

Assembly Bill No. 313

CHAPTER 365

An act to amend Sections 1569.38 and 1569.682 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 30, 2011. Filed with Secretary of State September 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 313, Monning. Residential care facilities for the elderly.

(1) Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services. A violation of the act is a misdemeanor.

Existing law requires the department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman, as defined, whenever the department substantiates that a violation has occurred that poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license.

This bill would require a licensed residential care facility for the elderly to provide a prescribed written notice to a resident, the resident's responsible party, if any, and the local long-term care ombudsman under specified conditions. The bill would prescribe civil penalties for violation of specified provisions.

(2) Existing law requires a licensee of a licensed residential care facility for the elderly to take all reasonable steps to transfer affected residents safely as a result of the forfeiture of a license or the change of use of the facility pursuant to the department's regulations.

This bill would require the licensee to take all reasonable steps to transfer affected residents safely as the result of the revocation of the license.

(3) By creating a new 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.

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

SECTION 1. Section 1569.38 of the Health and Safety Code is amended to read:

1569.38. (a) Each residential care facility for the elderly shall place in a conspicuous place copies of all licensing reports issued by the department within the preceding 12 months, and all licensing reports issued by the department resulting from the most recent annual visit of the department to the facility. This subdivision shall not apply to any portion of a licensing report referring to a complaint that was found by the department to be unfounded or unsubstantiated. The facility, during the admission process, shall inform the resident and the resident's responsible person in writing that licensing reports are available for review at the facility, and that copies of licensing reports and other documents pertaining to the facility are available from the appropriate district office of the department. The facility shall provide the telephone number and address of the appropriate district office.

(b) A licensed residential care facility for the elderly shall provide written notice to a resident, the resident's responsible party, if any, and the local long-term care ombudsman, within 10 days from the occurrence of either of the following events:

(1) The department commences proceedings to suspend or revoke the license of the facility pursuant to Section 1569.50.

(2) A criminal action that relates to the health or safety of the residents is brought against the licensed residential care facility.

(c) The notice provided to a resident and the resident's responsible party, if any, shall include the name and contact information for the local long-term care ombudsman and for the Community Care Licensing Division of the department with a statement that directs the resident or the resident's responsible party to contact the division for information on the license status of the facility.

(d) The notice, described in subdivision (b), provided to a resident and the resident's responsible party, if any, shall include the reason given for the commencement of proceedings to suspend or revoke the license of the facility, or the reason given for criminal action brought against the licensed residential care facility.

(e) Upon providing the notice described in subdivision (b), the licensed residential care facility shall also post a written notice, in at least 14-point type, in a conspicuous location in the facility, that may include where the mail boxes are located, where the facility license is posted, or any other easily accessible location in the facility. The posting shall include all of the following information:

(1) The date of the notice.

(2) The name of the residential care facility for the elderly.

(3) A statement that a copy of the most recent licensing report prepared by the department, and any additional reports of facility evaluation visits, within the preceding 12 months, may be obtained at the facility.

(4) The name and telephone number of the contact person designated by the Community Care Licensing Division of the department to provide information on the license status of the facility.

(f) The notice required to be posted pursuant to subdivision (e) shall remain posted until the deficiencies that gave rise to the notice are resolved.

(g) A licensee who fails to comply with the requirements of subdivision (b) or (c) shall be liable for civil penalties in the amount of one hundred dollars (\$100) for each day of the failure to provide notification as required in this section. The total civil penalty for each day shall not exceed one hundred dollars (\$100) regardless of the number of notices that the licensee fails to send that day. The total civil penalty for a continuous violation of subdivision (b) or (c) shall not exceed five thousand dollars (\$5,000).

(h) For purposes of this section, “responsible party” means an individual, including the patient’s relative, health care surrogate decisionmaker, or a placement agency, who assists the resident in placement or assumes varying degrees of responsibility for the well-being of the resident, as designated by the resident in writing.

SEC. 2. Section 1569.682 of the Health and Safety Code is amended 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, change of use of the facility pursuant to the department’s regulations, or revocation of a license, 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, revocation 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's 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 shall 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. 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.