

## **ACTION REQUIRED**

### **SB 781 (Leno), CHAPTER 617, STATUTES OF 2009**

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

**Subject:** Eviction Procedures

**Summary:** Senate Bill (SB) 781, which is effective January 1, 2010, adds section 1569.683 to the Health and Safety Code (H&SC). This law requires licensees of a residential care facility for the elderly (RCFE) to include specified information in the notice to quit (eviction notice) that is given to residents prior to their eviction. The purpose of this law is to provide consumer awareness and to ensure that eviction notices do not violate residents' rights.

### **Requirements to be Included in an Eviction Notice – Pursuant to SB 781**

In addition to meeting the requirements in SB 781, the licensee must comply with other applicable RCFE regulations, including section 87224 on eviction procedures.

The eviction notice must include the following information as required in SB 781:

- The reasons relied upon for the eviction, with specific facts to permit determination of the date, place, witnesses, and circumstances concerning those reasons.
- The effective date of the eviction. (This would be the date of termination, i.e., the expiration of the 30-day or 3-day period. It is recommended that licensees document the date the eviction notice is served and the end of the notice period.)
- Information about resources available to assist the resident in identifying alternative housing and care options, including public and private referral services and case management organizations.
- Information about the resident's right to file a complaint with the CDSS regarding the eviction, with the name, address, and telephone number of the nearest office of community care licensing and the State Ombudsman.
- A statement that informs the resident that the licensee cannot evict a resident who remains in the facility after the effective date of the eviction unless the licensee files an unlawful detainer action in superior court and receives a written judgment signed by a judge.
- A statement that if a licensee pursues an unlawful detainer action, the resident must be served with a summons and complaint.

- A statement that the resident has the right to contest the eviction in writing and through a hearing.

**Note:** *SB 781 only applies to evictions specified in RCFE regulation section 87224. The process for an unlawful detainer action does not apply to health condition relocation orders, or transfer of a resident upon forfeiture of license or change in use of the facility.*

**Implementation:**

- The LPA must review all new facility applications as of January 1, 2010 to ensure that eviction notices meet the requirements of H&SC section 1569.683 (SB 781). The LPA must also ensure that the admission agreement contains the required information.
- During a desk review, upon receipt of a facility's eviction notice, or prior to a facility visit:
  - The LPA must review the facility file to see if the licensee has submitted an updated admission agreement. The admission agreement, which is part of the plan of operation, must include conditions under which the agreement may be terminated and list the justifications for eviction permissible under state law or regulation, exactly as they are worded in the applicable law or regulation. The admission agreement shall include an explanation of the resident's right to notice prior to an eviction, the process by which the resident may appeal the decision (including the unlawful detainer action process) and the relocation assistance offered by the facility. In addition, the admission agreement shall state the responsibilities of the licensee and the rights of the resident when a facility evicts residents as required in H&SC section 1569.682. Most of the information required by SB 781 to be included in the eviction notice has already been required by existing statute and regulations.
  - The LPA must review the facility's eviction notice to see if it meets the new statutory requirements in H&SC section 1569.683. If the notice is not compliant with statute, the LPA must phone the licensee immediately. The LPA shall advise the licensee that he/she must immediately notify the resident and/or the resident's responsible person or conservator that the timeframe for the 30-day or 3-day eviction process will not begin until the resident is served with a CCLD approved corrected eviction notice. Further, the LPA must inform the licensee that he/she must continue to provide care and supervision to that resident, and continue to meet the needs of that resident, for as long as that resident resides in the facility. (For purposes of this law, served to the resident means the documented date the resident was given the notice. Served to the conservator or family means the documented date the notice was mailed, faxed, etc.)
  - ❖ The LPA must follow up this phone call by sending the licensee a form letter or checklist of required items for the eviction notice [see Evaluator Manual

Regulation Interpretations and Procedures for Residential Care Facilities for the Elderly section 87224(a)].

- ❖ The licensee shall notify and provide a copy of the corrected eviction notice to the resident's responsible person or conservator upon serving the corrected eviction notice to the resident.
- ❖ The LPA must document all activities related to this event on the form, LIC 812, Detail Supportive Information, and place this form in the confidential section of the facility file.
- During the next facility visit or complaint visit to an RCFE, LPAs must notify administrators about the new requirements of H&SC section 1569.683.
  - The LPA must discuss and provide a copy of this implementation plan or provide information on how to access this implementation plan on the CCLD website.
- The LPA may offer consultant services on best practices in the following areas:
  - It is a best practice for a licensee to issue the eviction notice in writing to the resident and resident's responsible person or conservator at preferably the same time.
  - It is a best practice, if an Ombudsman is to be notified of the eviction, for a licensee to share the eviction notice with both the local Ombudsman's office as well as the State Ombudsman's office, which will eliminate delays in routing the actual eviction notice from the state office to the local office.
  - The resource "list" provided to residents must identify, at a minimum, other local providers, Ombudsman, referral agencies and placement/case management services. It is a best practice for a licensee to work with other licensees, their LPA, city and county resources, State and local Ombudsman, clergy, referral agencies, case management agencies, multipurpose senior service programs, family members and social workers to comply with the requirement to include resources in the eviction notice. This list should be current at all times.
- As appropriate, until regulations are developed, the LPA must use H&SC section 1569.683 as the authority for citing the facility for any violation that pertains to the contents of the eviction notice.

#### Complaint Investigations and 3-Day Eviction Notices

- For an unlawful eviction complaint, the LPA must initiate the investigation as soon as possible to avoid a potentially unnecessary relocation of a resident.

- If a resident receives a 3-day eviction notice based on good cause, and if that resident does not leave a facility within that timeframe, then H&SC section 1569.683 still applies and the licensee must file an unlawful detainer action in superior court.
- During this interim period, licensees may rely upon other resources or means of intervention to ensure the health and safety of all residents is protected.
  - Good cause exists if the resident is engaging in behavior that is a threat to the mental and/or physical health or safety of him/herself or to the mental and/or physical health or safety of others in the facility. The issuance of the 3-day notice may also be appropriate for residents involved in criminal behavior that threatens the health and safety of residents or facility staff but is not associated with a mental disorder. The burden of proof falls on the licensee to demonstrate that a resident is not safe. All 3-day eviction notices are reviewed on a case-by-case basis to determine if good cause exists.

#### Court Proceeding

- If an LPA is required to appear in court, an LPM and legal liaison must be consulted prior to the proceeding.

#### Resources

For legislative information related to this new law, see:  
[http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0751-0800/sb\\_781\\_bill\\_20091011\\_chaptered.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0751-0800/sb_781_bill_20091011_chaptered.html)