

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY APRIL 26, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2629

Introduced by Assembly Member Bonnie Lowenthal

February 19, 2010

An act to amend Sections 1507.3, 1566.45, and 1568.0832 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2629, as amended, Bonnie Lowenthal. Residential facilities.

Existing law provides for the licensing and regulation of residential facilities under the California Community Care Facilities Act and residential care facilities for persons with chronic life-threatening illness by the State Department of Social Services. Violation of these provisions constitutes a misdemeanor.

Under existing law, bedridden persons may be admitted to, and remain in, any of the above-described residential facilities if the facility secures and maintains an appropriate fire clearance. Under existing law, a person is not classified as "bedridden" if ~~they have~~ *he or she has* a temporary illness that persists for 14 days or less.

This bill would, instead, exclude from the definition of "bedridden" a temporary illness or recovery from surgery that persists for 14 days or less. The bill would also permit a residential facility to retain a bedridden client in excess of 14 days if prescribed conditions are met.

This bill would prohibit a residential facility, except for an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN), from admitting or retaining a client if he or she requires

24-hour skilled nursing care. The bill would also require a residential facility that admits or retains a bedridden person, within 48 hours of admission or retention, to notify the fire authority of the estimated length of time that the person will retain his or her bedridden status in the facility. This bill would make other conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 1507.3 of the Health and Safety Code is
2 amended to read:

3 1507.3. (a) Notwithstanding Section 1566.45 or any other
4 provision of law, a residential facility that provides care to adults
5 may obtain a waiver from the department for the purpose of
6 allowing a resident who has been diagnosed as terminally ill by
7 his or her physician and surgeon to remain in the facility, or
8 allowing a person who has been diagnosed as terminally ill by his
9 or her physician and surgeon to become a resident of the facility
10 if that person is already receiving hospice services and would
11 continue to receive hospice services without disruption if he or
12 she became a resident, when all of the following conditions are
13 met:

14 (1) The facility agrees to retain the terminally ill resident, or
15 accept as a resident the terminally ill person, and to seek a waiver
16 on behalf of the individual, provided the individual has requested
17 the waiver and is capable of deciding to obtain hospice services.

18 (2) The terminally ill resident, or the terminally ill person to be
19 accepted as a resident, has obtained the services of a hospice
20 certified in accordance with federal medicare conditions of
21 participation and licensed pursuant to Chapter 8 (commencing
22 with Section 1725) or Chapter 8.5 (commencing with Section
23 1745).

1 (3) The facility, in the judgment of the department, has the
2 ability to provide care and supervision appropriate to meet the
3 needs of the terminally ill resident, or the terminally ill person to
4 be accepted as a resident, and is in substantial compliance with
5 regulations governing the operation of residential facilities that
6 provide care to adults.

7 (4) The hospice has agreed to design and provide for care,
8 services, and necessary medical intervention related to the terminal
9 illness as necessary to supplement the care and supervision
10 provided by the facility.

11 (5) An agreement has been executed between the facility and
12 the hospice regarding the care plan for the terminally ill resident,
13 or the terminally ill person to be accepted as a resident. The care
14 plan shall designate the primary caregiver, identify other caregivers,
15 and outline the tasks the facility is responsible for performing and
16 the approximate frequency with which they shall be performed.
17 The care plan shall specifically limit the facility's role for care and
18 supervision to those tasks authorized for a residential facility under
19 this chapter.

20 (6) The facility has obtained the agreement of those residents
21 who share the same room with the terminally ill resident, or any
22 resident who will share a room with the terminally ill person to be
23 accepted as a resident, to allow the hospice caregivers into their
24 residence.

25 (b) At any time that the licensed hospice, the facility, or the
26 terminally ill resident determines that the resident's condition has
27 changed so that continued residence in the facility will pose a threat
28 to the health and safety of the terminally ill resident or any other
29 resident, the facility may initiate procedures for a transfer.

30 (c) A facility that has obtained a hospice waiver from the
31 department pursuant to this section, or an Adult Residential Facility
32 for Persons with Special Health Care Needs (ARFPSHN) licensed
33 pursuant to Article 9 (commencing with Section 1567.50), need
34 not call emergency response services at the time of a
35 life-threatening emergency if the hospice agency is notified instead
36 and all of the following conditions are met:

37 (1) The resident is receiving hospice services from a licensed
38 hospice agency.

1 (2) The resident has completed an advance directive, as defined
2 in Section 4605 of the Probate Code, requesting to forego
3 resuscitative measures.

4 (3) The facility has documented that facility staff have received
5 training from the hospice agency on the expected course of the
6 resident’s illness and the symptoms of impending death.

7 (d) Nothing in this section is intended to expand the scope of
8 care and supervision for a residential facility, as defined in this
9 chapter, that provides care to adults nor shall a facility be required
10 to alter or extend its license in order to retain a terminally ill
11 resident, or allow a terminally ill person to become a resident of
12 the facility, as authorized by this section.

13 (e) Nothing in this section shall require any care or supervision
14 to be provided by the residential facility beyond that which is
15 permitted in this chapter.

16 (f) Nothing in this section is intended to expand the scope of
17 life care contracts or the contractual obligation of continuing care
18 retirement communities as defined in Section 1771.

19 (g) The department shall not be responsible for the evaluation
20 of medical services provided to the resident by the hospice and
21 shall have no liability for the independent acts of the hospice.

22 (h) The department, in consultation with the State Fire Marshal,
23 shall develop and expedite implementation of regulations related
24 to residents who have been diagnosed as terminally ill who remain
25 in the facility and who are nonambulatory that ensure resident
26 safety but also provide flexibility to allow residents to remain in
27 the least restrictive environment.

28 (i) Nothing in this section shall be construed to relieve a licensed
29 residential facility that provides care to adults of its responsibility
30 *to do both of the following: to notify*

31 *(1) Notify* the fire authority having jurisdiction of the presence
32 of a bedridden resident in the facility as required pursuant to
33 subdivision (e) of Section ~~1566.45~~, *and to obtain 1566.45.*

34 *(2) Obtain* and maintain a fire clearance from the fire authority
35 having jurisdiction.

36 (j) The requirement in paragraph (1) of subdivision (a) to obtain
37 a waiver, and the ~~requirements of requirement in paragraph (1)~~
38 *of* subdivision (i); shall not apply to a facility licensed as an
39 ARFPSHN pursuant to Article 9 (commencing with Section
40 1567.50).

1 SEC. 2. Section 1566.45 of the Health and Safety Code is
2 amended to read:

3 1566.45. (a) (1) For purposes of this section, “bedridden”
4 means requiring assistance in turning and repositioning in bed or
5 being unable to independently transfer to and from bed, except in
6 a facility with appropriate and sufficient care staff, mechanical
7 devices, if necessary, and safety precautions, as determined by the
8 director in regulations.

9 (2) In developing the regulations for child residential facilities,
10 the department shall take into consideration the size and weight
11 of the child.

12 (3) For purposes of this section, the status of being bedridden
13 shall not include a temporary illness or recovery from surgery that
14 persists for 14 days or less.

15 (4) The determination of the bedridden status of persons with
16 developmental disabilities shall be made by the Director of Social
17 Services or his or her designated representative, in consultation
18 with the Director of Developmental Services or his or her
19 designated representative, after consulting the resident’s individual
20 safety plan. The determination of the bedridden status of all other
21 persons with disabilities who are not developmentally disabled
22 shall be made by the Director of Social Services, or his or her
23 designated representative.

24 (b) No client shall be admitted to or retained in a residential
25 facility, ~~except for a facility licensed as an Adult Residential~~
26 ~~Facility for Persons with Special Health Care Needs pursuant to~~
27 ~~Article 9 (commencing with Section 1567.50) if he or she requires~~
28 ~~facility if he or she requires 24-hour skilled nursing care, except~~
29 ~~for a facility licensed as an Adult Residential Facility for Persons~~
30 ~~with Special Health Care Needs pursuant to Article 9 (commencing~~
31 ~~with Section 1567.50).~~

32 (c) A bedridden person may be admitted to, and remain in, a
33 residential facility that secures and maintains an appropriate fire
34 clearance. A fire clearance shall be issued to a facility in which
35 one or more bedridden persons reside if either of the following
36 conditions are met:

37 (1) The fire safety requirements are met. Clients who are unable
38 to independently transfer to and from bed, but who do not need
39 assistance to turn or reposition in bed, shall be considered
40 nonambulatory for purposes of this paragraph.

1 (2) Alternative methods of protection are approved.

2 (d) Notwithstanding paragraph (3) of subdivision (a), a
3 bedridden client may be retained in a residential facility in excess
4 of 14 days if all of the following requirements are satisfied:

5 (1) The facility notifies the department in writing that the person
6 is recovering from a temporary illness or surgery.

7 (2) The facility submits to the department, with the notification
8 required in paragraph (1), a physician and surgeon's written
9 statement to the effect that the client's illness or recovery is of a
10 temporary nature. The statement shall contain an estimated date
11 upon which the illness or recovery is expected to end or upon
12 which the client is expected to no longer be confined to bed.

13 (3) The department determines that the client's health and safety
14 is adequately protected in the facility and that transfer to a higher
15 level of care is not necessary.

16 (4) This subdivision does not expand the scope of care and
17 supervision of a residential facility.

18 (e) Notwithstanding the length of stay of a bedridden client,
19 every residential facility admitting or retaining a bedridden client
20 shall, within 48 hours of the client's admission or retention in the
21 facility, notify the fire authority having jurisdiction over the
22 bedridden client's location of the estimated length of time the client
23 will retain his or her bedridden status in the facility.

24 (f) (1) The department and the Office of the State Fire Marshal,
25 in consultation with the State Department of Developmental
26 Services, shall each promulgate regulations that meet all of the
27 following conditions:

28 (A) Are consistent with this section.

29 (B) Are applicable to facilities regulated under this chapter,
30 consistent with the regulatory requirements of the California
31 Building Standards Code for fire and life safety for the respective
32 occupancy classifications into which the State Department of Social
33 Services' community care licensing classifications fall.

34 (C) Permit clients to remain in homelike settings.

35 (2) At a minimum, these regulations shall do both of the
36 following with regard to a residential care facility that provides
37 care for six or fewer clients, at least one of whom is bedridden:

38 (A) Clarify the fire and life safety requirements for a fire
39 clearance for the facility.

1 (B) Identify procedures for requesting the approval of alternative
2 means of providing equivalent levels of fire and life safety
3 protection. Either the facility, the client or client’s representative,
4 or local fire official may request from the Office of the State Fire
5 Marshal a written opinion concerning the interpretation of the
6 regulations promulgated by the State Fire Marshal pursuant to this
7 section for a particular factual dispute. The State Fire Marshal
8 shall issue the written opinion within 45 days following the request.

9 (g) For facilities that care for six or fewer clients, a local fire
10 official shall not impose fire safety requirements stricter than the
11 fire safety regulations promulgated for the particular type of facility
12 by the Office of the State Fire Marshal or the local fire safety
13 requirements imposed on any other single family dwelling,
14 whichever is more strict.

15 (h) This section and regulations promulgated thereunder shall
16 be interpreted in a manner that provides flexibility to allow
17 bedridden persons to avoid institutionalization and be admitted to,
18 and safely remain in, community-based residential care facilities.

19 SEC. 3. Section 1568.0832 of the Health and Safety Code is
20 amended to read:

21 1568.0832. (a) (1) For purposes of this section, “bedridden”
22 means requiring assistance in turning and repositioning in bed or
23 being unable to independently transfer to and from bed, except in
24 a facility with appropriate and sufficient care staff, mechanical
25 devices, if necessary, and safety precautions, as determined by the
26 director in regulations.

27 (2) For purposes of this section, the status of being bedridden
28 shall not include a temporary illness or recovery from surgery that
29 persists for 14 days or less.

30 (3) The determination of the bedridden status of persons with
31 developmental disabilities shall be made by the Director of Social
32 Services or his or her designated representative, in consultation
33 with the Director of Developmental Services or his or her
34 designated representative, after consulting the resident’s individual
35 safety plan. The determination of the bedridden status of all other
36 persons with disabilities who are not developmentally disabled
37 shall be made by the Director of Social Services, or his or her
38 designated representative.

39 (b) A bedridden person may be admitted to, and remain in, a
40 residential facility that secures and maintains an appropriate fire

1 clearance. A fire clearance shall be issued to a facility in which
2 one or more bedridden persons reside if either of the following
3 conditions are met:

4 (1) The fire safety requirements are met. Residents who are
5 unable to independently transfer to and from bed, but who do not
6 need assistance to turn or reposition in bed, shall be considered
7 nonambulatory for purposes of this paragraph.

8 (2) Alternative methods of protection are approved.

9 (c) Notwithstanding paragraph (2) of subdivision (a), a
10 bedridden resident may be retained in a residential care facility in
11 excess of 14 days if all of the following conditions are met:

12 (1) The facility notifies the department in writing that the person
13 is recovering from a temporary illness or surgery.

14 (2) The facility submits to the department, with the notification
15 required in paragraph (1), a physician and surgeon's written
16 statement to the effect that the resident's illness or recovery is of
17 a temporary nature. The statement shall contain an estimated date
18 upon which the illness or recovery is expected to end or upon
19 which the resident is expected to no longer be confined to bed.

20 (3) The department determines that the resident's health and
21 safety is adequately protected in the facility and that transfer to a
22 higher level of care is not necessary.

23 (4) This subdivision does not expand the scope of care and
24 supervision of a residential care facility.

25 (d) Notwithstanding the length of stay of a bedridden resident,
26 every residential facility admitting or retaining a bedridden resident
27 shall, within 48 hours of the resident's admission or retention in
28 the facility, notify the fire authority having jurisdiction over the
29 bedridden resident's location of the estimated length of time the
30 resident will retain his or her bedridden status in the facility.

31 (e) (1) The department and the Office of the State Fire Marshal,
32 in consultation with the State Department of Developmental
33 Services, shall each promulgate regulations that meet all of the
34 following conditions:

35 (A) Are consistent with this section.

36 (B) Are applicable to facilities regulated under this chapter,
37 consistent with the regulatory requirements of the California
38 Building Standards Code for fire and life safety for the respective
39 occupancy classifications into which the State Department of Social
40 Services' community care licensing classifications fall.

1 (C) Permit residents to remain in homelike settings.

2 (2) At a minimum, these regulations shall do both of the
3 following with regard to a residential care facility that provides
4 care for six or fewer residents, at least one of whom is bedridden:

5 (A) Clarify the fire and life safety requirements for a fire
6 clearance for the facility.

7 (B) Identify procedures for requesting the approval of alternative
8 means of providing equivalent levels of fire and life safety
9 protection. Either the facility, the resident or resident's
10 representative, or local fire official may request from the Office
11 of the State Fire Marshal a written opinion concerning the
12 interpretation of the regulations promulgated by the State Fire
13 Marshal pursuant to this section for a particular factual dispute.
14 The State Fire Marshal shall issue the written opinion within 45
15 days following the request.

16 (f) For facilities that care for six or fewer residents, a local fire
17 official shall not impose fire safety requirements stricter than the
18 fire safety regulations promulgated for the particular type of facility
19 by the Office of the State Fire Marshal or the local fire safety
20 requirements imposed on any other single family dwelling,
21 whichever is more strict.

22 (g) This section and any regulations promulgated thereunder
23 shall be interpreted in a manner that provides flexibility to allow
24 bedridden persons to avoid institutionalization and be admitted to,
25 and safely remain in, community-based residential care facilities.

26 SEC. 4. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

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