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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 ~~amend Section 1569.886 of, to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of, of~~ 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. ~~Existing law requires that an admission agreement for a residential care facility for the elderly explain the resident's right to notice prior to an involuntary transfer, discharge, or eviction, as specified.~~ A violation of these provisions is a misdemeanor.

This bill would establish specified rights for residents of *privately operated* residential care facilities for the elderly, including, among other things, ~~to receive 90 days' notice before an involuntary transfer, discharge, or eviction,~~ to be accorded dignity in their personal relationships with staff, to be granted a reasonable level of 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 authorize the department to assess civil penalties, pursuant to specified provisions, for a violation of these rights, and would provide that a licensee who violates these rights may be prosecuted by the Attorney General in a civil action for an injunction or civil damages, or both.~~ *copy of these rights*. The bill would ~~also~~ authorize a former or current resident of a residential care facility for the elderly to bring a civil action against any ~~facility licensee~~ that violates these rights, *as specified*, but would require the resident to provide the ~~facility licensee~~ alleged to have violated any of ~~the those~~ rights ~~described above~~ with a specified written notice at least 30 days prior to the commencement of the action. The bill would prohibit the maintenance of an action for damages if the ~~facility licensee~~ alleged to have violated these rights ceases, corrects, or otherwise rectifies the alleged violation within 30 days of *receipt of* the written notice.

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:

1 Article 2.5. Resident’s Bill of Rights

2
3 1569.261. (a) It is the intent of the Legislature in enacting this
4 article to adopt fundamental rights for all persons residing in a
5 residential care facility for the elderly, as defined in Section 1569.2,
6 to ensure that facilities respect and promote these rights, and to
7 provide residents the ability to enforce their rights.

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

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

17 (d) The Legislature also intends that each residential care facility
18 for the elderly provide a safe, comfortable, and homelike
19 environment for its residents and that it protect residents from ~~any~~
20 ~~type of~~ physical or mental abuse, neglect, ~~restraint~~, exploitation,
21 or endangerment.

22 1569.265. (a) Rights and liberties set forth in this article do
23 not diminish a resident’s constitutional rights or any other rights
24 set forth in other state or federal laws and regulations. Persons
25 residing in residential care facilities for the elderly shall continue
26 to enjoy all of their civil and legal rights.

27 (b) *The provisions of this article apply only to privately operated*
28 *residential care facilities for the elderly.*

29 1569.267. (a) At admission, a facility staff person shall
30 personally advise a resident and the resident’s representative of,
31 and give a complete written copy of, the rights in this article and
32 the personal rights in Section 87468 of Title 22 of the California
33 Code of Regulations. The licensee shall have each resident and
34 the resident’s representative sign *and date* a copy of the resident’s
35 rights, and the licensee shall include the signed *and dated* copy in
36 the resident’s record.

37 (b) ~~Facilities—~~*Licensees* shall prominently post, in areas
38 accessible to the residents and their representatives, a copy of the
39 residents’ rights.

1 (c) The rights posted pursuant to subdivision (b) shall be posted
2 both in English and in any other language in a facility ~~where in~~
3 *which* 5 percent or more of the residents can only read that other
4 language.

5 (d) The ~~facility licensee~~ shall provide initial and ongoing training
6 for all members of its staff to ensure that residents' rights are fully
7 respected and implemented.

8 1569.269. (a) Residents *of residential care facilities for the*
9 *elderly* shall have all of the following rights:

10 (1) To be accorded dignity in their personal relationships with
11 staff, residents, and other persons.

12 (2) To be granted a reasonable level of personal privacy in
13 accommodations, medical treatment, personal care and assistance,
14 visits, communications, telephone conversations, use of the
15 Internet, and meetings of resident and family groups.

16 (3) To confidential treatment of their records and personal
17 information and to approve their release, except as authorized by
18 law.

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

23 (5) To be accorded ~~a safe and habitable environment.~~ *safe,*
24 *healthful, and comfortable accommodations, furnishings, and*
25 *equipment.*

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

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

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

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

1 (10) To be free from neglect, financial exploitation, involuntary
2 seclusion, punishment, humiliation, intimidation, and verbal,
3 mental, physical, or sexual abuse.

4 (11) To present grievances and recommend changes in policies,
5 procedures, and services to the staff of the facility, the facility's
6 management and governing authority, and to any other person
7 without restraint, coercion, discrimination, reprisal, or other
8 retaliatory actions. The licensee shall take prompt actions to ~~resolve~~
9 *respond to* residents' grievances.

10 (12) To contact the State Department of Social Services, the
11 long-term care ombudsman, or both, regarding grievances against
12 ~~the facility licensee~~. The ~~facility licensee~~ shall post the telephone
13 numbers and addresses for the local offices of the State Department
14 of Social Services and ombudsman program, in accordance with
15 Section 9718 of the Welfare and Institutions Code, conspicuously
16 in the facility foyer, lobby, residents' activity room, or other
17 location easily accessible to residents.

18 (13) To be fully informed, as evidenced by the resident's written
19 acknowledgement, prior to or at the time of admission, of all rules
20 governing residents' conduct and responsibilities. In accordance
21 with Section 1569.885, all rules established by a ~~facility licensee~~
22 shall be reasonable and shall not violate any rights set forth in this
23 chapter or in other applicable laws or regulations.

24 (14) To receive in the admission agreement a comprehensive
25 description of the method for evaluating residents' service needs
26 and the fee schedule for the items and services provided, and to
27 receive written notice of any rate increases pursuant to Sections
28 1569.655 and 1569.884.

29 (15) To be informed in writing at or before the time of admission
30 of any resident retention limitations set by the state or ~~facility~~,
31 *licensee*, including any limitations or restrictions on the ~~facility's~~
32 *licensee's* ability to meet residents' needs.

33 (16) To reasonable accommodation of individual needs and
34 preferences in all aspects of life in the facility, except when the
35 health or safety of the individual or other residents would be
36 endangered.

37 (17) To reasonable accommodation of resident preferences
38 concerning room and roommate choices.

- 1 (18) To written notice of any room changes at least 30 days in
- 2 advance unless the request for a change is initiated by a resident,
- 3 required to fill a vacant bed, or necessary due to an emergency.
- 4 (19) To share a room with the resident’s spouse, domestic
- 5 partner, or a person of resident’s choice when both spouses,
- 6 partners, or residents live in the same facility and consent to the
- 7 arrangement.
- 8 (20) To select their own physicians, pharmacies, privately paid
- 9 personal assistants, hospice agency, and health care providers.
- 10 (21) To have prompt access to review all of their records and
- 11 to purchase photocopies. Photocopied records shall be promptly
- 12 provided, not to exceed two business days, at a cost not to exceed
- 13 the community standard for photocopies.
- 14 (22) To be protected from involuntary transfers, discharges, and
- 15 evictions in violation of state laws and regulations. Facilities shall
- 16 not involuntarily transfer or evict residents for grounds other than
- 17 those specifically enumerated under state law or regulations, and
- 18 shall comply with enumerated eviction and relocation protections
- 19 for residents. ~~A facility shall provide 90 days’ notice to a resident~~
- 20 ~~prior to involuntarily transfer, discharge, or eviction.~~ For purposes
- 21 of this paragraph, “involuntary” means a transfer, discharge, or
- 22 eviction that is initiated by the ~~facility,~~ *licensee*, not by the resident.
- 23 (23) To move from ~~the~~ a facility.
- 24 (24) To *consent to* have relatives and other individuals of the
- 25 resident’s choosing visit at any time, ~~subject to the resident’s right~~
- 26 ~~to withdraw consent.~~ *privately and without prior notice.*
- 27 (25) To receive written information on the right to establish an
- 28 advanced health care directive and, pursuant to Section 1569.156,
- 29 ~~the facility’s licensee’s~~ written policies on honoring those
- 30 directives.
- 31 (26) To be encouraged to maintain and develop their fullest
- 32 potential for independent living through participation in activities
- 33 that are designed and implemented for this purpose, in accordance
- 34 with Section 87219 of Title 22 of the California Code of
- 35 Regulations.
- 36 (27) To organize and participate in a resident council that is
- 37 established pursuant to Section 1569.157.
- 38 (28) To protection of their property from theft or loss in
- 39 accordance with Sections 1569.152, 1569.153, and 1569.154.

1 (29) To manage their financial affairs. ~~The facility~~ *A licensee*
2 shall not require residents to deposit their personal funds with the
3 facility. ~~No licensee or employee of a facility shall become or act~~
4 ~~as a representative payee for any payments made to a resident, if~~
5 ~~the resident or the resident's representative objects. No licensee~~
6 ~~or employee of a facility shall serve as agent for a resident under~~
7 ~~a power of attorney.~~ *licensee. Except as provided in approved*
8 *continuing care agreements, a licensee, or a spouse, domestic*
9 *partner, relative, or employee of a licensee, shall not do any of*
10 *the following:*

11 (A) *Accept appointment as a guardian or conservator of the*
12 *person or estate of a resident.*

13 (B) *Become or act as a representative payee for any payments*
14 *made to a resident, without the written and documented consent*
15 *of the resident or the resident's representative.*

16 (C) *Serve as an agent for a resident under any general or special*
17 *power of attorney.*

18 (D) *Become or act as a joint tenant on any account with a*
19 *resident.*

20 (E) *Enter into a loan or promissory agreement or otherwise*
21 *borrow money from a resident without a notarized written*
22 *agreement outlining the terms of the repayment being given to the*
23 *resident.*

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

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

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

38 (e) ~~The department may assess civil penalties pursuant to Section~~
39 ~~1569.49 for a violation of a right specified in this section.~~

1 (e) *The provisions of this section are severable. If any provision*
2 *of this section or its application is held invalid, that invalidity shall*
3 *not affect other provisions or applications that can be given effect*
4 *without the invalid provision or application.*

5 1569.271. (a) Thirty days or more before the commencement
6 of an action for damages pursuant to Section 1569.275, the *current*
7 *or former* resident or the resident's representative shall do both of
8 the following:

9 (1) Notify the ~~facility~~ *licensee* alleged to have violated any
10 requirements of this article of the particular alleged violation.

11 (2) Demand *in writing* that the ~~facility~~ *licensee* cease, correct,
12 or otherwise rectify the alleged violation.

13 The notice ~~shall be in writing and~~ shall be sent by certified or
14 registered mail, return receipt requested, to the residential care
15 facility in which the resident resides or resided or to the ~~person's~~
16 *licensee's* principal place of business within California.

17 (b) ~~Except as provided in subdivision (e), no~~ *No* action for
18 damages may be maintained under Section 1569.275 if the ~~facility~~
19 *licensee* ceases, corrects, or otherwise rectifies the alleged violation
20 within 30 days after receipt of the notice.

21 (c) No action for damages may be maintained under Section
22 1569.275 upon a showing by a ~~facility~~ *licensee* alleged to have
23 violated any requirements of this article that ~~all of the following~~
24 ~~exist:~~

25 (1) ~~All residents similarly situated have been identified, or a~~
26 ~~reasonable effort to identify those other residents has been made.~~

27 (2) ~~All residents so identified have been notified that the facility~~
28 ~~will cease, correct, or otherwise rectify the practices, acts, or~~
29 ~~methods alleged to be in violation.~~

30 (3) ~~The facility~~ *the licensee* has ceased from engaging, or if
31 immediate cessation is impossible or unreasonably expensive under
32 the circumstances, *that the person licensee* will, within a reasonable
33 time, cease to engage, in the alleged violation.

34 (d) An action for injunctive relief brought under the specific
35 provisions of Section 1568.275 may be commenced without
36 compliance with subdivision (a) *if the alleged violation poses a*
37 *threat to the health or safety of a resident.* Not less than 30 days
38 after the commencement of an action for injunctive relief, and after
39 compliance with subdivision (a), the *current or former* resident
40 may amend his or her complaint without leave of court to include

1 a request for damages. The appropriate provisions of subdivision
2 (b) or (c) shall be applicable if the complaint for injunctive relief
3 is amended to request damages.

4 (e) Attempts to comply with this section by a *facility licensee*
5 receiving a demand shall be construed to be an offer to compromise
6 and shall be inadmissible as evidence pursuant to Section 1152 of
7 the Evidence Code. Furthermore, these attempts to comply with
8 a demand shall not be considered an admission of engaging in an
9 act or practice declared unlawful under this article. Evidence of
10 compliance or attempts to comply with this section may be
11 introduced by a defendant for the purpose of establishing good
12 faith or to show compliance with this section.

13 ~~1569.275. (a) (1) An action for injunction or civil damages,
14 or both, against a residential care facility for the elderly that
15 violates any provision of this article may be prosecuted by the
16 Attorney General in the name of the people of the State of
17 California upon his or her own complaint or upon the complaint
18 of a board, officer, person, corporation, or association, or by a
19 person acting for the interests of itself, its members, or the general
20 public.~~

21 ~~(2) Every facility shall provide access to the Office of the
22 Attorney General during normal business hours or at any time
23 when the suspected violation presents an immediate or substantial
24 threat to the physical health, mental health, or safety of a resident.~~

25 ~~(3) The amount of civil damages that may be recovered in an
26 action brought by the Attorney General shall not exceed the
27 maximum amount of civil penalties that could be assessed on
28 account of the violation or violations provided for in paragraph
29 (2) of subdivision (b).~~

30 ~~(4) A licensee who violates any provision of this article or
31 regulations adopted by the department pursuant to this article, and
32 whose violation presents an immediate or substantial threat to the
33 physical health, mental health, or safety of a resident of a
34 residential care facility for the elderly may be enjoined from
35 permitting the violation to continue and may be sued for civil
36 damages within a court of competent jurisdiction.~~

37 ~~(b)~~

38 ~~1569.275. (a) (1) A current or former resident of a residential
39 care facility for the elderly, as defined in subdivision (k) of Section
40 1569.2, may bring a civil action against any *facility licensee* that~~

1 violates any requirements of this article. The suit shall be brought
 2 in a court of competent jurisdiction. The licensee shall be liable
 3 for the acts of the licensee’s employees.

4 (2) The licensee shall be liable for up to five hundred dollars
 5 (\$500) for each violation, and for costs and attorney’s fees, and
 6 may be enjoined from permitting the violation to continue.
 7 Injunctive relief granted under this section shall not be stayed
 8 pending appeal.

9 (3) The statute of limitations for suit under this subdivision shall
 10 be three years, which shall not begin to run until the violation has
 11 been discovered.

12 (4) The current or former resident has the right to a trial by jury.

13 (5) The right to bring a civil action shall survive the death of
 14 the resident.

15 (6) An agreement by a resident of a residential care facility for
 16 the elderly to waive his or her rights to sue pursuant to this
 17 subdivision shall be deemed contrary to public policy and shall be
 18 void and unenforceable.

19 (e)

20 (b) The right to bring a civil action against any person or entity
 21 for a violation of this article shall be subject to the requirements
 22 of Section 1569.271.

23 (d)

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

26 (d) *The provisions of this section are severable. If any provision*
 27 *of this section or its application is held invalid, that invalidity shall*
 28 *not affect other provisions or applications that can be given effect*
 29 *without the invalid provision or application.*

30 ~~SEC. 2. Section 1569.886 of the Health and Safety Code is~~
 31 ~~amended to read:~~

32 ~~1569.886. (a) The admission agreement shall not include any~~
 33 ~~ground for involuntary transfer or eviction of the resident unless~~
 34 ~~those grounds are specifically enumerated under state law or~~
 35 ~~regulation.~~

36 ~~(b) The admission agreement shall list the justifications for~~
 37 ~~eviction permissible under state law or regulation, exactly as they~~
 38 ~~are worded in the applicable law or regulation.~~

39 ~~(c) The admission agreement shall include an explanation of~~
 40 ~~the resident’s right to 90 days’ notice prior to an involuntary~~

1 transfer, discharge, or eviction, the process by which the resident
2 may appeal the decision and a description of the relocation
3 assistance offered by the facility.

4 (d) ~~The admission agreement shall state the responsibilities of~~
5 ~~the licensee and the rights of the resident when a facility evicts~~
6 ~~residents pursuant to Section 1569.682.~~

7 ~~SEC. 3.~~

8 *SEC. 2.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.