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AMENDED IN SENATE AUGUST 19, 2014
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AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY MAY 6, 2014
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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 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 privately operated residential care facilities for the elderly, including, among other things, 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 of these rights. ~~The bill would authorize a former or current resident of a residential care facility for the elderly to bring a civil action against any licensee that violates these rights, as specified, but would require the resident to provide the licensee alleged to have violated any of those rights 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 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:

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 *and* to ensure that facilities respect and promote these rights, ~~and~~
11 ~~to 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

1 treated with dignity, kindness, and respect, and that their civil
2 liberties be fully honored.

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

8 (d) The Legislature also intends that each residential care facility
9 for the elderly provide a safe, comfortable, and homelike
10 environment for its residents and that it protect residents from
11 physical or mental abuse, neglect, exploitation, or endangerment.

12 1569.265. (a) Rights and liberties set forth in this article do
13 not diminish a resident’s constitutional rights or any other rights
14 set forth in other state or federal laws and regulations. Persons
15 residing in residential care facilities for the elderly shall continue
16 to enjoy all of their civil and legal rights.

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

19 1569.267. (a) At admission, a facility staff person shall
20 personally advise a resident and the resident’s representative of,
21 and give a complete written copy of, the rights in this article and
22 the personal rights in Section 87468 of Title 22 of the California
23 Code of Regulations. The licensee shall have each resident and
24 the resident’s representative sign and date a copy of the resident’s
25 rights, and the licensee shall include the signed and dated copy in
26 the resident’s record.

27 (b) Licensees shall prominently post, in areas accessible to the
28 residents and their representatives, a copy of the residents’ rights.

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

32 (d) The licensee shall provide initial and ongoing training for
33 all members of its staff to ensure that residents’ rights are fully
34 respected and implemented.

35 1569.269. (a) Residents of residential care facilities for the
36 elderly shall have all of the following rights:

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

39 (2) To be granted a reasonable level of personal privacy in
40 accommodations, medical treatment, personal care and assistance,

1 visits, communications, telephone conversations, use of the
2 Internet, and meetings of resident and family groups.

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

6 (4) To be encouraged and assisted in exercising their rights as
7 citizens and as residents of the facility. Residents shall be free
8 from interference, coercion, discrimination, and retaliation in
9 exercising their rights.

10 (5) To be accorded safe, healthful, and comfortable
11 accommodations, furnishings, and equipment.

12 (6) To care, supervision, and services that meet their individual
13 needs and are delivered by staff that are sufficient in numbers,
14 qualifications, and competency to meet their needs.

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

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

18 (9) To fully participate in planning their care, including the right
19 to attend and participate in meetings or communications regarding
20 the care and services to be provided in accordance with Section
21 1569.80, and to involve persons of their choice in the planning
22 process. The licensee shall provide necessary information and
23 support to ensure that residents direct the process to the maximum
24 extent possible, and are enabled to make informed decisions and
25 choices.

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

29 (11) To present grievances and recommend changes in policies,
30 procedures, and services to the staff of the facility, the facility's
31 management and governing authority, and to any other person
32 without restraint, coercion, discrimination, reprisal, or other
33 retaliatory actions. The licensee shall take prompt actions to
34 respond to residents' grievances.

35 (12) To contact the State Department of Social Services, the
36 long-term care ombudsman, or both, regarding grievances against
37 the licensee. The licensee shall post the telephone numbers and
38 addresses for the local offices of the State Department of Social
39 Services and ombudsman program, in accordance with Section
40 9718 of the Welfare and Institutions Code, conspicuously in the

1 facility foyer, lobby, residents' activity room, or other location
2 easily accessible to residents.

3 (13) To be fully informed, as evidenced by the resident's written
4 acknowledgement, prior to or at the time of admission, of all rules
5 governing residents' conduct and responsibilities. In accordance
6 with Section 1569.885, all rules established by a licensee shall be
7 reasonable and shall not violate any rights set forth in this chapter
8 or in other applicable laws or regulations.

9 (14) To receive in the admission agreement a comprehensive
10 description of the method for evaluating residents' service needs
11 and the fee schedule for the items and services provided, and to
12 receive written notice of any rate increases pursuant to Sections
13 1569.655 and 1569.884.

14 (15) To be informed in writing at or before the time of admission
15 of any resident retention limitations set by the state or licensee,
16 including any limitations or restrictions on the licensee's ability
17 to meet residents' needs.

18 (16) To reasonable accommodation of individual needs and
19 preferences in all aspects of life in the facility, except when the
20 health or safety of the individual or other residents would be
21 endangered.

22 (17) To reasonable accommodation of resident preferences
23 concerning room and roommate choices.

24 (18) To written notice of any room changes at least 30 days in
25 advance unless the request for a change is ~~initiated by a~~ *agreed to*
26 *by the* resident, required to fill a vacant bed, or necessary due to
27 an emergency.

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

32 (20) To select their own physicians, pharmacies, privately paid
33 personal assistants, hospice agency, and health care ~~providers.~~
34 *providers, in a manner that is consistent with the resident's*
35 *contract of admission or other rules of the facility, and in*
36 *accordance with this act.*

37 (21) To have prompt access to review all of their records and
38 to purchase photocopies. Photocopied records shall be promptly
39 provided, not to exceed two business days, at a cost not to exceed
40 the community standard for photocopies.

1 (22) To be protected from involuntary transfers, discharges, and
2 evictions in violation of state laws and regulations. Facilities shall
3 not involuntarily transfer or evict residents for grounds other than
4 those specifically enumerated under state law or regulations, and
5 shall comply with enumerated eviction and relocation protections
6 for residents. For purposes of this paragraph, “involuntary” means
7 a transfer, discharge, or eviction that is initiated by the licensee,
8 not by the resident.

9 (23) To move from a facility.

10 (24) To consent to have relatives and other individuals of the
11 resident’s choosing visit ~~at any time~~ *during reasonable hours*,
12 privately and without prior notice.

13 (25) To receive written information on the right to establish an
14 advanced health care directive and, pursuant to Section 1569.156,
15 the licensee’s written policies on honoring those directives.

16 (26) To be encouraged to maintain and develop their fullest
17 potential for independent living through participation in activities
18 that are designed and implemented for this purpose, in accordance
19 with Section 87219 of Title 22 of the California Code of
20 Regulations.

21 (27) To organize and participate in a resident council that is
22 established pursuant to Section 1569.157.

23 (28) To protection of their property from theft or loss in
24 accordance with Sections 1569.152, 1569.153, and 1569.154.

25 (29) To manage their financial affairs. A licensee shall not
26 require residents to deposit their personal funds with the licensee.
27 Except as provided in approved continuing care agreements, a
28 licensee, or a spouse, domestic partner, relative, or employee of a
29 licensee, shall not do any of the following:

30 (A) Accept appointment as a guardian or conservator of the
31 person or estate of a resident.

32 (B) Become or act as a representative payee for any payments
33 made to a resident, without the written and documented consent
34 of the resident or the resident’s representative.

35 (C) Serve as an agent for a resident under any general or special
36 power of attorney.

37 (D) Become or act as a joint tenant on any account with a
38 resident.

39 (E) Enter into a loan or promissory agreement or otherwise
40 borrow money from a resident without a notarized written

1 agreement outlining the terms of the repayment being given to the
2 resident.

3 *(30) To keep, have access to, and use their own personal*
4 *possessions, including toilet articles, and to keep and be allowed*
5 *to spend their own money, unless limited by statute or regulation.*

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

11 (c) No provision of a contract of admission, including all
12 documents that a resident or his or her representative is required
13 to sign ~~at the time of~~, *as part of the contract for*, or as a condition
14 of, admission to a residential care facility for the elderly, shall
15 require that a resident waive benefits or rights to which he or she
16 is entitled under this chapter or provided by federal or other state
17 law or regulation.

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

21 *(e) The rights specified in this section shall be in addition to*
22 *any other rights provided by law.*

23 ~~(e)~~
24 (f) The provisions of this section are severable. If any provision
25 of this section or its application is held invalid, that invalidity shall
26 not affect other provisions or applications that can be given effect
27 without the invalid provision or application.

28 ~~1569.271. (a) Thirty days or more before the commencement~~
29 ~~of an action for damages pursuant to Section 1569.275, the current~~
30 ~~or former resident or the resident's representative shall do both of~~
31 ~~the following:~~

32 ~~(1) Notify the licensee alleged to have violated any requirements~~
33 ~~of this article of the particular alleged violation.~~

34 ~~(2) Demand in writing that the licensee cease, correct, or~~
35 ~~otherwise rectify the alleged violation.~~

36 ~~The notice shall be sent by certified or registered mail, return~~
37 ~~receipt requested, to the residential care facility in which the~~
38 ~~resident resides or resided or to the licensee's principal place of~~
39 ~~business within California.~~

1 ~~(b) No action for damages may be maintained under Section~~
2 ~~1569.275 if the licensee ceases, corrects, or otherwise rectifies the~~
3 ~~alleged violation within 30 days after receipt of the notice.~~

4 ~~(c) No action for damages may be maintained under Section~~
5 ~~1569.275 upon a showing by a licensee alleged to have violated~~
6 ~~any requirements of this article that the licensee has ceased from~~
7 ~~engaging, or if immediate cessation is impossible or unreasonably~~
8 ~~expensive under the circumstances, that the licensee will, within~~
9 ~~a reasonable time, cease to engage, in the alleged violation.~~

10 ~~(d) An action for injunctive relief brought under the specific~~
11 ~~provisions of Section 1568.275 may be commenced without~~
12 ~~compliance with subdivision (a) if the alleged violation poses a~~
13 ~~threat to the health or safety of a resident. Not less than 30 days~~
14 ~~after the commencement of an action for injunctive relief, and after~~
15 ~~compliance with subdivision (a), the current or former resident~~
16 ~~may amend his or her complaint without leave of court to include~~
17 ~~a request for damages. The appropriate provisions of subdivision~~
18 ~~(b) or (c) shall be applicable if the complaint for injunctive relief~~
19 ~~is amended to request damages.~~

20 ~~(e) Attempts to comply with this section by a licensee receiving~~
21 ~~a demand shall be construed to be an offer to compromise and~~
22 ~~shall be inadmissible as evidence pursuant to Section 1152 of the~~
23 ~~Evidence Code. Furthermore, these attempts to comply with a~~
24 ~~demand shall not be considered an admission of engaging in an~~
25 ~~act or practice declared unlawful under this article. Evidence of~~
26 ~~compliance or attempts to comply with this section may be~~
27 ~~introduced by a defendant for the purpose of establishing good~~
28 ~~faith or to show compliance with this section.~~

29 ~~1569.275. (a) (1) A current or former resident of a residential~~
30 ~~care facility for the elderly, as defined in subdivision (k) of Section~~
31 ~~1569.2, may bring a civil action against any licensee that violates~~
32 ~~any requirements of this article. The suit shall be brought in a court~~
33 ~~of competent jurisdiction. The licensee shall be liable for the acts~~
34 ~~of the licensee's employees.~~

35 ~~(2) The licensee shall be liable for up to five hundred dollars~~
36 ~~(\$500) for each violation, and for costs and attorney's fees, and~~
37 ~~may be enjoined from permitting the violation to continue.~~
38 ~~Injunctive relief granted under this section shall not be stayed~~
39 ~~pending appeal.~~

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

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

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

7 ~~(6) An agreement by a resident of a residential care facility for~~
8 ~~the elderly to waive his or her rights to sue pursuant to this~~
9 ~~subdivision shall be deemed contrary to public policy and shall be~~
10 ~~void and unenforceable.~~

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

14 ~~(e) The remedies specified in this section shall be in addition~~
15 ~~to any other remedy provided by law.~~

16 ~~(d) The provisions of this section are severable. If any provision~~
17 ~~of this section or its application is held invalid, that invalidity shall~~
18 ~~not affect other provisions or applications that can be given effect~~
19 ~~without the invalid provision or application.~~

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

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