

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 364

Introduced by Assembly Member Ian Calderon

February 14, 2013

An act to amend ~~Section~~ *Sections 1534 and 1569.33* of the Health and Safety Code, relating to community care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 364, as amended, Ian Calderon. Community care facilities: unannounced visits.

The California Community Care Facilities Act provides for the licensure and regulation of community care facilities by the State Department of Social Services. Existing law requires, except as otherwise specified, that every licensed community care facility be subject to unannounced visits by the department and requires the department to visit the facilities as often as necessary to ensure the quality of care provided, but no less often than once every 5 years.

The California Residential Care Facilities for the Elderly Act provides for the licensure and regulation of residential care facilities for the elderly by the department. The act requires that every licensed residential care facility for the elderly be subject to unannounced visits by the department and requires the department to visit these facilities as often as necessary to ensure the quality of care provided, but no less often than once every 5 years.

This bill would instead require the department to visit a community care facility *or a residential care facility for the elderly* no less often than once every 2 years.

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

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

1 SECTION 1. Section 1534 of the Health and Safety Code is
2 amended to read:
3 1534. (a) (1) Every licensed community care facility shall be
4 subject to unannounced visits by the department. The department
5 shall visit these facilities as often as necessary to ensure the quality
6 of care provided.
7 (A) The department shall conduct an annual unannounced visit
8 to a facility under any of the following circumstances:
9 (i) When a license is on probation.
10 (ii) When the terms of agreement in a facility compliance plan
11 require an annual evaluation.
12 (iii) When an accusation against a licensee is pending.
13 (iv) When a facility requires an annual visit as a condition of
14 receiving federal financial participation.
15 (v) In order to verify that a person who has been ordered out of
16 a facility by the department is no longer at the facility.
17 (B) (i) The department shall conduct annual unannounced visits
18 to no less than 20 percent of facilities not subject to an evaluation
19 under subparagraph (A). These unannounced visits shall be
20 conducted based on a random sampling methodology developed
21 by the department.
22 (ii) If the total citations issued by the department exceed the
23 previous year's total by 10 percent, the following year the
24 department shall increase the random sample by an additional 10
25 percent of the facilities not subject to an evaluation under
26 subparagraph (A). The department may request additional resources
27 to increase the random sample by 10 percent.
28 (C) Under no circumstance shall the department visit a
29 community care facility less often than once every two years.
30 (D) In order to facilitate direct contact with group home clients,
31 the department may interview children who are clients of group
32 homes at any public agency or private agency at which the client
33 may be found, including, but not limited to, a juvenile hall,
34 recreation or vocational program, or a nonpublic school. The
35 department shall respect the rights of the child while conducting

1 the interview, including informing the child that he or she has the
2 right not to be interviewed and the right to have another adult
3 present during the interview.

4 (2) The department shall notify the community care facility in
5 writing of all deficiencies in its compliance with the provisions of
6 this chapter and the rules and regulations adopted pursuant to this
7 chapter, and shall set a reasonable length of time for compliance
8 by the facility.

9 (3) Reports on the results of each inspection, evaluation, or
10 consultation shall be kept on file in the department, and all
11 inspection reports, consultation reports, lists of deficiencies, and
12 plans of correction shall be open to public inspection.

13 (b) (1) Nothing in this section shall limit the authority of the
14 department to inspect or evaluate a licensed foster family agency,
15 a certified family home, or any aspect of a program where a
16 licensed community care facility is certifying compliance with
17 licensing requirements.

18 (2) Upon a finding of noncompliance by the department, the
19 department may require a foster family agency to deny or revoke
20 the certificate of approval of a certified family home, or take other
21 action the department may deem necessary for the protection of a
22 child placed with the family home. The family home shall be
23 afforded the due process provided pursuant to this chapter.

24 (3) If the department requires a foster family agency to deny or
25 revoke the certificate of approval, the department shall serve an
26 order of denial or revocation upon the certified or prospective
27 foster parent and foster family agency that shall notify the certified
28 or prospective foster parent of the basis of the department's action
29 and of the certified or prospective foster parent's right to a hearing.

30 (4) Within 15 days after the department serves an order of denial
31 or revocation, the certified or prospective foster parent may file a
32 written appeal of the department's decision with the department.
33 The department's action shall be final if the certified or prospective
34 foster parent does not file a written appeal within 15 days after the
35 department serves the denial or revocation order.

36 (5) The department's order of the denial or revocation of the
37 certificate of approval shall remain in effect until the hearing is
38 completed and the director has made a final determination on the
39 merits.

1 (6) A certified or prospective foster parent who files a written
 2 appeal of the department’s order with the department pursuant to
 3 this section shall, as part of the written request, provide his or her
 4 current mailing address. The certified or prospective foster parent
 5 shall subsequently notify the department in writing of any change
 6 in mailing address, until the hearing process has been completed
 7 or terminated.

8 (7) Hearings held pursuant to this section shall be conducted in
 9 accordance with Chapter 5 (commencing with Section 11500) of
 10 Division 3 of Title 2 of the Government Code. In all proceedings
 11 conducted in accordance with this section the standard of proof
 12 shall be by a preponderance of the evidence.

13 (8) The department may institute or continue a disciplinary
 14 proceeding against a certified or prospective foster parent upon
 15 any ground provided by this section, enter an order denying or
 16 revoking the certificate of approval, or otherwise take disciplinary
 17 action against the certified or prospective foster parent,
 18 notwithstanding any resignation, withdrawal of application,
 19 surrender of the certificate of approval, or denial or revocation of
 20 the certificate of approval by the foster family agency.

21 (9) A foster family agency’s failure to comply with the
 22 department’s order to deny or revoke the certificate of employment
 23 by placing or retaining children in care shall be grounds for
 24 disciplining the licensee pursuant to Section 1550.

25 *SEC. 2. Section 1569.33 of the Health and Safety Code is*
 26 *amended to read:*

27 1569.33. (a) Every licensed residential care facility for the
 28 elderly shall be subject to unannounced visits by the department.
 29 The department shall visit these facilities as often as necessary to
 30 ensure the quality of care provided.

31 (b) The department shall conduct an annual unannounced visit
 32 of a facility under any of the following circumstances:

- 33 (1) When a license is on probation.
- 34 (2) When the terms of agreement in a facility compliance plan
 35 require an annual evaluation.
- 36 (3) When an accusation against a licensee is pending.
- 37 (4) When a facility requires an annual visit as a condition of
 38 receiving federal financial participation.

1 (5) In order to verify that a person who has been ordered out of
2 the facility for the elderly by the department is no longer at the
3 facility.

4 (c) (1) The department shall conduct annual unannounced visits
5 to no less than 20 percent of facilities not subject to an evaluation
6 under subdivision (b). These unannounced visits shall be conducted
7 based on a random sampling methodology developed by the
8 department.

9 (2) If the total citations issued by the department exceed the
10 previous year's total by 10 percent, the following year the
11 department shall increase the random sample by 10 percent of the
12 facilities not subject to an evaluation under subdivision (b). The
13 department may request additional resources to increase the random
14 sample by 10 percent.

15 (d) Under no circumstance shall the department visit a residential
16 care facility for the elderly less often than once every ~~five~~ *two*
17 years.

18 (e) The department shall notify the residential care facility for
19 the elderly in writing of all deficiencies in its compliance with the
20 provisions of this chapter and the rules and regulations adopted
21 pursuant to this chapter, and shall set a reasonable length of time
22 for compliance by the facility.

23 (f) Reports on the results of each inspection, evaluation, or
24 consultation shall be kept on file in the department, and all
25 inspection reports, consultation reports, lists of deficiencies, and
26 plans of correction shall be open to public inspection.

27 (g) As a part of the department's evaluation process, the
28 department shall review the plan of operation, training logs, and
29 marketing materials of any residential care facility for the elderly
30 that advertises or promotes special care, special programming, or
31 a special environment for persons with dementia to monitor
32 compliance with Sections 1569.626 and 1569.627.