

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY MARCH 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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. Under existing law, an entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of, any printed matter, oral representation, or advertising material that does not comply with the requirements of the law relating to continuing care contracts is guilty of 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 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 that is not part of a multifacility organization with more than one continuing care retirement community in the state 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. Existing law requires the governing body of a multifacility organization to elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every 3 California-based continuing care retirement communities or fraction thereof that the provider operates.

This bill would additionally require the governing body of all providers to accept at least one resident, or 2 residents for a governing body with 21 or more members, from the continuing care retirement community or communities it operates to participate as voting members of the provider's governing body, and would make other technical and conforming changes. The bill would require a resident member to be nominated to participate on the provider's governing body by the resident association or, if a resident association does not exist, a committee of residents, and would authorize the resident association or committee of residents to nominate multiple nominees from which the provider's governing body may approve a resident member. If the governing body disapproves of the resident association's nominations,

the bill would require the resident association or committee of residents to nominate additional resident members until the vacancy is filled. *This bill would also require a provider that is part of a multifacility organization, if the organization has at least one continuing care retirement community in the state and does not have a governing body within the state, to appoint a select committee of its officers or partners to meet with the resident association or a resident elected committee of residents, as specified, no less frequently than at a reasonable period prior to any regularly scheduled meeting of the governing body at each of its facilities in the state to address concerns of the residents and to ensure that the opinions of residents are relayed to all of the officers or partners of the provider.*

(3) 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, and
- 7 services provided 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.
- 12 (3) Continuing care retirement communities are strengthened
- 13 when residents know that their views are heard and respected.
- 14 (b) The Legislature encourages continuing care retirement
- 15 communities to exceed the minimum resident participation
- 16 requirements established by this section by, among other things,
- 17 the following:

1 (1) Encouraging residents to form a resident association, and
2 assisting the residents, the resident association, and its governing
3 body to keep informed about the operation of the continuing care
4 retirement community.

5 (2) Encouraging residents of a continuing care retirement
6 community or their elected representatives to select residents to
7 participate as members of the governing body of the provider.

8 (3) Quickly and fairly resolving any dispute, claim, or grievance
9 arising between a resident and the continuing care retirement
10 community.

11 (c) The governing body of a provider, or the designated
12 representative of the provider, shall hold, at a minimum,
13 semiannual meetings with the residents of the continuing care
14 retirement community, or the resident association or its governing
15 body, for the purpose of the free discussion of subjects including,
16 but not limited to, income, expenditures, and financial trends and
17 issues as they apply to the continuing care retirement community
18 and proposed changes in policies, programs, and services. This
19 section does not preclude a provider from taking action or making
20 a decision at any time, without regard to the meetings required
21 under this subdivision.

22 (d) At least 30 days prior to the implementation of an increase
23 in the monthly care fee, the designated representative of the
24 provider shall convene a meeting, to which all residents shall be
25 invited, for the purpose of discussing the reasons for the increase,
26 the basis for determining the amount of the increase, and the data
27 used for calculating the increase. This meeting may coincide with
28 the semiannual meetings required in subdivision (c). At least 14
29 days prior to the meeting to discuss an increase in the monthly
30 care fee, the provider shall make available to each resident or
31 resident household comparative data showing the budget for the
32 upcoming year, the current year's budget, and actual and projected
33 expenses for the current year, and a copy shall be posted in a
34 conspicuous location at each facility.

35 (e) The governing body of a provider or the designated
36 representative of the provider shall provide residents with at least
37 14 days' advance notice of each meeting provided for in
38 subdivisions (c) and (d), and shall permit residents attending the
39 meeting to present issues orally and in writing. The governing
40 body of a provider or the designated representative of the provider

1 shall post the notice of, and the agenda for, the meeting in a
2 conspicuous place in the continuing care retirement community
3 at least 14 days prior to the meeting. The governing body of a
4 provider or the designated representative of the provider shall make
5 available to residents of the continuing care retirement community
6 upon request the agenda and accompanying materials at least seven
7 days prior to the meeting.

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

26 (g) A provider shall, within 10 days after the annual report
27 required pursuant to Section 1790 is submitted to the department,
28 provide, at a central and conspicuous location in the community
29 and in a conspicuous location on the provider's Internet Web site,
30 a copy of the annual report, including the multifacility statement
31 of activities and a copy of the annual audited financial statement,
32 but excluding personal confidential information.

33 (h) A provider shall maintain, as public information, available
34 upon request to residents, prospective residents, and the public,
35 minutes of the meetings held by the provider's governing body
36 and shall retain these records for at least three years from the date
37 the records were filed or issued.

38 (i) The governing body of a provider that is not part of a
39 multifacility organization with more than one continuing care

1 retirement community in the state shall accept both of the
2 following:

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

6 (2) At least one resident, or two residents for a governing body
7 with 21 or more members, of the continuing care retirement
8 community it operates to participate as a voting member of the
9 provider's governing body. A provider's governing body shall not
10 be required to meet the requirements of this paragraph until there
11 is a vacancy on the provider's governing body or upon the next
12 regularly scheduled selection of the provider's governing body
13 occurring on or after January 1, 2015. A resident member shall
14 perform his or her duties in a manner that complies with the
15 standards of conduct and fiduciary duties of all other members of
16 the governing board.

17 (j) In a multifacility organization having more than one
18 continuing care retirement community in the state, the governing
19 body of the multifacility organization shall do both of the
20 following:

21 (1) Elect either to have at least one nonvoting resident
22 representative to the provider's governing body for each
23 California-based continuing care retirement community the
24 provider operates or to have a resident-elected committee composed
25 of representatives of the residents of each California-based
26 continuing care retirement community that the provider operates
27 select or nominate at least one nonvoting resident representative
28 to the provider's governing body for every three California-based
29 continuing care retirement communities, or fraction thereof, that
30 the provider operates. If a multifacility organization elects to have
31 one representative for every three communities that the provider
32 operates, the provider shall provide to the president of the residents
33 association of each of the communities that do not have a resident
34 representative; the same notice of meetings, packets, minutes, and
35 other materials as the resident representative. At the reasonable
36 discretion of the provider, information related to litigation,
37 personnel, competitive advantage, or confidential information that
38 is not appropriate to disclose, may be withheld.

39 (2) (A) Elect to have at least one resident, or two residents for
40 a governing body with 21 or more members, from any of the

1 continuing care retirement communities it operates to participate
2 as voting members of the provider's governing body. A provider's
3 governing body shall not be required to meet the requirements of
4 this subparagraph until there is a vacancy on the provider's
5 governing body or upon the next regularly scheduled selection of
6 the provider's governing body occurring on or after January 1,
7 2015. A resident member shall perform his or her duties in a
8 manner that complies with the standards of conduct and fiduciary
9 duties of all other members of the governing board.

10 (B) If there are communities that do not have a resident from
11 the community as a voting member of the provider's governing
12 body, the provider shall provide to the president of the ~~residents~~
13 *resident* association of each of those communities; the same notice
14 of meetings, packets, minutes, and other materials as the resident
15 voting members. At the reasonable discretion of the provider,
16 information related to litigation, personnel, competitive advantage,
17 or confidential information that is not appropriate to disclose; may
18 be withheld.

19 (k) In order to encourage innovative and alternative models of
20 resident involvement, residents selected pursuant to paragraph (1)
21 of subdivision (i) or paragraph (1) of subdivision (j) to participate
22 as a resident representative to the provider's governing body may,
23 at the option of the resident association, be selected in any one of
24 the following ways:

25 (1) By a majority vote of the resident association of a provider
26 or by a majority vote of a resident-elected committee of residents
27 of a multifacility organization.

28 (2) If no resident association exists, any resident may organize
29 a meeting of the majority of the residents of the continuing care
30 retirement community to select or nominate residents to represent
31 them on the governing body.

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

33 (l) A resident member of the provider's governing body selected
34 pursuant to paragraph (2) of subdivision (i) or paragraph (2) of
35 subdivision (j) shall be nominated to participate on the provider's
36 governing body by the resident association or, if a resident
37 association does not exist, a committee of residents. The resident
38 association or committee of residents may nominate multiple
39 nominees from which the provider's governing body may approve
40 a resident member. If the governing body disapproves of the

1 resident association’s nominations, the resident association or the
2 committee of residents shall nominate additional resident members
3 for the governing body’s approval or disapproval until the vacancy
4 is filled.

5 (m) The resident association, ~~or~~ organizing resident, or, in the
6 case of a multifacility organization, the resident-elected committee
7 of residents, shall give residents of the continuing care retirement
8 community at least 30 days’ advance notice of the meeting to select
9 a resident representative and resident members of the governing
10 body and shall post the notice in a conspicuous place at the
11 continuing care retirement community.

12 (n) (1) Except as provided in subdivision (o), resident
13 representatives shall receive the same notice of meetings, packets,
14 minutes, and other materials as members of the provider’s
15 governing body and shall be permitted to attend, speak, and
16 participate in all meetings of the governing body.

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

30 (o) Notwithstanding subdivision (n), the provider’s governing
31 body may exclude resident representatives from its executive
32 sessions and from receiving meeting materials to be discussed
33 during executive session. However, resident representatives shall
34 be included in executive sessions and shall receive all meeting
35 materials to be discussed during executive sessions related to
36 discussions of the annual budgets, increases in monthly care fees,
37 indebtedness, and expansion of new and existing continuing care
38 retirement communities.

39 (p) The provider shall pay all reasonable travel costs for resident
40 representatives and resident members of the governing body.

1 (q) The provider shall disclose in writing the extent of resident
2 involvement with the governing body to prospective residents.

3 (r) A provider is not prohibited from exceeding the minimum
4 resident participation requirements of this section by, for example,
5 having more resident meetings ~~or~~, more resident representatives
6 or resident members of the governing body to the provider's
7 governing body than required, or by having one or more residents
8 on the provider's governing body who are selected with the active
9 involvement of residents.

10 (s) *If a multifacility organization having at least one continuing
11 care retirement community in the state does not have a governing
12 body within the state, the provider shall appoint a select committee
13 of its officers and partners to meet pursuant to paragraph (6) of
14 subdivision (a) of Section 307 of the Corporations Code with the
15 resident association or a resident-elected committee of residents
16 no less frequently than a reasonable period prior to any regularly
17 scheduled meeting of the governing body at each of its facilities
18 in the state to address concerns of the residents and to ensure that
19 the opinions of residents are relayed to all officers or partners of
20 the provider.*

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