

Date of Hearing: April 1, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 1572 (Eggman) – As Amended: March 24, 2014

SUBJECT: Residential care facilities for the elderly (RCFE): resident and family councils.

SUMMARY: Amends Sections 1569.157 and 1569.158 of the Health and Safety Code to update and modernize resident councils and family councils. Specifically, this bill:

- 1) Renames "resident-oriented facility councils" as "resident councils."
- 2) Clarifies that facility staff, a Long-Term Care Ombudsman (LTCO) program representative, and other participation at resident council activities is permissive, upon invitation of the resident council.
- 3) Requires facilities to consider written recommendations of the resident council and respond within 14 calendar days, in writing.
- 4) Prohibits facility policies from limiting the right of residents to meet independently with outside persons, or facility personnel, as determined by the resident council.
- 5) Requires facilities to orient resident council members of their rights to participate in facility regulatory inspections.
- 6) Requires facilities to promote resident councils by informing new and current residents that a resident council exists, the meeting dates, time and place, and the resident contact.
- 7) For facilities with 16 or more beds, a staff person shall be designated to assist the resident council with meeting and notification arrangements, and provide space to post resident council information in a prominent place.
- 8) If resident councils do not exist, the facility shall provide notice to residents upon admission, of their right to form a resident council, and receive a copy of the codes authorizing resident councils. This information must also be provided to the newly admitted residents family, friends or representatives.
- 9) Requires facilities to share contact information of the resident representative of the resident council with the Long-Term Care Ombudsman upon request, and with permission of the resident council.
- 10) Prohibits discrimination or retaliation, against any individual as a result of their participation in the resident council; refusing to publicize or provide space for resident council meetings; failing to respond to written requests in a timely manner; and establishes \$250 dollar per day fine for violations.

- 11) Requires facilities to post a copy of the state law related to resident councils labeled "Rights of Resident Councils" in a prominent place that is accessible to residents, families, friends, or representatives.
- 12) Prohibits an RCFE from banning the formation of a family council, or banning participants from meeting independently with anyone, including facility personnel, during nonworking hours.
- 13) Requires access to common meeting space during mutually agreed upon times, and shall be provided adequate space to post meeting notices, minutes, information and newsletters.
- 14) Declares family council meetings are private; personnel and visitors may participate by invitation only.
- 15) Declares facilities must consider the actions of family councils, and must respond in writing, within 14 calendar days of any action or inaction.
- 16) Requires that when a family council exists, meeting notices shall be included in routine mailings, and shall inform family members, friends and representatives identified on the admissions agreement during the admission process, the existence of the family council, and name the family council representative.
- 17) Requires facilities to share the name and contact information of the family representative with the Long-Term Care Ombudsman.
- 18) If a facility has no family council, the facility shall provide new residents, their family, friends and representatives with information on their right to form a family council.
- 19) For facilities with 16 or more residents, facilities must provide staff assistance in the form of a staff liaison to the council, to respond to written requests that result from family council meetings.
- 20) Establishes conditions for willful interference when a facility interferes with the formation, maintenance, or promotion of a family council, or for the family council's participation in the inspection process, retaliation, refusing to publicize meetings, or provide meeting space, or failure to respond to written requests in a timely manner.

EXISTING LAW:

- 1) Establishes the California Community Care Facilities Act which includes licensing and regulation provisions relative to adult residential facilities, group homes, and RCFEs.
- 2) Establishes that RCFEs will provide a model of non-medical residential care for persons 60 years of age or over, and permits RCFEs to provide varying levels and intensities of care and supervision based on the resident's needs.
- 3) Provides for the licensure and regulation of RCFEs by the State Department of Social Services (DSS) and establishes the requirements for licensure and license renewal, including

facilitating the formation of resident-oriented facility councils, and allowing the formation of family councils.

- 4) Requires every facility, at the request of a majority of the residents, to assist with the formation of a resident-oriented facility council composed of residents or family members, to make recommendations to facility management to improve quality of life, and strategies to enforce resident rights.
- 5) Allows the formation of family councils when requested by a member of a resident's family or responsible party, and grants the family council a private meeting room during agreed upon times; allows family councils to meet privately with outside persons, such as the Long-Term Care Ombudsman (LTCO) and other nonprofit or government organizations, or with facility personnel during nonworking hours.
- 6) Requires facilities to grant family councils access to space on bulletin boards to post and display agendas, meeting notices, and newsletters.
- 7) Declares that a willful or repeated violation of these provisions is a misdemeanor punishable by a fine of up to \$1,000, imprisonment in county jail for up to 1 year, or both.
- 8) Establishes the Long-Term Care Ombudsman Program, administered pursuant to the Mello-Grandlund Long-Term Care Act of 1996, to assist residents in the assertion of their civil and human rights through the encouragement of community contact and involvement.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: "This bill is a necessary step in protecting elderly residents of residential care facilities for the elderly (RCFE). RCFEs have come under great scrutiny in California and this bill is a proactive effort to prevent incidents from occurring in facilities. The promotion and establishment of resident and family councils will encourage a collaborative approach to addressing problems and concerns before they endanger the health and safety of residents. Consequently, resident and family councils will enhance the quality of care in these facilities and potentially save state resources."

Background: California's aged population is growing rapidly. The state's 65+ population will reach 5 million people this year. By 2035, the state's population profile will consist of one-in-five over age 65, a demographic shift expected to present vexing problems for policy makers and governmental agencies attempting to address care needs of this expanding and diversifying population while the pool of those available to give care remains flat.

Residential care facilities for the elderly (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.

**Growth in the number of RCFE Licensees:**

<b><u>Fiscal Year:</u></b>	<b><u># of Licenses</u></b>
FY 2000-2001	6,187
FY 2001-2002	6,204
FY 2002-2003	6,313
FY 2003-2004	6,491
FY 2004-2005	6,730
FY 2005-2006	6,992
FY 2006-2007	7,334
FY 2007-2008	7,707
FY 2008-2009	7,847
FY 2009-2010	7,822
FY 2010-2011	7,681
FY 2011-2012	7,695

\*As of March 14, 2014 there were 7570 RCFEs operating in California serving 176,026 residents.

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 within our communities.

In response, the Governor has proposed the following budget initiatives to assist DSS with their oversight activities:

- 1) **Additional positions.** The additional 71.5 positions to assist in CCL enforcement activities including 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) **Recognizing the changing needs** of clients in RCFEs, the Governor's budget proposes that DSS will assist with policy and practice development for medical and mental health conditions in community facilities, by establishing medical expertise resources. Although CCL has no staff with medical expertise, DSS licenses facilities that do allow for incidental medical care.
- 4) **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.
- 5) **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.

- 6) **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.
- 7) **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.
- 8) **Specialized complaint hotline**, 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.
- 9) **Centralized application processing** for Adult and Senior Care facilities, which is expected to increase inspections of licensed facilities to at least once every two years.
- 10) **Establish a statewide Quality Assurance Unit** to track information statewide, including complaints, actions, or performance. It also does not provide aggregate data to review and identify patterns.
- 11) **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.

As part of the rules and regulations governing an RCFE, facilities must allow resident councils and family councils to be convened.

#### FAMILY COUNCILS:

The primary purpose of a family council is for families, as a group, to influence the quality of residents' care. Whatever affects the residents' lives is a proper concern of the family council, whether it's the "look and feel" of the facility, the day-to-day care, resident rights, or the activity program. Family councils give a stake in the facility's administration, and a mechanism for families to add value to the facility, and the residents' quality of life.

Family councils offer a forum to communicate with the facility staff. Facility staff is typically invited to specific meetings at specific times to discuss specific concerns. For example, if concerns about dietary issues arise, the council may invite the dietician to talk to the council, answer questions and address these concerns. Effective family councils provide a way to resolve concerns before they rise to the level of an official complaint. Family council members benefit directly from sharing information, support, and encouragement. By working together to solve problems, families feel less isolated and powerless.

#### RESIDENT COUNCILS:

Resident councils are one method that assisted living communities can use to continue delivering a high level of quality care and services to residents. Resident councils are an avenue for open communication between the community’s management and its residents. When resident councils exist, they are often an extension of the activity program rather than an independent group. Resident councils offer an additional forum for dialogue among residents, management and staff, which opens communication in order that residents maintain a level of control over their daily lives. Resident councils are a place for collaborative discussions about activities, dining services, housekeeping, and concerns with administration and staff. Good communications and good relationships is key for many people who desire inclusion, and in many ways, can

supplement state oversight activities and can anticipate problems before they become systemic issues.

**Previous Legislation**

AB 2262 (Lanterman, Lewis, and Brown, Ch. 1203, Stats. 1973) established the Community Care Facilities Act and provided a coordinated comprehensive statewide service system of quality community care for mentally ill, developmentally and physically disabled, and children and adults who require care or services by a facility or organization.

SB 185 (Mello, Ch. 1127, Stats. 1985) was enacted to provide for the licensing, regulation, and operation of residential care facilities for the elderly.

AB 3459 (Friedman, Ch. 1333, Stats. 1990) was enacted to provide for the licensing, regulation, and operation of residential care facilities for persons with a chronic, life-threatening illness.

AB 4319 (Mello, Ch. 692, Stats. 1988) authorized family councils in residential care, and skilled nursing facilities.

SB 1102 (Roberti, Ch. 466, Stats. 1989) allowed family councils in residential care facilities for the elderly (RCFES).

**Recommended clean-up amendments:**

**Amendment #1:**

On page 3, lines 7-12:

7 of the facility, ~~and may include~~ **F**amily members or ~~friends of~~  
8 ~~residents,~~ resident representatives, advocates, or long-term care  
9 ombudsman program representatives, ~~Facility~~ **facility** staff or others,  
10 ~~including long-term care ombudsman program representatives,~~  
11 may participate in resident council meetings and activities at the  
12 invitation of the resident council.

**Amendment #2:**

On page 4, line 2, strike "faculty" and replace with "facility"

**Amendment #3:**

On page 5, lines 19 and 20:

Strike out: "Notwithstanding any other law," and start that sentence at that point.

**Amendment #4:**

On page 6, line 32:

Strike "and" and replace with "or"

Amendment # 5:

On page 7, lines 26 and 27:

Strike out: "Notwithstanding any other law," and start that sentence at that point.

REGISTERED SUPPORT / OPPOSITION:

Support

California Advocates for Nursing Home Reform (CANHR)  
California Communities United Institute  
California Continuing Care Residents Association (CALCRA)  
California Long-Term Care Ombudsman Association  
California Senior Legislature  
Consumer Federation of California  
County of San Diego  
Elder Abuse Task Force of Santa Clara County  
Elder Law and Advocacy  
Jewish Family Service of Los Angeles  
Johnson Moore Trial Lawyers  
LeadingAge California-Support if Amended  
Long Term Care Services of Ventura County, Inc.  
National Association of Social Workers (NASW)-California Chapter  
National Senior Citizens Law Center  
Ombudsman Services of Contra Costa  
State Long-Term Care Ombudsman  
Valentine Law Group  
Numerous individuals.

Opposition

None on file.

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