

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 1554 (Skinner) – As Amended: April 22, 2014

SUBJECT: Residential care facilities for the elderly (RCFE): complaint investigations.

SUMMARY: Requires the Department of Social Services (DSS) Community Care Licensing Division (CCLD) to investigate complaints involving abuse, neglect, or serious harm to a RCFE resident within 24 hours, or 10 days depending on the nature of the complaint, and to complete investigations within 30 or 90 days, depending on the nature of the complaint. Specifically, this bill:

- 1) Clarifies that complainants may seek investigations, instead of inspections, when credible, non-harassing assertions of violations of law or regulation are made by any person.
- 2) Allows complaints to be made electronically or verbally, as well as in writing.
- 3) Requires DSS to make a preliminary review of the complaint upon receipt.
- 4) Requires DSS to notify the complainant of the name of the investigator within 2 working days, and then make an onsite investigation within 10 days after receiving the complaint.
- 5) Provides for a more immediate investigation within 24 hours if the complaint alleges credible abuse (including neglect), or an imminent threat of death or serious harm.
- 6) Assures priority action by DSS when the Long-Term Care Ombudsman submits a complaint that a licensee fails to provide the Ombudsman with a roster, census, or list of names and room numbers and locations of residents, or is restricting the Ombudsman's ability to:
 - a. enter a facility;
 - b. conduct unescorted and unhindered movement within the facility in order to provide visits, or hear, investigate and resolve complaints;
 - c. observe and monitor conditions of residents and the facility;
 - d. speak confidentially with residents; and
 - e. assist residents to protect their health, safety and rights.
- 7) Requires investigators to confer with complainants before conducting an onsite investigation in order to convey the proposed course of action.
- 8) Allows DSS to coordinate investigations when existing investigations are underway.
- 9) Maintains the confidentiality of the complainant unless the complainant specifically requests his/her name be released, and prohibits the department from giving a licensee advance notice of an inspection.

- 10) Provides for immediate civil monetary penalty of \$1000 for each day, of each violation and allows the department to take any other authorized enforcement actions for violations.
- 11) Itemizes the elements of the investigation to include all evidence, observed conditions, witness statements, interviews with facility staff, other residents, family members, visitors, long-term care ombudsman, and others who may have information about the complaint, or facility records.
- 12) Requires the investigation to be completed within 90 days unless law enforcement has established an investigation already, in which case DSS may extend the investigation if the department notifies the complainant with 48 hours; or 30 days for complaints involving imminent harm.
- 13) Provides for an appeal process in the event the complainant is dissatisfied with the department's findings or investigation, or enforcement actions resulting therein.
- 14) Specifically exempts from the California Public Records Act, disclosure of names of individuals identified in records collected by the Department of Social Services related to investigations and inspections of RCFEs.
- 15) Requires DSS to assure that licensees, officers and employees of licensees comply with anti-retaliation and anti-discrimination provisions of the RCFE Act.

EXISTING LAW:

- 1) Establishes the California Community Care Facilities Act (CCFA) to provide a comprehensive statewide service system of quality community care for people who have a mental illness, a developmental or physical disability, and children and adults who require care or services by a facility or organization.
- 2) Establishes the California RCFE Act, which requires facilities that provide personal care and supervision, protective supervision or health related services for persons 60 years of age or older who voluntarily choose to reside in that facility to be licensed by DSS.
- 3) Prohibits any person, firm, partnership, association, corporation or public agency from establishing, operating, managing, conducting or maintaining a Community Care Facility (CCF) or RCFE without a valid license provided by DSS.
- 4) Provides that any person who violates the RCFE Act shall be guilty of a misdemeanor and upon conviction be fined no more than \$1,000, imprisoned in county jail for up to one year, or both.
- 5) Establishes the Long-Term Care Ombudsman program as a result of the federal Older Americans Act (OAA) and the Mello-Granlund Older Californians Act (OCA), and places it within the California Department of Aging to encourage community contact and involvement with elderly patients or residents of long-term care facilities through the use of volunteers and volunteer programs.

- 6) Requires the Ombudsman, either personally or through representatives, to identify, investigate, and resolve complaints that may adversely affect the health, safety, welfare, or rights of residents of long-term care facilities.
- 7) Provides that representatives of the Ombudsman program have access to long-term care facilities and residents, and the medical and social records of residents.
- 8) Prohibits willful interference with the functions of the Ombudsman representative and the Ombudsman program.
- 9) Prohibits retaliation and reprisals by a long-term care facility, and provides for sanctions with respect to interference, retaliation, and reprisals.
- 10) Provides that representatives of the Ombudsman program have the right to enter and move about long-term care facilities to identify, hear, investigate, and resolve complaints; observe and monitor conditions of residents and facilities; speak confidentially with residents; and provide services to assist residents in protecting their health, safety, welfare, and rights.
- 11) Prohibits RCFE licensees or their staff from discriminating or retaliating against a resident if the resident has participated in the filing of a complaint, grievance, or request for inspection with the California Department of Social Services (DSS) or with a local or state ombudsman.
- 12) Prohibits an RCFE licensee or their staff from discriminating or retaliating against a fellow staff person, as specified, if the staff person has participated in the filing of a complaint, grievance, or request for inspection with DSS or with a local or state ombudsman.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: "Due to the lack of regular inspections of RCFEs, it is critical that CCL have a strong and effective complaint investigation system to identify and stop instances of abuse and neglect. Yet the opposite is true. CCL's current complaint investigation system is plagued by problems of inadequate investigation, poor communication with complainants, lack of transparency, weak enforcement, and appeal procedures that protect operators and imperil residents. CCL does not send written findings to complainants except upon request, and does not give complainants an opportunity to appeal CCL's findings. Even when complaints are substantiated, meaningful enforcement action by CCL is very rare.

"Elders living in RCFEs today are especially vulnerable to abuse, neglect and other types of mistreatment. Many, if not most of them, suffer from dementia, are in poor health and are physically and emotionally fragile. Despite their growing needs, they live in facilities that are loosely regulated and are not necessarily designed or required to accommodate their needs. According to CCL, it received nearly 3,000 complaints against RCFEs in FY 2011/12, an astounding number when one considers that many residents and their families may have never seen a CCL inspector. These complaints may be the tip of the iceberg. The California Long Term Care Ombudsman Program reported receiving 11,673 complaints against RCFEs in FY 2012, 1,673 of which involved abuse.

"AB 1554 would require CCL to begin investigations of complaints involving abuse, neglect, or serious harm to a RCFE resident within 24 hours, complete investigations of these highest priority complaints within 30 days, and ensure the confidentiality of patients, staff, and whistleblowers. Additionally, the bill would require CCL to complete investigations of all other complaints within 90 days; to interview complainants, residents and other pertinent parties during investigations; to send written findings to complainants; and to provide complainants an opportunity to appeal complaint findings."

Background: California has the largest population of people age 65 and older of any state in the nation. California's 65+ population is projected to double from its 2010 census of about 4.3, to 8.4 million 2030. By 2035, the 65+ population will exceed 20% of the population. This year, California's 65+ population will reach 5 million people. Although research shows that older, low-income women's life-spans are decreasing, most other populations are experiencing longer life-spans. As California's population ages, it is becoming more culturally and ethnically diverse. Disability is highly associated with age, and as the aged population expands, so will the presence of disabilities within our communities.

RCFE is a model of care overseen by the Department of Social Services. RCFEs provide care, supervision and assistance with activities of daily living, such as bathing, dressing, ambulating, grooming, and other personal activities. They may also provide incidental medical services under special care plans. Facilities provide services to persons 60 years of age and over and persons under 60 with compatible needs. RCFEs are also referred to as assisted living facilities or board and care homes. Facilities can range in size from six or fewer, to over 100 beds. Residents in RCFEs require varying levels of personal care and protective supervision. Since RCFEs are non-medical facilities, they are not required to have nurses or other health personnel on staff. Oversight of RCFEs consists of licensing visits once every 5 years. For RCFEs under the scrutiny of the CCL division, or on probation, annual unannounced visits from CCL occur.

The number of RCFEs, and corresponding workload to oversee and enforce laws and regulations therein, has grown rapidly during the past decade. In 2004, there were about 6,500 licensed facilities. By 2014, nearly 7,600 facilities housing over 175,000 people are in operation throughout the state. Recent media has captured the ramifications of the rapid expansion, and diversification of the RCFE industry, as it struggles to meet the housing and care needs of a growing aged population, and the growing presence of more disabilities. Although most RCFE's are administered and staffed by competent caregivers and people committed to the wellbeing of their clients, frightening accounts of poor care and administration has focused policy makers on the RCFE model of care. In September 2013, the California Health Care Foundation (CHCF) Center for Health Reporting and San Diego Union Tribune reported that at least 27 San Diego County seniors died from neglect and injuries in RCFEs, in some cases with no investigation by CCL. Also reported, The CCL Investigations Branch, an internal police force, has not made an arrest in nine years even though the investigation found that hundreds of RCFE residents have suffered sexual assaults, physical abuse, medication errors, life threatening bedsores and other abuses. During the past year, Californians monitoring local, state and national media have been confronted with no less than the following range of media reports about RCFEs:

- PBS Frontline/ProPublica: "Life and Death in Assisted Living" and "Elderly, At Risk and Haphazardly Protected" July, 2013.

- San Diego Union Tribune, California Health Care Foundation Center for Health Reporting: "Deadly Neglect, Medical Errors, Weaker Rules Signal Safety Problems in California Assisted Living Homes" September, 2013.
- San Jose Mercury: "Shuttering Castro Valley Senior Care Facility Sparks Criminal Investigation" October, 2013.
- The Sacramento Bee: "Care Home Owner to Stand Trial" March 2013.

Governor's Budget Proposal: Coinciding with critical media coverage of RCFE oversight, Governor Brown proposed the following budget concepts:

- 1) **Additional positions.** The additional 71.5 positions to assist in CCL enforcement activities include six special investigator assistants, a nurse practitioner, five licensing program managers, and others.
- 2) **Staff training and development** for new field staff and training for supervisors and managers by expanding the Licensing Program Analyst academy, implementing ongoing training, and strengthening the Administrator Certification Section.
- 3) **Create a Mental Health Populations Unit** which would provide technical assistance to enforcement staff and licensees, as well as to individuals who reside in facilities who have increasing mental health care needs.
- 4) **Establish a Corporate Accountability Unit.** With increased applications for Residential Care Facilities for the Elderly and corporate mergers and acquisitions for facilities, the additional attorney and associate governmental program analyst would perform systemic noncompliance analysis and ensure corrective actions; create management reports that identify patterns and trends; make corrective action recommendations; and, follow-up on corrective action plans to ensure that licensees with poor compliance patterns do not support operational expansions.
- 5) **Increased civil penalties.** Because the current civil penalty structure is related to a "per violation" event, the current maximum civil penalty, even in response to serious injury or death of a resident, is \$150.
- 6) **Establish a Temporary Manager and Receivership Process,** to appoint a temporary manager or receiver to act as the provisional licensee, if DSS determines that residents of a facility are likely to be in danger of serious injury or death, and the immediate relocation of clients is not feasible.
- 7) **Specialized complaint hotline.** Create a specialized and centralized toll-free public complaint hotline, which can help acquire better initial information, conduct consistent prioritization, and dispatch incoming complaints to regional offices.
- 8) **Centralize application processing** for Adult and Senior Care facilities, which is expected to increase inspections of licensed facilities to at least once every two years.

- 9) **Establish a statewide Quality Assurance Unit** to track information statewide, including complaints, actions, or performance.
- 10) **Establish an Emergency Client/Resident Contingency Account** to be used at the discretion of the Director of DSS for the care and relocation of clients and residents, when a facility's license is revoked or temporarily suspended.

Supporters: The California Advocates for Nursing Home Reform, the measure's sponsor, writes that "the last year has brought many shocking revelations about the mistreatment of California elders who live in Residential Care Facilities for the Elderly (RCFEs). A central theme of the media and advocacy reports is that RCFE residents are increasingly exposed to serious harm and death due to their extraordinary vulnerability and California's failure to respond when their mistreatment is reported or discovered. AB 1554 will help protect California's at-risk elders in RCFEs by requiring Community Care Licensing (CCL) – the state agency charged with investigating complaints about RCFEs – to begin investigations of the most serious complaints within 24 hours and to complete these investigations within 30 days. The bill also sets standards for completing investigations of less serious complaints and establishes basic due process rights for complainants."

Previous Hearing: AB 1554 was previously heard and amended in the Assembly Human Services Committee where it passed on a vote of 6-0-1 (Hall).

Related Legislation:

AB 1816 (Yamada) Nursing Home Investigations: would establish time-frames for investigations of complaints and reports of abuse, misconduct, and mistreatment within skilled nursing facilities.

AB 1554 is one-of a multi-bill package of reform measures currently pending in the legislature:

SB 894 (Corbett) Suspensions and Revocation: would amend current law to strengthen and improve the procedures regarding suspension and/or revocation of licenses and to create expedited timelines for the safe relocation of residents when a facility's license has been revoked.

SB 895 (Corbett) Annual Inspections: would amend Health and Safety Code section 1569.33 to require CCL to conduct unannounced, comprehensive inspections of all RCFEs at least annually.

SB 911 (Block) Administrator and Staff Training: would increase the hours of training for both administrators and direct care staff, and increase the training requirements for staff serving persons with dementia or who distribute medication for resident self-administration.

SB 1153 (Leno) Ban on Admissions: would give DSS the ability to impose a ban on new admissions to a RCFE to protect unknowing future residents and give the facility time to focus their resources on fixing its problems before taking on additional care responsibilities.

AB 1554 (Skinner) Complaint Investigations: would require CCL to begin investigations of complaints involving abuse, neglect, or serious harm to a RCFE resident within 24 hours; to complete investigations of these highest priority complaints within 30 days; and to ensure the confidentiality of patients, staff and whistleblowers.

AB 1571 (Eggman) Online Consumer Information System: would require that DSS/CCL establish an on-line RCFE Consumer Information system to include specified, updated and accurate license, ownership, survey and enforcement information on every licensed RCFE in California with components to be phased in over a five (5) year period ending June 30, 2019.

AB 1572 (Eggman) Resident and Family Councils: would promote the development of Resident Councils and Family Councils in RCFEs by requiring RCFEs to, among other things, assist in the formation of Resident Councils at the request of two or more residents and prohibit RCFEs from interfering with the formation of Family Councils.

AB 2171 (Wieckowski) Resident Bill of Rights: would establish a statutory bill of rights to address the needs and interests of RCFE residents in areas such as visitation, privacy, confidentiality, personalized care, autonomy, informed consent, freedom from abuse and restraint, adequate staffing and others.

AB 2236 (Stone and Maienschein) would increase fines for violating laws and regulations and give "teeth" to CCL to stop and deter threats to resident health and safety.

REGISTERED SUPPORT / OPPOSITION:

Support

California Advocates for Nursing Home Reform (CANHR) - Sponsor
Alliance on Aging

American Association of Retired Persons (AARP)

American Federation of State, County and Municipal Employees (AFSCME). AFL-CIO

Assisted Living Consumer Alliance (ALCA)

California Advocates for Nursing Home Reform (CANHR)

California Assisted Living Association (CALA)

California Communities United Institute

California Continuing Care Residents Association (CALCRA)

California Long-Term Care Ombudsman Association (CLTCOA)

California Retired Teachers Association (CalRTA)

Consumer Federation of California (CRC)

Contra Costa Advisory Council on aging (CCACOA)

County of San Diego

County Welfare Directors Association of California (CWDA)

Disability Rights California (DRC)

Elder Abuse Task Force of Santa Clara County

Elder Law & Advocacy

Jewish Family Service of Los Angeles

Johnson Moore Trial Lawyers

LeadingAge California

Long Term Care Services of Ventura County, Inc.

National Association of Social Workers-California Chapter (NASW-CA)

National Consumer Voice for Quality Long-Term Care

Ombudsman & HICAP Services of Northern California

Ombudsman Services of Contra Costa

Valentine Law Group
One individual.

Opposition

Numerous individuals (tens).

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