



SB-1288 Health and care facilities: inspections. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

NO. 1288

**Introduced by Senator Leyva
(Coauthor: Senator Jackson)
(Coauthors: Assembly Members Bonta, Rodriguez, and Santiago)**

February 16, 2018

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1288, Leyva. Health and care facilities: inspections.

Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, the licensing and regulation of health facilities, as defined. Existing law requires that every health facility for which a license or special permit has been issued 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 those facilities for compliance with provisions of state law and regulations during a state periodic inspection, or at the same time as a federal periodic inspection.

Existing law requires the department to adopt regulations governing the operation of a health facility, including, but not limited to, regulations that require prescribed health facilities to meet minimum nurse-to-patient ratios, and to assign additional staff according to a documented patient classification system for determining nursing care requirements. Violation of these provisions, or willful or repeated violation of the rules or regulations, is a crime.

This bill would require state periodic inspections of health facilities to include reviews of compliance with the nurse-to-patient ratios and staff assignment regulations described above. The bill would require the department to ensure that these inspections are not announced in advance of the date of inspection.

Existing law requires the department to promulgate regulations establishing criteria to assess an administrative penalty against a general acute care hospital, acute psychiatric hospital, or special hospital. Until the effective date of specified regulations, existing law authorizes the department to assess the licensee an administrative penalty not to exceed \$100,000, as specified, when a licensee of a hospital receives a notice of deficiency constituting an immediate jeopardy to the health or safety of a patient and is required to submit a plan of correction. After the effective date of these specified regulations, existing law authorizes the department to assess administrative penalties not to exceed \$125,000, for a deficiency constituting an immediate jeopardy violation, as specified.

Existing law requires certain penalties collected by the department to be deposited into the Internal Departmental Quality Improvement Account, to be expended, upon appropriation, for internal quality improvement activities in the Licensing and Certification Program.

This bill would require the department to assess specified penalties for a violation of the nurse-to-patient ratios and staff assignment regulations described above. The bill would require those penalty moneys to be deposited into the State Department of Public Health Licensing and Certification Program Fund, to be expended, upon appropriation, for the purpose of enforcing those regulations.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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. The department shall ensure that a periodic inspection conducted to inspect compliance with regulations adopted pursuant to Section 1276.4 is not announced in advance of the date of inspection.

(g) Notwithstanding any other 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 conducted pursuant to this section shall include reviews of compliance with regulations adopted pursuant to Section 1276.4. If the department inspects 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 1280.3 of the Health and Safety Code is amended to read:

1280.3. (a) Commencing on the effective date of the regulations adopted pursuant to this section, 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 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 promulgated thereunder that 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 1 (commencing with Section 127400) of Chapter 2.5 of Part 2 of Division 107 or the rules and regulations promulgated thereunder.

The department shall promulgate regulations establishing the criteria to assess an administrative penalty against a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250. The criteria shall include, but need not be limited to, the following:

(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.

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

(d) The regulations shall not change the definition of immediate jeopardy as established in this section.

(e) The regulations shall apply only to incidents occurring on or after the effective date of the regulations.

(f) (1) Notwithstanding subdivision (a), if the department determines that a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 has violated a regulation adopted pursuant to Section 1276.4, the department shall assess an administrative penalty of fifteen thousand dollars (\$15,000) for the first violation and thirty thousand dollars (\$30,000) for the second and each subsequent violation. For purposes of this subdivision, multiple violations found on the same inspection survey shall constitute a single violation for purposes of determining whether the violation was a first, second, or subsequent violation.

(2) A violation occurring more than three years after the date of the last violation shall be treated as a first violation.

(3) In instances where a registered nurse is unexpectedly sick or injured at work and leaves the health facility, and a health facility documents and demonstrates that prompt efforts were made to maintain required staffing levels, a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 shall not be given an administrative penalty for a violation pursuant to Section 1276.4. Notwithstanding any other law, the department may, without taking any regulatory actions pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this section by means of an All Facilities Letter (AFL) or similar instruction.

(4) Notwithstanding subdivision (f) of Section 1280.15, all penalties collected by the department pursuant to paragraph (1) shall be deposited into the State Department of Public Health Licensing and Certification Program Fund, under Section 1266.9.

These penalty revenues shall be expended solely for the purpose of enforcing regulations adopted pursuant to Section 1276.4.

(g) 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.

(h) 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.

(i) In enforcing subdivision (a) and paragraph (1) of subdivision (f), 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.