



RON CHAPMAN, MD, MPH
Director & State Health Officer

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



EDMUND G. BROWN, JR.
Governor

March 14, 2012

AFL 12-08

TO: Long Term Care (LTC) Facilities

SUBJECT: Increase in Class “B” Citation Penalties, Elimination of Citation Review Conference (CRC) Process, and Recommendations of Federal Enforcement Remedies

AUTHORITY: Assembly Bill (AB) X1 19 (Blumenfield; Chapter 4, Statutes of 2011; effective June 29, 2011);
AB 641 (Feuer; Chapter 729, Statutes of 2011; effective January 1, 2012)

The following information provides notice of new requirements set forth by recently chaptered legislation: ABX1 19 and AB 641.

AB 641 repealed the entire CRC process for citations issued to the following LTC facilities:

- Skilled Nursing Facilities;
- Intermediate Care Facilities;
- Intermediate Care Facilities/Developmentally Disabled;
- Intermediate Care Facilities/Developmentally Disabled--Habilitative;
- Intermediate Care Facilities/Developmentally Disabled--Nursing;
- Intermediate Care Facilities/Developmentally Disabled--Continuous Nursing;
- Congregate Living Health Facilities;
- Nursing Facilities; and
- Pediatric Day Health and Respite Care Facilities.

CRC appeals requested prior to January 1, 2012 will continue to be conducted pursuant to HSC Section 1428 as it existed on December 31, 2011.

Although this legislation eliminated the CRC appeal process for contesting citations, a licensee can continue to contest a class “AA” or “A” in superior court. Similarly, remaining law still allows a licensee to contest a class “B” citation through either an administrative hearing before an Administrative Law Judge (ALJ) or binding arbitration.

AFL 12-08
Page 2
March 14, 2012

A licensee of a facility that has received a citation *of any class* has 15 business days after the citation's issuance to notify the Licensing and Certification Program's District Office (DO) of its intent to seek adjudication of the validity of the citation. If the facility's appeal is regarding a class 'B' citation, the licensee must, at that same time, make its election either to have an administrative hearing before an ALJ or to submit the matter to binding arbitration.

When the DO issues a class "B" citation to the facility, the DO will provide the licensee with a blank *Request for Legal Action* form for the facility to use to give its notification of intent to seek adjudication of the 'B' citation, including the election to proceed by administrative hearing or by binding arbitration. A sample form is attached.

AB 641 also deleted the prior prohibition against issuing both a citation to a facility under state law and recommending to CMS the levying of a civil money penalty under federal law. Should CDPH, during an inspection, discover an issue of non-compliance with state health and safety statutes or regulations, the nursing facility now can be issued a citation for violating state law *and* a recommendation may also be made to CMS to impose a monetary penalty for the failure to comply with federal requirements, as applicable.

ABX1 19, effective June 29, 2011, increased the upper limit for "B" citations for skilled nursing facilities and intermediate care facilities to \$2,000. This is a new provision contained in HSC Section 1424.5(a)(4). *The civil monetary penalty for class "B" citations for all other LTCs remains unchanged: Not less than \$100 and not more than \$1,000.*

The information in this All Facilities Letter is a brief summary of recent legislative changes. Facilities should refer to the full text of AB 641 and applicable sections of ABX1 19 to ensure compliance. CDPH's failure to expressly notify facilities of legislative changes does not relieve facilities of their responsibility for following all laws and regulations.

If you have any questions, please contact your local District Office.

Sincerely,

Original signed by Debby Rogers

Debby Rogers, RN, MS, FAEN
Deputy Director
Center for Health Care Quality

Attachment

REQUEST FOR LEGAL ACTION

The licensee of a long-term health care facility has 15 business days after issuance of the citation to notify the district office of its intent to adjudicate the validity of the citation at an administrative hearing or through binding arbitration.

Please indicate your intent below by checking one of these boxes:

- I wish to refer the citation to an administrative hearing. In accordance with Health and Safety Code, Section 1428, this constitutes written notice of my intent to do so.

- I intend to refer the citation to binding arbitration. In accordance with Health and Safety Code, Section 1428, this constitutes written notice of my intent to file a demand for arbitration with the American Arbitration Association, which I understand must be filed within 60 days from service of the citation.

<Name and address of facility>

Facility	Citation Number
----------	-----------------

Signature of Licensee or Administrator	Telephone Number	Date
--	------------------	------

If any of the above boxes are checked, please send this form by certified mail within 15 business days to:

<Name of district office and address>