



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-227 Health and care facilities: inspections and penalties. (2019-2020)

SHARE THIS:  

Date Published: 10/14/2019 09:00 PM

Senate Bill No. 227

CHAPTER 843

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

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 227, Leyva. Health and care facilities: inspections and penalties.

(1) Existing law generally requires the State Department of Public Health to license, regulate, and inspect health and care facilities. Existing law specifically requires the department to adopt regulations that require a general acute care hospital, an acute psychiatric hospital, and a special hospital to meet minimum nurse-to-patient ratios and assign additional staff according to a documented patient classification system for determining nursing care requirements. Existing law also generally requires the department to periodically inspect every health facility for which a license or special permit has been issued for compliance with state laws and regulations, and to ensure that those periodic inspections are not announced in advance of inspection.

This bill would require the periodic inspections of these specified 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 conduct these inspections in a manner that is not announced in advance of the date of inspection.

(2) 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 for a deficiency constituting an immediate jeopardy violation and a violation of the rules and regulations applicable to these types of hospitals that do not constitute an immediate jeopardy. Existing law requires certain penalties collected by the department to be deposited into the Internal Departmental Quality Improvement Account, to be expended, upon appropriation by the Legislature, for internal quality improvement activities in the Licensing and Certification Program.

This bill would require the department to assess specified administrative penalties for a violation of the nurse-to-patient ratios and staff assignment regulations described above. The bill would exempt from those administrative penalties a general acute care hospital that demonstrates to the satisfaction of the department that, among other things, prompt efforts were made to maintain required staffing levels, as specified.

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 conduct a periodic inspection to inspect compliance with this section and regulations adopted pursuant to Section 1276.4 that 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. 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 under 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) 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 subdivision by means of an All Facilities Letter (AFL) or similar instruction.

(4) (A) Notwithstanding paragraph (1), a general acute care hospital shall not be subject to an administrative penalty under that paragraph if the hospital demonstrates to the satisfaction of the department all of the following:

(i) That any fluctuation in required staffing levels was unpredictable and uncontrollable.

(ii) Prompt efforts were made to maintain required staffing levels.

(iii) In making those efforts, the hospital immediately used and subsequently exhausted the hospital's on-call list of nurses and the charge nurse.

(B) Nothing in this paragraph shall be construed to affect the obligation of a general acute care hospital to maintain proper staffing levels as prescribed in Section 70217 of Title 22 of the California Code of Regulations.

(5) Nothing in this section prohibits the department from issuing an administrative penalty for a staffing violation pursuant to this section and an administrative penalty for any resulting harm pursuant to subdivision (a).

(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.