

BILL ANALYSIS

S.B. 1663
By: Wentworth
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Individuals who live in assisted living facilities have the right to give advance directives, such as medical power of attorney, that will be followed in case of incapacitation. Currently, the penalties for not honoring an advance directive only apply in certain instances and are not sufficient to ensure that an advance directive will be honored.

S.B. 1663 amends provisions relating to the disregard or violation of a resident's advance directive by a convalescent home, nursing home, or related institution and provides an administrative penalty.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1663 amends the Health and Safety Code to require the Department of Aging and Disability Services (DADS) to assess an administrative penalty against a convalescent home, nursing home, or related institution that knowingly employs or has on staff a health care practitioner who knowingly disregards or violates a resident's advance directive if the institution has included a statement in its written policies that the institution will follow a resident's advance directive. The bill requires a person, including an owner or employee of such an institution, who has cause to believe that a resident's advance directive has been or may be knowingly disregarded in violation of a written policy to report such violation consistent with the requirements of state law on reports of abuse or neglect in such an institution.

S.B. 1663 specifies that it is not a violation of these provisions or any other law if an institution, its owners, employees, agents, or physicians in good faith attempt to resuscitate a resident because the institution or those persons who practice in the institution reasonably believe that the process of dying appears to be the result of an accident, unnatural causes, or suspicious circumstances. The bill authorizes an institution, to the extent consistent with federal law and on the basis of conscience, to object to honoring an advanced directive if the institution includes in its policies and explains to each prospective resident before admission to the institution the circumstances under which the institution would not follow instructions of an advanced directive. The bill requires such policies and explanation to include a clear and precise statement of limitations that result from the institution's objection to implement advanced directives based on conscience, a description of the differences between an institution-wide policy of objection on the basis of conscience and an objection that may be raised by an individual healthcare provider, and a description of the range of medical conditions or procedures affected by an objection based on conscience.

S.B. 1663 requires DADS, after providing notice and opportunity for a hearing to the holder of a license to establish, conduct, or maintain a convalescent home, nursing home, or related

institution, to suspend or revoke a license if DADS finds that the license holder has been assessed three or more administrative penalties for knowingly violating a resident's advance directive.

EFFECTIVE DATE

September 1, 2009.