

AMENDED IN SENATE JUNE 26, 2014
AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY APRIL 22, 2014
AMENDED IN ASSEMBLY MARCH 25, 2014
AMENDED IN ASSEMBLY MARCH 10, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1554

Introduced by Assembly Member Skinner
(Principal coauthor: Assembly Member Rodriguez)
(Coauthors: Assembly Members Atkins and Eggman)
(Coauthors: Senators Block and Corbett)

January 27, 2014

An act to amend Section 1569.37 of, and to amend, repeal, and add Section 1569.35 of, the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1554, as amended, Skinner. Residential care facilities for the elderly.

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 and makes a violation of those provisions a crime. Existing law authorizes a person to request an inspection of a facility by transmitting notice of an alleged violation of law to the department. Existing law requires the department to review a complaint and conduct an onsite inspection within 10 days and requires

the department to provide the substance of the complaint to the licensee no earlier than the time of the inspection.

This bill, beginning July 1, 2015, would make various changes to this complaint procedure, including prohibiting the department from giving a licensee advance notice of an investigation regarding a complaint and requiring the department to conduct an onsite investigation within one working day of receiving a complaint if the complaint alleges physical abuse, sexual abuse, or a threat of imminent danger. The bill would state the intent of the Legislature that the department conduct investigations in the manner required to ensure maximum effectiveness while respecting the rights of residents and to complete an investigation, except as specified, within 90 days of receiving a complaint, or within 30 days when the complaint alleges physical abuse, sexual abuse, or a threat of imminent danger. The bill would prohibit a licensee, or officer or employee of the licensee, from interfering with or obstructing an investigation conducted pursuant to these provisions and would require the department to assess an immediate ~~civil penalty of \$1,000~~ *penalty, as specified*, per day per violation for violations of that prohibition. Because a violation of this prohibition would also be a crime, the bill would impose a state-mandated local program. The bill would authorize a complainant who is dissatisfied with the department's investigation, findings, or enforcement to file an appeal, as specified, and would require the department to inform the complainant of these appeal rights, as specified.

Existing law prohibits a licensee from discriminating or retaliating in any manner against a person receiving the services of the licensee's residential care facility for the elderly, or against an employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department, or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the appropriate local ombudsman, or with the state ombudsman.

This bill would require the department to assess an immediate ~~\$1,000 per day~~ *civil penalty, as specified, per day* for each violation of these provisions.

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 1569.35 of the Health and Safety Code
2 is amended to read:

3 1569.35. (a) Any person may request an inspection of any
4 residential care facility for the elderly in accordance with this
5 chapter by transmitting to the department notice of an alleged
6 violation of applicable requirements prescribed by statutes or
7 regulations of this state, including, but not limited to, a denial of
8 access of any person authorized to enter the facility pursuant to
9 Section 9722 of the Welfare and Institutions Code. A complaint
10 may be made either orally or in writing.

11 (b) The substance of the complaint shall be provided to the
12 licensee no earlier than at the time of the inspection. Unless the
13 complainant specifically requests otherwise, neither the substance
14 of the complaint provided the licensee nor any copy of the
15 complaint or any record published, released, or otherwise made
16 available to the licensee shall disclose the name of any person
17 mentioned in the complaint except the name of any duly authorized
18 officer, employee, or agent of the department conducting the
19 investigation or inspection pursuant to this chapter.

20 (c) Upon receipt of a complaint, other than a complaint alleging
21 denial of a statutory right of access to a residential care facility for
22 the elderly, the department shall make a preliminary review and,
23 unless the department determines that the complaint is willfully
24 intended to harass a licensee or is without any reasonable basis, it
25 shall make an onsite inspection within 10 days after receiving the
26 complaint except where the visit would adversely affect the
27 licensing investigation or the investigation of other agencies,
28 including, but not limited to, law enforcement agencies. In either
29 event, the complainant shall be promptly informed of the
30 department's proposed course of action.

31 (d) Upon receipt of a complaint alleging denial of a statutory
32 right of access to a residential facility for the elderly, the

1 department shall review the complaint. The complainant shall be
2 notified promptly of the department’s proposed course of action.

3 (e) This section shall become inoperative on July 1, 2015, and,
4 as of January 1, 2016, is repealed, unless a later enacted statute,
5 that becomes operative on or before January 1, 2016, deletes or
6 extends the dates on which it becomes inoperative and is repealed.

7 SEC. 2. Section 1569.35 is added to the Health and Safety
8 Code, to read:

9 1569.35. (a) A person may request an investigation of a
10 residential care facility for the elderly in accordance with this
11 chapter by making a complaint to the department alleging a
12 violation of applicable requirements prescribed by statutes or
13 regulations of this state. A complaint may be made either orally,
14 in writing, or electronically.

15 (b) (1) Upon receipt of a complaint, the department shall make
16 a preliminary review. Within two working days of receiving the
17 complaint, the department shall notify the complainant of the name
18 of the officer, employee, or agent of the department who will
19 conduct the investigation. Unless the department determines that
20 the complaint is willfully intended to harass a licensee or is without
21 any reasonable basis, it shall make an onsite investigation within
22 10 days after receiving the complaint.

23 (2) Notwithstanding paragraph (1), if a complaint alleges
24 physical abuse, sexual abuse, or a threat of imminent danger of
25 death or serious harm, the department shall conduct an onsite
26 investigation within one working day of the receipt of the
27 complaint.

28 (3) Notwithstanding paragraph (1), if a local long-term care
29 ombudsman or the State Long-Term Care Ombudsman files a
30 complaint alleging denial of a statutory right of access to a
31 residential care facility for the elderly under Section 9722 of the
32 Welfare and Institutions Code, the department shall give priority
33 to the complaint, as required pursuant to Section 9721 of the
34 Welfare and Institutions Code, and contact the Office of the State
35 Long-Term Care Ombudsman in the investigation.

36 (4) Prior to conducting an onsite investigation pursuant to this
37 section, the department shall make a good faith effort, documented
38 in writing, to contact and interview the complainant and inform
39 the complainant of the department’s proposed course of action and
40 the relevant deadline for the department to complete its

1 investigation. To the extent practicable, the officer, employee, or
2 agent of the department who will conduct the investigation will
3 be the representative who interviews and makes contact with the
4 complainant.

5 (c) When conducting an investigation pursuant to this section,
6 the department shall consult with and, to the extent practicable,
7 coordinate its investigation of a residential care facility for the
8 elderly with the investigation of the facility by other agencies,
9 including, but not limited to, the Office of the State Long-Term
10 Care Ombudsman and law enforcement agencies. Nothing in this
11 subdivision shall be construed to limit the department's ability to
12 temporarily suspend an investigation if requested to do so by a
13 law enforcement agency because the investigation would adversely
14 affect an active criminal investigation. The department shall
15 maintain written documentation of the law enforcement request
16 and continue to ensure the safety of all residents. The department
17 shall immediately resume any investigation that is suspended
18 pursuant to this subdivision upon consent of law enforcement or
19 completion of the criminal investigation.

20 (d) The department shall not give a licensee advance notice of
21 an investigation conducted pursuant to this section. The substance
22 of the complaint shall be provided to the licensee no earlier than
23 at the time of the onsite investigation. Unless the complainant
24 specifically requests that his or her own name is released, neither
25 the substance of the complaint provided to the licensee, nor any
26 copy of the complaint or any record published, released, or
27 otherwise made available to the licensee, shall disclose the name
28 of the complainant.

29 (e) It is the intent of the Legislature that the department shall
30 conduct investigations under this section in the manner required
31 to ensure maximum effectiveness while respecting the rights of
32 residents.

33 (f) A licensee, or officer or employee of the licensee, shall not
34 interfere with or obstruct an investigation conducted pursuant to
35 this section. The department shall assess an immediate civil penalty
36 ~~of one thousand dollars (\$1,000)~~ *equal to the penalty established*
37 *for a serious violation pursuant to subdivision (c) of Section*
38 *1569.49* per day per violation for violations of this subdivision. In
39 addition to assessing that penalty, the department may take any

1 other enforcement actions authorized by this chapter for violations
2 of this subdivision.

3 (g) When conducting an onsite investigation pursuant to this
4 section, the department shall interview any residents who are the
5 subject of the complaint. Additionally, the officer, employee, or
6 agent of the department conducting the investigation shall collect
7 and evaluate all available evidence necessary to complete the
8 investigation, including, but not limited to, the following:

9 (1) Observed conditions.

10 (2) Statements of witnesses.

11 (3) Interviews with administration, staff, other residents, family
12 members, visitors, the long-term care ombudsman, and other
13 individuals or agencies that provide services at the facility who
14 may have information about the complaint.

15 (4) Records from the facility and any other relevant sources.

16 (h) (1) The department shall complete its investigation within
17 90 days of receiving the complaint. Investigation of a complaint
18 alleging physical abuse, sexual abuse, or a threat of imminent
19 danger of death or serious harm shall be completed within 30 days
20 of receiving the complaint.

21 (2) The 30-day and 90-day deadlines in paragraph (1) may be
22 extended for an additional 30 days if the department has diligently
23 attempted, but has not been able, to obtain necessary evidence
24 related to the investigation. Whenever the department exercises
25 this authority, it shall notify the complainant in writing of the basis
26 for the extension, and shall include ~~in the notice any outstanding~~
27 ~~evidence, the sources from which the evidence has been sought,~~
28 ~~and~~ the anticipated completion date.

29 (3) Nothing in this section shall be interpreted to diminish the
30 department's authority and obligation to investigate and enforce
31 an alleged violation of state laws or regulations or any alleged
32 facts that might constitute such a violation.

33 (i) Within 10 days of completing the investigation of a complaint
34 under this section, the department shall notify the complainant in
35 writing of the department's determination as a result of the
36 investigation and of the complainant's right to appeal the findings.
37 The written notice shall describe the appeal process provided for
38 under subdivision (j) and include a copy of any reports and
39 documents describing violations and enforcement actions resulting
40 from the investigation.

1 (j) (1) A complainant who is dissatisfied with the department's
2 investigation, findings, or enforcement actions resulting from the
3 investigation may file an appeal by notifying the program manager
4 of the officer, employee, or agent of the department conducting
5 the investigation in writing within 15 *working* days after receiving
6 the notice described in subdivision (i). The program manager shall
7 schedule a meeting or teleconference with the complainant within
8 30 *working* days of receiving an appeal. The program manager
9 shall carefully review the concerns, information, and evidence
10 presented by the complainant to determine whether the
11 department's findings or actions should be modified or whether
12 further investigation is necessary. Within 10 *working* days after
13 conducting the meeting or teleconference with the complainant,
14 the program manager shall notify the complainant in writing of
15 the department's determinations and actions concerning the appeal
16 and of the appeal rights provided in paragraph (2).

17 (2) If a complainant is dissatisfied with the program manager's
18 determination on an appeal, the complainant may, within 15
19 *working* days after receipt of this determination, file an appeal in
20 writing with the department's ~~Deputy Director~~ *Quality Assurance*
21 *Unit* of the Community Care Licensing Division. Within 30
22 *working* days of receiving an appeal, ~~the deputy director or his or~~
23 ~~her designee~~ *a representative of the Quality Assurance Unit* shall
24 interview the complainant, consider any information presented or
25 submitted by the complainant, and review the complaint record to
26 determine whether the department's findings or actions should be
27 modified or whether further investigation is necessary. No later
28 than 10 *working* days after completing this review, the deputy
29 director shall notify the complainant in writing of the department's
30 determinations and actions concerning the appeal.

31 (3) A complainant may be assisted or represented by any person
32 of his or her choice in the appeal process described in this
33 subdivision.

34 (k) This section shall become operative on July 1, 2015.

35 SEC. 3. Section 1569.37 of the Health and Safety Code is
36 amended to read:

37 1569.37. (a) No licensee, or officer or employee of the licensee,
38 shall discriminate or retaliate in any manner, including, but not
39 limited to, eviction or threat of eviction, against any person
40 receiving the services of the licensee's residential care facility for

1 the elderly, or against any employee of the licensee's facility, on
2 the basis, or for the reason that, the person or employee or any
3 other person has initiated or participated in the filing of a
4 complaint, grievance, or a request for investigation with the
5 department pursuant to this chapter, or has initiated or participated
6 in the filing of a complaint, grievance, or request for investigation
7 with the appropriate local ombudsman, or with the ~~state~~
8 ~~ombudsman~~ *State Long-Term Care Ombudsman* recognized
9 pursuant to Chapter 11 (commencing with Section 9700) of
10 Division 8.5 of the Welfare and Institutions Code.

11 (b) The department shall assess an immediate civil penalty in
12 the amount of ~~one thousand dollars (\$1,000)~~ *equal to the penalty*
13 *established for a serious violation pursuant to subdivision (c) of*
14 *Section 1569.49* per day for each violation of this section. In
15 addition to assessing that penalty, the department may take any
16 other enforcement actions authorized by this chapter for violations
17 of this section.

18 SEC. 4. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.