines that the
8 complaint is willfully intended to harass a licensee or is without
9 any reasonable basis, it shall make an onsite inspection or
10 investigation within 10 working days of the receipt of the
11 complaint. In any case in which the complaint involves a threat of
12 imminent danger of death or serious bodily harm, the state
13 department shall make an onsite inspection or investigation within
14 24 hours of the receipt of the complaint. In any event, the
15 complainant shall be promptly informed of the state department’s
16 proposed course of action and of the opportunity to accompany
17 the inspector on the inspection or investigation of the facility. Upon
18 the request of either the complainant or the state department, the
19 complainant or his or her representative, or both, may be allowed
20 to accompany the inspector to the site of the alleged violations
21 during his or her tour of the facility, unless the inspector determines
22 that the privacy of any patient would be violated thereby.

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

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

1 (3) The department shall complete its investigation within 90
2 working days from receipt of the complaint and the department
3 shall issue a citation within the mandatory timeframes established
4 pursuant to Section 1423, including, but not limited to, serving the
5 citation upon the licensee within three days after completion of
6 the investigation, excluding Sundays and holidays, unless the
7 licensee agrees in writing to an extension of time. The
8 90-working-day period may be extended if the department has
9 exercised reasonable diligence in attempting to, but has not been
10 able to, obtain all necessary evidence related to the investigation.
11 The department shall analyze its compliance with this requirement
12 in its annual system and staffing analysis prepared pursuant to
13 subparagraph (B) of paragraph (2) of subdivision (d) of Section
14 1266.

15 (4) Within 10 working days of the completion of the complaint
16 investigation, the state department shall notify the complainant
17 and licensee in writing of the department's determination as a
18 result of the inspection or investigation.

19 (b) Upon being notified of the state department's determination
20 as a result of the inspection or investigation, a complainant who
21 is dissatisfied with the state department's determination, regarding
22 a matter which would pose a threat to the health, safety, security,
23 welfare, or rights of a resident, shall be notified by the state
24 department of the right to an informal conference, as set forth in
25 this section. The complainant may, within 15 working days after
26 receipt of the notice, notify the director in writing of his or her
27 request for an informal conference. The informal conference shall
28 be held with the designee of the director for the county in which
29 the long-term health care facility which is the subject of the
30 complaint is located. The long-term health care facility may
31 participate as a party in this informal conference. The director's
32 designee shall notify the complainant and licensee of his or her
33 determination within 10 working days after the informal conference
34 and shall apprise the complainant and licensee in writing of the
35 appeal rights provided in subdivision (c).

36 (c) If the complainant is dissatisfied with the determination of
37 the director's designee in the county in which the facility is located,
38 the complainant may, within 15 days after receipt of this
39 determination, notify in writing the Deputy Director of the
40 Licensing and Certification Division of the state department, who

1 shall assign the request to a representative of the Complainant
2 Appeals Unit for review of the facts that led to both determinations.
3 As a part of the Complainant Appeals Unit's independent
4 investigation, and at the request of the complainant, the
5 representative shall interview the complainant in the district office
6 where the complaint was initially referred. Based upon this review,
7 the Deputy Director of the Licensing and Certification Division
8 of the state department shall make his or her own determination
9 and notify the complainant and the facility within 30 days.

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

17 (e) A miniexit conference shall be held with the administrator
18 or his or her representative upon leaving the facility and at the
19 completion of the investigation to inform him or her of the status
20 of the investigation. The department shall also state the items of
21 noncompliance and compliance found as a result of a complaint
22 and those items found to be in compliance, provided the disclosure
23 maintains the anonymity of the complainant. In any matter in which
24 there is a reasonable probability that the identity of the complainant
25 will not remain anonymous, the state department shall also notify
26 the facility that it is unlawful to discriminate or seek retaliation
27 against a resident, employee, or complainant.

28 (f) For purposes of this section, "complaint" means any oral or
29 written notice to the state department, other than a report from the
30 facility of an alleged violation of applicable requirements of state
31 or federal law or any alleged facts that might constitute such a
32 violation.

33 (g) *The department shall apply the timeframes for investigation*
34 *or inspection established pursuant to this section when a report*
35 *is made by a facility of an alleged violation of applicable*
36 *requirements of state or federal law or any alleged facts that might*
37 *constitute a violation of those requirements.*

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