

AMENDED IN ASSEMBLY APRIL 7, 2011
AMENDED IN ASSEMBLY MARCH 14, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Monning

February 9, 2011

An act to ~~add Section 1569.336 to~~ amend Section 1569.682 of, and to add Section 1569.336 to, the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as amended, Monning. Residential care facilities for the elderly.

(1) Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services. A violation of the act is a misdemeanor.

Existing law requires the department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman, as defined, whenever the department substantiates that a violation has occurred which poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license.

This bill would require a licensed residential care facility for the elderly to provide a written notice to a resident, ~~emergency contact person or legal representative~~ *the resident's responsible party, if any*, and the local long-term care ombudsman under specified conditions.

By

(2) Existing law require a licensee of a licensed residential care facility for the elderly to take all reasonable steps to transfer affected residents safely as a result of the forfeiture of a license or the charge of use of the facility pursuant to the department’s regulations.

This bill would require the licensee to take all reasonable steps to transfer affected residents safely as the result of the revocation of the license.

(3) 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 1569.336 is added to the Health and
2 Safety Code, to read:

3 1569.336. (a) A licensed residential care facility for the elderly
4 shall provide written notice to a resident, ~~any person designated~~
5 ~~as an authorized emergency contact for the resident or, if~~
6 ~~applicable, legal representative of the resident, and the resident’s~~
7 ~~responsible party, if any, and the local long-term care ombudsman,~~
8 within 10 days from the occurrence of ~~any either~~ of the following
9 events:

10 ~~(1) The department informs a facility that a violation has~~
11 ~~occurred which poses a serious threat to the health, including~~
12 ~~mental health, and safety of any resident, as defined in regulations~~
13 ~~adopted pursuant to Section 1569.31.~~

14 ~~(2)~~

15 (1) The department commences proceedings to suspend or
16 revoke the license of the facility pursuant to Section 1569.50.

17 ~~(3) A civil or~~

18 (2) A criminal action that relates to the health or safety of the
19 residents is brought against the licensed residential care facility.

20 (b) The notice provided to a resident and ~~emergency contact~~
21 ~~person~~ *the resident’s responsible party, if any*, shall include the

1 contact information for the local Long-Term Care Ombudsman
2 and for the Community Care Licensing Division of the department
3 with a statement that directs the resident or emergency contact to
4 contact either the ombudsman or division for information on the
5 license status of the facility.

6 (c) Upon providing the notice described in subdivision (a), the
7 licensed residential care facility shall also post a written notice, in
8 ~~at least 14-point type, on or immediately adjacent to the interior~~
9 ~~side of the main door into the facility that includes all of the~~ *at*
10 *least 14-point type, in a conspicuous location in the facility, that*
11 *may include where the mail boxes are located, where the facility*
12 *license is posted, or any other easily accessible location in the*
13 *facility. The posting shall include all of the following information:*

14 (1) The date of the notice.

15 (2) The name of the residential care facility for the elderly.

16 (3) A statement that a copy of the most recent licensing report
17 prepared by the department, and any additional reports of facility
18 evaluation visits, within the preceding 12 months, may be obtained
19 at the facility.

20 (4) The name and telephone number of the contact person
21 designated by the department to provide information about the site
22 visit report.

23 (d) The notice described in subdivision (c) shall remain posted
24 ~~for 30 consecutive days or until the deficiencies that gave rise to~~
25 ~~the notice are resolved, whichever is later.~~ *the notice are resolved.*

26 (e) A civil penalty levied for a violation of this section pursuant
27 to Section 1569.49 shall be in addition to any civil penalty levied
28 for the underlying violation that gives rise to the notice
29 requirements of this section.

30 (f) *For purposes of this section, “responsible party” means an*
31 *individual, including the patient’s relative, health care surrogate*
32 *decision maker, or a placement agency, who assists the resident*
33 *in placement or assumes varying degrees of responsibility for the*
34 *well-being of the resident, as designated by the resident in writing.*

35 *SEC. 3. Section 1569.682 of the Health and Safety Code is*
36 *amended to read:*

37 1569.682. (a) A licensee of a licensed residential care facility
38 for the elderly shall, prior to transferring a resident of the facility
39 to another facility or to an independent living arrangement as a
40 result of the forfeiture of a license, as described in subdivision (a),

1 (b), or (f) of Section 1569.19~~or~~, change of use of the facility
 2 pursuant to the department’s regulations, *revocation of a license*,
 3 take all reasonable steps to transfer affected residents safely and
 4 to minimize possible transfer trauma, and shall, at a minimum, do
 5 all of the following:

6 (1) Prepare, for each resident, a relocation evaluation of the
 7 needs of that resident, which shall include both of the following:

8 (A) Recommendations on the type of facility that would meet
 9 the needs of the resident based on the current service plan.

10 (B) A list of facilities, within a 60-mile radius of the resident’s
 11 current facility, that meet the resident’s present needs.

12 (2) Provide each resident or the resident’s responsible person
 13 with a written notice no later than 60 days before the intended
 14 eviction. The notice shall include all of the following:

15 (A) The reason for the eviction, with specific facts to permit a
 16 determination of the date, place, witnesses, and circumstances
 17 concerning the reasons.

18 (B) A copy of the resident’s current service plan.

19 (C) The relocation evaluation.

20 (D) A list of referral agencies.

21 (E) The right of the resident or resident’s legal representative
 22 to contact the department to investigate the reasons given for the
 23 eviction pursuant to Section 1569.35.

24 (3) Discuss the relocation evaluation with the resident and his
 25 or her legal representative within 30 days of issuing the notice of
 26 eviction.

27 (4) Submit a written report of any eviction to the licensing
 28 agency within five days.

29 (5) Upon issuing the written notice of eviction, a licensee shall
 30 not accept new residents or enter into new admission agreements.

31 (6) (A) For paid preadmission fees in excess of five hundred
 32 dollars (\$500), the resident is entitled to a refund in accordance
 33 with all of the following:

34 (i) A 100-percent refund if preadmission fees were paid within
 35 six months of notice of eviction.

36 (ii) A 75-percent refund if preadmission fees were paid more
 37 than six months but not more than 12 months before notice of
 38 eviction.

1 (iii) A 50-percent refund if preadmission fees were paid more
2 than 12 months but not more than 18 months before notice of
3 eviction.

4 (iv) A 25-percent refund if preadmission fees were paid more
5 than 18 months but less than 25 months before notice of eviction.

6 (B) No preadmission refund is required if preadmission fees
7 were paid 25 months or more before the notice of eviction.

8 (C) The preadmission refund required by this paragraph shall
9 be paid within 15 days of issuing the eviction notice. In lieu of the
10 refund, the resident may request that the licensee provide a credit
11 toward the resident's monthly fee obligation in an amount equal
12 to the preadmission fee refund due.

13 (7) If the resident gives notice five days before leaving the
14 facility, the licensee shall refund to the resident or his or her legal
15 representative a proportional per diem amount of any prepaid
16 monthly fees at the time the resident leaves the facility and the
17 unit is vacated. Otherwise the licensee shall pay the refund within
18 seven days from the date that the resident leaves the facility and
19 the unit is vacated.

20 (8) Within 10 days of all residents having left the facility, the
21 licensee, based on information provided by the resident or
22 resident's legal representative, shall submit a final list of names
23 and new locations of all residents to the department and the local
24 ombudsperson program.

25 (b) If seven or more residents of a residential care facility for
26 the elderly will be transferred as a result of the forfeiture of a
27 license, *revocation of a license*, or change in the use of the facility
28 pursuant to subdivision (a), the licensee shall submit a proposed
29 closure plan to the department for approval. The department shall
30 approve or disapprove the closure plan, and monitor its
31 implementation, in accordance with the following requirements:

32 (1) Upon submission of the closure plan, the licensee shall be
33 prohibited from accepting new residents and entering into new
34 admission agreements for new residents.

35 (2) The closure plan shall meet the requirements described in
36 subdivision (a), and describe the staff available to assist in the
37 transfers. The department's review shall include a determination
38 as to whether the licensee's closure plan contains a relocation
39 evaluation for each resident.

1 (3) Within 15 working days of receipt, the department shall
2 approve or disapprove the closure plan prepared pursuant to this
3 subdivision, and, if the department approves the plan, it shall
4 become effective upon the date the department grants its written
5 approval of the plan.

6 (4) If the department disapproves a closure plan, the licensee
7 may resubmit an amended plan, which the department shall
8 promptly either approve or disapprove, within 10 working days
9 of receipt by the department of the amended plan. If the department
10 fails to approve a closure plan, it shall inform the licensee, in
11 writing, of the reasons for the disapproval of the plan.

12 (5) If the department fails to take action within 20 working days
13 of receipt of either the original or the amended closure plan, the
14 plan, or amended plan, as the case may be, shall be deemed
15 approved.

16 (6) Until such time that the department has approved a licensee's
17 closure plan, the facility shall not issue a notice of transfer or
18 require any resident to transfer.

19 (7) Upon approval by the department, the licensee shall send a
20 copy of the closure plan to the local ombudsperson program.

21 (c) (1) If a licensee fails to comply with the requirements of
22 subdivision (a), and if the director determines that it is necessary
23 to protect the residents of a facility from physical or mental abuse,
24 abandonment, or any other substantial threat to health or safety,
25 the department shall take any necessary action to minimize trauma
26 for the residents. The department shall contact any local agency
27 that may have placement or advocacy responsibility for the
28 residents, and shall work with those agencies to locate alternative
29 placement sites, contact relatives or other persons responsible for
30 the care of these residents, provide onsite evaluation of the
31 residents, and assist in the transfer of residents.

32 (2) The participation of the department and local agencies in
33 the relocation of residents from a residential care facility for the
34 elderly shall not relieve the licensee of any responsibility under
35 this section. A licensee that fails to comply with the requirements
36 of this section shall be required to reimburse the department and
37 local agencies for the cost of providing the relocation services. If
38 the licensee fails to provide the relocation services required in
39 subdivisions (a) and (b), then the department may request that the
40 Attorney General's office, the city attorney's office, or the local

1 district attorney's office seek injunctive relief and damages in the
2 same manner as provided for in Chapter 5 (commencing with
3 Section 17200) of Part 2 of Division 7 of the Business and
4 Professions Code.

5 (d) A licensee who fails to comply with requirements of this
6 section shall be liable for the imposition of civil penalties in the
7 amount of one hundred dollars (\$100) per violation per day for
8 each day that the licensee is in violation of this section, until such
9 time that the violation has been corrected. The civil penalties shall
10 be issued immediately following the written notice of violation.
11 However, if the violation does not present an immediate or
12 substantial threat to the health or safety of residents and the licensee
13 corrects the violation within three days after receiving the notice
14 of violation, the licensee shall not be liable for payment of any
15 civil penalties pursuant to this subdivision related to the corrected
16 violation.

17 (e) A resident of a residential care facility for the elderly covered
18 under this section, may bring a civil action against any person,
19 firm, partnership, or corporation who owns, operates, establishes,
20 manages, conducts, or maintains a residential care facility for the
21 elderly who violates the rights of a resident, as set forth in this
22 section. Any person, firm, partnership, or corporation who owns,
23 operates, establishes, manages, conducts, or maintains a residential
24 care facility for the elderly who violates this section shall be
25 responsible for the acts of the facility's employees and shall be
26 liable for costs and attorney fees. Any such residential care facility
27 for the elderly may also be enjoined from permitting the violation
28 to continue. The remedies specified in this section shall be in
29 addition to any other remedy provided by law.

30 (f) This section does not apply to a licensee that has obtained a
31 certificate of authority to offer continuing care contracts, as defined
32 in paragraph (8) of subdivision (c) of Section 1771.

33 ~~SEC. 2.~~

34 *SEC. 3.* No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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