

AMENDED IN SENATE JULY 15, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 323

Introduced by Assembly Member Kalra
(Coauthor: Senator Stern)

January 26, 2021

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

LEGISLATIVE COUNSEL’S DIGEST

AB 323, as amended, 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.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1423 of the Health and Safety Code is
 2 amended to read:
 3 1423. (a) If upon inspection or investigation the director
 4 determines that a nursing facility is in violation of any state or
 5 federal law or regulation relating to the operation or maintenance
 6 of the facility, or determines that any other long-term health care
 7 facility is in violation of any statutory provision or regulation
 8 relating to the operation or maintenance of the facility, the director
 9 shall promptly, but not later than 24 hours, excluding Saturday,
 10 Sunday, and holidays, after the director determines or has
 11 reasonable cause to determine that an alleged violation has
 12 occurred, issue a notice to correct the violation and of intent to
 13 issue a citation to the licensee. Before completing the investigation
 14 and making the final determination whether to issue a citation, the
 15 department shall hold an exit conference with the licensee to
 16 identify the potential for issuing a citation for any violation, discuss
 17 investigative findings, and allow the licensee to provide the
 18 department with additional information related to the violation.
 19 The department shall consider this additional information, in

1 conjunction with information from the inspection or investigation,
2 in determining whether to issue a citation, or whether other action
3 would be appropriate. If the department determines that the
4 violation warrants the issuing of a citation and an exit conference
5 has been completed it shall do either of the following:

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

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

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

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

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

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

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

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

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

6 1424. Citations issued pursuant to this chapter shall be
7 classified according to the nature of the violation and shall indicate
8 the classification on the face thereof.

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

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

14 (2) The resident's medical condition.

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

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

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

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

27 (c) (1) Class "AA" violations are violations that meet the criteria
28 for a class "A" violation and that the department determines to
29 have been a substantial factor in the death of a resident of a
30 long-term health care facility. Except as provided in Section
31 1424.5, a class "AA" citation is subject to a civil penalty in the
32 amount of not less than five thousand dollars (\$5,000) and not
33 exceeding twenty-five thousand dollars (\$25,000) for each citation.
34 In any action to enforce a citation issued under this subdivision,
35 the department shall prove all of the following:

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

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

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

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

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

17 (d) (1) Class “A” violations are violations that the department
18 determines present either (1) imminent danger that death or serious
19 harm to the residents of the long-term health care facility would
20 result therefrom, or (2) substantial probability that death or serious
21 physical harm to residents of the long-term health care facility
22 would result therefrom. A physical condition or one or more
23 practices, means, methods, or operations in use in a long-term
24 health care facility may constitute a class “A” violation. The
25 condition or practice constituting a class “A” violation shall be
26 abated or eliminated immediately, unless a fixed period of time,
27 as determined by the department, is required for correction. Except
28 as provided in Section 1424.5, a class “A” citation is subject to a
29 civil penalty in an amount not less than one thousand dollars
30 (\$1,000) and not exceeding ten thousand dollars (\$10,000) for each
31 citation.

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

38 (e) (1) Except as provided in paragraph (4) of subdivision (a)
39 of Section 1424.5, class “B” violations are violations that the
40 department determines have a direct or immediate relationship to

1 the health, safety, or security of long-term health care facility
2 residents, other than class “AA” or “A” violations. Unless
3 otherwise determined by the department to be a class “A” violation
4 pursuant to this chapter and regulations adopted pursuant thereto,
5 a violation of a patient’s rights as set forth in Sections 72527 and
6 73523 of Title 22 of the California Code of Regulations, that is
7 determined by the department to cause or under circumstances
8 likely to cause significant humiliation, indignity, anxiety, or other
9 emotional trauma to a patient is a class “B” violation. A class “B”
10 citation is subject to a civil penalty in an amount not less than one
11 hundred dollars (\$100) and not exceeding one thousand dollars
12 (\$1,000) for each citation. A class “B” citation shall specify the
13 time within which the violation is required to be corrected. If the
14 department establishes that a violation occurred, the licensee shall
15 have the burden of proving that the licensee did what might
16 reasonably be expected of a long-term health care facility licensee,
17 acting under similar circumstances, to comply with the regulation.
18 If the licensee sustains this burden, then the citation shall be
19 dismissed.

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

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

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

38 (3) As used in this section, “willful material omission” means
39 the willful failure to record any untoward event that has affected
40 the health, safety, or security of the specific resident, and that was

1 omitted with the knowledge that the records falsely reflect the
2 condition of the resident or the care or services provided.

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

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

16 (2) (A) When the penalty assessed is one thousand dollars
17 (\$1,000) or less, the violation shall be issued and enforced, except
18 as provided in this subdivision, in the same manner as a class “B”
19 violation, and shall include the right of appeal as specified in
20 Section 1428. Where the assessed penalty is in excess of one
21 thousand dollars (\$1,000), or for skilled nursing facilities or
22 intermediate care facilities as specified in paragraphs (1) and (2)
23 of subdivision (a) of Section 1418, in excess of two thousand
24 dollars (\$2,000), the violation shall be issued and enforced, except
25 as provided in this subdivision, in the same manner as a class “A”
26 violation, and shall include the right of appeal as specified in
27 Section 1428.

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

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

38 (h) When the licensee has failed to post the notices required by
39 Section 9718 of the Welfare and Institutions Code in the manner
40 required under Section 1422.6, the department shall assess the

1 licensee a civil penalty in the amount of one hundred dollars (\$100)
2 for each day the failure to post the notices continues. When the
3 total penalty assessed is less than two thousand dollars (\$2,000),
4 the violation shall be issued and enforced in the same manner as
5 a class “B” violation, and shall include the right of appeal as
6 specified in Section 1428. When the assessed penalty is equal to
7 or in excess of two thousand dollars (\$2,000), the violation shall
8 be issued and enforced in the same manner as a class “A” violation
9 and shall include the right of appeal as specified in Section 1428.
10 Fines collected pursuant to this subdivision shall be used to fund
11 the costs incurred by the California Department of Aging in
12 producing and posting the posters.

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

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

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

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

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

33 1424.5. (a) In lieu of the fines specified in subdivisions (c),
34 (d), (e), and (g) of Section 1424, fines imposed on skilled nursing
35 facilities or intermediate care facilities, as specified in paragraphs
36 (1) and (2) of subdivision (a) of Section 1418, shall be as follows:

37 (1) A class “AA” citation is subject to a civil penalty in an
38 amount not less than thirty thousand dollars (\$30,000) and not
39 exceeding one hundred twenty thousand dollars (\$120,000) for
40 each citation. For a second or subsequent class “AA” citation in a

1 skilled nursing facility or intermediate care facility within a
2 24-month period, the state department shall commence action to
3 suspend or revoke the facility’s license in accordance with Section
4 1294.

5 (2) A class “A” citation is subject to a civil penalty in an amount
6 not less than three thousand five hundred dollars (\$3,500) and not
7 exceeding twenty-five thousand dollars (\$25,000) for each citation.
8 A class “A” citation that ~~resulted in~~ *involved* the death of a patient
9 or resident is subject to a civil penalty in an amount not less than
10 fifteen thousand dollars (\$15,000) and not exceeding sixty thousand
11 dollars (\$60,000).

12 (3) Any “willful material falsification” or “willful material
13 omission,” as those terms are defined in subdivision (f) of Section
14 1424, in the health record of a resident is subject to a civil penalty
15 in an amount not less than three thousand five hundred dollars
16 (\$3,500) and not exceeding twenty-five thousand dollars (\$25,000)
17 for each citation.

18 (4) A class “B” citation is subject to a civil penalty in an amount
19 not less than one hundred fifty dollars (\$150) and not exceeding
20 three thousand dollars (\$3,000). Class “B” violations are violations
21 that the department determines have a direct or immediate
22 relationship to the health, safety, or security of long-term health
23 care facility residents, other than class “AA” or “A” violations.
24 Unless otherwise determined by the department to be a class “A”
25 violation pursuant to this chapter and regulations adopted pursuant
26 thereto, any violation of a patient’s rights as set forth in Sections
27 72527 and 73523 of Title 22 of the California Code of Regulations,
28 that is determined by the department to cause, or under
29 circumstances to be likely to cause, significant humiliation,
30 indignity, anxiety, or other emotional trauma to a resident is a class
31 “B” violation. A class “B” citation shall specify the time within
32 which the violation is required to be corrected. If the department
33 establishes that a violation occurred, the licensee shall have the
34 burden of proving that the licensee did what might reasonably be
35 expected of a long-term health care facility licensee, acting under
36 similar circumstances, to comply with the regulation. If the licensee
37 sustains this burden, then the citation shall be dismissed.

38 (b) A licensee may, in lieu of contesting a class “AA” or class
39 “A” citation pursuant to Section 1428, transmit to the department,
40 the minimum amount specified by law, or 65 percent of the amount

- 1 specified in the citation, whichever is greater, for each violation,
- 2 within 30 business days after the issuance of the citation.

O