

AMENDED IN SENATE JULY 15, 2021

AMENDED IN SENATE JUNE 24, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 499**

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**Introduced by Assembly Member Blanca Rubio  
(Coauthor: Assembly Member Calderon)**

February 9, 2021

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An act to repeal and add Section 1569.47 of the Health and Safety Code, relating to referral sources.

LEGISLATIVE COUNSEL'S DIGEST

AB 499, as amended, Blanca Rubio. Referral source for residential care facilities for the elderly: duties.

(1) The California Residential Care Facilities for the Elderly Act generally requires the State Department of Social Services to license, inspect, and regulate residential care facilities for the elderly and imposes criminal penalties on a person who violates the act or who willfully or repeatedly violates any rule or regulation adopted under the act. The act prohibits a placement agency, as defined, from placing an individual in a licensed residential care facility for the elderly if the individual, because of a health condition, cannot be cared for within the limits of the license or requires inpatient care in a health facility. The act requires an employee of a placement agency who knows, or reasonably suspects, that a facility is improperly operating without a license to report the facility to the department, and requires the department to investigate those reports. The act further requires a placement agency to notify the appropriate licensing agency of any known or suspected incidents that would jeopardize the health or safety

of residents in a facility. The act specifically makes a violation of these requirements a crime.

This bill would recast the requirements on a placement agency and its employees to instead be requirements on a referral source, defined to mean any specified county department, state-funded program, agency, or person that is engaged in identifying senior housing options at residential care facilities for the elderly. The bill would prohibit a referral source from, among other things, referring a person to a residential care facility for the elderly in which the referral source has an ownership or management interest without a waiver. The bill would require a referral source, before sending a compensated referral to a residential care facility for the elderly, to provide a person or their representative with specific written, electronic, or verbal disclosures that include, among others, the referral source’s privacy policy. The bill would additionally require a compensated referral source to comply with additional requirements that include, among others, maintaining a minimum amount of liability insurance coverage. The bill would impose criminal penalties and civil penalties for a violation of these provisions, as specified. By expanding the existing crime under the act and specifying new criminal penalties, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

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

- 1 SECTION 1. Section 1569.47 of the Health and Safety Code
- 2 is repealed.
- 3 SEC. 2. Section 1569.47 is added to the Health and Safety
- 4 Code, to read:
- 5 1569.47. (a) The following definitions shall apply to this
- 6 section:
- 7 (1) “Compensated referral” means a referral by a private,
- 8 for-profit or nonprofit agency that is engaged in the business of
- 9 referring persons to residential care facilities for the elderly in

1 exchange for any consideration or thing of value, including a fee,  
2 commission, gift, or any reciprocal benefit.

3 (2) “Referral” means identifying and connecting a person or  
4 that person’s representative to a residential care facility for the  
5 elderly to facilitate the further evaluation, in consultation with the  
6 facility, of whether that facility is a suitable senior housing option  
7 for that person.

8 (3) (A) “Referral source” means any county welfare department,  
9 county social service department, county mental health department,  
10 county public guardian, general acute care hospital discharge  
11 planner or coordinator, state-funded program or private, for-profit,  
12 or nonprofit agency providing referral services, conservator  
13 pursuant to Part 3 (commencing with Section 1800) of Division 4  
14 of the Probate Code, conservator pursuant to Chapter 3  
15 (commencing with Section 5350) of Part 1 of Division 5 of the  
16 Welfare and Institutions Code, and regional center for persons  
17 with developmental disabilities, or a person or entity that provides  
18 a referral to a residential care facility for the elderly on behalf of  
19 the aforementioned entities, that is engaged in identifying senior  
20 housing options at residential care facilities for the elderly.

21 (B) A referral source does not include a licensee of a residential  
22 care facility for the elderly, or any professional services staff  
23 member of a residential care facility for the elderly, who on behalf  
24 of that facility, makes a referral, even if they have received a  
25 discount or other remuneration from the facility.

26 (b) (1) A referral source shall not ~~knowingly~~ refer a person to  
27 a facility providing care and supervision or protective supervision  
28 ~~unless if the referral source knows or reasonably suspects~~ the  
29 facility is *not* licensed as a residential care facility for the elderly  
30 or is *not* exempt from licensing under Section 1569.145. Violation  
31 of this paragraph is a misdemeanor.

32 (2) A referral source shall not ~~knowingly~~ refer an individual to  
33 a residential care facility for the elderly if *the referral source knows*  
34 *or reasonably suspects* the individual, because of their health  
35 condition, cannot be cared for within the limits of the facility’s  
36 license or requires inpatient care in a health facility. Violation of  
37 this paragraph is a misdemeanor.

38 (3) A referral source shall not refer a person to a residential care  
39 facility for the elderly in which the referral source, and an affiliated  
40 group under Section 1585 of the Financial Code or an immediate

1 family member of the referral source, has an ownership or  
2 management interest or a common employee in an executive  
3 management position, unless the referral source obtains a written  
4 waiver from the person or that person’s representative before  
5 making the referral. For purposes of this subparagraph, “immediate  
6 family” means a spouse, parent, child, or any person related by  
7 consanguinity or affinity within the second degree. Violation of  
8 this paragraph is a misdemeanor.

9 (4) (A) A referral source who knows, or reasonably suspects,  
10 that a facility that is not exempt from licensing is operating without  
11 a license shall report the name and address of the facility to the  
12 department. Failure to report as required by this subparagraph is  
13 a misdemeanor.

14 (B) The department shall investigate any report filed under  
15 subparagraph (A). If the department has probable cause to believe  
16 that the facility that is the subject of the report is operating without  
17 a license, the department shall investigate the facility within 10  
18 days after receipt of the report.

19 (5) A referral source shall notify the appropriate licensing  
20 agency of any known or suspected incidents that would jeopardize  
21 the health or safety of residents in a residential care facility for the  
22 elderly. A violation of this paragraph is a misdemeanor. Reportable  
23 incidents include, but are not limited to, all of the following:

- 24 (A) Incidents of physical abuse.
- 25 (B) Any violation of personal rights.
- 26 (C) Any situation in which a facility is unclean, unsafe,  
27 unsanitary, or in poor condition.
- 28 (D) Any situation in which a facility has insufficient personnel  
29 or incompetent personnel on duty.
- 30 (E) Any situation in which residents experience mental or verbal  
31 abuse.

32 (c) (1) Before sending a compensated referral to a residential  
33 care facility for the elderly located in California, a referral source  
34 shall provide the person or their representative with information  
35 that includes all of the following disclosures:

- 36 (A) A description of the referral source’s service.
- 37 (B) The referral source’s contact information, including business  
38 address, email address, and telephone number.

1 (C) A referral source’s privacy policy, or if the referral source  
2 maintains an internet website, a link or URL to the privacy policy  
3 on the internet website.

4 (D) A statement regarding whether and under what  
5 circumstances the referral source will be paid a fee by residential  
6 care facilities for the elderly to which the person is referred.

7 (E) A statement that the person or their representative may  
8 request at any time via email or by submitting a letter that the  
9 referral source cease contact with the person or their representative  
10 at points of contact they designate, such as telephone numbers and  
11 email addresses, and that the referral source will cease contact in  
12 response to that request and also cease making additional referrals  
13 on behalf of the person or the their representative.

14 (F) The following language: “Information regarding inspections,  
15 evaluations, complaints, and citations associated with any of  
16 California’s residential care facilities for the elderly, also known  
17 as assisted living facilities, can be viewed at the State Department  
18 of Social Services Community Care Licensing website at:  
19 [www.cdss.ca.gov](http://www.cdss.ca.gov). Additionally, during a health-related state of  
20 emergency, information about the active cases within residential  
21 care facilities for the elderly may also be posted on this website.”

22 (2) The information and disclosures required by paragraph (1)  
23 shall be provided to the person or their representative in a clear  
24 manner designed to give actual notice of its contents and may be  
25 provided, together or separately, in any the following methods:

26 (A) A written disclosure at least in 12-point bold font either in  
27 hardcopy form or by electronic means. *If the person or their*  
28 *representative provides the referral source with an email address,*  
29 *the referral source shall send an electronic version of the*  
30 *disclosure to the person or their representative’s email address.*

31 (B) A link to an electronic disclosure displayed on a web page  
32 in a larger font than the surrounding text.

33 (C) Verbally, if the verbal disclosure is given telephonically  
34 and recorded with the consent of the person or their representative.  
35 At the time of the verbal disclosure, a person or their representative  
36 *shall be informed that they may verbally request a written or*  
37 *electronic disclosure be provided to them. disclosure. If the person*  
38 *or their representative requests a written or electronic disclosure,*  
39 *the referral source shall provide the written or electronic*  
40 *disclosure to the person or their representative who makes the*

1 *request*. If, in a subsequent phone conversation, the person or their  
2 representative verbally requests a written disclosure, the referral  
3 agency shall inform them of the procedure for submitting the  
4 request in writing pursuant to paragraph (3).

5 (3) The referral source shall maintain records of the disclosures  
6 set forth pursuant to this subdivision for a period of three years  
7 and shall provide a copy of the disclosures provided to the person,  
8 representative, or the residential care facility for the elderly, upon  
9 written request.

10 (4) In addition to the requirements of paragraph (1), a  
11 compensated referral source shall comply with all of the following:

12 (A) Use a nationally accredited service provider to perform  
13 background checks on referral sources who have direct contact  
14 with persons or their representatives.

15 (B) Maintain liability insurance coverage in an amount of at  
16 least one million dollars (\$1,000,000) per occurrence and two  
17 million dollars (\$2,000,000) in total annual aggregate for negligent  
18 acts or omissions by the referral source or any of its employees.

19 (C) Accept remuneration only from residential care facilities  
20 for the elderly with which the referral source has a written contract.

21 (D) Maintain and prominently display a privacy policy on every  
22 internet website it operates or, if the referral source does not  
23 maintain an internet website, then it shall provide the person or  
24 their representative with a written copy of the privacy policy.

25 (E) Refrain from holding any power of attorney for a resident  
26 or potential resident or from holding that person's property in any  
27 capacity.

28 (F) Cease making referrals on behalf of the person or their  
29 representative ~~within 15~~ *as soon as feasible but not more than 10*  
30 days after receipt of ~~a~~ *an oral or* written request, pursuant to  
31 subparagraph (E) of paragraph (1).

32 (G) Cease contacting a person or their representative ~~within 15~~  
33 *as soon as feasible but not more than 10* days after receipt of ~~a~~ *an*  
34 *oral or* written request, pursuant to subparagraph (E) of paragraph  
35 (1).

36 (H) *Obtain the affirmative consent of the person or their*  
37 *representative for the following:*

38 (i) *Making referrals on a person's behalf. Consent may be*  
39 *obtained verbally in a telephone conversation and recorded in an*  
40 *audio file, electronically, or in writing.*

1     (ii) *Disclosing a person’s personal information, as defined in*  
2 *Section 1798.140 of the Civil Code, for any purpose other than*  
3 *those necessary to make an authorized referral, unless the person*  
4 *or their representative provides affirmative informed consent to*  
5 *the disclosure.*

6     (d) A referral source that violates subdivision (c) is subject to  
7 a civil penalty of between two hundred fifty dollars (\$250) and  
8 one thousand dollars (\$1,000) for each violation, and Section  
9 1569.40 shall not apply. A district attorney may institute a  
10 proceeding in superior court to recover the civil penalty under this  
11 subdivision and to restrain and enjoin a violation of subdivision  
12 (c).

13     (e) *In addition to any other action, violations of this section are*  
14 *subject to an action under Chapter 5 (commencing with Section*  
15 *17200) of Part 2 of Division 7 of the Business and Professions*  
16 *Code.*

17     SEC. 3. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.