



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

SB-413 Dementia: major neurocognitive disorder. (2017-2018)

SHARE THIS:  

Date Published: 07/25/2017 09:00 PM

Senate Bill No. 413

CHAPTER 122

An act to amend Sections 1569.698, 1569.699, and 1569.7 of the Health and Safety Code, and to amend Sections 1981 and 2356.5 of the Probate Code, relating to neurocognitive disorders.

[Approved by Governor July 24, 2017. Filed with Secretary of State July 24, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 413, Morrell. Dementia: major neurocognitive disorder.

Existing law regulates the licensure and operation of residential care facilities for the elderly, including the adoption of building standards to provide for locked and secured perimeters in residential care facilities for the elderly that care for persons with dementia.

Existing law, the California Conservatorship Jurisdiction Act, generally establishes the standards and procedures for establishing the proper jurisdiction for a proceeding to appoint a conservator of a person, an estate, or both. Existing law provides that application of these provisions to a conservatee with dementia is subject to the specified limitations.

Existing law authorizes a conservator to place a conservatee in a secured perimeter residential care facility for the elderly, as specified, or to authorize the administration of certain prescribed medications upon a court's finding that among other things, the conservatee has dementia and a functional impairment.

This bill would replace references to the term dementia in these provisions with major neurocognitive disorders. The bill would also make technical, nonsubstantive changes to these provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1569.698 of the Health and Safety Code is amended to read:

1569.698. (a) The State Fire Marshal has proposed that the California Building Standards Commission adopt building standards to provide for locked and secured perimeters in residential care facilities for the elderly that care for persons with major neurocognitive disorder:

(1) It is acknowledged that these building standards will not become effective until October 1, 1996.

(2) It is the policy of the California Building Standards Commission that building standards be adopted exclusively into the California Building Standards Code and not into state statute.

(3) However, in recognition of the immediate need of residential care facilities for the elderly caring for persons with major neurocognitive disorder to provide a secured environment, it is the intent of the Legislature that the building standards for locked and secured perimeters proposed by the State Fire Marshal for adoption in the 1994 California Building Standards Code, as set forth in Section 1569.699, be effective October 4, 1995.

(b) (1) Upon the filing of emergency regulations with the Secretary of State pursuant to subdivision (c), a residential care facility for the elderly that cares for people with major neurocognitive disorder may utilize secured perimeter fences or locked exit doors if it meets the requirements for additional safeguards required by those regulations.

(2) For the purposes of this article, major neurocognitive disorder includes Alzheimer's disease and related disorders, diagnosed by a physician, that increase the tendency to wander and that decrease hazard awareness and the ability to communicate.

(3) It is the intent of the Legislature in enacting this article that residential care facilities for the elderly have options for the security of persons with major neurocognitive disorder who are residents of those facilities that are in addition to existing security exceptions made for individual residents. It is the further intent of the Legislature that these additional options shall include the use of waivers of certain building standards relating to fire safety, to be issued by the state department with the approval of the State Fire Marshal, to permit the care of a target group of persons with major neurocognitive disorder by means of secured perimeter fences, or the use of locked exterior doors. Each waiver request shall include a facility plan of operation that addresses elements of care to be identified by the department in regulations and demonstrates the facility's ability to meet the safety needs of persons with major neurocognitive disorder.

(4) The department shall adopt regulations that ensure that staff for secured perimeter facilities receive appropriate and adequate training in the care of residents with major neurocognitive disorder.

(5) Nothing in this section is intended to prohibit residential care facilities for the elderly from accepting or retaining persons with major neurocognitive disorder whose needs can be fully met using care options permitted by existing law and regulations.

(6) It is not the intent of the Legislature to authorize an increase in the level of care provided in a residential care facility for the elderly or to establish a supplemental rate structure based on the services provided in the facility.

(7) All admissions to residential care facilities for the elderly shall continue to be voluntary on the part of the resident or with the lawful consent of the resident's legal conservator.

(c) The department shall adopt regulations to implement subdivision (b) in accordance with those provisions of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of any emergency regulations following October 4, 1995, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(d) In addition to the security options authorized by subdivision (b), residential care facilities for the elderly that accept or retain as residents persons with major neurocognitive disorder, and that choose to utilize the security options of egress-control devices of the time-delay type in addition to secured perimeter fences or locked exit doors, shall comply with Section 1569.699, or regulations adopted by the California Building Standards Commission, whichever is operative.

(e) A residential care facility for the elderly shall not utilize special egress-control devices of the time-delay type, secured perimeter fences, or locked exit doors unless the facility meets the requirements of Section 1569.699 or the California Building Standards Commission adopts building standards to implement this section.

(f) Any person who is not a conservatee and is entering a locked or secured perimeter facility pursuant to this section shall sign a statement of voluntary entry. The facility shall retain the original statement and shall send a copy of the statement to the department.

SEC. 2. Section 1569.699 of the Health and Safety Code is amended to read:

1569.699. (a) When approved by the person responsible for enforcement, as described in Section 13146, exit doors in facilities classified as Group R, Division 2 facilities under the California Building Standards Code, licensed as residential care facilities for the elderly, and housing clients with Alzheimer's disease or major neurocognitive disorder, may be equipped with approved listed special egress-control devices of the time-delay type, provided the building is protected throughout by an approved automatic sprinkler system and an approved automatic smoke-detection system. The devices shall conform to all of the following requirements:

(1) Automatic deactivation of the egress-control device upon activation of either the sprinkler system or the detection system.

(2) Automatic deactivation of the egress-control device upon loss of electrical power to any of the following:

(A) The egress-control device.

(B) The smoke-detection system.

(C) Exit illumination as required by Section 1012 of the California Building Standards Code.

(3) Be capable of being deactivated by a signal from a switch located in an approved location.

(4) Initiate an irreversible process that will deactivate the egress-control device whenever a manual force of not more than 15 pounds (66.72 N) is applied for two seconds to the panic bar or other door-latching hardware. The egress-control device shall deactivate within an approved time period not to exceed a total of 15 seconds, except that the person responsible for enforcement, as described in Section 13146, may approve a delay not to exceed 30 seconds in residential care facilities for the elderly serving patients with Alzheimer's disease. The time delay established for each egress-control device shall not be field adjustable.

(5) Actuation of the panic bar or other door-latching hardware shall activate an audible signal at the door.

(6) The unlatching shall not require more than one operation.

(7) (A) A sign shall be provided on the door located above and within 12 inches (305mm) of the panic bar or other door-latching hardware reading:

KEEP PUSHING. THIS DOOR WILL OPEN IN ____ SECONDS. ALARM WILL SOUND.

(B) Sign letter shall be at least one inch (25mm) in height and shall have a stroke of not less than 1/8 inch (3.3mm).

(8) Regardless of the means of deactivation, relocking of the egress-control device shall be by manual means only at the door.

(b) Grounds of residential care facilities for the elderly serving persons with Alzheimer's disease or major neurocognitive disorder may be fenced, and gates therein equipped with locks, provided safe dispersal areas are located not less than 50 feet (15240mm) from the buildings. Dispersal areas shall be sized to provide an area of not less than three square feet (0.282) per occupant. Gates shall not be installed across corridors or passageways leading to the dispersal areas unless they comply with the exit requirements of Section 1021 of the California Building Standards Code.

(c) Exit doors may be locked in residential care facilities for the elderly that meet the requirements for Group I, Division 3 occupancies under the California Building Standards Code and that care for people with major neurocognitive disorder.

(d) This section shall become inoperative on the date the California Building Standards Commission adopts regulations regarding secured perimeters in residential care facilities for the elderly, and, as of the January 1 next following that date, is repealed, unless a later enacted statute, that becomes operative on or before that January 1, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 1569.7 of the Health and Safety Code is amended to read:

1569.7. Residential care facilities for the elderly that serve residents with Alzheimer's disease and other forms of major neurocognitive disorder should include information on sundowning as part of the training for direct care staff, and should include in the plan of operation a brief narrative description explaining activities available for residents to decrease the effects of sundowning, including, but not limited to, increasing outdoor activities in appropriate weather conditions.

SEC. 4. Section 1981 of the Probate Code is amended to read:

1981. (a) (1) This chapter does not apply to a minor, regardless of whether the minor is or was married.

(2) This chapter does not apply to any proceeding in which a person is appointed to provide personal care or property administration for a minor, including, but not limited to, a guardianship under Part 2 (commencing with Section 1500).

(b) This chapter does not apply to any proceeding in which a person is involuntarily committed to a mental health facility or subjected to other involuntary mental health care, including, but not limited to, any of the following proceedings or any proceeding that is similar in substance:

(1) A proceeding under Sections 1026 to 1027, inclusive, of the Penal Code.

(2) A proceeding under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code.

(3) A proceeding under Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(4) A proceeding under Article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5 of the Welfare and Institutions Code.

(5) A proceeding under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, which is also known as the Lanterman-Petris-Short Act.

(6) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(7) A proceeding under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(c) Article 3 (commencing with Section 2001) does not apply to an adult with a developmental disability, or to any proceeding in which a person is appointed to provide personal care or property administration for an adult with a developmental disability, including, but not limited to, the following types of proceedings:

(1) A proceeding under Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(2) A limited conservatorship under subdivision (d) of Section 1801.

(3) A proceeding under Section 4825 of the Welfare and Institutions Code.

(4) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(d) Application of this chapter to a conservatee with major neurocognitive disorder is subject to the express limitations of Sections 2002 and 2016, as well as the other requirements of this chapter.

SEC. 5. Section 2356.5 of the Probate Code is amended to read:

2356.5. (a) The Legislature hereby finds and declares of all the following:

(1) That people with major neurocognitive disorder, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders," should have a conservatorship to serve their unique and special needs.

(2) That, by adding powers to the probate conservatorship for people with major neurocognitive disorder, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.

(3) That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of major neurocognitive disorder requires the protections specified in this section.

(b) Notwithstanding any other law, a conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, and that has a care plan that meets the requirements of Section 87705 of Title 22 of the California Code of Regulations, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has major neurocognitive disorder, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of Section 811, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 811.

(3) The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(4) The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

(c) Notwithstanding any other law, a conservator of a person may authorize the administration of medications appropriate for the care and treatment of major neurocognitive disorder, upon a court's finding, by clear and convincing evidence, of all of the

following:

(1) The conservatee has major neurocognitive disorder, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of major neurocognitive disorder, and has at least one mental function deficit pursuant to subdivision (a) of Section 811, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 811.

(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (c) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

(f) A petition for authority to act under this section is governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1. Upon granting or denying authority to a conservator under this section, the court shall discharge the attorney or order the continuation of the legal representation, consistent with the standard set forth in subdivision (a) of Section 1470.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition shall be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist has at least two years of experience in diagnosing major neurocognitive disorder.

(4) The petition may be filed by any of the persons designated in Section 1891.

(g) The court investigator shall annually investigate and report to the court every two years pursuant to Sections 1850 and 1851 if the conservator is authorized to act under this section. In addition to the other matters provided in Section 1851, the conservatee shall be specifically advised by the investigator that the conservatee has the right to object to the conservator's powers granted under this section, and the report shall also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers granted under this section, or the investigator determines that some change in the powers granted under this section is warranted, the court shall provide a copy of the report to the attorney of record for the conservatee. If no attorney has been appointed for the conservatee, one shall be appointed pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days after receiving this report, do either of the following:

(1) File a petition with the court regarding the status of the conservatee.

(2) File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

(h) A petition to terminate authority granted under this section shall be governed by Section 2359.

(i) Nothing in this section shall be construed to affect a conservatorship of the estate of a person who has major neurocognitive disorder.

(j) Nothing in this section shall affect the laws that would otherwise apply in emergency situations.

(k) Nothing in this section shall affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have major neurocognitive disorder.