

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 762

Introduced by Assembly Member Bonnie Lowenthal

February 26, 2009

An act to amend Section 1569.72 of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 762, as amended, Bonnie Lowenthal. Residential care facilities for the elderly: admission.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensing and regulation of residential care facilities for the elderly by the State Department of Social Services. Under existing law, with certain exceptions, residential care facilities for the elderly are prohibited from admitting or retaining, other than for a maximum of 14 days for temporary illness or for recovery from surgery, a bedridden resident. A resident who is bedridden may be admitted to and remain in the facility if the facility secures and maintains fire clearance and obtains departmental approval. Existing law defines "bedridden" for this purpose as a resident who requires assistance in turning and repositioning in bed, or who is unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the Director of Social Services in regulations.

This bill would redefine "bedridden" to mean a resident who requires assistance in turning and repositioning in bed, *except in a facility with*

appropriate and sufficient care staff, mechanical devices, if necessary, and safety precautions, as determined by the director in regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.72 of the Health and Safety Code
2 is amended to read:

3 1569.72. (a) Except as otherwise provided in subdivision (d),
4 no resident shall be admitted or retained in a residential care facility
5 for the elderly if any of the following apply:

6 (1) The resident requires 24-hour, skilled nursing or intermediate
7 care.

8 (2) The resident is bedridden, other than for a temporary illness
9 or for recovery from surgery.

10 (b) (1) For the purposes of this section, “bedridden” means
11 requiring assistance in turning and repositioning in bed, *except in*
12 *a facility with appropriate and sufficient care staff, mechanical*
13 *devices, if necessary, and safety precautions, as determined by the*
14 *director in regulations.*

15 (2) The determination of the bedridden status of persons with
16 developmental disabilities shall be made by the Director of Social
17 Services or his or her designated representative, in consultation
18 with the Director of Developmental Services or his or her
19 designated representative, after consulting the resident’s individual
20 safety plan. The determination of the bedridden status of all other
21 persons with disabilities who are not developmentally disabled
22 shall be made by the Director of Social Services, or his or her
23 designated representative.

24 (c) Notwithstanding paragraph (2) of subdivision (a), bedridden
25 persons may be admitted to, and remain in, residential care facilities
26 for the elderly that secure and maintain an appropriate fire
27 clearance. A fire clearance shall be issued to a facility in which a
28 bedridden person resides if either of the following conditions are
29 met:

30 (1) The fire safety requirements are met.

31 (2) Alternative methods of protection are approved.

32 (d) (1) For purposes of this section, “temporary illness” means
33 any illness which persists for 14 days or less.

1 (e) A bedridden resident may be retained in a residential care
2 facility for the elderly in excess of 14 days if all of the following
3 requirements are satisfied:

4 (1) The facility notifies the department in writing regarding the
5 temporary illness or recovery from surgery.

6 (2) The facility submits to the department, with the notification,
7 a physician and surgeon's written statement to the effect that the
8 resident's illness or recovery is of a temporary nature. The
9 statement shall contain an estimated date upon which the illness
10 or recovery will end or upon which the resident will no longer be
11 confined to a bed.

12 (3) The department determines that the health and safety of the
13 resident is adequately protected in that facility and that transfer to
14 a higher level of care is not necessary.

15 (4) This section does not expand the scope of care and
16 supervision of a residential care facility for the elderly.

17 (f) Notwithstanding the length of stay of a bedridden resident,
18 every facility admitting or retaining a bedridden resident, as defined
19 in this section, shall, within 48 hours of the resident's admission
20 or retention in the facility, notify the local fire authority with
21 jurisdiction in the bedridden resident's location of the estimated
22 length of time the resident will retain his or her bedridden status
23 in the facility.

24 (g) Nothing in this section shall be used for purposes of Section
25 1569.70 to determine the appropriateness of residents being
26 admitted or retained in a residential care facility for the elderly on
27 the basis of health related conditions and the need for these services
28 until the three levels of care set forth in Section 1569.70 are fully
29 implemented. This section shall not prohibit the Community Care
30 Licensing Division of the State Department of Social Services
31 from continuing to implement the regulations of Article 8
32 (commencing with Section 87700) of Chapter 8 of Division 6 of
33 Title 22 of the California Code of Regulations, as promulgated
34 and approved on February 13, 1990.

35 (h) (1) The department and the Office of the State Fire Marshal,
36 in consultation with the State Department of Developmental
37 Services, shall each promulgate regulations that meet all of the
38 following conditions:

39 (A) Are consistent with subdivisions (a) to (f), inclusive.

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) (i) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection.

(ii) Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshall shall issue the written opinion within 45 days following the request.

(i) For facilities that care for six or fewer clients, a local fire official may not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(j) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.