

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 1899 (Brown) – As Amended: April 22, 2014

**SUBJECT:** Residential care facilities for the elderly licensure: internet complaint reporting, license forfeiture and lifetime ban.

**SUMMARY:** This measure establishes a telephonic hotline and an internet-based complaint intake mechanism at the Department of Social Services (DSS) for consumers who wish to register a complaint about a Residential Care Facility for the Elderly (RCFE), and requires an RCFE license to be revoked when the licensee abandons a facility, and then bans that individual from licensure for life. Specifically, this bill:

- 1) As of January 1, 2015, establishes a lifetime ban upon an RCFE licensee who is required to forfeit his/her license for abandoning an RCFE.
- 2) Requires the Director of the Department of Social Services to establish and maintain a telephone hotline, and an internet-based web-site dedicated to accepting public complaints regarding RCFEs.
- 3) Requires the web-site to host data related to final actions resulting in citation, suspension, or revocation taken against each licensee, indexed by the name of the licensee and by the name of the facility.

**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.
- 4) Requires that an RCFE license must be forfeited prior to expiration when a licensee sells or transfers a facility or facility property, is convicted of assault, sexual battery, rape, cruel or inhuman punishment, lewd and lascivious acts, or any violent felony, or upon death of the licensee.
- 5) Allows any person to request an inspection of a RCFE by filing a complaint – orally or in writing.
- 6) Requires DSS to conduct a preliminary review of every complaint and conduct an onsite inspection within 10 days unless the complaint is determined to be willful harassment, and the complainant was promptly informed of the Department's course of action.

- 7) Authorizes the Director of DSS to deny, suspend or revoke an RCFE license under specified conditions.

FISCAL EFFECT: Unknown

COMMENTS:

Background: California's aged population is growing rapidly. The state's 65+ population will reach 5 million people, or about 14% of the population, 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.

The DSS has overseen a rapid increase of RCFEs, along with a recent plateau of that growth trend. Between 2001 and 2009, RCFE licensees increased from about 6,200 to about 7,850, representing 26.8% growth. By March of this year, the number of RCFE licensees was 7570, reflecting a 3.5% decline since 2009.

<u>Fiscal Year:</u>	<u>Number of Licenses</u>
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

Recent media has captured the ramifications of the rapid expansion, and diversification of the RCFE industry and DSS oversight, as the industry and regulators struggle to meet the housing and care needs of a growing aged population, and the corresponding increased presence of disabilities within our communities. One case that received significant media attention focused upon the abandonment of Valley Springs Manor, a RCFE with 19 residents in the city of Castro Valley. The facility had been frequently visited by Community Care Licensing Division,

(CCLD) the unit within DSS designated to enforce standards due to numerous regulatory violations. In May 2013 CCLD, taking action in response to the beleaguered facility's poor care history, revoked Valley Springs Manor's license. Licensees are granted appeal rights in such instances and the revocation was immediately appealed, which allowed the facility to remain operational. The licensee abandoned the facility during the fall of 2013, ultimately leaving its frail clientele under the care of the facility cook, a noble effort for which he was rewarded a \$3,800 citation which CCLD later rescinded. Even though CCLD issued the citation, it was not until the cook called "911" that emergency protocol to protect the residents was activated.

Governor's Proposal: The Governor has proposed the following budget initiatives to assist DSS with their oversight activities. Though budget initiatives, these proposals carry significant policy implications as well, including #8 below, similar to the complaint mechanism embodied in AB 1899.

- 1) **Additional positions.** An additional 71.5 positions to assist in CCLD 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 CCLD 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, corporate mergers and acquisitions, 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.
- 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.
- 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.

Author's Statement: "It is estimated that by 2020 our senior population will increase and total 15.7 million seniors, which will comprise 14% of the nation's population. This will increase the numbers of seniors in residential care facilities and the accompanying health and safety code violations, which lead to abandonment of a facility. AB 1899 seeks to address the abandonment of residential care facilities and the need to have an efficient and centralized system of obtaining accurate information about these facilities to prevent violators from repeatedly violating health and safety codes with impunity.

"AB 1899 is designed with the anticipation of our growing senior population and the changing role of residential care facilities for the elderly (RCFE) in California. Data from the Medicare Current Beneficiary Survey, or MCBS, the elderly nursing home population has declined over the past 10 years; more elderly people are living in residential care facilities and other types of care facilities, in community-based housing with supportive services, and in houses in a regular community with no supportive services. That trend is especially pronounced for people 85 or older. Recent reports about health and safety code violations and the incidents occurring in California's RCFEs warrants the need for license revocation for abandonment of a facility. A centralized and modernized method of inquiring, obtaining, and reporting information about these facilities through the creation of a telephone hotline and a progressive internet website program would allow CDSS to better monitor and track licensure of RCFEs and help protect California's elderly RCFE consumers."

Supporters Argue: Industry, local government and advocates support AB 1899 for the provisions related to banning licensees from obtaining new licenses once they have abandoned a facility. Law enforcement cites their support for the telephone hotline and internet website dedicated to complaint reporting, and posting of enforcement actions. The California Commission on Aging, the state's designated principle advocate for older adults, stresses that licensees not be allowed to return to the industry if they have abandoned a facility. The California Long-Term Care Ombudsman Association stresses the value to consumers when they have an on-line resource to consult about concerns related to facility quality and licensing compliance.

Lifetime Ban: The author may wish to consider developing language to provide for a mechanism that offers due process to a former licensee whose license was revoked for allegedly abandoning a facility and its residents, and who is subsequently banned from re-licensure. A lifetime ban, though understandable as a remedy for the state to keep untrustworthy licensees with histories of

neglect and abandonment out of the RCFE industry, is a powerful and heavy "tool" to deliver to a state regulator.

Previous Hearing: AB 1899 was heard in the Assembly Human Services Committee on April 8, 2014, and passed on a 6-0 vote.

Related Past 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 (RCFE).

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.

Current Session:

SB 894 (Corbett) Suspensions and Revocation: this bill 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: this bill 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: increases the hours of training for both administrators and direct care staff; increases the training requirements for staff serving persons with dementia or who distribute medication for resident self-administration.

SB 1153 (Leno) Ban on Admissions: this bill gives DSS the ability to impose a ban on new admissions to a RCFE. This will 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: This bill 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: AB 1571 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: will 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 that addresses 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) Residential Care Facilities: 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)  
California Assisted Living Association (CALA)  
California Commission on Aging  
California Police Chiefs Association  
Community Residential Care Association of California  
County of San Diego  
LeadingAge California – Support if Amended  
Long Term Care Ombudsman Services of San Luis Obispo County  
National Association of Social Workers, California Chapter (NASW-CA)

Opposition

None on file.

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