



State of California—Health and Human
Services Agency
**California Department of
Public Health**



GAVIN NEWSOM
Governor

November 19, 2021

AFL 21-45

TO: Long-term Care Facilities (LTC)

SUBJECT: Assembly Bill (AB) 323 - Citation Criteria and Civil Penalty Increases

All Facilities Letter (AFL) Summary

- This AFL notifies LTCs of the chaptering of AB 323 that changes the burden of proof the California Department of Public Health (CDPH) must meet when issuing Class "AA" citations.
- This bill also creates a new category of citation and increases civil penalty amounts in skilled nursing facilities and intermediate care facilities.

Effective January 1, 2022, AB 323 (Chapter 458, Statutes 2021) changes the burden of proof CDPH must meet before issuing a class "AA" citation from a "direct proximate cause" of the death of a resident of a LTC facility to a "substantial factor" in the death. "Substantial factor" is defined as, "more than a remote or trivial factor, but is not required to be the only cause of harm."

AB 323 created a new category of citation for SNFs and ICFs, a class "A" citation that involved the death of a resident. This new type of citation carries a civil penalty in an amount not less than \$15,000 and not exceeding \$60,000. AB 323 also increases civil penalty amounts for class "AA," "A," and "B" citations and "willful material falsification" or "willful material omission" in SNFs and ICFs. The new civil penalty amounts are below:

- Class "AA" citations are subject to a civil penalty not less than \$30,000 and not exceeding \$120,000 for each citation.
- Class "A" citations are subject to a civil penalty not less than \$3,500 and not exceeding \$25,000 for each citation.
- "Willful material falsification" or "willful material omission" in the health record of a resident are subject to a civil penalty not less than \$3,500 and not exceeding \$25,000 for each citation.
- Class "B" citation are subject to a civil penalty not less than \$150 and not exceeding \$3,000.

AB 323 does not affect the civil penalty amounts for other types of LTC facilities.

CDPH's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities

should refer to the full text of all applicable sections of Health and Safety Code and the California Code of Regulations to ensure compliance.

If you have any questions about this AFL, please contact your local district office.

Sincerely,

Original signed by Cassie Dunham

Cassie Dunham

Acting Deputy Director

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Page Last Updated : November 19, 2021