



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES



EDMUND G. BROWN JR.
GOVERNOR

January 17, 2017

PIN 17-02-CCLD

TO: All Community Care Licensees

FROM: *Original signed by Pamela Dickfoss*
PAMELA DICKFOSS
Deputy Director
Community Care Licensing Division

SUBJECT: AB 2231 CARE FACILITIES: CIVIL PENALTIES

Provider Information Notice (PIN) Summary

PIN 17-02-CCLD summarizes changes to statute as the result of Assembly Bill (AB) 2231 (Chapter 823, Statutes of 2016). This bill amended Health and Safety Code Sections 1566.7, 1569.335, 1596.819, and 1596.859; and amended, repealed, and added Sections 1548, 1568.0822, 1569.49, 1596.8595, 1596.99, and 1597.58.

On September 29, 2016, Governor Brown signed [Assembly Bill \(AB\) 2231](#), enacting new laws for facilities licensed by the Community Care Licensing Division (CCLD). AB 2231:

- increases civil penalties for specified facility categories for violations of licensing requirements
- defines “repeat violations”
- changes repeat violation penalty amounts
- requires the Department to assist licensees with prevention of repeat violations
- changes how the Department categorizes complaint investigation findings.

The following provisions are effective beginning January 1, 2017:

Increased civil penalties for violations that result in death, serious bodily injury and physical abuse

Small Family Homes (SFH), Crisis Nurseries (CN), and Adult Residential Care Facilities for Persons with Special Health Care Needs (ARFPSHN), are now subject to higher civil penalties for violations which result in death or serious bodily injury, or constitute physical abuse.

FACILITY TYPE	Death		Serious Bodily Injury / Physical Abuse	
	Current	Effective 1/1/17	Current	Effective 1/1/17
CHILDREN'S RESIDENTIAL				
SFH, CN (Capacity 40 or fewer)	\$150	\$7,500	\$150	\$2,500
SFH, CN (Capacity 41 - 100)	\$150	\$10,000	\$150	\$5,000
SFH, CN (Capacity more than 100)	\$150	\$15,000	\$150	\$10,000
ADULT				
ARFPSHN (any capacity)	\$150	\$15,000	\$150	\$10,000

- Civil penalties tied to “capacity” are now calculated based on the number of clients for which that particular facility is licensed.
- Facility capacity is no longer used to determine the civil penalty amount for violations at Foster Family Agencies or Adoption Agencies.

Complaints

- The Child Day Care Act statutes were amended to replace the reference to “inconclusive” investigation findings with the term “unsubstantiated.”
- The use of “unsubstantiated” instead of “inconclusive” will be consistently applied across all licensed community care facilities and reflected on the CCLD’s transparency website. The Department will continue to use “unfounded” for its findings as applicable.

Beginning July 1, 2017 the following provisions are effective:

Failure to Correct Civil Penalty

- The civil penalty for violations that are not corrected, after being provided a specified length of time to correct, is increased to \$100 per violation per day.

Repeat Violations

- A “repeat violation” is defined as a violation within 12 months of a prior violation of a statutory or regulatory provision designated by the same combination of letters and numerals.
- The civil penalty for a repeat of the type of violation that is provided a specified length of time to correct before a penalty is assessed, has increased to \$250 per violation for the first day, and then \$100 per violation each day until corrected.
- Any time a facility repeats the exact same statutory or regulatory provision within 12 months of a prior violation, the same repeat civil penalty amount shall apply. There are no longer increasing (“progressive” or “tiered”) penalties for subsequent repeat violations.
- The Department shall make a good faith effort to work with the licensee to determine the cause of any deficiency and ways to prevent repeat violations.

- The notice of deficiency shall state the manner in which the deficiency constitutes a repeat of the previous violation.
- The notice of deficiency for repeat violations shall be submitted to a supervisor for review and approval.

Immediate Civil Penalty Violations

- Issuance of an immediate civil penalty of \$500 per violation, and then \$100 per violation for each day the violation continues after the citation, for any of the following violations:
 - Any violation the Department determines resulted in the injury or illness of a client
 - Fire clearance violations
 - Absence of supervision, as required by statute and regulations
 - Accessible bodies of water, when prohibited by statute and regulations
 - Accessible firearms, ammunition, or both
 - Refusal of entry to a facility or any part of a facility of any duly authorized officer, employee, or agent of the State Department of Social Services
 - The presence of a person subject to a Department Order of Exclusion on the premises
- A repeat of the same violation within 12 months of the prior violation will result in an immediate civil penalty of \$1,000 per violation, and then \$100 for each day the violation continues after the citation.

Death or Serious Bodily Injury Civil Penalty with Underlying Violation Penalty

- The civil penalty amount for a violation that results in death or serious bodily injury will be reduced by the amount of the civil penalty already assessed for the underlying violation such that the sum of the civil penalty amounts will equal the larger civil penalty amount stipulated in statute.
 - Example: A \$500 civil penalty is assessed for a violation at an RCFE. Later, the Department determines that the underlying violation resulted in serious bodily injury to a resident, resulting in the assessment of a \$10,000 civil penalty. The \$10,000 civil penalty will be reduced by the already-assessed civil penalty amount of \$500. The licensee will be responsible for paying the original \$500 penalty and the enhanced penalty of \$9,500, for a total of \$10,000 in civil penalties.
- If the amount of the civil penalty that the Department has already assessed for the underlying violation exceeds the amount of the penalty for a violation that results in death or serious bodily, the larger amount will prevail and be due and payable as already assessed by the Department.
 - Example: A repeat fire clearance violation at a Small Family Home with 40 or fewer children goes uncorrected for a certain period of time, resulting in the assessment of a \$3,000 civil penalty. Later, the Department

determines that this same violation subsequently resulted in serious bodily injury to a client, which, since the facility capacity was 40 clients or less, resulted in the assessment of a \$2,500 civil penalty. The \$3,000 civil penalty for the underlying violation prevails over the \$2,500 serious bodily injury civil penalty.

Payment of Civil Penalties

- A civil penalty will be due and payable after administrative appeals have been exhausted. A civil penalty not paid within 30 days shall be subject to late fees.
- Until regulations regarding late fees are developed, late fees will not be imposed.

The Department will adopt and amend regulations as applicable to conform to the new civil penalty requirements and will update the Evaluator Manual and relevant forms. In the interim, statute is controlling and supersedes conflicting regulations and other Evaluator Manual documents.

The information in this PIN is a brief summary of the provisions of AB 2231. Licensees are responsible for following all applicable laws. The California Department of Social Services' failure to expressly notify licensees of statutory or regulatory requirements does not relieve licensees of their responsibility to follow all laws and regulations. Licensees should refer to the full text of all applicable sections of the Health and Safety Code.

For legislative information related to this law, see:

[Bill Text – AB 2231 Care facilities: civil penalties](#)



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EDMUND G. BROWN JR.
GOVERNOR

December 22, 2017

PIN 17-13-ASC

TO: ALL ADULT AND SENIOR CARE FACILITY LICENSEES

FROM: *Original signed by Pamela Dickfoss*
PAMELA DICKFOSS
Deputy Director
Community Care Licensing Division

SUBJECT: **2017 CHAPTERED LEGISLATION AFFECTING ADULT AND SENIOR CARE FACILITIES: SUMMARY AND IMPLEMENTATION**

Provider Information Notice (PIN) Summary

PIN 17-13-ASC provides a summary and implementation information for legislation chaptered in 2017 affecting Adult and Senior Care Facilities. Statutes referenced in this document are operative on January 1, 2018.

“ACTION REQUIRED”

BILL INFORMATION	SUBJECT	PAGE
Assembly Bill 713 (Chu), Chapter 613, Statutes of 2017	Continuing Care Retirement Communities (CCRC): Dispute of Resident Transfer Decision. Amended section 1788 of the Health and Safety Code to require the Department of Social Services to review a disputed transfer decision and make a determination as to whether the transfer was appropriate and necessary.	2

BILL INFORMATION	SUBJECT	PAGE
Senate Bill 219 (Wiener), Chapter 483, Statutes of 2017	Long-term Care Facilities: Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Residents. Added section 1569.318 to the Health and Safety Code requiring RCFEs to abide by the provisions of the LGBT Long-Term Care Facility Residents' Bill of Rights in section 1439.50, et seq. of the Health and Safety Code.	4
“INFORMATION ONLY – NO ACTION REQUIRED”		
BILL INFORMATION	SUBJECT	PAGE
Senate Bill 413 (Morrell), Chapter 122, Statutes of 2017	Dementia: Major Neurocognitive Disorder. Amended sections 1569.698, 1569.699 and 1569.7 of the Health and Safety Code and sections 1981 and 2356.5 of the Probate Code replacing the term “dementia” with “major neurocognitive disorder.”	5
Senate Bill 420 (Monning), Chapter 333, Statutes of 2017	State summary criminal history information: sentencing information. Amended section 11105 of the Penal Code to clarify that the California Department of Justice must provide sentencing information as part of the criminal history information disseminated to the California Department of Social Services.	5

Assembly Bill 713 (Chu), Chapter 613, Statutes of 2017

[Assembly Bill \(AB\) 713](#) amended Health and Safety Code (HSC) section 1788 which requires the Continuing Care Branch (CCB) of the California Department of Social Services (CDSS) to review a disputed transfer decision and make a determination as to whether the transfer was appropriate and necessary. The review and determination, pursuant to AB 713 is in addition to a procedural review of the transfer process that is already required by existing law. Additionally, AB 713 requires a CCRC provider to use an assessment tool to determine the appropriateness of a level of care transfer, as well as other requirements summarized below.

A CCRC provider is permitted to transfer a resident to a higher level of care for specified reasons. AB 713 made minor edits to this area of law (bolded), including:

- Allows a resident to be transferred if they develop a physical or mental condition **that is detrimental to** or endangers the health, safety, or well-being of the resident or another person.
- Allows a resident to be transferred if their condition or needs exceed that which may be **appropriately**, rather than lawfully, provided in the existing living unit.

Prior to a transfer being initiated, the CCRC provider is required to use an assessment tool or tools, which must include scoring and evaluating criteria, to determine the appropriateness of a level of care transfer. The assessment must include an evaluation of the physical and cognitive capacities of the resident.

Current law provides a resident the right to dispute their transfer decision. Pursuant to AB 713, for disputed transfer decisions, a CCRC provider is now required to provide to the resident or the resident’s responsible person copies of the completed assessment. For a disputed transfer decision, see below implementation requirements:

Implementation:

Step	Who	Action
1	CDSS Staff	Upon receipt of a resident or resident’s responsible party’s request for review of a disputed transfer decision, CDSS staff will notify the CCRC provider and request submission of all documentation necessary to substantiate the CCRC provider’s compliance with the transfer process specified in HSC sections 1788(a)(10)(A)-(C) (see Appendix A).
2	CCRC Provider	Submit documentation to the Department that includes, but is not limited to, an explanation of how the transfer process criteria set out in HSC section 1788(a)(10)(A) (see Appendix A) is met, assessment tool(s) used, and the following documentation required by HSC section 1788(a)(10)(B)(viii): <ul style="list-style-type: none"> • Resident’s medical reports; • Other documents showing the resident’s current mental and physical function; • Prognosis; and • Expected duration of relevant conditions, if applicable

Step	Who	Action
3	CDSS Staff	Determine if the transfer process complies with HSC sections 1788(a)(10)(A)-(C) (see Appendix A) and if the transfer was appropriate and necessary and prepare a report of findings.
4	CDSS Staff	Send report of findings via mail to the CCRC provider and the resident or the resident's responsible party.

Senate Bill 219 (Wiener), Chapter 483, Statutes of 2017

[Senate Bill 219](#) added HSC section 1569.318 which requires all RCFE licensees and facility staff to abide by the provisions of the LGBT Long-Term Care Facility Residents' Bill of Rights in HSC section 1439.50, et seq.

RCFE licensees and facility staff are required to observe personal rights specific to residents who identify as LGBT. HSC section 1439.51(a) (see Appendix B) prohibits specified actions based on a resident's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status.

HSC section 1439.51(b) specifies that personal rights do not apply to the extent that they are incompatible with any professionally reasonable clinical judgment.

RCFE licensees and facility staff are required to observe personal rights specific to residents who identify as LGBT in addition to those rights currently in [HSC section 1569.269](#) and California Code of Regulations (CCR), [Title 22, section 87468](#).

Implementation:

Step	Who	Action
1	RCFE Licensee	Post the following notice: <i>"[Name of facility] does not discriminate and does not permit discrimination, including, but not limited to, bullying, abuse, or harassment, on the basis of actual or perceived sexual orientation, gender identity, gender expression, or HIV status, or based on association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, or HIV status. You may file a complaint with the Office of the State Long-Term Care Ombudsman [provide contact information] if you believe that</i>

Step	Who	Action
		<i>you have experienced this kind of discrimination.”</i>
2	RCFE Licensee	Provide a copy of the LGBT Residents’ Bill of Rights in HSC section 1439.51 to the resident or the resident’s representative upon signing the admission agreement.

Senate Bill 413 (Morrell), Chapter 122, Statutes of 2017

[Senate Bill 413](#) amended HSC sections 1569.698, 1569.699 and 1569.7, which affected RCFEs, and Probate Code sections 1981 and 2356.5 and replaced the term “dementia” with “major neurocognitive disorder.” Licensees should be aware that references to dementia and major neurocognitive disorder may be used interchangeably.

Implementation:

Information only. No action required.

Senate Bill 420 (Monning), Chapter 333, Statutes of 2017

[Senate Bill 420](#) amended Penal Code section 11105, which affected all facility types licensed by the Community Care Licensing Division, to clarify that the California Department of Justice must provide sentencing information as part of the criminal history information disseminated to CDSS.

Implementation:

Information only. No action required.

Appendix A

Assembly Bill 713

Health and Safety Code section 1788(a)(10)(A)-(C)

(a) A continuing care contract shall contain all of the following:

(10) The procedures and conditions under which a resident may be voluntarily and involuntarily transferred from a designated living unit. The transfer procedures, at a minimum, shall include provisions addressing all of the following circumstances under which a transfer may be authorized:

(A) A continuing care retirement community may transfer a resident under the following conditions, taking into account the appropriateness and necessity of the transfer and the goal of promoting resident independence:

(i) The resident is nonambulatory. The definition of “nonambulatory,” as provided in Section 13131, shall either be stated in full in the continuing care contract or be cited. If Section 13131 is cited, a copy of the statute shall be made available to the resident, either as an attachment to the continuing care contract or by specifying that it will be provided upon request. If a nonambulatory resident occupies a room that has a fire clearance for nonambulatory residents, transfer shall not be necessary.

(ii) The resident develops a physical or mental condition that is detrimental to or endangers the health, safety, or well-being of the resident or another person.

(iii) The resident’s condition or needs require the resident’s transfer to an assisted living care unit or skilled nursing facility, because the level of care required by the resident exceeds that which may be appropriately provided in the living unit.

(iv) The resident’s condition or needs require the resident’s transfer to a nursing facility, hospital, or other facility, and the provider has no facilities available to provide that level of care.

(B) Before the continuing care retirement community transfers a resident under any of the conditions set forth in subparagraph (A), the community shall satisfy all of the following requirements:

(i) Involve the resident and the resident’s responsible person, as defined in paragraph (6) of subdivision (r) of Section 87101 of Title 22 of the California Code of Regulations, and upon the resident’s or responsible person’s request, family members, or the resident’s physician or other appropriate health professional, in the assessment process that forms the basis for the level of care transfer decision by the provider. The provider shall offer an explanation of the assessment process, which shall include, but not be limited to, an evaluation of the physical and cognitive capacities of the resident. An assessment tool or tools, including scoring and evaluating criteria, shall be used in the determination of the appropriateness of the transfer. The provider shall make copies of

the completed assessment to share with the resident or the resident's responsible person.

(ii) Prior to sending a formal notification of transfer, the provider shall conduct a care conference with the resident and the resident's responsible person, and, upon the resident's or responsible person's request, family members, and the resident's health care professionals, to explain the reasons for transfer.

(iii) Notify the resident and the resident's responsible person of the reasons for the transfer in writing.

(iv) Notwithstanding any other provision of this subparagraph, if the resident does not have impairment of cognitive abilities, the resident may request that his or her responsible person not be involved in the transfer process.

(v) The notice of transfer shall be made at least 30 days before the transfer is expected to occur, except when the health or safety of the resident or other residents is in danger, or the transfer is required by the resident's urgent medical needs. Under those circumstances, the written notice shall be made as soon as practicable before the transfer.

(vi) The written notice shall contain the reasons for the transfer, the effective date, the designated level of care or location to which the resident will be transferred, a statement of the resident's right to a review of the transfer decision at a care conference, as provided for in subparagraph (C), and for disputed transfer decisions, the right to review by the Continuing Care Contracts Branch of the State Department of Social Services, as provided for in subparagraph (D). The notice shall also contain the name, address, and telephone number of the department's Continuing Care Contracts Branch.

(vii) The continuing care retirement community shall provide sufficient preparation and orientation to the resident to ensure a safe and orderly transfer and to minimize trauma.

(viii) For disputed transfer decisions, the provider shall provide documentation of the resident's medical reports, other documents showing the resident's current mental and physical function, the prognosis, and the expected duration of relevant conditions, if applicable. The documentation shall include an explanation of how the criteria set out in subparagraph (A) are met. The provider shall make copies of the completed report to share with the resident or the resident's responsible person.

(C) The resident has the right to review and dispute the transfer decision at a subsequent care conference that shall include the resident, the resident's responsible person, and, upon the resident's or responsible person's request, family members, the resident's physician or other appropriate health care professional, and members of the provider's interdisciplinary team. The local ombudsperson may also be included in the care conference, upon the request of the resident, the resident's responsible person, or the provider.

Appendix B

Senate Bill 219

Health and Safety Code section 1439.51(a)(1)-(8)

(a) Except as provided in subdivision (b), it shall be unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status:

1) Deny admission to a Residential Care Facility for the Elderly, transfer or refuse to transfer a resident within a facility or to another facility, or discharge or evict a resident from a facility.

2) Deny a request by residents to share a room.

NOTE FOR CLARIFICATION: *Reasonable accommodation of resident preferences concerning room and roommate choices will be observed, pursuant to HSC [section 1569.269\(a\)\(16\)](#), except when the health or safety of the individual or other residents would be endangered.*

3) Where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a transgender resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request.

4) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom available to other persons of the same gender identity, regardless of whether the resident is making a gender transition or appears to be gender-nonconforming. Harassment includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom available to other persons of the same gender identity.

5) Willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns.

NOTE FOR CLARIFICATION: *Document the gender identity, correct name, as indicated by the resident, and pronoun of each resident, as indicated by the resident. Best practice is to document this information in the resident's record, pursuant to CCR Title 22 [section 87506](#).*

6) Deny a resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted for any other resident.

7) Restrict a resident's right to associate with other residents or with visitors, including the right to consensual sexual relations, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner. This section does not preclude a facility from banning or restricting sexual relations, as long as the ban or restriction is applied uniformly and in a nondiscriminatory manner.

8) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care in a manner that, to a similarly situated reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort.