



State of California—Health and Human
Services Agency
**California Department of
Public Health**



GAVIN NEWSOM
Governor

November 19, 2021

AFL 21-47

TO: Skilled Nursing Facilities (SNFs)
Intermediate Care Facilities (ICFs)

SUBJECT: Assembly Bill (AB) 849 – Liability for Damages

All Facilities Letter (AFL) Summary

This AFL notifies all SNFs and ICFs of the chaptering of AB 849 (Chapter 471, Statutes of 2021), changing a court's method of computing damages in a civil action against a SNF or ICF licensee for violation of a resident's rights under federal or state law.

AB 849 revises the way a court computes damages in a civil action after finding a SNF or ICF licensee liable for a violation of a right of a resident or patient as set forth in Title 22, California Code of Regulations, section 72527 or 73523, or any other right provided by federal or state law, as follows:

- For violations that occurred prior to March 1, 2021, the licensee will be liable for up to \$500 for the entire civil action, plus costs and attorney's fees.
- For violations that occur on or after March 1, 2021, the licensee will be liable for up to \$500 for each violation, plus costs and attorney's fees.

An agreement by a SNF or ICF resident or patient to waive their rights to sue for violations of that resident's or patient's rights is void as contrary to public policy.

The new factors a court must use in determining the amount of damages to award are:

- The nature and seriousness of each violation.
- The likelihood and severity of the risk that each violation would cause a resident to suffer indignity, discomfort, or pain.
- The efforts made by the facility to prevent each violation from occurring or to prevent future violations.

In addition to the former or current resident or patient, civil actions may be brought by the legal representative, personal representative, or successor in interest of a current or former resident or patient.

CDPH's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities should refer to the full text of all applicable sections of the Health and Safety Code.

If you have any questions or concerns regarding this AFL, please contact your local district office.

Sincerely,

Original signed by Cassie Dunham

Cassie Dunham

Acting Deputy Director

Center for Health Care Quality, MS 0512 . P.O. Box 997377 . Sacramento, CA
95899-7377
(916) 324-6630 . (916) 324-4820 FAX
Department Website (cdph.ca.gov)



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