

ACTION REQUIRED

ASSEMBLY BILL 1572 (Eggman), Chapter 177, Statutes of 2014

Affects: Residential Care Facilities for the Elderly

Subject: Residential care facilities for the elderly: resident and family councils

Summary: [Assembly Bill \(AB\) 1572](#) amends [Section 1569.157](#) and [1569.158](#) of the Health and Safety Code

Resident Councils

This law grants resident councils' additional rights, adds requirements for licensees, and limits membership of a resident council to RCFE residents, except at the invitation of resident council. Family members, resident representatives, advocates, long-term care ombudsman program representatives, facility staff or others may participate in resident council meetings and activities at the invitation of the resident council.

AB 1572 requires licensees to:

- Assist residents in establishing and maintaining a single resident council (formerly referred to as resident-oriented facility council) at the request of two or more residents, instead of a majority of its residents.
- Provide a written response within 14 calendar days to written concerns or recommendations of resident councils regarding any action or inaction taken in response to concerns or recommendations.
- Inform resident council members of their right to be interviewed as part of the regulatory inspection process.
- Promote established resident councils by providing information on the council to new residents, as specified.
- Inform in writing new residents and resident representatives, upon admission, of their right to form a resident council when no council is currently established.
- Upon request and with permission of the council, share resident council contact information with the long-term care ombudsman.
- Post the text of Health and Safety Code section 1569.157 with the heading "Rights of Resident Councils" in a prominent place at the facility accessible to residents, family members, and resident representatives.

For a facility with a licensed capacity of 16 or more beds, this bill also requires a licensee to designate a staff person to assist with resident council meetings and notifications, including, making a room available for resident council meetings, and posting information in a central location readily accessible to residents, relatives, and resident representatives.

AB 1572 prohibits licensees from:

- Having policies limiting the rights of residents to meet independently with outside persons or facility personnel.
- Willfully interfering with the formation, maintenance, or promotion of a resident council or its participation in the regulatory inspection process.

A violation of any provision in this section is considered a violation of resident rights and subjects the licensee to a daily civil penalty of \$250 until the violation is corrected and verified.

Family Councils

This law grants family councils' additional rights, adds requirements for licensees, and specifies that facility personnel or visitors may attend family council meetings only at the invitation of the family council.

AB 1572 requires licensees to:

- Provide a written response within 14 calendar days to written concerns or recommendations of family councils regarding any action or inaction taken in response to concerns or recommendations.
- Promote established family councils and to provide notice of the family council and its meetings in routine mailings to family members and resident representatives and to inform family members and resident representatives of the existence of the family council, as specified.
- Inform in writing the resident's family or resident representative - who are identified on the admission agreement or in the resident's records - upon admission of a new resident, of their right to form a family council when no council is currently established.
- Upon request and with the permission of the council, to share council contact information with the long-term care ombudsman.

For a facility with a licensed capacity of 16 or more beds, this bill also requires the licensee to designate a staff person to provide assistance to the family council and respond to written requests that result from family council meetings.

AB 1572 prohibits licensees from:

- Willfully interfering with the formation, maintenance, or promotion of a family council or its participation in the regulatory inspection process.

A violation of any provision in this section is considered a violation of resident rights and subjects the licensee to a daily civil penalty of \$250 until the violation is corrected and verified.

IMPLEMENTATION

Description of Councils

The following is the statutory definition of each council:

Resident Council - Per 1569.157(a) of the Health and Safety Code, “the resident council shall be composed of residents of the facility. Family members, resident representatives, advocates, long-term care ombudsman program representatives, facility staff, or others may participate in resident council meetings and activities at the invitation of the resident council.”

Family Council - Per 1569.158(c) of the Health and Safety Code, family council “means a meeting of family members, friends, representatives, or agents as defined in Section 14110.8 of the Welfare and Institutions Code of two or more residents to confer in private without facility staff.”

The primary difference between two councils is that a resident council is composed of residents only, unless others as specified in Health and Safety Code section 1569.157(a) are invited to participate at the request of the resident council. Family councils are composed only of family members, friends, representatives, or agents, as specified, of two or more residents. Statute specifies that “facility personnel or visitors may attend a family council meeting only at the family council’s invitation.”

Councils that self-identify as a resident or family council would be required to follow the statute specific to that council.

Licensees

Licensees must comply with the provisions of this law in all aspects of facility operation, including, but not limited to, facility policies, procedures and practice.

Licensees are required to respond to resident and/or family council concerns or recommendations within 14 calendar days, but are not required to resolve the concerns or implement the recommendations within 14 calendar days. Licensees are required to inform each resident council member of their right to be interviewed as part of the regulatory inspection process. A licensee may wish to include this notification in a prospective resident’s admission agreement or as an addendum to an existing resident’s admission agreement.

Licensees are required to post, in a prominent place in the facility accessible to residents, family members, and resident representatives, the text of Health and Safety Code section 1569.157 with the heading “Rights of Resident Councils.” Prior to January 1, 2015, the Department will develop a form to meet the specific requirements of this section. Licensees may access a copy of the “Rights of Resident Councils” (PUB 747) form from the Department’s website after January 1,

2015 at <http://www.dss.cahwnet.gov/cdssweb/PG167.htm#pub>) or may develop their own form to meet this requirement.

Licensing Program Analysts

Violations

I. Resident Councils

If a Licensing Program Analyst identifies a violation of any provision of Health and Safety Code section 1569.157(a) through (h), it shall constitute a violation of resident rights as specified in Health and Safety Code section 1569.269(a)(27). The Licensing Program Analyst may identify a violation by noting the absence of the mandated “Rights of Resident Councils” posting or the failure of the mandated posting to recite the specific text of Health and Safety Code section 1569.157, or by interviewing residents and/or staff to determine lack of compliance with this section. If a violation is identified, the Licensing Program Analyst shall cite:

- *Health and Safety Code section 1569.157 (include the specific subdivision(s) violated) and assess the corresponding civil penalty, as instructed below.*

Pursuant to Health and Safety Code section 1569.157(i), a violation(s) of this section is subject to a daily civil penalty of \$250. The LIC 421 series notifying licensees of the assessment of civil penalties will be updated to accommodate penalties created by this law. Interim procedures described below are to be utilized by field staff until the updated form is available.

II. Family Councils

If a Licensing Program Analyst identifies a violation of any provision of Health and Safety Code section 1569.158(a) through (i), it shall constitute a violation of resident rights. The Licensing Program Analyst may identify a violation by interviewing residents, family members and/or staff to determine non-compliance. If a violation is identified, the Licensing Program Analyst shall cite:

- *Health and Safety Code section 1569.158 (include the specific subdivision(s) violated) and assess the corresponding civil penalty, as instructed below.*

Pursuant to Health and Safety Code section 1569.157(j), a violation(s) of this section is subject to a daily civil penalty of \$250. The LIC 421 series notifying licensees of the assessment of civil penalties will be updated to accommodate penalties created by this law. Interim procedures described below are to be utilized by the field staff until the updated form is available.

Health and Safety Code section 1569.158(g)(2) requires the licensee to provide upon admission of a new resident, written information to the resident’s family or resident representative of their right to form a family council if no council exists. The resident’s

family that are noticed should be at the discretion of the resident and respectful of the confidentiality of the resident pursuant to section 87506(c) of Title 22, California Code of Regulation (CCR).

Interim Civil Penalty Assessment Procedures

Until the updated LIC 421 series form is available, procedures for assessing a civil penalty for a violation(s) of either Health and Safety Code section 1569.157 or 1569.158 are 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 **Addendums** (Addendum A – Resident Councils, Addendum B – Family Councils) for civil penalty assessment language, instructions and appeal rights.
- Follow instructions provided in the Evaluator Manual Reference Material, section 3-3600 (Plan of Correction), section 3-3605 (Clearing the Deficiency) and section 3-3700 (Proof of Correction/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 as part of 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.

This process should be utilized for the assessment of civil penalties related to a violation of Health and Safety Code section 1569.157 (resident councils) and/or Health and Safety Code 1569.158 (family councils). If both Health and Safety Code sections are violated, the licensee is liable for a civil penalty assessment pursuant to each code section.

The daily civil penalty will accrue until the violation(s) is corrected. The civil penalty assessment is for a violation of the specified code section, regardless of how many subsections are violated. The date of correction will be considered the date in which a facility licensee submits documentation of the correction to the Department of Social Services and the correction is verified by the department to have been corrected by that date.

Regulations will be revised for Section 87221 of the Title 22 CCR and civil penalty forms will be updated. Applicable revisions to the Evaluator Manual will follow.

For legislative information related to this new law: [Bill Text - AB 1572 Residential care facilities for the elderly](#)

ADDENDUM A

ASSEMBLY BILL 1572 INTERIM CIVIL PENALTY NOTICE

Applies to Residential Care Facilities for the Elderly only

Resident Councils

The following statement shall be included in all reports in which a civil penalty is being assessed for a violation of Hands Code section 1569.157(a)-(h), until the LIC 421 series is updated.

Civil penalties shall be assessed against any facility which fails to take corrective action within described time periods. Per California Health and Safety Code section 1569.157(i), you are hereby notified that a \$250 civil penalty per day will be assessed until the violation is corrected. The date of correction will be considered the date in which the licensee submits documentation of the correction to the Department of Social Services and the correction is verified by the Department of Social Services to have been completed by that date.

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 you invoice with the payment. You will find the invoice number on our 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 or licensing office with 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 the 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.

ADDENDUM B

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Applies to Residential Care Facilities for the Elderly only

Family Councils

The following statement shall be included in all reports in which a civil penalty is being assessed for a violation of Hands Code section 1569.158(a)-(i), until the LIC 421 series is updated.

Civil penalties shall be assessed against any facility which fails to take corrective action within described time periods. Per California Health and Safety Code section 1569.158(j), you are hereby notified that a \$250 civil penalty per day will be assessed until the violation is corrected. The date of correction will be considered the date in which the licensee submits documentation of the correction to the Department of Social Services and the correction is verified by the Department of Social Services to have been completed by that date.

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 you invoice with the payment. You will find the invoice number on our invoice. **DO NOT SEND CASH.**

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