

**ASSEMBLY BILL**

**No. 1178**

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**Introduced by Assembly Member Davis**

February 28, 1997

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An act to add Section 1569.156 to the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 1178, as introduced, Davis. Residential care facilities for the elderly: informed consent.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for licensure and regulation of facilities that provide residential care and supportive services for elderly persons. Existing law requires the State Department of Social Services to adopt reasonable rules, regulations, and standards as necessary for administration of the act. Violation of these provisions, or willful or repeated violation of the regulations, is a crime.

This bill would establish standards that require informed consent, as defined, prior to the administration of medical treatment in a facility licensed under the act. By changing the definition 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 1569.156 is added to the Health  
2 and Safety Code, immediately following Section 1569.155,  
3 to read:

4 1569.156. (a) (1) Informed consent means the  
5 voluntary agreement of a patient or the authorized  
6 representative of an incapacitated patient to accept a  
7 treatment or procedure after receiving information in  
8 accordance with this section.

9 (2) For patients in a facility licensed under this  
10 chapter, it is the responsibility of the attending physician  
11 and surgeon to determine what information a reasonable  
12 person in the patient's condition and circumstances  
13 would consider material to a decision to accept or refuse  
14 a proposed treatment or procedure. Information that is  
15 commonly appreciated need not be disclosed. The  
16 disclosure of the material information and the obtaining  
17 of informed consent shall be the responsibility of the  
18 physician and surgeon.

19 (b) The information material to a decision concerning  
20 the administration of a psychotherapeutic drug or  
21 physical restraint, or the prolonged use of a device that  
22 may lead to the inability of the patient to regain use of a  
23 normal bodily function shall include at least all of the  
24 following:

25 (1) The need for the proposed treatment and the  
26 nature and seriousness of the patient's illness.

27 (2) The nature of the procedures to be used in the  
28 proposed treatment including their probable frequency  
29 and duration.

30 (3) The probable degree and duration, and whether  
31 temporary or permanent, of the improvement or  
32 remission, expected with and without the proposed  
33 treatment.

34 (4) The nature, degree, duration, and probability of  
35 the side effects and significant risks, associated with the



1 proposed treatment commonly known to physicians and  
2 surgeons.

3 (5) The reasonable alternative treatments and risks,  
4 and why the physician and surgeon is recommending this  
5 particular treatment.

6 (6) That the patient has the right to accept or refuse  
7 the proposed treatment, and if he or she consents, has the  
8 right to revoke his or her consent for any reason at any  
9 time, and that the revocation need not be in writing.

10 (c) Before initiating the administration of  
11 psychotherapeutic drugs, or physical restraints, or the  
12 prolonged use of a device that may lead to the inability  
13 to regain use of a normal bodily function, facility staff shall  
14 verify that the patient's health record contains  
15 documentation that the patient has given informed  
16 consent to the proposed treatment or procedure. The  
17 facility shall also ensure that all decisions concerning the  
18 withdrawal or withholding of life sustaining treatment  
19 are documented in the patient's health record.

20 (d) This section shall not be construed to require  
21 obtaining informed consent each time a treatment or  
22 procedure is administered unless material circumstances  
23 or risks change.

24 (e) This section does not prohibit initiating treatment  
25 without informed consent if an emergency exists where  
26 there is an unanticipated condition in which immediate  
27 action is necessary for the preservation of life or the  
28 prevention of serious bodily harm to the patient or others  
29 or to alleviate severe physical pain, and it is impracticable  
30 to obtain the required consent, and provided that the  
31 action taken is within the customary practice of  
32 physicians and surgeons in good standing in similar  
33 circumstances. The existence of and the facts  
34 surrounding the emergency shall be documented in the  
35 patient's health record.

36 (f) Notwithstanding paragraph (4) of subdivision (b),  
37 disclosure of the risks of a proposed treatment or  
38 procedure may be withheld if any of the following applies  
39 and is documented in the patient's health record:



1 (1) The patient or patient’s representative specifically  
2 requested that he or she not be informed of the risk of the  
3 recommended treatment or procedure. This request  
4 does not waive the requirement for providing the other  
5 material information concerning the treatment  
6 procedure.

7 (2) The physician and surgeon relied upon objective  
8 facts, as documented in the health record, that would  
9 demonstrate to a reasonable person that the disclosure  
10 would have so seriously upset the patient that the patient  
11 would not have been able to rationally weigh the risks of  
12 refusing to undergo the recommended treatment and  
13 that, unless inappropriate, a patient’s representative gave  
14 informed consent as set forth herein.

15 (g) (1) A general consent provision in a contract for  
16 admission shall only encompass consent for routine  
17 nursing care or emergency care.

18 (2) “Routine nursing care,” as used in this section,  
19 means a treatment or procedure that does not require  
20 informed consent as specified in subdivision (b) or that  
21 is otherwise determined by the physician and surgeon not  
22 to require disclosure pursuant to this section.

23 (3) Routine nursing care includes, but is not limited to,  
24 care that does not require the order of a physician and  
25 surgeon.

26 (4) This subdivision does not preclude the use of  
27 informed consent forms for any specific treatment or  
28 procedure at the time of admission or at any other time.

29 (5) All consent provisions or forms shall indicate that  
30 the patient or incapacitated patient’s representative may  
31 revoke his or her consent at any time, in writing or orally.

32 (h) If a patient or his or her representative cannot  
33 communicate with the physician because of language or  
34 communication barriers, the facility shall arrange for an  
35 interpreter.

36 (1) An interpreter shall be someone who is fluent in  
37 both English and the language used by the patient and his  
38 or her legal representative, or who can communicate  
39 with a deaf person, if deafness is the communication  
40 barrier.



1 (2) When interpreters are used, documentation shall  
2 be placed in the patient's health record indicating the  
3 name of the person who acted as the interpreter and his  
4 or her relationship to the patient and to the facility.

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

15 Notwithstanding Section 17580 of the Government  
16 Code, unless otherwise specified, the provisions of this act  
17 shall become operative on the same date that the act  
18 takes effect pursuant to the California Constitution.

