

AMENDED IN ASSEMBLY JULY 5, 2012

AMENDED IN SENATE MAY 25, 2012

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, *and to repeal Section 1280.1 of*, 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 provides 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, *as well as associated provisions*, 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 to maintain a patient classification ~~system, as defined,~~ *system* 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 requiring general acute care hospitals to maintain a patient classification system, this bill would expand the definition of a crime, this bill and~~ 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
6 the department. The frequency of inspections shall vary, depending
7 upon the type and complexity of the health facility or special
8 service to be inspected, unless otherwise specified by state or
9 federal law or regulation. The inspection shall include participation
10 by the California Medical Association consistent with the manner
11 in which it participated in inspections, as provided in Section 1282
12 prior to September 15, 1992.

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

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

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

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

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

37 (g) Notwithstanding any other provision of law, the department
38 shall inspect the facility for compliance with provisions of state

1 law and regulations during a state periodic inspection or at the
2 same time as a federal periodic inspection, including, but not
3 limited to, an inspection required under this section. Inspections
4 shall include review of compliance with state requirements for
5 staffing, including regulations adopted pursuant to Section 1276.4
6 and regulations regarding patient classification systems. If the
7 department inspects the facility for compliance with state law and
8 regulations at the same time as a federal periodic inspection, the
9 inspection shall be done consistent with the guidance of the federal
10 Centers for Medicare and Medicaid Services for the federal portion
11 of the inspection.

12 (h) The department shall emphasize consistency across the state
13 and its district offices when conducting licensing and certification
14 surveys and complaint investigations, including the selection of
15 state or federal enforcement remedies in accordance with Section
16 1423. The department may issue federal deficiencies and
17 recommend federal enforcement actions in those circumstances
18 where they provide more rigorous enforcement action.

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

21 1279.4. (a) A health facility licensed pursuant to subdivision
22 (a) of Section 1250 shall maintain a patient classification system
23 that shall be reviewed and updated at least annually.

24 (b) The annual updating of the patient classification system shall
25 include a review of its reliability by a review committee. The
26 review committee shall be appointed by the nursing administration,
27 subject to ~~paragraph (3)~~ subdivision (c). The review committee
28 shall determine whether the system accurately measures patient
29 care needs.

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

34 ~~(d) For purposes of this section, a “patient classification system”~~
35 ~~means a method for establishing staffing requirements by unit,~~
36 ~~patient, and shift.~~

37 SEC. 3. Section 1280.1 of the Health and Safety Code is
38 repealed.

39 ~~1280.1. (a) Subject to subdivision (d), prior to the effective~~
40 ~~date of regulations adopted to implement Section 1280.3, if a~~

1 licensee of a health facility licensed under subdivision (a), (b), or
2 (f) of Section 1250 receives a notice of deficiency constituting an
3 immediate jeopardy to the health or safety of a patient and is
4 required to submit a plan of correction, the department may assess
5 the licensee an administrative penalty in an amount not to exceed
6 twenty-five thousand dollars (\$25,000) per violation.

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

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

18 (d) This section shall apply only to incidents occurring on or
19 after January 1, 2007. With respect to incidents occurring on or
20 after January 1, 2009, the amount of the administrative penalties
21 assessed under subdivision (a) shall be up to one hundred thousand
22 dollars (\$100,000) per violation. With respect to incidents occurring
23 on or after January 1, 2009, the amount of the administrative
24 penalties assessed under subdivision (a) shall be up to fifty
25 thousand dollars (\$50,000) for the first administrative penalty, up
26 to seventy-five thousand dollars (\$75,000) for the second
27 subsequent administrative penalty, and up to one hundred thousand
28 dollars (\$100,000) for the third and every subsequent violation.
29 An administrative penalty issued after three years from the date
30 of the last issued immediate jeopardy violation shall be considered
31 a first administrative penalty so long as the facility has not received
32 additional immediate jeopardy violations and is found by the
33 department to be in substantial compliance with all state and federal
34 licensing laws and regulations. The department shall have full
35 discretion to consider all factors when determining the amount of
36 an administrative penalty pursuant to this section.

37 (e) No new regulations are required or authorized for
38 implementation of this section.

1 ~~(f) This section shall become inoperative on the effective date~~
2 ~~of regulations promulgated by the department pursuant to Section~~
3 ~~1280.3.~~

4 ~~(g) In enforcing this section, the department shall take into~~
5 ~~consideration the special circumstances of small and rural hospitals,~~
6 ~~as defined in Section 124840, in order to protect access to quality~~
7 ~~care in those hospitals.~~

8 ~~SEC. 3.~~

9 ~~SEC. 4.~~ Section 1280.3 of the Health and Safety Code is
10 amended to read:

11 1280.3. (a) The director may assess an administrative penalty
12 against a licensee of a health facility licensed under subdivision
13 (a), (b), or (f) of Section 1250 for a deficiency that occurs on or
14 after January 1, 2013, and constitutes an immediate jeopardy
15 violation, as determined by the department, up to a maximum of
16 seventy-five thousand dollars (\$75,000) for the first administrative
17 penalty, up to one hundred thousand dollars (\$100,000) for the
18 second subsequent administrative penalty, and up to one hundred
19 twenty-five thousand dollars (\$125,000) for the third and every
20 subsequent violation. An administrative penalty issued after three
21 years from the date of the last issued immediate jeopardy violation
22 shall be considered a first administrative penalty so long as the
23 facility has not received additional immediate jeopardy violations
24 and is found by the department to be in substantial compliance
25 with all state and federal licensing laws and regulations. The
26 department shall have full discretion to consider all factors when
27 determining the amount of an administrative penalty pursuant to
28 this section.

29 (b) Except as provided in subdivision (c), for a violation of this
30 chapter or the rules and regulations adopted thereunder that occurs
31 on or after January 1, 2013, but does not constitute a violation of
32 subdivision (a), the department may assess an administrative
33 penalty in an amount ~~of up to~~ *not less than two thousand five*
34 *hundred dollars (\$2,500) and not exceeding* twenty-five thousand
35 dollars (\$25,000) per violation. This subdivision shall also apply
36 to violation of regulations set forth in Article ~~3~~ 1 (commencing
37 with Section 127400) of Chapter ~~2~~ 2.5 of Part 2 of Division 107
38 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 adopted 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.~~

SEC. 5. By amending Section 1280.3 of the Health and Safety Code in Section 3 4 of this act, it is the intent of the Legislature to

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

8 ~~SEC. 5.~~

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