

Assembly Bill No. 1855

CHAPTER 583

An act to add Section 9718.5 to the Welfare and Institutions Code, relating to seniors.

[Approved by Governor September 27, 2022. Filed with Secretary of State September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1855, Nazarian. Long-Term Care Ombudsman Program: facility access.

Existing law, as part of the Mello-Granlund Older Californians Act, establishes the Office of the State Long-Term Care Ombudsman, under the direction of the State Long-Term Care Ombudsman, in the California Department of Aging. Existing law provides for the Long-Term Care Ombudsman Program under which funds are allocated to local ombudsman programs to assist elderly persons in long-term health care facilities and residential care facilities by, among other things, investigating and seeking to resolve complaints against these facilities, and providing services to assist residents in the protection of their health, safety, welfare, and rights. Under existing law, if an individual is a patient in a skilled nursing facility when a written advance health care directive is executed, the advance health care directive is not effective unless a patient advocate or ombudsman signs the advance directive as a witness, as specified.

This bill would prohibit a skilled nursing facility or residential care facility from denying entry to a representative of the office acting in their official capacity, except as specified. The bill would authorize a facility, during a state of emergency, health emergency, or local health emergency to require a representative of the office entering the facility to adhere to infection control protocols for the duration of their visit that are no more stringent than those required for facility staff. The bill would make related findings and declarations.

The people of the State of California do enact as follows:

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

(a) During the COVID-19 pandemic, representatives of the Office of the State Long-Term Care Ombudsman were denied entry to long-term care facilities, despite explicit authorization to do so, as provided in Section 9722 of the Welfare and Institutions Code. In some instances, it was an owner-operator denying entry into a facility where quality of care was

substandard, and complaints from residents required entry into the facility for investigative purposes.

(b) An advance health care directive is a legal document that specifies how an individual wants their medical decisions to be made if they are unable to make those decisions. An advance health care directive informs an individual's health care team and loved ones regarding the kind of health care the individual wants, or who they wish to make health care decisions on their behalf if they cannot. Section 4675 of the Probate Code requires a written advance health care directive for a patient in a skilled nursing facility to be witnessed by a patient advocate or ombudsman in order to be effective; however, ombudsman representatives were not permitted to enter these facilities during the beginning of the COVID-19 pandemic. This created a significant problem for facility residents during a time when they had a critical need for the ombudsman's assistance, especially when residents contracted COVID-19 and experienced complications.

(c) It is, therefore, the intent of the Legislature in enacting this act to reaffirm the unabridged right of representatives of the State Long-Term Care Ombudsman to enter long-term care facilities in the performance of their official duties.

SEC. 2. Section 9718.5 is added to the Welfare and Institutions Code, to read:

9718.5. (a) (1) Except as provided in paragraph (2), a skilled nursing facility or residential care facility shall not, under any circumstances, deny entry to a representative of the office acting in their official capacity.

(2) Notwithstanding paragraph (1), nothing in this section is intended to affect the ability of the State Public Health Officer or a local health officer to limit contact with patients or staff at a skilled nursing facility or residents or staff at a residential care facility in order to prevent or limit the spread of a contagious, infectious, or communicable disease.

(b) During a state of emergency declared by the Governor, a health emergency declared by the State Public Health Officer, or a local health emergency declared by a local health officer, a skilled nursing facility or residential care facility may require the representative of the office entering the facility to adhere to infection control protocols for the duration of their visit that are no more stringent than those required for facility staff.