

Assembly Bill No. 2066

CHAPTER 643

An act to amend Sections 1569.525 and 1569.682 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 27, 2012. Filed with Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2066, Monning. Residential care facilities for the elderly: revocation of licenses.

Existing law provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires 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, the change of use of the facility pursuant to the department's regulations, or the revocation of a license. This requirement includes providing each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction and, if 7 or more residents will be transferred as a result of the forfeiture of a license, revocation of a license, or change in the use of the facility, submitting a proposed closure plan to the department for approval.

This bill would eliminate the requirement that a licensee comply with these provisions on the basis of the revocation of a license.

Existing law requires, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension, to comply with specified procedures relating to the transfer of residents.

This bill would make these provisions applicable in the event that the director determines that it is necessary to revoke the license of a residential care facility for the elderly. The bill also would require that, upon an order to revoke a license, except as specified, the licensee provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. The bill would authorize the department to allow the licensee to secure the services of a person who is not an immediate family member of the licensee or an entity that is not owned by the licensee to

manage the day-to-day operations of the facility for at least 60 days, provided that the person or entity is licensed and in substantial compliance to operate a residential care facility for the elderly that is of comparable or greater size and comparable programming to the facility, and that the person or entity meets other specified requirements. The bill would require that a resident who transfers from the facility receive a refund of paid preadmission fees in accordance with specified provisions. The bill would require the licensee, within 10 days of all residents having left the facility, to submit a final list of names and new locations of all residents to the department and the local ombudsman program.

By expanding the definition of a 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.

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

SECTION 1. Section 1569.525 of the Health and Safety Code is amended to read:

1569.525. (a) If the director determines that it is necessary to temporarily suspend or to revoke any license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety pursuant to Section 1569.50, the department shall make every effort to minimize trauma for the residents.

(b) The department shall contact any local agency that may have placement or advocacy responsibility for the residents of a residential care facility for the elderly after a decision is made to temporarily suspend or to revoke the license of the facility and prior to its implementation. The department shall work with these agencies to locate alternative placement sites and to contact relatives responsible for the care of these residents.

(c) The department shall use physicians and surgeons and other medical personnel deemed appropriate by the department to provide onsite evaluation of the residents and assist in any transfers.

(d) The department may require the licensee to prepare and submit to the licensing agency a written plan for relocation and compliance with the terms and conditions of the approved plans, and to provide other information as necessary for the enforcement of this section.

(e) Upon an order to revoke a license, except an order to revoke a license following the temporary suspension of a license pursuant to Section 1569.50, the following shall apply:

(1) The licensee shall provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's

responsible person within 24 hours of receipt of the department's order of revocation.

(2) The department shall permit the licensee to secure the services of a person who is not an immediate family member of the licensee or an entity that is not owned by the licensee to manage the day-to-day operations of the residential care facility for the elderly for a period of at least 60 days, provided that all of the following conditions are met:

(A) A proposal is submitted to the department within 72 hours of the licensee's receipt of the department's order of revocation that includes both of the following:

(i) A completed "Application for a Community Care Facility or Residential Care Facility for the Elderly License" form (LIC 200), or similar form as determined by the department, signed and dated by both the licensee and the person or entity described in paragraph (2).

(ii) A copy of the executed agreement between the licensee and the person or entity described in paragraph (2) that delineates the roles and responsibilities of each party and specifies that the person or entity described in paragraph (2) shall have the full authority necessary to operate the facility, in compliance with all applicable laws and regulations, and without interference from the licensee.

(B) The person or entity described in paragraph (2) shall be currently licensed and in substantial compliance to operate a residential care facility for the elderly that is of comparable size or greater and has comparable programming to the facility. For purposes of this subparagraph, the following definitions apply:

(i) "Comparable programming" includes, but is not limited to, dementia care, hospice care, and care for residents with exempted prohibited health care conditions.

(ii) "Comparable size" means a facility capacity of 1 to 15 residents, 16 to 49 residents, or 50 or more residents.

(C) The person or entity described in paragraph (2) shall not be subject to the application fee specified in Section 1569.185.

(D) If the department denies a proposal to secure the services of a person or entity pursuant to paragraph (2), this denial shall not be deemed a denial of a license application subject to the right to a hearing under Section 1569.22 and other procedural rights under Section 1569.51.

(3) (A) Notwithstanding Section 1569.651 or any other provision of law, for paid preadmission fees in excess of five hundred dollars (\$500), a resident who transfers from the facility during the 60-day period described in paragraph (1) of subdivision (e) is entitled to a refund in accordance with all of the following:

(i) A 100-percent refund if preadmission fees were paid within six months of the notice of closure required by paragraph (1).

(ii) A 75-percent refund if preadmission fees were paid more than six months, but not more than 12 months, before the notice of closure required by paragraph (1).

(iii) A 50-percent refund if preadmission fees were paid more than 12 months, but not more than 18 months, before the notice of closure required by paragraph (1).

(iv) A 25-percent refund if preadmission fees were paid more than 18 months, but not more than 25 months, before the notice of closure required by paragraph (1).

(B) No preadmission fee refund is required if preadmission fees were paid 25 months or more before the notice of closure required by paragraph (1).

(C) The preadmission fee refund required by this paragraph shall be paid within 15 days of issuing the notice of closure required by paragraph (1). In lieu of the refund, the resident may request that the licensee provide a credit toward the resident's monthly fee obligation in an amount equal to the preadmission fee refund due.

(4) If a resident transfers from the facility during the 60-day period described in paragraph (1) of subdivision (e), and the resident gives notice at least five days before leaving the facility, the licensee shall refund to the resident or his or her legal representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility and the unit is vacated. Otherwise the licensee shall pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated.

(5) Within 10 days after all residents who are transferring pursuant to these provisions have left the facility, the licensee that had his or her license revoked shall, based on information provided by the resident or the resident's legal representative, submit a final list of names and new locations of all residents to the department and the local ombudsman program.

(f) Nothing in this section shall preclude the department from amending the effective date in the order of revocation and closing the facility prior to the end of the 60-day notice period provided for in subdivision (e), or from pursuing any other available remedies if necessary to protect the health and safety of the residents in care.

SEC. 2. Section 1569.682 of the Health and Safety Code is amended to read:

1569.682. (a) A licensee of a licensed residential care facility for the elderly shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19, or a change of use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

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

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

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

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

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

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

(C) The relocation evaluation.

(D) A list of referral agencies.

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

(F) The contact information for the local long-term care ombudsman, including address and telephone number.

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

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

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

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

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

(ii) A 75-percent refund if preadmission fees were paid more than 6 months but not more than 12 months before notice of eviction.

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

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

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

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

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

(8) Within 10 days of all residents having left the facility, the licensee, based on information provided by the resident or resident's legal

representative, shall submit a final list of names and new locations of all residents to the department and the local ombudsman program.

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

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

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

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

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

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

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

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

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

(2) The participation of the department and local agencies in the relocation of residents from a residential care facility for the elderly shall not relieve the licensee of any responsibility under this section. A licensee that fails to comply with the requirements of this section shall be required to reimburse

the department and local agencies for the cost of providing the relocation services. If the licensee fails to provide the relocation services required in subdivisions (a) and (b), then the department may request that the Attorney General's office, the city attorney's office, or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

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

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

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

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