

Assembly Bill 2245

Long-term Care Facilities

Assembly Member Ash Kalra

SUMMARY

AB 2245 updates long-term care facility citation penalties and standards for negligent care to safeguard nursing home and long-term care facility residents.

Specifically, the bill:

- Adopts California State Auditor recommendation on skilled nursing facility citation amounts to improve quality-of-care deficiencies in nursing homes.
- Improves Department of Public Health enforcement ability by clarifying the confusing causation standard for “AA” citations from “direct proximate cause” to the “substantial factor” test.

BACKGROUND

According to the 2018 state audit of nursing facilities, “[t]he state has not adequately addressed quality-of-care deficiencies.” Among the audit’s recommendations is a recommendation of the State Legislature to “increase citation penalty amounts annually by—at a minimum—the cost of inflation.”

The Department of Public Health (DPH) Licensing and Certification Division is responsible for investigations of deaths and other violations of licensing standards for long-term care facilities, including: skilled nursing facilities (nursing homes), intermediate care facilities for the developmentally disabled, and congregate living health facilities.

There are three categories of citation that DPH may issue when a facility has been found to have violated licensing standards; Class AA, Class A and Class B. The highest level of citation is a Class AA, which is issued when DPH determines the facility’s violation caused a resident’s death.

If there is insufficient evidence that the facility’s violation is a “direct proximate cause” of the death, a Class A citation is issued instead. Criteria for Class A citations include whether a facility poses an imminent danger or there is a substantial probability of death or serious harm to residents.

Class B citations apply when there is a direct or immediate relationship to resident health, safety or security, and may include emotional and financial elements. Class B citations apply in several other circumstances including abuse reporting and patient rights.

However, under current law, the “direct proximate cause” standard for AA citations is confusing and unclear. In fact, according to DPH, it is undefined, which makes it difficult for it to defend class AA citations. Further, DPH states that there is no “case law or jury instruction for “direct proximate cause” that can guide a court toward a clear application of the standard.”¹

The California Supreme Court rejected the “proximate cause” causation standard and concluded that “substantial factor” is the proper causation standard in determining negligence.² A substantial factor is more than remote or trivial but need not be the only cause of harm.

In commenting on similar bills in 2017 and 2019 (AB 1335 and AB 506, Kalra), DPH agrees that the substantial factor standard is better than the direct proximate cause standard and has opposed the inclusion of language that would create “an almost insurmountable burden to overcome” because patients often suffer from other co-morbidities.

The application of “substantial factor” is not just a regulatory action, but also applied in a judicial setting. If a long-term care facility appeals a Class

¹ DPH Oppose Unless Amended Position on AB 506 (2019-20 Legislative Session).

² *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1056.

AA citation, DPH must prove causation in Superior Court, to a judge. Because there is no case law on “direct proximate cause,” it has led to confusion by the courts and inconsistent application. In fact, of the 296 Class AA citations issued between January 2000 and January 2018, 74 percent are appealed and 77 percent are subsequently reduced to a lower citation.

Between 2000 and 2014, DPH issued 259 Class AA citations and 1,774 Class A citations, of which 287 involved resident deaths. A January 2017 investigative report by Disability Rights California concluded that deaths in these facilities were inappropriately classified as Class A violations, even in cases of severe neglect. In some cases, the confusion created by applying the “direct proximate cause” standard may have prevented DPH from issuing a more appropriate Class AA citation.

These Class A deaths included:

- Untreated pressure sores
- Catching on fire while smoking unsupervised
- Severe, untreated dehydration
- Punctured G-tube and septic shock
- Choking to death

SOLUTION

Because citation fines for “AA” and “A” have not increased since 2000, AB 2245 makes the following increases per recommendations of the California State Auditor:

Citation Type	Current Amount	AB 506
AA	\$25,000-\$100,000	\$30,000-\$120,000
A	\$2,000-\$20,000	\$3,500-\$25,000
B³	\$100-\$2,000	\$150-\$3,000
Falsification⁴	\$2,000-\$20,000	\$3,500-\$25,000

³ Class B citation amounts were last increased in 2011

⁴ Willful falsification of a health by a long-term care facility

In addition, the bill provides for an enhanced citation for a Class “A” citation that resulted in a death to be not less than \$15,000 and not exceed \$60,000.

By adopting AB 2245, the state can ensure that DPH is able to properly apply long-term care facility violations and hold accountable those found to be responsible for a resident’s harm or death.

SPONSOR

Disability Rights California

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