

# ACTION REQUIRED

## AB 949 (Krekorian), CHAPTER 686, STATUTES OF 2007

**Affects:** Residential Care Facilities for the Elderly (RCFEs)

**Subject:** Resident Transfers

**Summary:** AB 949 adds section 1569.682 to the Health and Safety (H&S) Code; and amends sections 1569.651, 1569.884, and 1569.886 of the H&S Code. It establishes procedures that licensed RCFEs must follow when residents must be relocated as a result of forfeiture of license due to specified reasons, or evictions due to change of use of the facility.

More specifically, AB 949 applies to four types of licensee-initiated RCFE closures:

- Evictions based on change of use of the facility pursuant to department regulations.
- Forfeiture of license resulting from sale of the property. (Applies to the sale of the property and the facility when the facility will no longer be used as an RCFE and all residents must be relocated; does not apply when the facility is being sold or transferred and will continue to be used as an RCFE.)
- Forfeiture of license resulting from surrender of the license.
- Forfeiture of license resulting from abandonment of the facility.

This new law has been designed to minimize transfer trauma, to ensure that residents are transferred safely, and to ensure that the California Department of Social Services (CDSS) has appropriate oversight of the process.

AB 949 does not apply to licensees that have obtained a certificate of authority to offer continuing care contracts.

### Major Licensee Responsibilities Regarding Resident Transfers

Prior to transferring a resident to another facility or to an independent living arrangement for any of the above reasons, a licensee must, at a minimum, do all of the following, as required by H&S Code section 1569.682(a):

- For each resident, prepare a relocation evaluation of the resident's needs. Include the following: 1) recommendations on the best type of facility for the resident, based on the resident's current service plan [LIC 625, Appraisal/Needs and Services Plan]; and 2) a list of such facilities within a 60-mile radius of the existing facility.
- Provide each resident, or each resident's responsible person, with a written notice no later than 60 days before the intended eviction. The notice must include the reason for the eviction (with specific facts), a copy of the resident's current service plan [LIC 625], the relocation evaluation, a list of referral agencies, and the right of the resident or the resident's legal representative to contact the CDSS to investigate the reason(s) for the eviction.

- Discuss the relocation evaluation with the resident and the resident's legal representative within 30 days of issuing the notice of eviction.
- Submit a written report of any eviction to the licensing agency within five days of the facility issuing the notice of eviction.
- Upon issuing the written notice of eviction, stop accepting new residents or entering into new admission agreements.
- Refund paid preadmission fees in excess of \$500, as specified in H&S Code section 1569.682(a)(6). Pay the refund within 15 days of issuing the eviction notice, or, if the resident requests, use the refund as a credit toward the resident's monthly fee.
- Refund any applicable per diem amount of prepaid monthly fees. If a resident gives a five-day notice, the refund must be paid at the time the resident leaves the facility and vacates the unit. Otherwise, the refund must be paid within seven days from the date the resident leaves the facility and vacates the unit.
- Within 10 days of all residents having left the facility, send a final list of names and new locations of all residents to the CDSS and the local ombudsperson program.

If seven or more residents are to be transferred as a result of forfeiture of license due to specified reasons, or evictions due to change of use of the facility, the licensee must also do the following:

- Submit an overall facility closure plan to the CDSS for review and approval. The closure plan must meet all of the requirements of H&S Code section 1569.682(a) identified above, and must describe the staff available to assist in the transfers.
- Upon submission of the closure plan to the CDSS, stop accepting new residents or entering into new admission agreements.
- Until the CDSS has approved the closure plan, do not issue a notice of transfer or require any resident to transfer.
- If the CDSS disapproves the plan, [the licensee may] resubmit an amended plan as outlined below.
- Upon approval of the closure plan by the CDSS, send a copy of the closure plan to the local ombudsperson program.

## Major CDSS Responsibilities Regarding Resident Transfers

With regard to the overall facility closure plans required of facilities in which seven or more residents are to be transferred as a result of forfeiture of license due to specified reasons, or evictions due to change of use of the facility, the CDSS must do the following:

- Approve or disapprove of the facility closure plan based on the time lines described below, and monitor the plan's implementation as appropriate.
- As part of the CDSS's review, determine whether the closure plan contains a relocation evaluation for each resident. (However, the CDSS does not have to individually review each resident's relocation evaluation, as indicated in the implementation instructions.)
- Within 15 working days of receipt, approve or disapprove the closure plan. If approved, the plan becomes effective on the date that the CDSS grants its written approval. If disapproved, the licensee may resubmit an amended plan to the CDSS.
- Within 10 working days of receipt of an amended plan, approve or disapprove the amended closure plan in writing.
- If a facility's original or amended closure plan is disapproved, inform the licensee in writing of the reasons for the disapproval. (If the CDSS fails to take action within 20 working days of receipt of either the original or the amended closure plan, the plan is automatically deemed approved.)
- If a licensee fails to meet its obligations under H&S Code section 1569.682(a), and if the director determines that it is necessary to protect the residents of a facility from physical or mental abuse, abandonment, or other substantial threat to health or safety, the CDSS must take any necessary action to minimize trauma for residents. (The CDSS must contact local agencies that have placement or advocacy responsibilities for residents, and work with them to locate alternative placements, contact relatives or other responsible persons, provide onsite evaluation of residents, and assist in transfer of residents.)

## AB 949 Admission Agreement Provisions

- Requires admission agreements to include an explanation of the facility's responsibilities, including (1) the need to prepare a facility closure plan when required and (2) the rights of residents evicted pursuant to H&S Code section 1569.682.

## Other AB 949 Provisions

- Requires licensees that fail to comply with H&S Code section 1569.682 to reimburse the CDSS and local agencies for the cost of providing resident relocation services. The involvement of the CDSS and local agencies does not relieve the licensee of responsibility under H&S Code section 1569.682.

- Permits the CDSS to request the Attorney General's office, the city attorney's office, or the local district attorney's office to seek injunctive relief and damages from licensees that do not provide the required relocation services.
- Provides for specified civil penalties in the amount of \$100 per violation per day for the licensee's failure to comply with H&S Code section 1569.682. If the violation does not present an immediate or substantial threat to the health and safety of residents, and the licensee corrects the violation within three days after receiving the notice of violation, the licensee is not be liable for payment of any civil penalty related to the corrected violation.
- Permits a resident to bring a civil action against a licensee for violation of the resident's rights under this act.

**Implementation:** These statutory requirements are effective January 1, 2008. Until regulations are developed, follow the instructions given below and use statute to cite licensees that fail to comply with the requirements of H&S Code sections 1569.682, 1569.884, and 1569.886.

### Admission Agreements

When reviewing an admission agreement, make sure that it includes the following:

- An explanation of the RCFE's responsibilities to prepare a relocation evaluation for each resident, to prepare a facility closure plan when seven or more residents are to be transferred, and to provide notice of an eviction pursuant to H&S Code section 1569.682. (See H&S Code section 1569.884(j).)
- A description of the responsibilities of the licensee and the rights of the resident when a facility evicts residents pursuant to H&S Code section 1569.682. (See H&S Code section 1569.886(d).)

The LIC 604A, Guide to Admission Agreements for Residential Care Facility for the Elderly, will be revised to include these items.

### When Six or Fewer Residents Are To Be Transferred

If six or fewer residents are to be transferred from an RCFE pursuant to AB 949 and the RCFE submits the required written report of an eviction(s) to the local licensing office—or if the local licensing office otherwise becomes aware of the situation—do the following:

- Contact the facility by phone to learn more about the facility's situation and to talk to the licensee about the requirements of H&S Code section 1569.682.
- Ask the licensee how he or she intends to meet the requirements of H&S Code section 1569.682. On a case-by-case basis, determine whether it is necessary to make a site visit—or to require related documentation—to ensure that the licensee is complying with the requirements of H&S Code section 1569.682.

- Document all such contacts with the licensee on the LIC 185, Contact Sheet. File this documentation in the facility file.
- Follow all normal licensing procedures regarding evictions and forfeiture of licenses.
- Ensure that the licensee submits the required final list of names and new locations of all residents to the CDSS and the local ombudsperson program within 10 days of all residents having left the facility.

### When Seven or More Residents Are To Be Transferred

If seven or more residents are to be transferred from an RCFE pursuant to AB 949 and the RCFE submits the required facility closure plan to the local licensing office—or if the local licensing office otherwise becomes aware of the situation—do the following:

- Contact the facility by phone to learn more about the facility's situation and to talk to the licensee about the requirements of H&S Code section 1569.682. Document any such contacts on the LIC 185 and file in the facility file.
- Evaluate the facility closure plan to ensure that it meets all requirements.
  - 🕒 Determine whether the closure plan contains a relocation evaluation for each resident as required by H&S Code sections 1569.682(a)(1) and (b)(2). Review a sample of 10 percent, or a minimum of one or two, of the resident relocation evaluations to ensure that they meet the requirements of H&S Code section 1569.682(a)(1).
  - 🕒 Determine whether the closure plan provides for sufficient staff to assist with resident transfers.
  - 🕒 Determine whether the closure plan addresses all of the other requirements of H&S Code section 1569.682(a).
- Within 15 working days of receipt, approve or disapprove the original facility closure plan in writing. As part of any disapproval, inform the licensee of the licensee's right to submit an amended plan to the CDSS.
- Within 10 working days of receipt, approve or disapprove the amended closure plan in writing.
- *If either the original or amended closure plan is approved*, inform the licensee in writing of the approval. The plan becomes effective on the date that the CDSS grants its written approval.
- *If either the original or amended closure plan is disapproved*, inform the licensee in writing of the reasons for the disapproval. Keep in mind that if the CDSS fails to take action within 20 working days of receipt of either the original or the amended closure plan, the plan is automatically deemed approved.

- In order to monitor the implementation of the facility closure plan, maintain regular phone contact with the facility to ensure that appropriate steps are being taken and to provide any needed assistance. As necessary, make a site visit(s) to ensure that the closure plan is being followed and that residents are being relocated safely with a minimum of transfer trauma.
- If it is determined that the licensee is not complying with H&S Code Section 1569.682(a), and that residents need to be protected as a result, contact local placement and advocacy agencies and work with them to assist in the transfer of residents, as required by H&S Code section 1569.682(c)(1).
- If the CDSS and local agencies must assist in the transfer of residents, seek reimbursement from the licensee as specified in H&S Code section 1569.682(c)(2). This may include contacting the Attorney General's Office, the city attorney's office, or the local district attorney's office.
- If a licensee fails to comply with H&S Code section 1569.682, assess civil penalties (\$100 per day per violation) as specified in H&S Code Section 1569.682(d). This includes waiving civil penalties if the violation does not present an immediate or substantial threat to the health and safety of residents *and* if the licensee corrects the violation within three days after receiving the notice of violation.
- In addition to maintaining documentation of a facility closure in the facility file, keep documentation or lists of all facility closures in a separate area or file, for tracking purposes and for easy reference for future facility closures.