

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2171

**Introduced by Assembly Member Wieckowski
(Coauthor: Assembly Member Yamada)
(Coauthor: Senator Leno)**

February 20, 2014

An act to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of, and to add Section 1569.425 to, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2171, as amended, Wieckowski. Residential care facilities for the elderly.

Existing law, the Residential Care Facilities for the Elderly Act, 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.

This bill would establish specified rights for residents of residential care facilities for the elderly, including, among other things, to be treated with dignity and respect, to personal privacy of accommodations, medical treatment, personal care and assistance, and to confidential treatment of their records and personal information, as specified. The bill would require, at admission, a facility staff person to personally advise a resident and the resident's representative, as described, of these and other specified rights and to provide them with a written copy. *The bill would require the department to assess civil penalties, pursuant to specified provisions, for a violation of these rights.* The bill would also provide that a licensee who violates the provisions of the Residential

Care Facilities for the Elderly Act may be prosecuted by the Attorney General in a civil action for an injunction or civil damages, or both, and would authorize a former or current resident of a residential care facility for the elderly to bring a civil action against any person or entity that violates that act, any regulatory requirements adopted by the department, or any right of the resident, 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. Article 2.5 (commencing with Section 1569.261)
2 is added to Chapter 3.2 of Division 2 of the Health and Safety
3 Code, to read:

4

5 Article 2.5. Resident’s Bill of Rights

6

7 1569.261. (a) It is the intent of the Legislature in enacting this
8 article to adopt fundamental rights for all persons residing in a
9 residential care facility for the elderly, as defined in Section 1569.2,
10 to ensure that facilities respect and promote these rights, and to
11 provide residents the ability to enforce their rights.

12 (b) In establishing this bill of rights, the Legislature intends that
13 persons residing in residential care facilities for the elderly be
14 treated with dignity, kindness, and respect, and that their civil
15 liberties be fully honored.

16 (c) A central purpose of the bill of rights is to strengthen a
17 resident’s right to make choices about his or her care, treatment,
18 and daily life in the facility and to ensure that the resident’s choices
19 are respected. The Legislature intends to enhance each resident’s
20 autonomy and ability to make decisions concerning his or her life.

21 (d) The Legislature also intends that each residential care facility
22 for the elderly provide a safe, comfortable, and homelike

1 environment for its residents and that it protect residents from any
2 type of physical or mental abuse, neglect, restraint, exploitation,
3 or endangerment.

4 1569.263. For purposes of this article, the following definitions
5 shall apply:

6 (a) ~~“Chemical restraint” means any drug that is used for~~
7 ~~discipline or convenience and not required to treat a medical~~
8 ~~condition.~~

9 (b) ~~“Inappropriate use of psychoactive drugs” means a~~
10 ~~psychoactive drug that is given to a resident under any of the~~
11 ~~following circumstances:~~

12 (1) ~~Without the informed consent of the resident or the resident’s~~
13 ~~representative, as described in Section 1569.271.~~

14 (2) ~~To treat needs or symptoms associated with dementia or~~
15 ~~related diseases, unless the facility has first tried and documented~~
16 ~~appropriate nonpharmacological approaches to respond to the~~
17 ~~resident’s needs.~~

18 (3) ~~To treat needs or symptoms associated with dementia or~~
19 ~~related diseases, unless a physician has directly examined a resident~~
20 ~~for this purpose and determined that the medication is medically~~
21 ~~necessary for this purpose.~~

22 (4) ~~For purposes of discipline or convenience and not required~~
23 ~~to treat a medical condition.~~

24 (5) ~~On a pro re nata or as-needed basis.~~

25 (c) ~~“Physical restraint” means any manual method or physical~~
26 ~~or mechanical device, material, or equipment attached or adjacent~~
27 ~~to the resident’s body that the resident cannot remove easily and~~
28 ~~that restricts freedom of movement or normal access to one’s body.~~

29 (d) ~~“Psychoactive drug” means a medication that is used to alter~~
30 ~~mood, level of anxiety, behavior, or cognitive processes.~~

31 1569.265. Rights and liberties set forth in this article do not
32 diminish a resident’s constitutional rights or any other rights set
33 forth in other state or federal laws and regulations. Persons residing
34 in residential care facilities for the elderly shall continue to enjoy
35 all of their civil and legal rights.

36 1569.267. (a) At admission, a facility staff person shall
37 personally advise a resident and the resident’s representative of,
38 and give a complete written copy of, ~~these~~ *the rights in this article*
39 and the personal rights in Section 87468 of Title 22 of the
40 California Code of Regulations. The licensee shall have each

1 resident and the resident's representative sign a copy of ~~these~~ *the*
2 *resident's* rights, and the licensee shall include the signed copy in
3 the resident's record.

4 (b) Facilities shall prominently post, in areas accessible to the
5 residents and their representatives, a copy of ~~these~~ *the residents'*
6 rights.

7 (c) The rights posted pursuant to subdivision (b) shall be posted
8 both in English and in any other language in a facility where 5
9 percent or more of the residents can only read that other language.

10 (d) The facility shall provide initial and ongoing training for all
11 members of its staff to ensure that residents' rights are fully
12 respected and implemented.

13 1569.269. (a) Residents shall have all of the following rights:

14 (1) To be treated with dignity and respect.

15 (2) To personal privacy in accommodations, medical treatment,
16 personal care and assistance, visits, communications, telephone
17 conversations, use of the Internet, and meetings of resident and
18 family groups.

19 (3) To confidential treatment of their records and personal
20 information and to approve their release, except as authorized by
21 law.

22 (4) To be encouraged and assisted in exercising their rights as
23 citizens and as residents of the facility. Residents shall be free
24 from interference, coercion, discrimination, and retaliation in
25 exercising their rights.

26 (5) To a safe and homelike environment.

27 (6) To care, supervision, and services that meet their individual
28 needs and is delivered by staff that are at all times sufficient in
29 numbers, qualifications, and competency to meet their needs.

30 (7) To be served food of the quality and in the quantity necessary
31 to meet their nutritional needs.

32 (8) To make choices concerning their daily life in the facility.

33 (9) To fully participate in planning their care, including the right
34 to attend and participate in meetings or communications regarding
35 the care and services to be provided in accordance with Section
36 1569.80, and to involve persons of their choice in the planning
37 process. The facility shall provide necessary information and
38 support to ensure that residents direct the process to the maximum
39 extent possible, and are enabled to make informed decisions and
40 choices.

1 (10) To consent to or reject *medication*, care, or services after
2 being fully informed of all material information relevant to the
3 resident's decision.

4 (11) To be free from neglect, financial exploitation, involuntary
5 seclusion, punishment, humiliation, intimidation, and verbal,
6 mental, physical, or sexual abuse.

7 (12) (A) To be free from physical and chemical restraints and
8 the inappropriate use of psychoactive drugs.

9 (B) *For purposes of this paragraph, the following definitions*
10 *shall apply:*

11 (i) "*Chemical restraint*" means any drug that is used for
12 *discipline or convenience and not required to treat a medical*
13 *condition.*

14 (ii) "*Physical restraint*" means any manual method or physical
15 *or mechanical device, material, or equipment attached or adjacent*
16 *to the resident's body that the resident cannot remove easily and*
17 *that restricts freedom of movement or normal access to one's body.*

18 (iii) "*Psychoactive drug*" means a medication that is used to
19 *alter mood, level of anxiety, behavior, or cognitive processes.*

20 (13) To present grievances and recommend changes in policies,
21 procedures, and services to the staff of the facility, the facility's
22 management and governing authority, and to any other person
23 without restraint, coercion, discrimination, ~~reprisal~~ *reprisal*, or
24 other retaliatory actions. The licensee shall take prompt actions to
25 resolve residents' grievances.

26 (14) To contact the State Department of Social Services, the
27 long-term care ombudsman, or both, regarding grievances against
28 the facility. The facility shall post the telephone numbers and
29 addresses for the local offices of the State Department of Social
30 Services and ombudsman program, in accordance with Section
31 9718 of the Welfare and Institutions Code, conspicuously in the
32 facility foyer, lobby, residents' activity room, or other location
33 easily accessible to residents.

34 (15) To be fully informed, as evidenced by the resident's written
35 acknowledgement, prior to or at the time of admission, of all rules
36 governing residents' conduct and responsibilities. In accordance
37 with Section 1569.885, all rules established by a facility shall be
38 reasonable and shall not violate any rights set forth in this chapter
39 or in other applicable laws or regulations.

1 (16) To receive in the admission agreement a comprehensive
2 description of the method for evaluating residents' service needs
3 and the fee schedule for the items and services provided, and to
4 receive written notice of any rate increases pursuant to Sections
5 1569.655 and 1569.884.

6 (17) To be informed in writing at or before the time of admission
7 of any resident retention limitations set by the state or facility,
8 including any limitations or restrictions on the facility's ability to
9 meet residents' needs.

10 (18) To reasonable accommodation of individual needs and
11 preferences in all aspects of life in the facility, except when the
12 health or safety of the individual or other residents would be
13 endangered.

14 (19) To reasonable accommodation of resident preferences
15 concerning room and roommate choices.

16 (20) To written notice of any room changes at least 30 days in
17 advance unless the request for a change is initiated by a resident,
18 required to fill a vacant bed, or necessary due to an emergency.

19 (21) To share a room with the resident's spouse, domestic
20 partner, or a person of resident's choice when both spouses,
21 partners, or residents live in the same facility and consent to the
22 arrangement.

23 (22) To select their own physicians, pharmacies, ~~privately,~~
24 *privately* paid personal assistants, hospice agency, and health care
25 providers.

26 (23) To have prompt access to review all of their records and
27 to purchase photocopies. Photocopied records shall be promptly
28 provided, not to exceed two business days, at a cost not to exceed
29 the community standard for photocopies.

30 (24) To be protected from involuntary transfers, discharges, and
31 evictions in violation of state laws and regulations. Facilities shall
32 not involuntarily transfer or evict residents for grounds other than
33 those specifically enumerated under state law or regulations, and
34 shall comply with enumerated eviction and relocation protections
35 for residents. For purposes of this paragraph, "involuntary" means
36 a transfer, discharge, or eviction that is initiated by the facility,
37 not by the resident.

38 (25) To move from the facility.

1 (26) To have relatives and other individuals of the resident's
2 choosing visit at any time, subject to the resident's right to
3 withdraw consent.

4 (27) To receive written information on the right to establish an
5 advanced health care directive and, pursuant to Section 1569.156,
6 the facility's written policies on honoring those directives.

7 (28) To be encouraged to maintain and develop their fullest
8 potential for independent living through participation in activities
9 that are designed and implemented for this purpose, in accordance
10 with Section 87219 of Title 22 of the California Code of
11 Regulations.

12 (29) To organize and participate in a resident council that is
13 established pursuant to Section 1569.157.

14 (30) To protection of their property from theft or loss in
15 accordance with Sections 1569.152, 1569.153, and 1569.154.

16 (31) To manage their financial affairs. The facility shall not
17 require residents to deposit their personal funds with the facility,
18 and no licensee or employee of a facility shall become *a*
19 representative payee for any payments made to residents or serve
20 as agent for a resident under a power of attorney.

21 (32) Other rights as specified in this chapter or other state laws
22 or regulations.

23 (b) A licensed residential care facility for the elderly shall not
24 discriminate against a person seeking admission or a resident based
25 on sex, race, color, ~~disability~~, religion, national origin, marital
26 status, registered domestic partner status, ancestry, actual or
27 perceived sexual orientation, or actual or perceived gender identity.

28 (c) No provision of a contract of admission, including all
29 documents that a resident or his or her representative is required
30 to sign at the time of, or as a condition of, admission to a residential
31 care facility for the elderly, shall require that a resident waive
32 benefits or rights to which he or she is entitled under this chapter
33 or provided by federal or other state law or regulation.

34 (d) Residents' family members, friends, and representatives
35 have the right to organize and participate in a family council that
36 is established pursuant to Section 1569.158.

37 (e) *The department shall assess civil penalties pursuant to*
38 *Section 1569.49 for a violation of a right specified in this section.*

39 1569.271. (a) If a resident lacks the capacity to exercise the
40 rights under this chapter or provided by federal or other state law

1 or regulation, the resident’s representative shall have the authority
 2 to exercise the resident’s rights, but may not act in any way to
 3 restrict them. The resident’s incapacity shall be determined by a
 4 court in accordance with state law or by the resident’s physician,
 5 unless the physician’s determination is disputed by the resident or
 6 resident’s representative.

7 (b) Persons who may act as the resident’s representative include
 8 a conservator, guardian, person authorized as agent in the resident’s
 9 valid advance health care directive, the resident’s spouse, registered
 10 domestic partner, or family member, or other surrogate
 11 decisionmaker designated consistent with statutory and case law.

12 SEC. 2. Section 1569.425 is added to the Health and Safety
 13 Code, immediately following Section 1569.42, to read:

14 1569.425. (a) A licensee who violates any provision of this
 15 chapter or regulations adopted by the department pursuant to this
 16 chapter, and whose violation presents an immediate or substantial
 17 threat to the physical health, mental health, or safety of a resident
 18 of a residential care facility for the elderly may be enjoined from
 19 permitting the violation to continue ~~or~~ and may be sued for civil
 20 damages within a court of competent jurisdiction. An action for
 21 injunction or civil damages, or both, may be prosecuted by the
 22 Attorney General in the name of the people of the State of
 23 California upon his or her own complaint or upon the complaint
 24 of a board, officer, person, corporation, or association, or by a
 25 person acting for the interests of itself, its members, or the general
 26 public. The amount of civil damages that may be recovered in an
 27 action brought pursuant to this section shall not exceed the
 28 maximum amount of civil penalties that could be assessed on
 29 account of the violation or violations. The licensee shall be liable
 30 for costs and attorney fees if the plaintiff prevails in an action
 31 pursuant to this subdivision.

32 (b) A current or former resident of a residential care facility for
 33 the elderly, as defined in subdivision (k) of Section 1569.2, may
 34 bring a civil action against any person or entity that violates any
 35 requirements of this chapter, any regulatory requirements adopted
 36 by the department, or any right of the resident provided by federal
 37 or state law or regulation. The suit shall be brought in a court of
 38 competent jurisdiction. The licensee shall be liable for the acts of
 39 the licensee’s employees. The licensee shall be liable for up to ~~one~~
 40 ~~thousand dollars (\$1,000) per day~~ *five hundred dollars (\$500) for*

1 each violation, and for costs and attorney fees, and may be enjoined
2 from permitting the violation to continue. Injunctive relief granted
3 under this section shall be deemed prohibitory, and shall not be
4 stayed pending appeal. The statute of limitations for suit under
5 this subdivision shall be three years, which shall not begin to run
6 until the violation has been discovered. The current or former
7 resident has the right to a trial by jury. The right to bring a civil
8 action shall survive the death of the resident. An agreement by a
9 resident of a residential care facility for the elderly to waive his
10 or her rights to sue pursuant to this subdivision shall be deemed
11 contrary to public policy and shall be void and unenforceable.

12 (c) The remedies specified in this section shall be in addition
13 to any other remedy provided by law.

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