

ACTION REQUIRED

SB 897 (Leno), CHAPTER 376, Statutes of 2011

Affects: Residential Care Facilities for the Elderly

Subject: Residential Care Facilities for the Elderly

Summary: Senate Bill 897 adds section 1569.686 to the Health and Safety Code, establishing the Residential Care Facility for the Elderly Residents Foreclosure Protection Act of 2011.

The Residential Care Facility for the Elderly Residents Foreclosure Protection Act of 2011 requires licensees to notify the following parties in writing within two business days of events, as specified, in a facility:

- The Department (California Department of Social Services)
- The Ombudsman (State Long-Term Care Ombudsman)
- Residents and, if applicable, their legal representatives

This act also requires the licensee to notify any applicant for potential residence, and if applicable, his/her legal representative prior to admission to a residential care facility for the elderly. How this notice is provided to the applicant/applicant's legal representative is not specified in law.

The act specifies the events as:

- Notice of default, notice of trustee's sale, or any other indication of foreclosure that is issued on the property.
- An unlawful detainer action initiated against the licensee.
- The licensee files for bankruptcy.
- The licensee receives a written notice of default of payment of rent (Code of Civil Procedures section 1161).
- A utility company has sent a notice of intent to terminate electricity, gas, or water service on the property within not more than 15 days of the notice.

In order to comply with the provisions of this law, a licensee who has encountered any of the above identified events is required to report them to the Department, the State Long Term-Care Ombudsman, residents and, if applicable, their legal representatives, beginning January 1, 2012.

This act requires the Department to act on the notice received by the licensee by initiating a compliance plan, noncompliance conference, or other appropriate action.

The Department may assess a civil penalty to a licensee who fails to provide the required notification of this act. The civil penalty cannot exceed \$100 for each day (\$2,000 in total) the licensee fails to provide the notification referenced above (Health and Safety Code section 1569.686).

In addition, if a resident is relocated and the notice required in Health and Safety Code section 1569.686 is not given by the licensee and the resident suffers transfer trauma or other harm to his or her health and safety, the licensee could have his/her license suspended, revoked, or a permanent revocation of the licensee's ability to operate or act as an administrator of any facility may occur.

The requirements of this bill do not apply to licensees of residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts.

Implementation:

The Licensing Program Analyst should cite any licensee that has failed to provide the notice required of the Residential Care Facility for the Elderly Residents Foreclosure Protection Act of 2011. The Licensing Program Analyst should use Health and Safety Code section 1569.686(a)(1) through (5), as appropriate, to cite a licensee that fails to provide one or more of these required notices.

Health and Safety Code section 1569.686 provides in pertinent part:

- (a) A licensee shall notify the department, the State Long-Term Care Ombudsman, all residents, and, if applicable, their legal representatives, in writing, within two business days, and shall notify all applicants for potential residence, and, if applicable, their legal representatives, prior to admission, of any of the following events, or knowledge of the event:
 - (1) A notice of default, notice of trustee's sale, or any other indication of foreclosure is issued on the property.
 - (2) An unlawful detainer action is initiated against the licensee.
 - (3) The licensee files for bankruptcy.
 - (4) The licensee receives a written notice of default of payment of rent described in section 1161 of the Code of Civil Procedure.
 - (5) A utility company has sent a notice of intent to terminate electricity, gas, or water service on the property within not more than 15 days of the notice.

The notice is required to be made to the Department, the State Long-Term Care Ombudsman, and the resident/applicant and legal representative, if any.

NOTE: Legal representative includes a person who is legally appointed to represent the resident such as a power of attorney that is in effect (Probate Code Section 4000 et seq. entitled the Power of Attorney Law) or a duly appointed court conservator [Probate Code section 1800 et seq. entitled the Guardianship-Conservatorship Law and California Code of Regulations, Title 22, section 87101(c)(11)].

A licensee is only required by law to send this notification to these persons and is not required by this law to send this notification to other "responsible persons" as defined in California Code of Regulations, Title 22, section 87101(r)(6). Notices to all parties are required to be made in writing except for the notice to the applicant/applicant's for potential residence, and, if applicable, their legal representatives. The licensee must report to the State Long-Term Care Ombudsman and may report to the local Long-Term Care Ombudsman. Notice to the local Long-Term Care Ombudsman does not satisfy the requirement to report to the State Long-Term Care Ombudsman

Per Health and Safety Code section 1569.686(c), the Licensing Program Analyst shall assess a civil penalty up to \$100 for each day the licensee did not provide the required notification. The total civil penalty cannot exceed \$2,000.

Violations

Licensing Program Analyst's should monitor compliance with the provisions of this law and cite licensees for failure to comply.

Civil Penalty Assessment

The LIC 421 series that notifies licensees of the assessment of civil penalties is in the process of being changed to accommodate penalties created by this law. Interim procedures have been developed for field staff to utilize until the new form is developed. A violation of Health and Safety Code section 1569.686(a)(1) through (5), as applicable, shall be documented on LIC 421D form (under development). Until the LIC 421D form is available, the procedure for assessing the civil penalty for a violation of one of the above-identified subsections is as follows:

- Provide notice, including instructions and appeal rights, to the licensee about the assessment of a civil penalty using the Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099), as appropriate. See **Addendum A** for civil penalty assessment language, instructions and appeal rights.
- Follow instructions provided in the Evaluator Manual Reference Material, section 3-3600 (Plan of Correction) 3-3605 (Clearing the Deficiency) and section 3-3700 (Proof of Corrections/Non-Visits).
- Provide a copy of the signed LIC 809 or LIC 9099 that includes the assessment of the civil penalty to the office support staff processing the civil penalty billing.
- A copy of the LIC 809 or the LIC 9099 must be included in the package that is sent to the Accounting and Systems Bureau. These steps are necessary in order to provide an audit trail and for the Cashier's Office to know where to credit civil penalty payments received from the licensee. See the Office Procedures Manual for additional information on civil penalty billing.

Repeat Violations

Civil penalties for a repeat violation of the above identified subsections within the same 12-month period shall be assessed using the Civil Penalty Assessment form (LIC 421).

The first repeat violation of any subsection in Health and Safety Code section 1569.686(a)(1) through (5), as applicable, within a 12 month period will result in an immediate civil penalty of \$150 per cited violation and a \$50 civil penalty for each day the violation continues as specified in Health and Safety Code section 1569.49(d) and California Code of Regulations, Title 22, section 87761(d).

In the event the licensee repeats the violation again within 12 months of the last violation, the Licensing Program Analyst shall cite and assess an immediate civil penalty of \$1000 per cited violation and \$100 for each day the violation continues as specified in Health and Safety Code section 1569.49(e) and California Code of Regulations, Title 22, section 87761(e).

Corrective Action

The licensee must submit satisfactory evidence to the Licensing Program Analyst that the required notices have been provided in order to stop the accruing civil penalty.

The Residential Care Facilities for the Elderly Residents Foreclosure Protection Act of 2011 also requires the Department to initiate a compliance plan, noncompliance conference or other appropriate action when the Department receives the required notice from the licensee to the Department. Licensing Program Analysts evaluate and follow-up on the information presented in any report in a timely and appropriate manner. The Licensing Program Analyst shall consult with his/her Licensing Program Manager to determine the most timely and appropriate course of action to take on all reports related to Health and Safety section 1569.686(a) or otherwise received.

Upon mandatory managerial review, it may be necessary to consult with an enforcement attorney. Referrals to the Audit Section should be made only upon approval of the Regional Manager. The decision on what action to take may be based on several factors including the type of event reported, the severity of the situation, how it may impact the health and safety of the residents in care, the history of the licensee's compliance with regulations, and any patterns of financial distress.

A Licensing Program Analyst may receive calls from the public regarding a facility and the facility's financial health. Any part of the public file may be disclosed to any person inquiring about the facility and any licensee reports as a result of this statute, using existing procedures regarding public records requests.

Addendum A

SENATE BILL 897 INTERIM CIVIL PENALTY NOTICE

“Indicators of Financial Distress”

Applies to Residential Care Facilities for the Elderly only

The following statement shall be included in all LIC 809s and LIC 9099s in which a civil penalty is being assessed for a violation of **Health and Safety Code section 1569.686**, until the LIC 421D civil penalty form is developed.

Per California Health and Safety Code section 1569.686, you are hereby notified that a \$100 civil penalty per day will be assessed until the violation is corrected. The total civil penalty for a continuous violation shall not exceed \$2,000.

You will receive an invoice in the mail. Payment is due when billed. Payment must be made by a personal, business or cashier’s check or money order made payable to the “California Department of Social Services”. Please write the facility number and invoice number on your check and include a copy of your invoice with the payment. You will find the invoice number on your invoice. **DO NOT SEND CASH.**

APPEAL RIGHTS

The applicant/licensee has a right without prejudice to discuss any disagreement concerning the proper application of licensing laws and regulations with the licensing agency. When civil penalties are involved, the licensee may request a formal review by the licensing agency to amend, extend the due date, or to dismiss the penalty. Requests for civil penalty appeal must be in writing, must be postmarked within 10 days of receipt of this form, and must be addressed to the Regional Office of jurisdiction over the facility. The agency has a duty to review the facts presented without prejudice within a 10-day period. Upon review of the facts upon which the appeal is based, the agency may amend any portion of the action taken, or may dismiss the violation. The licensing agency review of an appeal may be conducted based upon information provided in writing by the licensee. The licensee may request an office interview to provide additional information. The licensee will be notified in writing of the results of the agency review.