

ACTION REQUIRED

AB 2066 (Monning), Chapter 643, Statutes of 2012

Affects: Residential Care Facilities for the Elderly

Subject: Residential Care Facilities for the Elderly: Revocation of Licenses

Summary: This bill amends Health and Safety Code Sections 1569.525 and 1569.682 relating to revocation of licenses.

The purpose of AB 2066 is to provide additional health and safety protections for residents in Residential Care Facilities for the Elderly (facility), and to minimize transfer trauma in the event that the California Department of Social Services (Department) determines it necessary to revoke a facility license. This bill also adds clean up language related to AB 313 (Monning) Chapter 365, Statutes of 2011. AB 313 created inappropriate requirements regarding Residential Care Facility for the Elderly license revocation, making it difficult for CDSS to implement its provisions.

Health and Safety Code Section 1569.525

AB 2066 requires the Department to contact any local agency that has placement or advocacy responsibility for residents of a facility after a decision is made to temporarily suspend or to initiate revocation of the license of the facility. This bill also requires the Department to work with these agencies to locate alternative placement sites and contact relatives responsible for facility residents.

Upon an order to revoke a license, except an order to revoke a license following the temporary suspension of a license pursuant to Health and Safety Code section 1569.50, AB 2066 requires the following:

- (e)(1) The licensee shall provide a 60-day written notice of license revocation, stating that the revocation may lead to closure of the facility, to the resident and the resident's responsible person within 24 hours of receipt of the Department's order of revocation;
- (2) The Department shall allow the licensee to secure the services of a person who is not an immediate family member of the licensee or an entity that is not owned by the licensee to manage the day-to-day operations of the facility for a period of at least 60 days, provided all of the following conditions are met:
 - (A) Within 72 hours of the licensee's receipt of the Department's order of revocation, a proposal is submitted to the Department that includes:
 - (i) A completed "Application for a Residential Care Facility for the Elderly License" form (LIC 200), signed and dated by both the licensee and the person or entity described above;
 - (ii) A copy of an executed agreement between the licensee and the person or entity described in (e)(2) above that delineates the roles and

responsibilities of each party and specifies that the person or entity shall have full authority necessary to operate the facility, in compliance with all applicable laws and regulations, without interference from the licensee.

- (B) The person or entity shall be currently licensed and in substantial compliance to operate a facility that is of comparable size or greater and has comparable programming to the facility. The following definitions apply to this requirement:
 - (i) “Comparable programming” includes but is not limited to dementia care, hospice care, and care for residents with exempted prohibited health conditions.
 - (ii) “Comparable size” means a facility capacity of 1 to 15 residents, 16 to 49 residents, or 50 or more residents.
 - (C) The person or entity shall not be subject to an application fee.
 - (D) If the Department denies a proposal to secure the services of the person or entity, the denial shall not be deemed a denial of a license application subject to the right to a hearing and other procedural rights.
- (3)(A) Notwithstanding Section 1569.651 or any other provision of law, a resident who transfers from the facility during the 60-day period described in (e)(1), is entitled to a refund of paid preadmission fees in excess of five hundred dollars (\$500) according to the following:
- (i) A 100-percent refund if preadmission fees were paid within six months of the notice of closure required by paragraph (e)(1).
 - (ii) A 75-percent refund if preadmission fees were paid more than six months, but not more than 12 months, before the notice of closure required by paragraph (e)(1).
 - (iii) A 50-percent refund if preadmission fees were paid more than 12 months, but not more than 18 months, before the notice of closure required by paragraph (e)(1).
 - (iv) A 25-percent refund if preadmission fees were paid more than 18 months, but not more than 25 months, before the notice of closure required by paragraph (e)(1).
- (B) No preadmission fee refund is required if preadmission fees were paid 25 months or more before the notice of closure required by paragraph (e)(1).
 - (C) The preadmission fee refund required by this paragraph shall be paid within 15 days of issuing the notice of closure required by paragraph (e)(1). In lieu of the refund, the resident may request that the licensee provide a credit toward the resident’s monthly fee obligation in an amount equal to the preadmission fee refund due.

- (4) If a resident transfers from the facility during the 60-day period described in (e)(1), and the resident gives notice at least five days before leaving the facility, the licensee shall refund to the resident or his or her legal representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility and the unit is vacated. Otherwise the licensee shall pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated.
- (5) Within 10 days after all residents who are transferring pursuant to these provisions have left the facility, the licensee that had his or her license revoked shall, based on information provided by the resident or the resident's legal representative, submit a final list of names and new locations of all residents to the Department and the local ombudsman program.
- (f) Nothing in this section shall preclude the Department from amending the effective date in the order of revocation and closing the facility prior to the end of the 60-day notice period provided for in subdivision (e), or from pursuing any other available remedies if necessary to protect the health and safety of the residents in care.

Health and Safety Code Section 1569.682

AB 2066 also requires a licensee of a facility, prior to transferring a resident to another facility or to an independent living arrangement as a result of a forfeiture of a license or a change of use of the facility, to provide each resident with a written notice no later than 60 days before the eviction that includes the address and phone number for the local long-term care ombudsman.

Implementation: These provisions have an effective date of January 1, 2013.

Local Placement or Advocacy Agencies

After a revocation order is served to the licensee, Licensing Program Analysts must contact any local agency that has placement or advocacy responsibility for residents of the facility, including the local long term care ombudsman. Licensing Program Analysts must then work with these agencies to assist them in locating alternative placement sites and contacting relatives or responsible persons for facility residents.

Resident Notifications

Within 24 hours of receipt of the Department's order of revocation, the facility licensee must provide all residents and their responsible persons with a 60-day written notice of license revocation that may lead to the closure of the facility. Licensing Program Analysts must obtain a copy of this notice, with written confirmation from the licensee that the notice was provided to all facility residents and their responsible persons. If the Department amends the effective date of the order of revocation, which closes the facility prior to the end of the 60-day notice, the licensee as a best practice should notify residents of the change of the facility closure date. The LPA must provide this notice to the same local agency(s), and advocates, including the local long term care

ombudsman and ensure that residents and responsible parties are notified of the change in closure date.

As a best practice, the licensee should notify residents if and as soon as the licensee secures the services of a person who is not an immediate family member of the licensee or an entity that is not owned by the licensee to manage the facility during time period specified.

Facility Management by Non-Immediate Family or Entity

The facility licensee may secure the services of a person that is not an immediate family member of the licensee or an entity that is not owned by the licensee to manage the day-to-day operations of the facility for at least 60 days.

If the licensee is interested in having a person or entity manage the facility following the receipt of a revocation order, the following conditions must be met:

STEP 1: Licensee submits to the applicable Regional Office a proposal [specified in (e)(2)(A)] within 72 hours of receipt of the order of revocation that includes:

- A completed “Application for a Residential Care Facility for the Elderly License” form (LIC 200), on behalf of the person or entity but signed and dated by both the licensee and the person or entity representative;
- An agreement signed by both the licensee and the person or entity representative that specifies the roles and responsibilities of each party and states that the person or entity has full authority to operate the facility in compliance with applicable laws and regulations, and without interference from the licensee. This agreement must be signed and dated by both the licensee and the person or entity representative.
- A completed “Applicant Information” form (LIC 215) on behalf of the interested person or entity representative.
- Proof that the applicant is currently licensed and operating an RCFE of comparable size (or greater) and program.. For example, if the facility that is having its licensed revoked has a hospice waiver, the applicant must also have a similar hospice waiver or experience. This requirement may be met by the applicant submitting a copy of their current license(s). It may also require submitting a copy of the approved plan of operation for program areas that are not identified on the license, such as dementia programs.
- A completed “Criminal Background Clearance Transfer Request” form (LIC 9182) for the person or entity representative.
- A completed “Designation of Facility Responsibility” form (LIC 308), signed by the current licensee.

- If applicable, a completed “Administrative Organization form (LIC 309), with required attachments (e.g., Articles of Incorporation, By-Laws or Operating Agreement, Resolution authorizing the filing of this application).
- A completed “Personnel Report” form (LIC 500).

STEP 2: According to the provisions of AB 2066, the person or entity shall not be charged an application fee. Upon receiving the completed forms and documents specified in “STEP 1,” the Licensing Program Analyst must review all applicable facility files maintained by CDSS to ensure that all facilities that the applicant is a licensee or co-licensee are in substantial compliance. The Licensing Program Analyst must also ensure that the applicant’s licensing history includes experience as a licensee or co-licensee of facilities that are comparable in size and program.

If the Licensing Program Analyst determines that there is a history of substantive non-compliance on the part of the applicant, or their associated facilities were not of comparable (or greater) size or programming, following consultation with the LPM, the proposal must be denied. If the proposal is not submitted within 72 hours of the licensee’s receipt of the order of revocation, the proposal must be denied. NOTE: The Licensing Program Analyst must process this proposal as quickly as possible so that the proposal is either approved or denied in the timeframe specified in (e)(2).

STEP 3: If the Licensing Program Analyst and Licensing Program Manager approve the proposal, they must establish the period of time that the person or entity will be approved to manage the day-to-day operations of the facility. AB 2066 specifies that the period of time that the person or entity shall manage the facility for is at least 60 days. However, in no case shall the approval continue past the effective date of the order of revocation.

STEP 4: The Licensing Program Analyst will work with the local Long-Term Care Ombudsman to monitor and/or coordinate visits to the facility to ensure that the facility is operating in accordance with all applicable statutes and regulations.

STEP 5: The Regional Office issues the facility a license, with name of person/entity listed as co-licensee and with an end date not to exceed the effective date of the order of revocation. The license must be posted in a prominent location in the licensed facility accessible to public view, as required in regulation section 87113.

Preadmission Fee Refunds

The following table summarizes the preadmission fee refund requirements outlined in AB 2066:

If Resident Transfers From Facility During 60-day Period and Preadmission Fee is in Excess of \$500:	Refund to be Paid or Credited to Resident Within 15 Days of Closure Notice
If preadmission fees were paid within six months of closure notice...	100% of Preadmission Fee
If preadmission fees were paid six to 12 months before closure notice...	75% of Preadmission Fee
If preadmission fees were paid 12 to 18 months before closure notice...	50% of Preadmission Fee
If preadmission fees were paid 18 to 25 months before closure notice...	25% of Preadmission Fee
If preadmission fees were paid 25 months or more before closure notice...	No Refund Required

If a Licensing Program Analyst receives an allegation of preadmission fees not being refunded to a resident or to multiple residents (either via incident report or complaint), and this information is substantiated, the Licensing Program Analyst must cite the facility pursuant to Health and Safety Code section 1569.525(e)(3)(A), and the licensee must indicate in the plan of correction how the refund or credit will be issued to the resident(s). In lieu of the refund, the resident may request that the licensee provide a credit toward the resident's monthly fee(s) in the amount equal to the refund.

If a resident transfers from the facility during the 60-day period described in (e)(4), and the resident gives notice at least five days before leaving the facility, the licensee must issue a refund to the resident or his or her legal representative for any prepaid monthly fees. If a Licensing Program Analyst receives an allegation of prepaid monthly fees not being refunded to a resident or to multiple residents (either via incident report or complaint), and this information is substantiated, the Licensing Program Analyst must cite the facility pursuant to Health and Safety Code section 1569.525(e)(4), and the licensee must indicate in the plan of correction how the refund will be issued to the resident(s).

Note: After the license has been officially revoked, the department does not have the authority to pursue any action for the recovery of un-refunded resident fees from the licensee. As such, upon revocation the department will not take any action relative to the recovery of resident fees. Residents and/or their responsible parties should be informed that one remedy available to recover such fees would be to pursue a claim against the former licensee in civil court.

Department Options for Revocation, Facility Closure, Other Remedies

AB 2066 includes language that allows the Department to amend the effective date of the order of revocation and closing the facility prior to the end of the 60-day notice period provided for in subdivision (e), if necessary. AB 2066 also allows the Department to pursue any other available remedies, if necessary, to protect the health and safety of the residents in care. These allowances are exercised only through coordination and permission by the Program Office and the Legal Division.

Eviction Notices

In order to comply with Health and Safety Code Section 1569.682, the Licensing Program Analyst shall promptly review all licensee submitted eviction notices to ensure that the eviction notice includes the address and phone number for the local long-term care ombudsman.

For legislative information related to this new law:

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2066_bill_20120927_chaptered.html