AMENDED IN SENATE APRIL 25, 2012

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~~,~~ 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 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 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:

SECTION 1. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the

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

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

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

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

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

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

(g) Notwithstanding any other provision of law, the department shall 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, including, but not limited to, an inspection required under this section. Inspections shall include review of compliance with state requirements for staffing, including regulations adopted pursuant to Section 1276.4 and regulations regarding patient classification systems. If the

department inspects the facility for compliance with state law and regulations at the same time as a federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.

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

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

1279.4. (a) A health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 shall maintain a patient classification system that shall be reviewed and updated at least ~~annually.~~ *annually.*

(b) Failure to maintain a patient classification system shall constitute an immediate jeopardy of patients for the ~~purposes~~ *purpose* of ~~Sections~~ *Section* 1280.1 or 1280.3.

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

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

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

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

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

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

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

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

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

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

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

1280.3. (a) The director may assess an administrative penalty against a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 for a deficiency ~~constituting~~ *that occurs on or after January 1, 2013, and constitutes* an immediate jeopardy violation, as determined by the department, up to a maximum of seventy-five thousand dollars ($75,000) for the first administrative penalty, up to one hundred thousand dollars ($100,000) for the second subsequent administrative penalty, and up to one hundred twenty-five thousand dollars ($125,000) for the third and every subsequent violation. An administrative penalty issued after three years from the date of the last issued immediate jeopardy violation shall be considered a first administrative penalty so long as the facility has not received additional immediate jeopardy violations and is found by the department to be in substantial compliance with all state and federal licensing laws and regulations. The department shall have full discretion to consider all factors when determining the amount of an administrative penalty pursuant to this section.

(b) Except as provided in subdivision (c), for a violation of this chapter or the rules and regulations adopted thereunder that *occurs on or after January 1, 2013, but* does not constitute a violation of subdivision (a), the department may assess an administrative

penalty in an amount of up to twenty-five thousand dollars ($25,000) per violation. This subdivision shall also apply to violation of regulations set forth in Article 3 (commencing with Section 127400) of Chapter 2 of Part 2 of Division 107 or the rules and regulations adopted thereunder.

The department shall use the following criteria to determine the amount of an administrative penalty against a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250:

(1) The patient's physical and mental condition.

(2) The probability and severity of the risk that the violation presents to the patient.

(3) The actual financial harm to patients, if any.

(4) The nature, scope, and severity of the violation.

(5) The facility's history of compliance with related state and federal statutes and regulations.

(6) Factors beyond the facility's control that restrict the facility's ability to comply with this chapter or the rules and regulations promulgated thereunder.

(7) The demonstrated willfulness of the violation.

(8) The extent to which the facility detected the violation and took steps to immediately correct the violation and prevent the violation from recurring.

(9) Compliance with staffing requirements of state and federal law and regulation, including, but not limited to, the patient classification system and nurse-to-patient ratios.

(c) The department shall not assess an administrative penalty for minor violations.

(d) If the licensee disputes a determination by the department regarding the alleged deficiency or alleged failure to correct a deficiency, or regarding the reasonableness of the proposed deadline for correction or the amount of the penalty, the licensee may, within 10 working days, request a hearing pursuant to Section 131071. Penalties shall be paid when all appeals have been exhausted and the department's position has been upheld.

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

(f) In enforcing subdivision (a) the department shall take into consideration the special circumstances of small and rural hospitals,

as defined in Section 124840, in order to protect access to quality care in those hospitals.

SEC. 4. By amending Section 1280.3 of the Health and Safety Code in Section 3 of this act, it is the intent of the Legislature to authorize the State Department of Public Health to implement the imposition of administrative penalties described in subdivisions (a) and (b) of Section 1280.3 of the Health and Safety Code, without the prior adoption of regulations to implement that section. The amendments made to Section 1280.3 of the Health and Safety Code by this act shall not be construed to prohibit the department from adopting implementing regulations.

~~SEC. 4.~~

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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