

ASSEMBLY BILL

No. 1751

Introduced by Assembly Member Bloom

February 14, 2014

An act to amend Section 1771.8 of the Health and Safety Code, relating to continuing care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1751, as introduced, Bloom. Continuing care retirement communities.

(1) Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year. Existing law declares the Legislature's finding that the residents of continuing care retirement communities have a unique and valuable perspective on the operations of, and services provided in, the community in which they live and should have input into decisions made by the provider.

Existing law requires every continuing care retirement community provider to make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than semiannually. Existing law also requires a provider to provide a copy of the annual report at a central and conspicuous location in the community. A violation of these provisions is punishable as a misdemeanor.

This bill would instead require the financial statement to be provided not less than quarterly, and would require it to include a written

explanation of all significant budget variances. This bill would additionally require a provider, who has entered into certain contracts, to make a copy of the annual report available on its Internet Web site. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the governing body of a provider to accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the governing body or one in 3 of its communities.

This bill would additionally require the governing board to accept at least 3 residents of the continuing care retirement community it operates or a number of residents equal to 25% of the members of the provider’s governing board, whichever is greater, to participate as voting members of the provider’s governing body, and would make other technical and conforming changes.

(3) Existing law authorizes the governing body to exclude resident representatives from its executive sessions and from receiving certain information.

This bill would delete those provisions.

(4) 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 1771.8 of the Health and Safety Code is
- 2 amended to read:
- 3 1771.8. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The residents of continuing care retirement communities
- 6 have a unique and valuable perspective on the operations ~~of~~ *of*,
- 7 and services provided ~~in~~ *in*, the community in which they live.
- 8 (2) Resident input into decisions made by the provider is an
- 9 important factor in creating an environment of cooperation,
- 10 reducing conflict, and ensuring timely response and resolution to
- 11 issues that may arise.

1 (3) Continuing care retirement communities are strengthened
2 when residents know that their views are heard and respected.

3 (b) The Legislature encourages continuing care retirement
4 communities to exceed the minimum resident participation
5 requirements established by this section by, among other things,
6 the following:

7 (1) Encouraging residents to form a resident association, and
8 assisting the residents, the resident association, and its governing
9 body to keep informed about the operation of the continuing care
10 retirement community.

11 (2) Encouraging residents of a continuing care retirement
12 community or their elected representatives to select residents to
13 participate as ~~board~~ members of the governing body of the
14 provider.

15 (3) Quickly and fairly resolving any dispute, claim, or grievance
16 arising between a resident and the continuing care retirement
17 community.

18 (c) The governing body of a provider, or the designated
19 representative of the provider, shall hold, at a minimum,
20 semiannual meetings with the residents of the continuing care
21 retirement community, or the resident association or its governing
22 body, for the purpose of the free discussion of subjects including,
23 but not limited to, income, expenditures, and financial trends and
24 issues as they apply to the continuing care retirement community
25 and proposed changes in policies, programs, and services. ~~Nothing~~
26 ~~in this~~ *This section precludes does not preclude* a provider from
27 taking action or making a decision at any time, without regard to
28 the meetings required under this subdivision.

29 (d) At least 30 days prior to the implementation of ~~any~~ *an*
30 increase in the monthly care fee, the designated representative of
31 the provider shall convene a meeting, to which all residents shall
32 be invited, for the purpose of discussing the reasons for the
33 increase, the basis for determining the amount of the increase, and
34 the data used for calculating the increase. This meeting may
35 coincide with the semiannual meetings ~~provided for~~ *required* in
36 subdivision (c). At least 14 days prior to the meeting to discuss
37 ~~any~~ *an* increase in the monthly care fee, the provider shall make
38 available to each resident or resident household comparative data
39 showing the budget for the upcoming year, the current year's

1 budget, and actual and projected expenses for the current year, and
2 a copy shall be posted in a conspicuous location at each facility.

3 (e) The governing body of a provider or the designated
4 representative of the provider shall provide residents with at least
5 14 days' advance notice of each meeting provided for in
6 subdivisions (c) and (d), and shall permit residents attending the
7 meeting to present issues orally and in writing. The governing
8 body of a provider or the designated representative of the provider
9 shall post the notice of, and the agenda for, the meeting in a
10 conspicuous place in the continuing care retirement community
11 at least 14 days prior to the meeting. The governing body of a
12 provider or the designated representative of the provider shall make
13 available to residents of the continuing care retirement community
14 upon request the agenda and accompanying materials at least seven
15 days prior to the meeting.

16 (f) ~~Each~~A provider shall make available to the resident
17 association or its governing body, or if neither exists, to a
18 committee of residents, a financial statement of activities for that
19 facility comparing actual costs to budgeted costs broken down by
20 expense category, not less than ~~semiannually~~, *quarterly, with a*
21 *written explanation of all significant budget variances*, and shall
22 consult with the resident association or its governing body, or, if
23 neither exists, with a committee of residents, during the annual
24 budget planning process. The effectiveness of consultations during
25 the annual budget planning process shall be evaluated at a
26 minimum every two years by the continuing care retirement
27 community administration. The evaluation, including any policies
28 adopted relating to cooperation with residents, shall be made
29 available to the resident association or its governing body, or, if
30 neither exists, to a committee of residents at least 14 days prior to
31 the next semiannual meeting of residents and the provider's
32 governing body provided for in subdivision (c), and a copy of the
33 evaluation shall be posted in a conspicuous location at each facility.

34 (g) ~~Each~~A provider shall, within 10 days after the annual report
35 required pursuant to Section 1790 is submitted to the department,
36 provide, at a central and conspicuous location in the community,
37 a copy of the annual report, including the multifacility statement
38 of activities, ~~and including~~ *and* a copy of the annual audited
39 financial statement, but excluding personal confidential
40 information.

1 (h) A provider, who has entered into Type A contracts, shall,
2 within 10 days after the annual report required pursuant to Section
3 1790 is submitted to the department, make available in a
4 conspicuous location on the provider's Internet Web site, a copy
5 of the annual report, including the multifacility statement of
6 activities and a copy of the annual audited financial statement,
7 but excluding confidential personal information.

8 ~~(h)~~ Each

9 (i) A provider shall maintain, as public information, available
10 upon request to residents, prospective residents, and the public,
11 minutes of the ~~board of director's~~ meetings held by the provider's
12 governing body and shall retain these records for at least three
13 years from the date the records were filed or issued.

14 ~~(i)~~

15 (j) The governing body of a provider that is not part of a
16 multifacility organization with more than one continuing care
17 retirement community in the state shall accept ~~at both of the~~
18 following:

19 (1) At least one resident of the continuing care retirement
20 community it operates to participate as a nonvoting resident
21 representative to the provider's governing body.

22 (2) At least three residents of the continuing care retirement
23 community it operates or a number of residents equal to 25 percent
24 of the members of the provider's governing board, whichever is
25 greater, to participate as voting members of the provider's
26 governing body.

27 ~~(j)~~

28 (k) In a multifacility organization having more than one
29 continuing care retirement community in the state, the governing
30 body of the multifacility organization shall ~~elect~~ do both of the
31 following:

32 (1) Elect either to have at least one nonvoting resident
33 representative to the provider's governing body for each
34 California-based continuing care retirement community the
35 provider operates or to have a resident-elected committee composed
36 of representatives of the residents of each California-based
37 continuing care retirement community that the provider operates
38 select or nominate at least one nonvoting resident representative
39 to the provider's governing body for every three California-based
40 continuing care retirement communities or fraction thereof that

1 the provider operates. If a multifacility organization elects to have
 2 one representative for every three communities that the provider
 3 operates, the provider shall provide to the president of the residents
 4 association of each of the communities that do not have a resident
 5 representative, the same notice of ~~board~~ meetings, ~~board~~ packets,
 6 minutes, and other materials as the resident representative. At the
 7 reasonable discretion of the provider, information related to
 8 litigation, personnel, competitive advantage, or confidential
 9 information that is not appropriate to disclose, may be withheld.

10 (2) *Elect to have at least three residents from any of the*
 11 *continuing care retirement communities it operates or a number*
 12 *of residents equal to 25 percent of the members of the provider’s*
 13 *governing board, whichever is greater, to participate as voting*
 14 *members of the provider’s governing body. If there are*
 15 *communities that do not have a resident from the community as a*
 16 *voting member of the provider’s governing body, the provider*
 17 *shall provide to the president of the residents association of each*
 18 *of those communities, the same notice of meetings, packets,*
 19 *minutes, and other materials as the resident voting members. At*
 20 *the reasonable discretion of the provider, information related to*
 21 *litigation, personnel, competitive advantage, or confidential*
 22 *information that is not appropriate to disclose, may be withheld.*

23 ~~(k)~~

24 (l) In order to encourage innovative and alternative models of
 25 resident involvement, ~~a resident~~ residents selected pursuant to
 26 ~~subdivision (i)~~ subdivision (j) or (k) to participate as a resident
 27 representative or member to the provider’s governing body may,
 28 at the option of the resident association, be selected in any one of
 29 the following ways:

30 (1) By a majority vote of the resident association of a provider
 31 or by a majority vote of a resident-elected committee of residents
 32 of a multifacility organization.

33 (2) If no resident association exists, any resident may organize
 34 a meeting of the majority of the residents of the continuing care
 35 retirement community to select or nominate residents to represent
 36 them ~~before~~ on the governing body.

37 (3) Any other method designated by the resident association.

38 ~~(t)~~

39 (m) The resident association, or organizing resident, or in the
 40 case of a multifacility organization, the resident-elected committee

1 of residents, shall give residents of the continuing care retirement
2 community at least 30 days' advance notice of the meeting to select
3 a resident representative *and members* and shall post the notice in
4 a conspicuous place at the continuing care retirement community.

5 (m)

6 (n) (1) ~~Except as provided in subdivision (n), the~~ *The* resident
7 representative *and members* shall receive the same notice of ~~board~~
8 meetings, ~~board~~ packets, minutes, and other materials as *other*
9 members *of the provider's governing body* and shall be permitted
10 to attend, speak, and participate in all meetings of the ~~board~~
11 *governing body*.

12 (2) Resident representatives *and members* may share information
13 from ~~board~~ meetings with other residents, unless the information
14 is confidential or doing so would violate fiduciary duties to the
15 provider. ~~In addition, a resident representative shall be permitted~~
16 ~~to attend meetings of the board committee or committees that~~
17 ~~review the annual budget of the facility or facilities and recommend~~
18 ~~increases in monthly care fees. The resident shall receive the same~~
19 ~~notice of committee meetings, information packets, minutes, and~~
20 ~~other materials as committee members, and shall be permitted to~~
21 ~~attend, speak at, and participate in, committee meetings.~~ Resident
22 representatives *and members* shall perform their duties in good
23 faith and with such care, including reasonable inquiry, as an
24 ordinarily prudent person in a like position would use under similar
25 circumstances.

26 (n) ~~Notwithstanding subdivision (m), the governing body may~~
27 ~~exclude resident representatives from its executive sessions and~~
28 ~~from receiving board materials to be discussed during executive~~
29 ~~session. However, resident representatives shall be included in~~
30 ~~executive sessions and shall receive all board materials to be~~
31 ~~discussed during executive sessions related to discussions of the~~
32 ~~annual budgets, increases in monthly care fees, indebtedness, and~~
33 ~~expansion of new and existing continuing care retirement~~
34 ~~communities.~~

35 (o) The provider shall pay all reasonable travel costs for the
36 resident ~~representative~~. *representatives and members*.

37 (p) The provider shall disclose in writing the extent of resident
38 involvement with the board to prospective residents.

39 (q) ~~Nothing in this section prohibits a~~ *A provider is not*
40 *prohibited* from exceeding the minimum resident participation

1 requirements of this section by, for example, having more resident
2 meetings or more resident representatives *or members* to the ~~board~~
3 *provider's governing body* than required or by having one or more
4 residents on the provider's governing body who are selected with
5 the active involvement of residents.

6 ~~(r) On or before April 1, 2003, the department shall do all of~~
7 ~~the following:~~

8 ~~(1) Make recommendations to the Legislature as to whether any~~
9 ~~changes in current law regarding resident representation to the~~
10 ~~board is needed.~~

11 ~~(2) Provide written guidelines available to residents and~~
12 ~~providers that address issues related to board participation,~~
13 ~~including rights and responsibilities, and that provide guidance on~~
14 ~~the extent to which resident representatives who are not voting~~
15 ~~members of the board have a duty of care, loyalty, and obedience~~
16 ~~to the provider and the extent to which providers can classify~~
17 ~~information as confidential and not subject to disclosure by resident~~
18 ~~representatives to other residents.~~

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.