

**ASSEMBLY BILL**

**No. 2044**

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**Introduced by Assembly Member Rodriguez**

February 20, 2014

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An act to amend Sections 1569.33, 1569.35, 1569.618, and 1569.625 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2044, as introduced, Rodriguez. Residential care facilities for the elderly.

Existing law provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. A violation of these provisions is a misdemeanor. Existing law requires, unless otherwise specified, licensed residential care facilities for the elderly to be subject to unannounced visits by the department 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 every licensed residential care facility to be subject to an annual unannounced visit by the department, as prescribed, and would require the department to conduct more frequent unannounced visits under specified circumstances.

Existing law authorizes a person to request an inspection of a residential care facility for the elderly for an alleged violation of law or regulations, and requires, with some exceptions, the department to make an onsite inspection within 10 days after receiving the complaint. Existing law requires the department to promptly inform the complainant of the department's proposed course of action.

This bill would, instead, require the department to make an onsite inspection within 3 days after receiving the complaint if the complaint

involves alleged abuse or serious neglect, or within 10 days after receiving the complaint for all other complaints. The bill would require the department to complete the investigation within 30 days and to promptly inform the complainant in writing of the department's findings and proposed course of action. The bill would provide a complainant who is dissatisfied with the department's findings or proposed action regarding a matter that would pose a threat to the health, safety, security, welfare, or rights of a resident with the right to request an informal conference and subsequent appeal, as prescribed.

Existing law requires the administrator designated by the licensee to be present at the facility during normal working hours and requires a facility manager, as defined, to be responsible for the operation of the facility when the administrator is temporarily absent from the facility.

This bill would require that at least one administrator, facility manager, or other person designated by the administrator who is at least 21 years of age be on the premises of the facility 24 hours per day and would require a minimum of one staff member who assists residents with personal activities of daily living per 16 residents be on the premises 24 hours per day. The bill would also require the facility to employ, and the administrator to schedule, a sufficient number of staff members, as prescribed.

Existing law requires the department to adopt regulations to require staff members who assist residents with personal activities of daily living to receive appropriate training, which consists of 10 hours of training within the first 4 weeks and 4 hours annually thereafter.

This bill would, instead, require the staff members to receive, at a minimum, 10 hours of training within certain timeframes, and 6 hours annually of continuing education, as prescribed.

By expanding the scope 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.

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 1569.33 of the Health and Safety Code  
2 is amended to read:

3 1569.33. (a) Every licensed residential care facility for the  
4 elderly shall be subject to *an annual unannounced visit* by  
5 the department. The department shall visit these facilities as often  
6 as necessary to ensure the quality of care provided.

7 (b) The department shall conduct ~~an annual unannounced visit~~  
8 *more frequent unannounced visits* of a facility under any of the  
9 following circumstances:

- 10 (1) When a license is on probation.
- 11 (2) When the terms of agreement in a facility compliance plan  
12 require ~~an annual evaluation~~. *more frequent unannounced visits*.
- 13 (3) When an accusation against a licensee is pending.
- 14 (4) When a facility requires ~~an annual visit~~ *more frequent*  
15 *unannounced visits* as a condition of receiving federal financial  
16 participation.
- 17 (5) *When the facility has a record of frequent complaints*  
18 *indicating a pattern of inadequate care.*

19 ~~(5)~~  
20 (6) In order to verify that a person who has been ordered out of  
21 the facility for the elderly by the department is no longer at the  
22 facility.

23 ~~(e) (1) The department shall conduct annual unannounced visits~~  
24 ~~to no less than 20 percent of facilities not subject to an evaluation~~  
25 ~~under subdivision (b). These unannounced visits shall be conducted~~  
26 ~~based on a random sampling methodology developed by the~~  
27 ~~department.~~

28 ~~(2) If the total citations issued by the department exceed the~~  
29 ~~previous year's total by 10 percent, the following year the~~  
30 ~~department shall increase the random sample by 10 percent of the~~  
31 ~~facilities not subject to an evaluation under subdivision (b). The~~  
32 ~~department may request additional resources to increase the random~~  
33 ~~sample by 10 percent.~~

34 ~~(d) Under no circumstance shall the department visit a residential~~  
35 ~~care facility for the elderly less often than once every five years.~~

36 ~~(e)~~

37 (c) The department shall notify the residential care facility for  
38 the elderly in writing of all deficiencies in its compliance with the

1 provisions of this chapter and the rules and regulations adopted  
2 pursuant to this chapter, and shall set a reasonable length of time  
3 for compliance by the facility.

4 ~~(f)~~

5 (d) Reports on the results of each inspection, evaluation, or  
6 consultation shall be kept on file in the department, and all  
7 inspection reports, consultation reports, lists of deficiencies, and  
8 plans of correction shall be open to public inspection.

9 ~~(g)~~

10 (e) As a part of the department’s evaluation process, the  
11 department shall review the plan of operation, training logs, and  
12 marketing materials of any residential care facility for the elderly  
13 that advertises or promotes special care, special programming, or  
14 a special environment for persons with dementia to monitor  
15 compliance with Sections 1569.626 and 1569.627.

16 SEC. 2. Section 1569.35 of the Health and Safety Code is  
17 amended to read:

18 1569.35. (a) Any person may request an inspection of any  
19 residential care facility for the elderly in accordance with this  
20 chapter by transmitting to the department notice of an alleged  
21 violation of applicable requirements prescribed by statutes or  
22 regulations of this state, including, but not limited to, a denial of  
23 access of any person authorized to enter the facility pursuant to  
24 Section 9722 of the Welfare and Institutions Code. A complaint  
25 may be made either orally or in writing.

26 (b) The substance of the complaint shall be provided to the  
27 licensee no earlier than at the time of the inspection. Unless the  
28 complainant specifically requests otherwise, neither the substance  
29 of the complaint provided the licensee nor any copy of the  
30 complaint or any record published, released, or otherwise made  
31 available to the licensee shall disclose the name of any person  
32 mentioned in the complaint except the name of any duly authorized  
33 officer, employee, or agent of the department conducting the  
34 investigation or inspection pursuant to this chapter.

35 (c) Upon receipt of a complaint, other than a complaint alleging  
36 denial of a statutory right of access to a residential care facility for  
37 the elderly, the department shall make a preliminary review and,  
38 unless the department determines that the complaint is willfully  
39 intended to harass a licensee or is without any reasonable basis, it  
40 shall make an onsite inspection *within 3 days after receiving the*

1 *complaint if the complaint involves alleged abuse or serious*  
2 *neglect, or within 10 days after receiving the complaint for all*  
3 *other complaints, except where when the visit would adversely*  
4 *affect the licensing investigation or the investigation of other*  
5 *agencies, including, but not limited to, law enforcement agencies.*  
6 ~~*In either event, the complainant shall be promptly informed of the*~~  
7 ~~*department's proposed course of action. The department shall*~~  
8 ~~*complete the investigation within 30 days and shall promptly*~~  
9 ~~*inform the complainant in writing of the department's findings*~~  
10 ~~*and proposed course of action.*~~

11 (d) Upon receipt of a complaint alleging denial of a statutory  
12 right of access to a residential facility for the elderly, the  
13 department shall review the complaint. The complainant shall be  
14 notified promptly of the department's proposed course of action.

15 (e) (1) *Upon being notified of the department's findings or*  
16 *proposed course of action as a result of the investigation conducted*  
17 *pursuant to subdivision (c), a complainant who is dissatisfied with*  
18 *the department's determination, regarding a matter that would*  
19 *pose a threat to the health, safety, security, welfare, or rights of a*  
20 *resident, shall be notified by the department of the right to an*  
21 *informal conference, as set forth in this subdivision. The*  
22 *complainant may, within five business days after receipt of the*  
23 *notice, notify the director in writing of his or her request for an*  
24 *informal conference. The informal conference shall be held with*  
25 *the designee of the director for the county in which the residential*  
26 *care facility for the elderly that is the subject of the complaint is*  
27 *located. The residential care facility for the elderly may participate*  
28 *as a party in this informal conference. The director's designee*  
29 *shall notify the complainant and licensee of his or her*  
30 *determination within 10 working days after the informal conference*  
31 *and shall apprise the complainant and licensee in writing of the*  
32 *appeal rights provided in paragraph (2).*

33 (2) *If the complainant is dissatisfied with the determination of*  
34 *the director's designee for the county in which the facility is*  
35 *located, the complainant may, within 15 days after receipt of this*  
36 *determination, notify in writing the Deputy Director of the*  
37 *Community Care Licensing Division of the department, who shall*  
38 *assign the request to a representative for review of the facts that*  
39 *led to both determinations. As a part of this independent*  
40 *investigation, and at the request of the complainant, the*

1 *representative shall interview the complainant in the senior care*  
 2 *program office where the complaint was initially referred. Based*  
 3 *upon this review, the Deputy Director of the Community Care*  
 4 *Licensing Division of the department shall make his or her own*  
 5 *determination and notify the complainant and the facility within*  
 6 *30 days.*

7 *(3) The department shall notify the facility of any action against*  
 8 *the facility resulting from the conference or review provided for*  
 9 *in paragraph (1) or (2) within three working days of the final*  
 10 *determination, unless the licensee agrees in writing to an extension*  
 11 *of this time. Notice may be effected either personally or by*  
 12 *registered or certified mail. A copy of the notice shall also be sent*  
 13 *to the complainant by registered or certified mail.*

14 SEC. 3. Section 1569.618 of the Health and Safety Code is  
 15 amended to read:

16 1569.618. (a) The administrator designated by the licensee  
 17 pursuant to subdivision (k) of Section 1569.15 shall be present at  
 18 the facility during normal working hours. A facility manager  
 19 designated by the licensee with notice to the department, shall be  
 20 responsible for the operation of the facility when the administrator  
 21 is temporarily absent from the facility.

22 *(b) (1) At least one administrator, facility manager, or other*  
 23 *person designated by the administrator who is at least 21 years*  
 24 *of age shall be on the premises 24 hours per day.*

25 *(2) A minimum of one staff member who assists residents with*  
 26 *personal activities of daily living per 16 residents shall be on the*  
 27 *premises 24 hours per day.*

28 *(c) The facility shall employ, and the administrator shall*  
 29 *schedule, a sufficient number of staff members to do all of the*  
 30 *following:*

31 *(1) Provide the care required in each resident's negotiated*  
 32 *service agreement during all hours of the day.*

33 *(2) Ensure the health, safety, comfort, and supervision of the*  
 34 *residents.*

35 *(3) Ensure that at least one staff member who has*  
 36 *cardiopulmonary resuscitation (CPR) training and first aid training*  
 37 *is on duty and on the premises at all times.*

38 *(4) Ensure that the interior and exterior of the facility is*  
 39 *maintained in a safe and clean manner.*

40 ~~(b)~~

1 (d) “Facility manager” means a person on the premises with the  
 2 authority and responsibility necessary to manage and control the  
 3 day-to-day operation of a residential care facility for the elderly  
 4 and supervise the clients. The facility manager, licensee, and  
 5 administrator, or any combination thereof, may be the same person  
 6 provided he or she meets all applicable requirements. If the  
 7 administrator is also the facility manager for the same facility, he  
 8 or she shall be limited to the administration and management of  
 9 only one facility.

10 SEC. 4. Section 1569.625 of the Health and Safety Code is  
 11 amended to read:

12 1569.625. (a) The Legislature finds that the quality of services  
 13 provided to residents of residential care facilities for the elderly is  
 14 dependent upon the training and skills of staff. It is the intent of  
 15 the Legislature in enacting this section to ensure that direct-care  
 16 staff have the knowledge and proficiency to carry out the tasks of  
 17 their jobs.

18 (b) The department shall adopt regulations to require staff  
 19 members of residential care facilities for the elderly who assist  
 20 residents with personal activities of daily living to receive  
 21 appropriate training. ~~This training shall consist of 10 hours of~~  
 22 ~~training within the first four weeks of employment and four hours~~  
 23 ~~annually thereafter. This training shall be administered on the job,~~  
 24 ~~or in a classroom setting, or any combination of the two. The~~  
 25 ~~department shall establish, in consultation with provider~~  
 26 ~~organizations, the subject matter required for this training. as~~  
 27 ~~provided in this section.~~

28 (c) ~~The training shall include, but not be limited to, the~~  
 29 ~~following:~~

30 (c) *Staff members of residential care facilities for the elderly*  
 31 *who assist residents with personal activities of daily living shall*  
 32 *receive, at a minimum, 10 total hours of training as follows:*

33 (1) *Within seven calendar days of the date of hire, training on*  
 34 *all of the following:*

35 (A) Physical limitations and needs of the elderly.

36 ~~(2)~~

37 (B) Importance and techniques for personal care services.

38 ~~(3)~~

39 (C) Residents’ rights.

40 ~~(4)~~

- 1 (D) Policies and procedures regarding medications.
- 2 ~~(5)~~
- 3 (E) Psychosocial needs of the elderly.
- 4 (F) *Building and fire safety and the appropriate response to*
- 5 *emergencies.*
- 6 (G) *Abuse, neglect, and financial exploitation prevention as*
- 7 *prescribed by the Department of Justice.*
- 8 (H) *Reporting requirements.*
- 9 (I) *Sanitation and food safety.*
- 10 (J) *Resident health and related problems.*
- 11 (K) *An overview of the staff members' specific job requirements.*
- 12 (L) *The philosophy and principles of independent living in an*
- 13 *assisted living residence.*
- 14 (2) *Within 30 calendar days from the date of hire, additional*
- 15 *training on medication assistance and monitoring, communicable*
- 16 *diseases, and dementia and cognitive impairment.*
- 17 (3) *Within 180 calendar days from the date of hire, additional*
- 18 *training on communication skills, the aging process, and disability*
- 19 *sensitivity.*
- 20 (d) *In addition to the training specified in subdivision (c), staff*
- 21 *members of residential care facilities for the elderly who assist*
- 22 *residents with personal activities of daily living shall also complete*
- 23 *6 hours annually of continuing education that includes, but is not*
- 24 *limited to, training on the promotion of resident dignity,*
- 25 *independence, self-determination, privacy, and choice, and review*
- 26 *of all the subjects described in subdivision (c).*
- 27 (e) *The training described in this section shall be administered*
- 28 *on the job, or in a classroom setting, or any combination of the*
- 29 *two.*
- 30 (f) *The department shall establish, in consultation with the*
- 31 *provider organization, the subject matter for the training described*
- 32 *in this section.*
- 33 SEC. 5. No reimbursement is required by this act pursuant to
- 34 Section 6 of Article XIII B of the California Constitution because
- 35 the only costs that may be incurred by a local agency or school
- 36 district will be incurred because this act creates a new crime or
- 37 infraction, eliminates a crime or infraction, or changes the penalty
- 38 for a crime or infraction, within the meaning of Section 17556 of
- 39 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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