

AMENDED IN SENATE APRIL 12, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1246

Introduced by Senator Hernandez

February 23, 2012

An act to amend Sections 1279 and 1280.3 of, and to add Section 1279.4 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1246, as amended, Hernandez. Health facilities: staffing.

Existing law regulates general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. Existing law required, by January 1, 2002, the State Department of Public Health to adopt regulations establishing the minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit for general acute care hospitals, acute psychiatric hospitals, and special hospitals. Existing law requires these ratios to constitute the minimum number of registered and licensed nurses that shall be allocated and additional staff to be assigned in accordance with a documented patient classification system for determining nursing requirements.

Existing law requires the department to promulgate regulations, ~~including~~ *that include* specified criteria, for the purpose of assessing an administrative penalty against general acute care hospitals, acute psychiatric hospitals, and special hospitals. Existing law authorizes the department to assess a licensee of these hospitals an administrative penalty, as specified, for a violation of existing law or for a deficiency constituting an immediate jeopardy violation, except that no penalty shall be assessed if it is a minor violation. Existing law requires that a

person who willfully or repeatedly violates a rule or regulation adopted pursuant to these provisions is guilty of a misdemeanor.

This bill would eliminate the requirement that the department to promulgate regulations to assess an administrative penalty and instead would require the department to use the specified criteria to determine the amount of the administrative penalty.

This bill would require general acute care hospitals, acute psychiatric hospitals, and special hospitals to maintain a patient classification system, as defined, that is reviewed and updated annually. This bill would provide that a failure to maintain and ~~annually update a patient classification system, or failure to comply with the requirements of a~~ patient classification system, may be subject to an administrative penalty. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law requires that every health facility for which a license or special permit has been issued shall be periodically inspected by the State Department of Public Health, or by another governmental entity under contract with the department. Existing law requires the department to inspect the facility for compliance with provisions of state law and regulations during a state periodic inspection, or at the same time as a federal periodic inspection.

This bill would require the inspections to include review of compliance with state requirements for staffing, including the regulations adopted by the department establishing nurse-to-patient ratios and regulations regarding patient classification systems.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 1279 of the Health and Safety Code is
- 2 amended to read:
- 3 1279. (a) Every health facility for which a license or special
- 4 permit has been issued shall be periodically inspected by the
- 5 department, or by another governmental entity under contract with

1 the department. The frequency of inspections shall vary, depending
2 upon the type and complexity of the health facility or special
3 service to be inspected, unless otherwise specified by state or
4 federal law or regulation. The inspection shall include participation
5 by the California Medical Association consistent with the manner
6 in which it participated in inspections, as provided in Section 1282
7 prior to September 15, 1992.

8 (b) Except as provided in subdivision (c), inspections shall be
9 conducted no less than once every two years and as often as
10 necessary to ensure the quality of care being provided.

11 (c) For a health facility specified in subdivision (a), (b), or (f)
12 of Section 1250, inspections shall be conducted no less than once
13 every three years, and as often as necessary to ensure the quality
14 of care being provided.

15 (d) During the inspection, the representative or representatives
16 shall offer such advice and assistance to the health facility as they
17 deem appropriate.

18 (e) For acute care hospitals of 100 beds or more, the inspection
19 team shall include at least a physician, registered nurse, and persons
20 experienced in hospital administration and sanitary inspections.
21 During the inspection, the team shall offer advice and assistance
22 to the hospital as it deems appropriate.

23 (f) The department shall ensure that a periodic inspection
24 conducted pursuant to this section is not announced in advance of
25 the date of inspection. An inspection may be conducted jointly
26 with inspections by entities specified in Section 1282. However,
27 if the department conducts an inspection jointly with an entity
28 specified in Section 1282 that provides notice in advance of the
29 periodic inspection, the department shall conduct an additional
30 periodic inspection that is not announced or noticed to the health
31 facility.

32 (g) Notwithstanding any other provision of law, the department
33 shall inspect the facility for compliance with provisions of state
34 law and regulations during a state periodic inspection or at the
35 same time as a federal periodic inspection, including, but not
36 limited to, an inspection required under this section. Inspections
37 shall include review of compliance with state requirements for
38 staffing, including regulations adopted pursuant to Section 1276.4
39 and regulations regarding patient classification systems. If the
40 department inspects the facility for compliance with state law and

1 regulations at the same time as a federal periodic inspection, the
2 inspection shall be done consistent with the guidance of the federal
3 Centers for Medicare and Medicaid Services for the federal portion
4 of the inspection.

5 (h) The department shall emphasize consistency across the state
6 and its district offices when conducting licensing and certification
7 surveys and complaint investigations, including the selection of
8 state or federal enforcement remedies in accordance with Section
9 1423. The department may issue federal deficiencies and
10 recommend federal enforcement actions in those circumstances
11 where they provide more rigorous enforcement action.

12 SEC. 2. Section 1279.4 is added to the Health and Safety Code,
13 to read:

14 1279.4. (a) ~~(1)~~—A health facility licensed pursuant to
15 subdivision (a), (b), or (f) of Section 1250 shall maintain a patient
16 classification system that shall be reviewed and updated at least
17 annually, ~~including a review of its reliability, by a review~~
18 ~~committee. The review committee shall be appointed by the nursing~~
19 ~~administration, subject to the requirements and limitations of~~
20 ~~paragraph (2). The review committee shall determine whether the~~
21 ~~system accurately measures patient care needs.~~

22 ~~(2) At least one-half of the committee shall be registered nurses~~
23 ~~who provide direct patient care. If the registered nurses are~~
24 ~~represented by a collective bargaining agent, the registered nurses~~
25 ~~shall be selected by the agent.~~

26 (b) Failure to maintain ~~and annually update~~ a patient
27 classification system shall constitute an immediate jeopardy of
28 patients for the purposes of Sections 1280.1 or 1280.3.

29 (c) (1) Failure to comply with *the requirements of* a patient
30 classification system, *including failure to annually update the*
31 *patient classification system*, shall constitute a violation subject
32 to subdivision (b) of Section 1280.3.

33 (2) *The annual updating of the patient classification system*
34 *shall include a review of its reliability by a review committee. The*
35 *review committee shall be appointed by the nursing administration,*
36 *subject to paragraph (3). The review committee shall determine*
37 *whether the system accurately measures patient care needs.*

38 (3) *At least one-half of the committee shall be registered nurses*
39 *who provide direct patient care. If the registered nurses are*

1 *represented by a collective bargaining agent, the registered nurses*
2 *shall be selected by the agent.*

3 (d) For purposes of this section, a “patient classification system”
4 means a method for establishing staffing requirements by unit,
5 patient, and shift that includes all of the following:

6 (1) A method to predict nursing care requirements of individual
7 patients.

8 (2) An established method by which the amount of nursing care
9 needed for each category of patient is validated for each unit and
10 for each shift.

11 (3) An established method to discern trends and patterns of
12 nursing care delivery by each unit, each shift, and each level of
13 licensed and unlicensed staff.

14 (4) A mechanism by which the accuracy of the nursing care
15 validation method described in paragraph (2) can be tested. This
16 method will address the amount of nursing care needed, by patient
17 category and pattern of care delivery, on an annual basis, or more
18 frequently, if warranted by the changes in patient populations, skill
19 level of the staff, or patient care delivery model.

20 (5) A method to determine staff resource allocations based on
21 nursing care requirements for each shift and each unit.

22 (6) A method by which the hospital validates the reliability of
23 the patient classification system for each unit and each shift.

24 SEC. 3. Section 1280.3 of the Health and Safety Code is
25 amended to read:

26 1280.3. (a) The director may assess an administrative penalty
27 against a licensee of a health facility licensed under subdivision
28 (a), (b), or (f) of Section 1250 for a deficiency constituting an
29 immediate jeopardy violation as determined by the department up
30 to a maximum of seventy-five thousand dollars (\$75,000) for the
31 first administrative penalty, up to one hundred thousand dollars
32 (\$100,000) for the second subsequent administrative penalty, and
33 up to one hundred twenty-five thousand dollars (\$125,000) for the
34 third and every subsequent violation. An administrative penalty
35 issued after three years from the date of the last issued immediate
36 jeopardy violation shall be considered a first administrative penalty
37 so long as the facility has not received additional immediate
38 jeopardy violations and is found by the department to be in
39 substantial compliance with all state and federal licensing laws
40 and regulations. The department shall have full discretion to

1 consider all factors when determining the amount of an
2 administrative penalty pursuant to this section.

3 (b) Except as provided in subdivision (c), for a violation of this
4 chapter or the rules and regulations—~~promulgated~~ *adopted*
5 thereunder that does not constitute a violation of subdivision (a),
6 the department may assess an administrative penalty in an amount
7 of up to twenty-five thousand dollars (\$25,000) per violation. This
8 subdivision shall also apply to violation of regulations set forth in
9 Article 3 (commencing with Section 127400) of Chapter 2 of Part
10 2 of Division 107 or the rules and regulations ~~promulgated~~ *adopted*
11 thereunder.

12 The department shall use the following criteria to determine the
13 amount of an administrative penalty against a health facility
14 licensed pursuant to ~~subdivisions~~ *subdivision* (a), (b), or (f) of
15 Section ~~1250~~. ~~The criteria shall include, but need not be limited~~
16 ~~to, the following:~~ *1250:*

- 17 (1) The patient's physical and mental condition.
 - 18 (2) The probability and severity of the risk that the violation
19 presents to the patient.
 - 20 (3) The actual financial harm to patients, if any.
 - 21 (4) The nature, scope, and severity of the violation.
 - 22 (5) The facility's history of compliance with related state and
23 federal statutes and regulations.
 - 24 (6) Factors beyond the facility's control that restrict the facility's
25 ability to comply with this chapter or the rules and regulations
26 promulgated thereunder.
 - 27 (7) The demonstrated willfulness of the violation.
 - 28 (8) The extent to which the facility detected the violation and
29 took steps to immediately correct the violation and prevent the
30 violation from recurring.
 - 31 (9) Compliance with staffing requirements of state and federal
32 law and regulation, including, but not limited to, the patient
33 classification system and nurse-to-patient ratios.
- 34 (c) The department shall not assess an administrative penalty
35 for minor violations.
- 36 (d) If the licensee disputes a determination by the department
37 regarding the alleged deficiency or alleged failure to correct a
38 deficiency, or regarding the reasonableness of the proposed
39 deadline for correction or the amount of the penalty, the licensee
40 may, within 10 working days, request a hearing pursuant to Section

1 131071. Penalties shall be paid when all appeals have been
2 exhausted and the department’s position has been upheld.

3 (e) For purposes of this section, “immediate jeopardy” means
4 a situation in which the licensee’s noncompliance with one or more
5 requirements of licensure has caused, or is likely to cause, serious
6 injury or death to the patient.

7 (f) In enforcing subdivision (a) the department shall take into
8 consideration the special circumstances of small and rural hospitals,
9 as defined in Section 124840, in order to protect access to quality
10 care in those hospitals.

11 SEC. 4. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.