

AMENDED IN SENATE AUGUST 27, 2009

AMENDED IN ASSEMBLY MAY 28, 2009

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~~ *Sections 1566.45, 1568.0832, and 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.~~ *Residential facilities: bedridden persons.*

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensing and regulation of *community care facilities, residential care facilities for persons with chronic life-threatening illness, and* 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.~~

Under existing law, bedridden persons may be admitted to, and remain in, a community care facility, residential care facility for persons with chronic life-threatening illness, or a residential care facility for the

elderly if the facility secures and maintains an appropriate fire clearance.

Existing law defines “nonambulatory persons” for purpose of inspections by the State Fire Marshal.

This bill would, for the purpose of fire clearance of a residential care facility for the elderly, ~~define “nonambulatory” as these facilities,~~ include within the definition of “nonambulatory person” a resident who is unable to independently transfer to and from bed but who does not need assistance turning and repositioning in bed.

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 1566.45 of the Health and Safety Code
2 is amended to read:

3 1566.45. (a) (1) For purposes of this section, “bedridden”
4 means ~~either~~ requiring assistance in turning and repositioning in
5 bed, or being unable to independently transfer to and from bed,
6 except in ~~facilities~~ a facility with appropriate and sufficient care
7 staff, mechanical devices, if necessary, and safety precautions, as
8 determined by the director in regulations.

9 (2) In developing the regulations for child residential facilities,
10 the department shall take into consideration the size and weight
11 of the child.

12 (3) For purposes of this section, the status of being bedridden
13 shall not include having any illness that persists for 14 days or
14 less.

15 (4) 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 (b) Bedridden persons may be admitted to, and remain in,
25 residential facilities that secure and maintain an appropriate fire
26 clearance. A fire clearance shall be issued to a facility in which a

~~bedridden person resides~~ *one or more bedridden persons reside* if either of the following conditions are met:

(1) The fire safety requirements are met. *Clients who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.*

(2) Alternative methods of protection are approved.

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

(A) Are consistent with subdivision (a).

(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) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. 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 ~~Marshal~~ *Marshal* shall issue the written opinion within 45 days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall 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.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow

1 bedridden persons to avoid institutionalization and be admitted to,
2 and safely remain in, community-based residential care facilities.

3 *SEC. 2. Section 1568.0832 of the Health and Safety Code is*
4 *amended to read:*

5 1568.0832. (a) (1) For purposes of this section, “bedridden”
6 means ~~either~~ requiring assistance in turning and repositioning in
7 bed, or being unable to independently transfer to and from bed,
8 except in ~~facilities~~ a facility with appropriate and sufficient care
9 staff, mechanical devices, if necessary, and safety precautions, as
10 determined by the director in regulations.

11 (2) For purposes of this section, the status of being bedridden
12 shall not include having any illness that persists for 14 days or
13 less.

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

23 (b) Bedridden persons may be admitted to, and remain in,
24 residential facilities that secure and maintain an appropriate fire
25 clearance. A fire clearance shall be issued to a facility in which a
26 ~~bedridden person resides~~ one or more bedridden persons reside if
27 either of the following conditions are met:

28 (1) The fire safety requirements are met. *Residents who are*
29 *unable to independently transfer to and from bed, but who do not*
30 *need assistance to turn or reposition in bed, shall be considered*
31 *nonambulatory for purposes of this paragraph.*

32 (2) Alternative methods of protection are approved.

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

37 (A) Are consistent with subdivision (a).

38 (B) Are applicable to facilities regulated under this chapter,
39 consistent with the regulatory requirements of the California
40 Building Standards Code for fire and life safety for the respective

1 occupancy classifications into which the State Department of Social
2 Services' community care licensing classifications fall.

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

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

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

9 (B) Identify procedures for requesting the approval of
10 alternative means of providing equivalent levels of fire and life
11 safety protection. Either the facility, the resident or resident's
12 representative, or local fire official may request from the Office
13 of the State Fire Marshal a written opinion concerning the
14 interpretation of the regulations promulgated by the State Fire
15 Marshal pursuant to this section for a particular factual dispute.
16 The State Fire ~~Marshal~~ *Marshal* shall issue the written opinion
17 within 45 days following the request.

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

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

28 ~~SECTION 4.~~

29 *SEC. 3.* Section 1569.72 of the Health and Safety Code is
30 amended to read:

31 1569.72. (a) Except as otherwise provided in subdivision (d),
32 no resident shall be admitted or retained in a residential care facility
33 for the elderly if any of the following apply:

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

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

38 (b) (1) For the purposes of this section, "bedridden" means
39 requiring assistance in turning and repositioning in bed or being
40 unable to independently transfer to and from bed, except in a

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

4 (2) The determination of the bedridden status of persons with
5 developmental disabilities shall be made by the Director of Social
6 Services or his or her designated representative, in consultation
7 with the Director of Developmental Services or his or her
8 designated representative, after consulting the resident's individual
9 safety plan. The determination of the bedridden status of all other
10 persons with disabilities who are not developmentally disabled
11 shall be made by the Director of Social Services, or his or her
12 designated representative.

13 (c) Notwithstanding paragraph (2) of subdivision (a), bedridden
14 persons may be admitted to, and remain in, residential care facilities
15 for the elderly that secure and maintain an appropriate fire
16 clearance. A fire clearance shall be issued to a facility in which
17 one or more bedridden persons reside if either of the following
18 conditions are met:

19 (1) The fire safety requirements are met. Residents who are
20 unable to independently transfer to and from bed, but who do not
21 need assistance to turn or reposition in bed, shall be considered
22 nonambulatory for purposes of this paragraph.

23 (2) Alternative methods of protection are approved.

24 (d) (1) For purposes of this section, "temporary illness" means
25 any illness which persists for 14 days or less.

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

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

31 (2) The facility submits to the department, with the notification,
32 a physician and surgeon's written statement to the effect that the
33 resident's illness or recovery is of a temporary nature. The
34 statement shall contain an estimated date upon which the illness
35 or recovery will end or upon which the resident will no longer be
36 confined to a bed.

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

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

3 (f) Notwithstanding the length of stay of a bedridden resident,
4 every facility admitting or retaining a bedridden resident, as defined
5 in this section, shall, within 48 hours of the resident's admission
6 or retention in the facility, notify the local fire authority with
7 jurisdiction in the bedridden resident's location of the estimated
8 length of time the resident will retain his or her bedridden status
9 in the facility.

10 (g) Nothing in this section shall be used for purposes of Section
11 1569.70 to determine the appropriateness of residents being
12 admitted or retained in a residential care facility for the elderly on
13 the basis of health-related conditions and the need for these services
14 until the three levels of care set forth in Section 1569.70 are fully
15 implemented. This section shall not prohibit the Community Care
16 Licensing Division of the State Department of Social Services
17 from continuing to implement the regulations of Article 8
18 (commencing with Section 87700) of Chapter 8 of Division 6 of
19 Title 22 of the California Code of Regulations, as promulgated
20 and approved on February 13, 1990.

21 (h) (1) The department and the Office of the State Fire Marshal,
22 in consultation with the State Department of Developmental
23 Services, shall each promulgate regulations that meet all of the
24 following conditions:

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

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

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

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

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

37 (B) (i) Identify procedures for requesting the approval of
38 alternative means of providing equivalent levels of fire and life
39 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 Marshal 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.