

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 661

Introduced by Senator Wolk
(Coauthor: Assembly Member Eng)

February 27, 2009

An act to amend ~~Section 1569.884~~ *Sections 1569.884 and 1569.885* of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 661, as amended, Wolk. Residential care facilities for the elderly: admission agreements.

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 these provisions is punishable as a misdemeanor.

This bill would require that if an admission agreement includes an arbitration agreement, that arbitration agreement comply with prescribed requirements. ~~The bill would provide that the arbitration agreement requirements shall not invalidate an arbitration agreement that does not meet the requirements if the arbitration agreement existed prior to the effective date of this bill.~~ *This bill would provide that these requirements shall apply to any arbitration agreement that is included in an agreement between an elder or dependent adult, or his or her representative, and a residential care facility for the elderly for the admission to, or continued care or residence at, the facility that is entered into, altered, modified, renewed, or extended on or after January 1, 2010.*

This bill would prohibit an admission agreement from containing a waiver of the residents’ personal rights, except as otherwise required or permitted by statute or regulation.

The bill would provide that its provisions are not intended to affect existing law relating to the enforceability or unenforceability of an arbitration agreement.

By expanding the definition of a crime, this bill would result in 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 1569.884 of the Health and Safety Code
2 is amended to read:

3 1569.884. The admission agreement shall include all of the
4 following:

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

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

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

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

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

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

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

13 (h) The facility’s policy concerning refunds.

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

15 (j) An explanation of the facility’s responsibility to prepare a
16 relocation evaluation, for each resident and a closure plan and to
17 provide notice in the case of an eviction pursuant to Section
18 1569.682.

19 (k) (1) If the admission agreement includes an arbitration
20 agreement, the arbitration agreement shall comply with all of the
21 following:

22 (A) Clearly indicate that the agreement to arbitrate is voluntary
23 and not a precondition for admission.

24 (B) Be written on a form that is separate from the rest of the
25 admission agreement.

26 (C) Clearly indicate to the parties that, by signing the arbitration
27 agreement, both parties are voluntarily and knowingly waiving
28 their right to a trial by jury or court trial and, instead, accepting
29 the use of arbitration.

30 ~~(2) The arbitration agreement requirements in paragraph (1)~~
31 ~~shall not invalidate an arbitration agreement that does not meet~~
32 ~~the requirements if the arbitration agreement existed prior to the~~
33 ~~effective date of this subdivision.~~

34 (D) *Provide the resident with the option of rescinding the*
35 *arbitration agreement within 10 days of signing the agreement by*
36 *delivering written notice of rescission to the person identified in*
37 *the arbitration agreement for receipt of that notice.*

38 (2) *The arbitration agreement requirements in paragraph (1)*
39 *shall apply to any arbitration agreement that is included in an*
40 *agreement between an elder or dependent adult, or his or her*

1 *representative, and a residential care facility for the elderly for*
2 *the admission to, or continued care or residence at, the facility*
3 *that is entered into, altered, modified, renewed, or extended on or*
4 *after January 1, 2010*

5 *SEC. 2. Section 1569.885 of the Health and Safety Code is*
6 *amended to read:*

7 1569.885. (a) When referring to a resident's obligation to
8 observe facility rules, the admission agreement shall indicate that
9 the rules must be reasonable, and that there is a facility procedure
10 for suggesting changes in the rules. A facility rule shall not violate
11 any right set forth in this article or in other applicable laws and
12 regulations.

13 (b) The admission agreement shall specify that a copy of the
14 facility grievance procedure for resolution of resident complaints
15 about facility practices shall be made available to the resident or
16 his or her representative.

17 (c) The admission agreement shall inform a resident of the right
18 to contact the State Department of Social Services, the long-term
19 care ombudsman, or both, regarding grievances against the facility.

20 (d) A copy of any applicable resident's rights specified by law
21 or regulation shall be an attachment to all admission agreements.

22 (e) The statement of resident's rights attached to admissions
23 agreements by a residential care facility for the elderly shall include
24 information on the reporting of suspected or known elder and
25 dependent adult abuse, as set forth in Section 1569.889.

26 (f) *The admission agreement shall not contain a waiver of the*
27 *residents' personal rights, except as otherwise required or*
28 *permitted by statute or regulation.*

29 *SEC. 3. Nothing in this act is intended to affect existing law*
30 *relating to the enforceability or unenforceability of an arbitration*
31 *agreement.*

32 ~~SEC. 2:~~

33 *SEC. 4. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *for a crime or infraction, within the meaning of Section 17556 of*
39 *the Government Code, or changes the definition of a crime within*

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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5 **CORRECTIONS:**

6 **Text—Page 3.**

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