

Date of Hearing: April 24, 2012

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

AB 2066 (Monning) – As Amended: April 17, 2012

SUBJECT: Residential care facilities for the elderly: revocation of licenses.

SUMMARY: AB 2066 changes required procedures to protect the well-being of residents when Residential Care Facilities for the Elderly (RCFE) licensees are the subject of a license revocation. Specifically, this bill:

- 1) Requires Department of Social Services (DSS) to notify appropriate local agencies of the decision to revoke an RCFE license, just as DSS is required to notify local agencies when a decision has been made to temporarily suspend an RCFE license.
- 2) Requires the director of DSS to make every effort to minimize trauma to residents in the event of a license revocation, and to use physicians, surgeons and other medical personnel to assess residents and to assist in their transfer, according to an approved, written plan of relocation.
- 3) Empowers DSS to pursue any other available remedies, if necessary, to protect the health and safety of residents, including amending the date of the revocation order.
- 4) Requires RCFE licensees to notify each resident, or the responsible party of each resident, with a written 60 day notice-of-revocation which may lead to closure, within 24 hours of receipt of the DSS license revocation order, and provide each resident with contact information for the local long-term care ombudsman program.
- 5) Permits a licensee under a revocation order to secure the services of a qualified, unrelated person or entity to manage the day-to-day operations of the facility for at least 60 days, if:
 - a. The licensee submits to DSS, within 72 hours of the revocation order, a completed application, and a copy of the signed, executed agreement between the licensee and the applicant;
 - b. The applicant is in substantial license compliance; and,
 - c. The applicant administers a comparable facility.
- 6) Exempts the licensing fee for the replacement administrator.
- 7) Provides for a refund of preadmission fees to the resident or the resident's responsible party, within 15 days of a revocation order, in the following amounts: 100% refund of preadmissions fees in excess of \$500 if those fees were paid within six months of the revocation order; 75% if paid 6-12 months before the revocation order; 50% if paid 12-18 months before the revocation order; and 25% if paid 18-25 months of the revocation order. Residents are granted the option to apply the refund amount toward outstanding monthly charges of the facility.

- 8) Requires a licensee which is the subject of a revocation order to provide DSS and the local Long-Term Care Ombudsman a list of names, and the new locations, of those residents who moved as a result of the revocation order.

EXISTING LAW:

- 1) Establishes the Residential Care Facilities for the Elderly Act which creates a licensing category and regulations for RCFEs within DSS, Community Care Licensing Division (CCLD).
- 2) Provides for enforcement authority of statutes and regulations governing RCFEs.
- 3) Provides for procedures to protect residents in the event of a temporary restraining order placed upon the licensee by making every effort to minimize trauma for residents.
- 4) Provides for procedures to protect RCFE residents in the event a license is voluntarily surrendered or the use of the facility changes by taking all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma.
- 5) Requires DSS to contact local agencies that may have placement or advocacy responsibilities for RCFE residents in the event of a temporary restraining order.
- 6) Requires an RCFE to provide residents, their responsible party, and the local long-term care ombudsman with a written notice when DSS commences proceedings to suspend or revoke its license.
- 7) Requires the licensee to take all reasonable steps to transfer affected residents safely as the result of the revocation of an RCFE license.

FISCAL EFFECT: Unknown

BACKGROUND: RCFEs are licensed, assisted living (non-medical) facilities for persons 60 years of age and over and other, younger eligible persons. Varying levels of care and supervision, protective supervision, and personal care such as assistance with hygiene, dressing, eating, bathing, and storage and distribution of medications are provided, based upon residents' needs. All RCFEs provide meals and housekeeping. Ongoing medical care is not allowed except in rare cases, although hospice care is allowed. People with ongoing medical needs require a higher level of care in a nursing home or an intermediate care facility.

RCFE care is one of the fastest growing components of the long-term supports and services industries. There are nearly 7,600 licensed RCFEs in California serving over 170,000 people, supporting about 70,000 jobs. According to DSS, approximately 80% of RCFEs are licensed for four-six residents; the remaining 20% of RCFEs have an average capacity of about 60 residents.

California is home to the largest number of seniors in the nation, and the older population is expanding at an unprecedented historical pace. The California Department of Finance's Demographic Research Unit estimates that California's 65+ population will grow by 43%, from

4.4 million in 2010 to 6.35 million by 2020; another 39%, to 8.83 million by 2030; and an additional 21% to 10.5 million by 2040. The expanding population of older Californians will impact every facet of policy, housing being one of the primary areas, and RCFE growth is reflected in the above describe demographic shift; since 2002, RCFE licenses have increased from 6,000 to nearly 7,600; nearly a 30% increase.

COMMENTS: AB 2066 resolves an unintentional ramification of AB 313 (Monning), Chapter 365, Statutes of 2011. AB 313 combined consumer protections in the event of license revocation with other consumer protections established in the event of voluntary surrender of a license, or facility-use change. Given that the process that leads up to license revocation is much different than the processes leading up to the surrender of a license or facility use change, Assemblyman Monning introduced AB 2066 to address revocation orders separate from surrender or use change. License revocation is the most severe form of disciplinary action for a licensee, and usually occurs at the end of a protracted process which DSS undertakes to encourage the licensee to achieve compliance. Since it may be unrealistic to expect a licensee under a revocation order to continue to provide safe accommodations for a vulnerable population, Assemblymember Monning developed AB 2066 to place the revocation process in the same code section dealing with temporary suspension orders.

AB 2066 further establishes procedures specific to license revocation, including; a 60-day written notification to residents and their responsible parties; the option for a licensee to turn day-to-day operations over to a qualified, temporary administrator, and a preadmission fee refund schedule. AB 2066 further authorizes DSS latitude to change the effective date of a revocation order, or to pursue any other remedy to protect the health and safety of residents. According to the author, these strategies may be used to maintain administrative integrity within the facility until residents are safely relocated, ideally, for the entire 60 day period.

Need for Bill: According to the author, license revocation is considered the final remedy in a series of on-going, unresolved deficiencies that place residents' health and safety at risk. Allowing residents to continue to live in an environment that does not meet licensing standards may actually be detrimental to their health. Forcing a licensee to maintain a poorly managed RCFE may place residents at greater risk than immediate relocation, though neither option is ideal. The author points out that when a revocation order is issued; maintaining staff is difficult as employees seek stable employment elsewhere. AB 2066 is intended to provide an additional level of options to provide quality care while residents make arrangements for alternative accommodations.

DOUBLE REFERRAL: This measure is the subject of a double referral to both the Assembly Committee on Human Services and the Assembly Committee on Aging and Long-Term Care. AB 2066 was heard in Assembly Human Services Committee on April 10, 2012, and passed as a consent item on a 6-0 vote.

RECENT AMENDMENTS

AB 2066 was amended on April 17th to clarify details of the 60-day notice and to provide for a preadmission fee reimbursement schedule in the event of a license revocation order.

RELATED LEGISLATION:

AB 313 (Monning), Chapter 365, Statutes of 2011, requires each RCFE to provide residents, their responsible party, and the local long-term care ombudsman (LTC Ombudsman) with a written notice when DSS commences proceedings to suspend or revoke its license, or a criminal action relating to health or safety of the residents is brought against the facility.

SB 897 (Leno), Chapter 376, Statutes of 2011, requires licensees of RCFEs, with certain exceptions, to notify DSS, the State Long-Term Care Ombudsman, and residents, applicants and potential residents, of specified events, relating to possible indicators of RCFE closure.

SB 1329 (Leno) of 2010, (Vetoed) would have required licensees of RCFEs to notify DSS and, in some instances, residents, applicants and potential residents, of specified events, and would have required DSS to initiate compliance plans, noncompliance conferences, or other administrative actions upon receipt of the notification.

SB 781 (Leno), Chapter 617, Statutes of 2009, requires a RCFE to include additional information when providing a notice of eviction to a resident, including the reason for the eviction, the effective date of the eviction, and additional information informing the resident of his/her rights regarding evictions.

AB 949 (Krekorian), Chapter 686, Statutes of 2007, established procedures to be followed by a residential care facility for the elderly prior to transferring a resident to another facility or living arrangement as a result of forfeiture of a license or changes in the use of the facility, and provides remedies for noncompliance.

REGISTERED SUPPORT / OPPOSITION:

Support

Aging Services of California
California Assisted Living Association (CALA)
State Long-Term Care Ombudsman

Opposition

None on file.

Analysis Prepared by: Robert MacLaughlin / AGING & L.T.C. / (916) 319-3990