

Assembly Bill No. 949

CHAPTER 686

An act to amend Sections 1569.651, 1569.884, and 1569.886 of, and to add Section 1569.682 to, the Health and Safety Code, relating to long-term health care facilities.

[Approved by Governor October 14, 2007. Filed with
Secretary of State October 14, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 949, Krekorian. Residential care facilities for the elderly: resident transfers.

Existing law provides for the licensure and regulation of residential care facilities for the elderly, as defined, by the State Department of Social Services, including, among other things, regulation of admissions procedures and agreements. Under existing law, a violation of any of these provisions is punishable as a misdemeanor.

This bill would require a licensed residential care facility for the elderly, prior to transferring a resident to another facility or to an independent living arrangement as a result of the forfeiture of a license, or a change of use of the facility pursuant to an eviction by the department, to take all reasonable steps to transfer affected residents safely, and minimize possible trauma by taking specified actions relating to resident notification and transfer and relocation planning, as prescribed. The bill would require a facility, if 7 or more residents of the facility will be transferred as a result of the forfeiture of a license or the change in the use of a facility, to submit a proposed closure plan for the affected residents to the department for review, and would require the department to approve or disapprove the plan. The bill would also require an admission agreement to include an explanation of the facility's responsibility to prepare a relocation evaluation for each resident and a closure plan, as provided, and a statement of the licensee's responsibilities and the resident's rights in the event of an eviction. The bill would impose civil penalties of \$100 per violation per day.

Existing law requires that if a licensee of a residential care facility for the elderly charges a preadmission fee in excess of \$500, it is refundable under certain conditions, as provided.

This bill would require that if a resident of a licensed residential care facility for the elderly is evicted, as provided, the resident is entitled to a refund of, or credit for, paid preadmission fees in excess of \$500, in accordance with specified conditions.

By changing the definition of related crimes, the 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.

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

SECTION 1. Section 1569.651 of the Health and Safety Code is amended to read:

1569.651. (a) A licensee of a residential care facility for the elderly shall not require any form of preadmission fee or deposit from a recipient under the State Supplementary Program for the Aged, Blind and Disabled (Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) who applies for admission to the facility.

(b) If a licensee charges a preadmission fee, the licensee shall provide the applicant or his or her representative with a written general statement describing all costs associated with the preadmission fee charges and stating that the preadmission fee is refundable. The statement shall describe the conditions for the refund as specified in subdivision (g). A licensee shall only charge a single preadmission fee as defined in subdivision (e) per resident admission.

(c) A licensee of a residential care facility for the elderly shall not require, request, or accept any funds from a resident or a resident's representative that constitutes a deposit against any possible damages by the resident.

(d) Any fee charged by a licensee of a residential care facility for the elderly, whether prior to or after admission, shall be clearly specified in the admission agreement.

(e) For the purposes of this section, "preadmission fee" means an application fee, processing fee, admission fee, entrance fee, community fee, or other fee, however designated, that is requested or accepted by a licensee of a residential care facility for the elderly prior to admission.

(f) This section shall not apply to licensees of residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (8) of subdivision (c) of Section 1771.

(g) If the applicant decides not to enter the facility prior to the facility's completion of a preadmission appraisal or if the facility fails to provide full written disclosure of the preadmission fee charges and refund conditions, the applicant or the applicant's representative shall be entitled to a refund of 100 percent of the preadmission fee.

(h) Unless subdivision (g) applies, preadmission fees in excess of five hundred dollars (\$500) shall be refunded according to the following:

(1) If the applicant does not enter the facility after a preadmission appraisal is conducted, the applicant or the applicant's representative shall

be entitled to a refund of at least 80 percent of the preadmission fee amount in excess of five hundred dollars (\$500).

(2) If the resident leaves the facility for any reason during the first month of residency, the resident shall be entitled to a refund of at least 80 percent of the preadmission fee amount in excess of five hundred dollars (\$500).

(3) If the resident leaves the facility for any reason during the second month of residency, the resident shall be entitled to a refund of at least 60 percent of the preadmission fee amount in excess of five hundred dollars (\$500).

(4) If the resident leaves the facility for any reason during the third month of residency, the resident shall be entitled to a refund of at least 40 percent of the preadmission fee amount in excess of five hundred dollars (\$500).

(5) The facility may, but is not required to, make a refund of the preadmission fee for residents living in the facility for four or more months.

(i) (1) Notwithstanding subdivision (g), if a resident is evicted by a facility pursuant to subdivision (a) of Section 1569.682, the resident or the resident's legal representative shall be entitled to a refund of preadmission fees in excess of five hundred dollars (\$500) in accordance with all of the following:

(A) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(B) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

(C) A 50-percent refund if preadmission fees were paid more than 12 months but not more than 18 months before notice of eviction.

(D) A 25-percent refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.

(2) No preadmission refund is required if preadmission fees were paid 25 months or more before the notice of eviction.

(3) The preadmission refund required by this subdivision shall be paid within 15 days of issuing the eviction notice.

SEC. 2. Section 1569.682 is added to the Health and Safety Code, to read:

1569.682. (a) A licensee of a licensed residential care facility for the elderly shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19 or change of use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(1) Prepare, for each resident, a relocation evaluation of the needs of that resident, which shall include both of the following:

(A) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan.

(B) A list of facilities, within a 60-mile radius of the resident's current facility, that meet the resident's present needs.

(2) Provide each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident's current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(E) The right of the resident or resident's legal representative to contact the department to investigate the reasons given for the eviction pursuant to Section 1569.35.

(3) Discuss the relocation evaluation with the resident and his or her legal representative within 30 days of issuing the notice of eviction.

(4) Submit a written report of any eviction to the licensing agency within five days.

(5) Upon issuing the written notice of eviction, a licensee shall not accept new residents or enter into new admission agreements.

(6) (A) For paid preadmission fees in excess of five hundred dollars (\$500), the resident is entitled to a refund in accordance with all of the following:

(i) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(ii) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

(iii) A 50-percent refund if preadmission fees were paid more than 12 months but not more than 18 months before notice of eviction.

(iv) A 25-percent refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.

(B) No preadmission refund is required if preadmission fees were paid 25 months or more before the notice of eviction.

(C) The preadmission refund required by this paragraph shall be paid within 15 days of issuing the eviction notice. In lieu of the refund, the resident may request that the licensee provide a credit toward the resident's monthly fee obligation in an amount equal to the preadmission fee refund due.

(7) If the resident gives notice five days before leaving the facility, the licensee shall refund to the resident or his or her legal representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility and the unit is vacated. Otherwise the licensee shall pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated.

(8) Within 10 days of all residents having left the facility, the licensee, based on information provided by the resident or resident's legal representative, shall submit a final list of names and new locations of all residents to the department and the local ombudsperson program.

(b) If seven or more residents of a residential care facility for the elderly will be transferred as a result of the forfeiture of a license or change in the use of the facility pursuant to subdivision (a), the licensee shall submit a proposed closure plan to the department for approval. The department shall approve or disapprove the closure plan, and monitor its implementation, in accordance with the following requirements:

(1) Upon submission of the closure plan, the licensee shall be prohibited from accepting new residents and entering into new admission agreements for new residents.

(2) The closure plan shall meet the requirements described in subdivision (a), and describe the staff available to assist in the transfers. The department's review shall include a determination as to whether the licensee's closure plan contains a relocation evaluation for each resident.

(3) Within 15 working days of receipt, the department shall approve or disapprove the closure plan prepared pursuant to this subdivision, and, if the department approves the plan, it shall become effective upon the date the department grants its written approval of the plan.

(4) If the department disapproves a closure plan, the licensee may resubmit an amended plan, which the department shall promptly either approve or disapprove, within 10 working days of receipt by the department of the amended plan. If the department fails to approve a closure plan, it shall inform the licensee, in writing, of the reasons for the disapproval of the plan.

(5) If the department fails to take action within 20 working days of receipt of either the original or the amended closure plan, the plan, or amended plan, as the case may be, shall be deemed approved.

(6) Until such time that the department has approved a licensee's closure plan, the facility shall not issue a notice of transfer or require any resident to transfer.

(7) Upon approval by the department, the licensee shall send a copy of the closure plan to the local ombudsperson program.

(c) (1) If a licensee fails to comply with the requirements of subdivision (a), and if the director determines that it is necessary to protect the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department shall take any necessary action to minimize trauma for the residents. The department shall contact any local agency that may have placement or advocacy responsibility for the residents, and shall work with those agencies to locate alternative placement sites, contact relatives or other persons responsible for the care of these residents, provide onsite evaluation of the residents, and assist in the transfer of residents.

(2) The participation of the department and local agencies in the relocation of residents from a residential care facility for the elderly shall not relieve the licensee of any responsibility under this section. A licensee that fails to comply with the requirements of this section shall be required to reimburse the department and local agencies for the cost of providing the relocation services. If the licensee fails to provide the relocation services required in

subdivisions (a) and (b), then the department may request that the Attorney General's office, the city attorney's office, or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(d) A licensee who fails to comply with requirements of this section shall be liable for the imposition of civil penalties in the amount of one hundred dollars (\$100) per violation per day for each day that the licensee is in violation of this section, until such time that the violation has been corrected. The civil penalties shall be issued immediately following the written notice of violation. However, if the violation does not present an immediate or substantial threat to the health or safety of residents and the licensee corrects the violation within three days after receiving the notice of violation, the licensee shall not be liable for payment of any civil penalties pursuant to this subdivision related to the corrected violation.

(e) A resident of a residential care facility for the elderly covered under this section, may bring a civil action against any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates the rights of a resident, as set forth in this section. Any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains a residential care facility for the elderly who violates this section shall be responsible for the acts of the facility's employees and shall be liable for costs and attorney fees. Any such residential care facility for the elderly may also be enjoined from permitting the violation to continue. The remedies specified in this section shall be in addition to any other remedy provided by law.

(f) This section does not apply to a licensee that has obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (8) of subdivision (c) of Section 1771.

SEC. 3. Section 1569.884 of the Health and Safety Code is amended to read:

1569.884. The admission agreement shall include all of the following:

(a) A comprehensive description of any items and services provided under a single fee, such as a monthly fee for room, board, and other items and services.

(b) A comprehensive description of, and the fee schedule for, all items and services not included in a single fee. In addition, the agreement shall indicate that the resident shall receive a monthly statement itemizing all separate charges incurred by the resident.

(c) A facility may assess a separate charge for an item or service only if that separate charge is authorized by the admission agreement. If additional services are available through the facility to be purchased by the resident that were not available at the time the admission agreement was signed, a list of these services and charges shall be provided to the resident or the resident's representative. A statement acknowledging the acceptance or refusal to purchase the additional services shall be signed and dated by the

resident or the resident's representative and attached to the admission agreement.

(d) An explanation of the use of third-party services within the facility that are related to the resident's service plan, including, but not limited to, ancillary, health, and medical services, how they may be arranged, accessed, and monitored, any restrictions on third-party services, and who is financially responsible for the third-party services.

(e) A comprehensive description of billing and payment policies and procedures.

(f) The conditions under which rates may be increased pursuant to Section 1569.655.

(g) The facility's policy concerning family visits and other communication with residents, pursuant to Section 1569.313.

(h) The facility's policy concerning refunds.

(i) Conditions under which the agreement may be terminated.

(j) An explanation of the facility's responsibility to prepare a relocation evaluation, for each resident and a closure plan and to provide notice in the case of an eviction pursuant to Section 1569.682.

SEC. 4. Section 1569.886 of the Health and Safety Code is amended to read:

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

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

(c) The admission agreement shall include an explanation of the resident's right to notice prior to an involuntary transfer, discharge, or eviction, the process by which the resident may appeal the decision and a description of the relocation assistance offered by the facility.

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

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