

SUBJECT: Enforcement of civil penalties against assisted living facilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Rose, S. King, J. Davis, Eissler, Herrero, Naishtat, Pierson
0 nays
2 absent — Hughes, Parker

SENATE VOTE: On final passage, April 12 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: The Department of Aging and Disability Services (DADS) regulates assisted living facilities. A person who violates a rule governing assisted living facilities that could threaten the health and safety of a resident is subject to a civil penalty of not less than \$100 nor more than \$10,000 for each violation. If these penalties or fees are not paid, DADS may request that the attorney general initiate a suit to collect the penalty.

DIGEST: SB 871 would specify that the attorney general had 30 days to notify DADS that it would accept a case to collect a penalty on behalf of the department before DADS would have to refer the case to another authority.

Investigation and attorney's fees could be assessed or collected on behalf of DADS or another state agency if a penalty under the chapter had been assessed. If a person liable for any funds owed DADS failed to pay the obligated amount, the state could seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. These parties could be found liable in the same or another suit if the state demonstrated that the obligation had not been paid or discharged.

The bill would define affiliate as it pertained to a party that could be held responsible for an obligation owed.

The bill would take effect September 1, 2007, and would apply only to a violation that occurred on or after that date.

**SUPPORTERS
SAY:**

SB 871 would clarify the provisions regarding filing civil suit against a party to an assisted living facility so that defendants could not use vague language as a loophole to evade the intent of the statute. Some defendants in civil suits have tried to have cases dropped by arguing over what actions would constitute the attorney general's acceptance of a case and whether those actions had been taken in a timely fashion to allow the attorney general to bring suit. The bill also would clarify that the attorney general could collect investigation and attorney's fees from a party to a suit if a penalty was assessed.

The bill also would give DADS more recourse when an obligation was owed to the department by expanding the parties from whom the obligation could be collected. The bill would limit collections of funds to appropriate parties with an interest in the facility against which the penalty was assessed. The definition of affiliate would mirror existing language governing civil suits in nursing facilities. Particularly in larger corporations, a shareholder with 10 percent voting power likely would have the largest share of stock and substantial sway on the operations of a facility.

**OPPONENTS
SAY:**

The bill would be too broad in its definition of affiliate and could bring an obligation upon individuals who should not face liability for the violations of another party. For example, the bill would allow a civil suit to be brought against a stockholder with 10 percent voting power in a facility. Such a party would not own a controlling interest in the facility and should not be held accountable for the actions of other parties that the stockholder had no means to influence.