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AB-979 Long-term care: family councils. (2023-2024)

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Assembly Bill No. 979

CHAPTER 821

An act to repeal and add Sections 1418.4 and 1569.158 of the Health and Safety Code, relating to long-term care.

[Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 979, Alvarez. Long-term care: family councils.

Existing law requires the State Department of Public Health to license and regulate skilled nursing facilities (SNFs) and intermediate care facilities (ICFs). Existing law requires the State Department of Social Services to license and regulate residential care facilities for the elderly (RCFEs). A violation of those licensing provisions is generally a crime. Existing law prohibits those facilities from prohibiting the formation of a family council, which is a meeting of family members, friends, or representatives of 2 or more residents to confer in private without facility staff. Existing law prohibits those facilities from willfully interfering with the formation, maintenance, or promotion of a family council, as specified.

This bill would make changes to the definition and scope of prohibited interference.

Existing law sets forth various requirements on facilities relating to a family council with regard to providing a designated staff person, providing adequate posting and meeting space for the family council, and responding to written requests, concerns, or recommendations within specified timeframes.

For SNFs and ICFs, this bill would require that the designated staff person be approved by the family council, as specified. The bill would require that the family council be allowed to meet virtually or at an offsite location at its discretion. If a family council submits written requests, concerns, or recommendations, the bill would require the facility to respond in writing regarding any action or inaction within 14 calendar days, as specified.

Existing law authorizes staff or visitors to attend family council meetings, at the group's invitation.

This bill would instead authorize facility staff to attend meetings only at the invitation of the family council.

Existing law requires a facility to inform family members or representatives of the existence of the family council, if applicable.

This bill would also require the facility to inform friends identified in certain materials and to provide the name and contact information of the family council representative prior to or within 5 business days after the resident's admission. The bill would make certain other related changes.

The bill would, for SNFs and ICFs, to the extent not in conflict with state and federal law, require a facility to inform the identified family members, friends, and representatives of their right to have their contact information shared with the family council.

The bill would, for RCFEs, require a facility to inform the identified family members, friends, and representatives of their right to have their contact information shared with the family council and of their right to consent or withhold consent to their contact information being shared.

If an RCFE does not have a family council, existing law requires the facility to provide written information to a newly admitted resident's family or representative of their right to form a family council.

This bill would also add a resident's friends as recipients of that information, and would apply those provisions to SNFs and ICFs, as specified.

Under existing law, a violation of the family council-related provisions is subject to specified civil penalties. In the case of RCFEs, existing law exempts a violation of those provisions from the above-described criminal penalty.

This bill would also specify that, in the case of SNFs and ICFs, a violation of those provisions is exempt from the above-described criminal penalty.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Family councils play a critical role in improving and maintaining the quality of care in skilled nursing facilities, intermediate care facilities, and residential care facilities for the elderly. Although state law requires that family councils be provided with adequate space on a prominent bulletin board or other posting area for the display of meeting notices, minutes, newsletters, or other information, family councils need to be able to meet virtually, and facilities need to facilitate electronic communications to family councils.

(b) The COVID-19 pandemic led to widescale prohibitions of visitation for hundreds of thousands of residents in long-term care, the inability to meet in person with other family members and resident representatives, and the inability to address grievances and problems within the facility. Resident representatives and family members of residents were physically barred from visiting the residents in their facility homes and are vulnerable to similar prohibitions in the future.

(c) Family council laws need to be updated to give equal footing to electronic forms of meeting and communicating with members and potential members as they do to in-person meeting and communicating.

SEC. 2. Section 1418.4 of the Health and Safety Code is repealed.

SEC. 3. Section 1418.4 is added to the Health and Safety Code, to read:

1418.4. (a) A licensed skilled nursing facility or intermediate care facility shall not prohibit the formation of a family council. If requested by a member of the resident's family or the resident representative, the family council shall be allowed to meet in a common meeting room of the facility at least once per month during mutually agreed-upon hours. A family council shall also be allowed to meet virtually or at an offsite location at its discretion.

(b) Facility policies on family councils shall in no way limit the right of residents, family members, and family council members to meet independently with outside persons, including members of nonprofit or governmental organizations or with facility personnel during nonworking hours.

(c) For purposes of this section, "family council" means a meeting of family members, friends, or representatives of two or more residents to confer in private without facility staff.

(d) A family council shall be provided with adequate space on a prominent bulletin board or other posting area for the display of meeting notices, minutes, newsletters, or other information pertaining to the operation or interest of the family council.

(e) A person other than a family member, friend, or resident representative, including facility staff, may attend a family council meeting, but only at the invitation of the family council.

(f) The facility shall provide a designated staff person, approved by the family council, who shall be responsible for providing assistance and responding to written requests that result from family council meetings. The family council may request an alternate staff person as needed.

(g) The facility shall consider the views and act upon the grievances and recommendations of a family council concerning proposed policy and operational decisions affecting resident care and life in the facility.

(h) If a family council submits written requests, concerns, or recommendations, the facility shall respond in writing regarding any action or inaction taken in response to the requests, concerns, or recommendations within 14 calendar days and shall detail its rationale for that response.

(i) (1) If a facility has a family council, the facility shall inform the resident and the resident's representatives, family members, or other individuals designated by the resident and identified on the contract of admission, during the admission process, or in the resident's records of the existence of the family council and provide the name and contact information of the family council representative, as designated by the family council, in writing, prior to or within five business days after the resident's admission. When family council meeting information is provided by the family council, the facility shall include notice of the family council meetings in quarterly mailings to those family members, friends, and resident representatives. The notice shall include the time, place, and date of meetings, and the name and contact information of the family council representative, as designated by the family council.

(2) If a facility does not have a family council, the facility shall provide, upon admission of a new resident, written information to the resident's family members, friends, or resident representatives identified on the contract of admission, during the admission process, or in the resident's records, of their right to form a family council.

(j) (1) A facility shall provide the family council with the names, email addresses, and other contact information for each resident's representatives, family members, or other individuals designated by the resident if the person has provided written consent specifying the contact information that may be shared with the family council.

(2) The facility must inform the identified family members, friends, and representatives of their right to have their contact information shared with the family council pursuant to paragraph (1).

(3) This subdivision shall be implemented only to the extent that it is not in conflict with state and federal law.

(k) A facility shall not willfully interfere with the formation, maintenance, or promotion of a family council, or with a family council's participation in governmental surveys or inspection activities performed by any applicable departments or other governmental entities. For purposes of this subdivision, willful interference shall include, but shall not be limited to, discrimination or retaliation in any way against an individual as a result of their participation in a family council, refusal to publicize family council meetings or provide appropriate space for meetings or postings as required under this section, failure to respond to written requests, concerns, or recommendations by a family council as required under this section, or the willful scheduling of facility events in conflict with a previously scheduled family council meeting.

(l) (1) A violation of this section shall constitute a violation of resident rights.

(2) A violation of this section shall constitute a class "B" violation, as defined in Section 1424.

(3) A violation of this section shall not be subject to Section 1290.

SEC. 4. Section 1569.158 of the Health and Safety Code is repealed.

SEC. 5. Section 1569.158 is added to the Health and Safety Code, to read:

1569.158. (a) A residential care facility for the elderly shall not prohibit the formation of a family council. If requested by a member of the resident's family or the resident representative, the family council shall be allowed to meet in a common meeting room of the facility during mutually agreed-upon hours. A family council shall also be allowed to meet virtually or at an offsite location at its discretion.

(b) Facility policies on family councils shall in no way limit the right of residents and participants in a family council to meet independently with outside persons, including members of nonprofit or governmental organizations or with facility personnel during nonworking hours.

(c) For purposes of this section, "family council" means a meeting of family members, friends, or representatives of two or more residents to confer in private without facility staff.

(d) A family council shall be provided with adequate space on a prominent bulletin board or other posting area for the display of meeting notices, minutes, information, and newsletters.

(e) A person other than a family member, friend, or resident representative, including facility staff, may attend a family council meeting, but only at the invitation of the family council.

(f) If a family council submits written requests, concerns, or recommendations, the facility shall respond in writing regarding any action or inaction taken in response to the requests, concerns, or recommendations within 14 calendar days and shall detail its rationale for that response.

(g) (1) If a facility has a family council, the facility shall inform the resident and the resident's representatives, family members, or other individuals designated by the resident or identified during the admission process of the existence of the family council. The facility shall provide the resident and those family members, friends, and resident representatives with the name and contact information of the family council representative, as designated by the family council, in writing, prior to or within five business days after the resident's admission or the resident's representative, family member, or other individual is designated or identified. When family council meeting information is provided by the family council, the facility shall include notice of family council meetings in routine mailings to those family members, friends, and resident representatives. The notice shall include the time, place, and date of meetings, and the name and contact information of the family council representative, as designated by the family council.

(2) If a facility does not have a family council, the facility shall provide, upon admission of a new resident, written information to the resident's family members, friends, or resident representatives identified during the admission process of their right to form a family council.

(3) Upon request, and with the permission of the family council, the facility shall share the name and contact information of the designated representative of the family council with the long-term care ombudsman program.

(h) (1) A facility shall provide the family council with the names, email addresses, and other contact information for each resident's representatives, family members, or other individuals designated by the resident if the person has provided written consent specifying the contact information that may be shared with the family council.

(2) The facility must inform the identified family members, friends, and representatives of their right to have their contact information shared with the family council and their right to consent or withhold consent to have their contact information shared with the family council pursuant to paragraph (1).

(i) If a facility has a family council and a licensed capacity of 16 or more, the facility shall appoint a designated staff liaison who shall be responsible for providing assistance to the family council and responding to written requests that result from family council meetings. A facility shall provide an alternate staff liaison as needed.

(j) A facility shall not willfully interfere with the formation, maintenance, or promotion of a family council, or with a family council's participation in governmental surveys or inspection activities performed by any applicable departments or other governmental entities. For purposes of this subdivision, willful interference shall include, but shall not be limited to, discrimination or retaliation in any way against an individual as a result of their participation in a family council, refusal to publicize family council meetings or provide appropriate space for meetings or postings as required under this section, failure to respond to written requests, concerns, or recommendations by a family council as required under this section.

(k) (1) A violation of this section shall not be subject to Section 1569.40.

(2) A violation of this section shall constitute a violation of resident rights.

(3) A facility that violates this section shall be subject to a daily civil penalty of two hundred fifty dollars (\$250) until the violation is corrected. A violation shall be deemed to have been corrected on the date the facility submits documentation of the correction to the department if the correction is verified by the department.