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AB-323 Long-term health facilities. (2021-2022)

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Assembly Bill No. 323

CHAPTER 458

An act to amend Sections 1423, 1424, and 1424.5 of the Health and Safety Code, relating to health facilities.

[Approved by Governor October 04, 2021. Filed with Secretary of State October 04, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 323, Kalra. Long-term health facilities.

The Long-Term Care, Health, Safety, and Security Act of 1973 generally requires the State Department of Public Health to license and regulate long-term health care facilities and to establish an inspection and reporting system to ensure that long-term health care facilities are in compliance with state statutes and regulations. The term "long-term health care facility" includes, among other types of facilities, a skilled nursing facility and intermediate care facility.

The act defines a class "A" violation as a violation that the department determines presents either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result therefrom. The act defines a class "AA" violation as a class "A" violation that the department determines to have been a direct proximate cause of death of a patient or resident of the facility. The act defines a class "B" violation as a violation that the department determines has a direct or immediate relationship to the health, safety, or security of long-term health care facility patients or residents, other than class "AA" or "A" violations. Class "B" violations are also, unless otherwise determined by the department to be a class "A" violation, any violation of a patient's rights as set forth in specified regulations that is determined by the department to cause, or under circumstances likely to cause, significant humiliation, indignity, anxiety, or other emotional trauma to a patient. The act requires the department to prove specific elements to enforce a citation for a class "AA" violation, including the element that death resulted from an occurrence of a nature that the regulation was designed to prevent.

This bill would redefine a class "AA" violation as a class "A" violation that the department determines to have been a substantial factor, as described, in the death of a resident of a long-term health care facility. The bill would increase the civil penalties for a class "A," "AA," or "B" violation by a skilled nursing facility or intermediate care facility, as specified. The bill would delete numerous references to the "patients" of a long-term health care facility.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1423 of the Health and Safety Code is amended to read:

1423. (a) If upon inspection or investigation the director determines that a nursing facility is in violation of any state or federal law or regulation relating to the operation or maintenance of the facility, or determines that any other long-term health care facility is in

violation of any statutory provision or regulation relating to the operation or maintenance of the facility, the director shall promptly, but not later than 24 hours, excluding Saturday, Sunday, and holidays, after the director determines or has reasonable cause to determine that an alleged violation has occurred, issue a notice to correct the violation and of intent to issue a citation to the licensee. Before completing the investigation and making the final determination whether to issue a citation, the department shall hold an exit conference with the licensee to identify the potential for issuing a citation for any violation, discuss investigative findings, and allow the licensee to provide the department with additional information related to the violation. The department shall consider this additional information, in conjunction with information from the inspection or investigation, in determining whether to issue a citation, or whether other action would be appropriate. If the department determines that the violation warrants the issuing of a citation and an exit conference has been completed it shall do either of the following:

(1) Recommend the imposition of a federal enforcement remedy or remedies on a nursing facility in accordance with federal law; or

(2) (A) Issue a citation pursuant to state licensing laws, and if the facility is a nursing facility, may recommend the imposition of a federal enforcement remedy.

(B) A state citation shall be served upon the licensee within 30 days after completion of the investigation. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, rule, or regulation alleged to have been violated, the particular place or area of the facility in which the violation occurred, as well as the amount of any proposed assessment of a civil penalty. The name of any patient jeopardized by the alleged violation shall not be specified in the citation in order to protect the privacy of the patient. However, at the time the licensee is served with the citation, the licensee shall also be served with a written list of each of the names of the patients alleged to have been jeopardized by the violation, which shall not be subject to disclosure as a public record. The citation shall fix the earliest feasible time for the elimination of the condition constituting the alleged violation, when appropriate.

(b) When no harm to patients, residents, or guests has occurred, a single incident, event, or occurrence shall result in no more than one citation for each statute or regulation violated.

(c) A citation shall not be issued for a violation that has been reported by the licensee to the department, or its designee, as an "unusual occurrence," if all of the following conditions are met:

(1) The violation has not caused harm to any patient, resident, or guest, or significantly contributed thereto.

(2) The licensee has promptly taken reasonable measures to correct the violation and to prevent a recurrence.

(3) The unusual occurrence report was the first source of information reported to the department, or its designee, regarding the violation.

SEC. 2. Section 1424 of the Health and Safety Code is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk that the violation presents to the resident's mental and physical condition.

(2) The resident's medical condition.

(3) The resident's mental condition and the resident's history of mental disability or disorder.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(b) Relevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record. This requirement shall not preclude the department or a facility from introducing facts not listed on the citation to support or challenge the amount of the civil penalty in any proceeding set forth in Section 1428.

(c) (1) Class "AA" violations are violations that meet the criteria for a class "A" violation and that the department determines to have been a substantial factor in the death of a resident of a long-term health care facility. Except as provided in Section 1424.5, a class "AA" citation is subject to a civil penalty in the amount of not less than five thousand dollars (\$5,000) and not exceeding

twenty-five thousand dollars (\$25,000) for each citation. In any action to enforce a citation issued under this subdivision, the department shall prove all of the following:

(A) The violation was a substantial factor in the death of a resident. A substantial factor is more than a remote or trivial factor, but is not required to be the only cause of harm.

(B) The death resulted from an occurrence of the nature that the regulation was designed to prevent.

(C) The resident suffering the death was among the class of persons for whose protection the regulation was adopted.

(2) If the department meets this burden of proof, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(3) Except as provided in Section 1424.5, for each class "AA" citation within a 12-month period that has become final, the department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class "AA" citation in a facility within that 12-month period that has been sustained, the department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(d) (1) Class "A" violations are violations that the department determines present either (1) imminent danger that death or serious harm to the residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to residents of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class "A" violation. The condition or practice constituting a class "A" violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the department, is required for correction. Except as provided in Section 1424.5, a class "A" citation is subject to a civil penalty in an amount not less than one thousand dollars (\$1,000) and not exceeding ten thousand dollars (\$10,000) for each citation.

(2) If the department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(e) (1) Except as provided in paragraph (4) of subdivision (a) of Section 1424.5, class "B" violations are violations that the department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility residents, other than class "AA" or "A" violations. Unless otherwise determined by the department to be a class "A" violation pursuant to this chapter and regulations adopted pursuant thereto, a violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Code of Regulations, that is determined by the department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class "B" violation. A class "B" citation is subject to a civil penalty in an amount not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) for each citation. A class "B" citation shall specify the time within which the violation is required to be corrected. If the department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(2) When a citation is issued pursuant to this paragraph, if the department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(f) (1) A willful material falsification or willful material omission in the health record of a resident of a long-term health care facility is a violation.

(2) "Willful material falsification," as used in this section, means any entry in the resident's health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of pressure ulcers or contractures, or pertaining to tests and measurements of vital signs, or notations of input and output of fluids, that was made with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(3) As used in this section, "willful material omission" means the willful failure to record any untoward event that has affected the health, safety, or security of the specific resident, and that was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(g) Except as provided in subdivision (a) of Section 1424.5, a violation of subdivision (f) may result in a civil penalty not to exceed ten thousand dollars (\$10,000), as specified in paragraphs (1) to (3), inclusive.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars (\$2,500) or more than ten thousand dollars (\$10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a resident by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars (\$2,500).

(2) (A) When the penalty assessed is one thousand dollars (\$1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "B" violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of one thousand dollars (\$1,000), or for skilled nursing facilities or intermediate care facilities as specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, in excess of two thousand dollars (\$2,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class "A" violation, and shall include the right of appeal as specified in Section 1428.

(B) This section does not change previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but is a clarification of existing law.

(3) This subdivision does not preclude the department from issuing a class "A" or class "B" citation for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, a single act, omission, or occurrence may not be cited both as a class "A" or class "B" violation and as a violation of this subdivision.

(h) When the licensee has failed to post the notices required by Section 9718 of the Welfare and Institutions Code in the manner required under Section 1422.6, the department shall assess the licensee a civil penalty in the amount of one hundred dollars (\$100) for each day the failure to post the notices continues. When the total penalty assessed is less than two thousand dollars (\$2,000), the violation shall be issued and enforced in the same manner as a class "B" violation, and shall include the right of appeal as specified in Section 1428. When the assessed penalty is equal to or in excess of two thousand dollars (\$2,000), the violation shall be issued and enforced in the same manner as a class "A" violation and shall include the right of appeal as specified in Section 1428. Fines collected pursuant to this subdivision shall be used to fund the costs incurred by the California Department of Aging in producing and posting the posters.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to resident safety or health.

(j) The department shall provide a copy of all citations issued under this section to the affected residents whose treatment was the basis for the issuance of the citation, to the affected residents' designated family member or representative of each of the residents, and to the complainant if the citation was issued as a result of a complaint.

(k) This section is not intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.

(l) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities.

SEC. 3. Section 1424.5 of the Health and Safety Code is amended to read:

1424.5. (a) In lieu of the fines specified in subdivisions (c), (d), (e), and (g) of Section 1424, fines imposed on skilled nursing facilities or intermediate care facilities, as specified in paragraphs (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

(1) A class "AA" citation is subject to a civil penalty in an amount not less than thirty thousand dollars (\$30,000) and not exceeding one hundred twenty thousand dollars (\$120,000) for each citation. For a second or subsequent class "AA" citation in a skilled nursing facility or intermediate care facility within a 24-month period, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(2) A class "A" citation is subject to a civil penalty in an amount not less than three thousand five hundred dollars (\$3,500) and not exceeding twenty-five thousand dollars (\$25,000) for each citation. A class "A" citation that involved the death of a patient or resident is subject to a civil penalty in an amount not less than fifteen thousand dollars (\$15,000) and not exceeding sixty thousand dollars (\$60,000).

(3) Any "willful material falsification" or "willful material omission," as those terms are defined in subdivision (f) of Section 1424, in the health record of a resident is subject to a civil penalty in an amount not less than three thousand five hundred dollars (\$3,500) and not exceeding twenty-five thousand dollars (\$25,000) for each citation.

(4) A class "B" citation is subject to a civil penalty in an amount not less than one hundred fifty dollars (\$150) and not exceeding three thousand dollars (\$3,000). Class "B" violations are violations that the department determines have a direct or immediate relationship to the health, safety, or security of long-term health care facility residents, other than class "AA" or "A" violations. Unless otherwise determined by the department to be a class "A" violation pursuant to this chapter and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Code of Regulations, that is determined by the department to cause, or under circumstances to be likely to cause, significant humiliation, indignity, anxiety, or other emotional trauma to a resident is a class "B" violation. A class "B" citation shall specify the time within which the violation is required to be corrected. If the department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(b) A licensee may, in lieu of contesting a class "AA" or class "A" citation pursuant to Section 1428, transmit to the department, the minimum amount specified by law, or 65 percent of the amount specified in the citation, whichever is greater, for each violation, within 30 business days after the issuance of the citation.