

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Cheryl Brown, Chair

AB 74 Calderon – As Amended April 7, 2015

SUBJECT: Care facilities: regulatory visits.

SUMMARY: Revises inspection schedules of facilities licensed by the Department of Social Services, except Foster Care Homes. Specifically, **this bill:**

- 1) Shortens existing increments of time between unannounced inspections of all facilities licensed by the Department of Social Services Community Care Licensing Division, except Foster Family Homes, from 5 years to:
 - a. 3 years beginning July 1, 2016
 - b. 2 years beginning July 1, 2017, and
 - c. 1 year beginning July 1, 2018,

Unless, (for a and b above), the license for a facility is on probation, the facility is under annual inspection orders based upon a plan of correction, a formal accusation against a facility license is pending, or the terms of federal financial participation already dictate annual unannounced inspections.

- 2) Provides for a random sampling process to select which facilities will be subject to a once-every-three year unannounced inspection beginning July 1, 2016, and a once-every-two year inspection beginning July 1, 2017.

EXISTING LAW:

- 1) Establishes the Community Care Licensing Division (CCLD) within the Department of Social Services with the power and authority to enforce laws and regulations related to facilities that it licenses.
- 2) Permits the Department of Social Services to inspect facilities to inspections as often as necessary to assure quality of care, but under no circumstances may inspections occur less than once every 5 years.
- 3) Directs the Department of Social Services to conduct annual unannounced inspections when a license is on probation, a compliance plan or plan of corrections requires annual unannounced inspections, an accusation against a facility is pending, the facility is on probation, or the facility is under order for annual inspections.
- 4) Establishes the California Residential Care Facility for the Elderly (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.

- 5) Prohibits any person, firm, partnership, association, corporation or public agency from establishing, operating, managing, conducting or maintaining a RCFE without a valid license provided by DSS.
- 6) Provides that any person who violates the CCFA or the RCFE Act shall be guilty of a misdemeanor and upon conviction shall be fined no more than \$1,000, imprisoned in county jail for up to one year, or both.

FISCAL EFFECT: Unknown.

COMMENTS:

AB 74 creates a statutory plan which will direct annual, unannounced licensing visits by Community Care Licensing personnel to all facilities licensed by the Department of Social Services by July 1, 2018, (except Foster Family Homes which are subject to annual announced visits) unless a complaint has been filed, a plan of correction directs unannounced inspections, the license is on probation, an accusation is pending, or federal financing dictates annual unannounced inspections as a condition of participation. Until then, AB 74 directs unannounced visits to facilities (other than Foster Family Homes) no less often than every 3 years by July 1, 2016, and no less often than once every other year by July 1, 2017.

According to the author: “Increasing the frequency of licensing visits will demonstrate that California is serious about addressing the deficiency in our inspection process for Community Care Facilities and will put California on par with the inspection procedures of other states. Currently we have a complaint based oversight system that is reactive to issues in our facilities instead of being proactive to prevent issues or fix and stop these issues before they become deadly. By at least having a licensing program analyst, or inspector, in these facilities, boots on the ground, once a year we will be able to be proactive and no longer be operating under a complaints based system. Facilities are in need of frequent inspections because of the vulnerability of the clients these facilities serve and it is our job to make sure these individuals are being (cared for) properly.”

Background: Community care facilities are considered those that provide non-medical care and supervision for children and adults in need, which includes persons with disabilities, seniors in need of residential care, children in foster care and at-risk children needing shelter services, families in need of early childhood education (child care), and adult care services. Community care facilities are overseen by the Community Care Licensing Division (CCLD) of the Department of Social Services. CCLD is responsible for conducting facility inspections, and when necessary, administrative actions when licensing standards are not met. CCLD may also assist providers to maintain compliance with licensing regulations.

The RCFE Act was established to help provide a system of residential care to allow older persons to remain as independent as possible while not forcing them to move between medical and nonmedical facilities. Commonly referred to as assisted living facilities, retirement homes and board and care homes, RCFEs are licensed facilities that provide services to individuals who are 60 years of age and older and persons under the age of 60 with compatible needs. RCFEs provide a wide array of care, which can include varying levels of personal care and protective supervision, based upon the needs of the resident.

Unannounced licensing visits are of fundamental importance in protecting the health and safety of children and adults receiving care through facility or home-based care. They ensure that basic health and safety requirements are being met and also provide opportunities for increased technical assistance to programs, enhanced information sharing, the development of best practices, and ultimately lead to an improvement in the quality of life for clients under care.

Unannounced Inspections: Numerous studies document a connection between increased licensing visits with a decrease in accidents requiring medical attention and greater provider compliance with health and safety standards. Regular and frequent unannounced inspection visits allow for state and local agencies to provide relevant and up-to-date information to the public on the quality of care offered, by facility. In a 2010-11 Spring Finance Letter, DSS asserted that “regular and frequent inspections of facilities improve client health and safety as evidenced by reductions in the percentage of the more serious imminent risk to total citations.” Specifically, “more annual inspections equates to better quality of care” and “more annual inspections equates to a smaller risk to the health and safety of clients.”

Prior to 2003, the required frequency of unannounced licensing visits was annually for most facility types. Due to the state's budget deficit at the time, and declining revenues, it was deemed necessary to find ways to reduce costs. As a result, CCLD is now required to conduct unannounced visits annually only when a facility is experiencing program compliance problems, or when it is required as a condition of federal funding participation.

Media reports began revealing disturbing developments within the assisted living/RCFE industry stirring rage and fear, most notably during September and October, 2013, which left the public with questions about the state's role to assure safe environments for vulnerable populations. Most notably:

- In San Diego County, more than two dozen recent, questionable deaths in RCFEs with little or no response by CCL were disclosed; and,
- In Contra Costa County, 19 frail seniors were abandoned at Valley Springs Manor. Though CCL was present throughout the process, CCL's action was to cite the cook, the last remaining unpaid staff member, and fine him \$3,800 for inadequate food and medication. That staff member eventually called 911 which activated a Sheriff response, hospital placements, and a range of other costly accommodations.

The Governor's 2015-16 January budget proposal includes increased funding and 28.5 positions within CCLD to address a facility complaint backlog and to expand training and technical assistance. This proposal for licensing positions was accompanied by a plan to phase-in increased inspection frequency to once every three years by 2017, for all facilities, once every two years by 2018 for all facility types except child care, and annually by 2019 for adult day care and residential care facilities for the elderly.

PRIOR LEGISLATION:

AB 1454 (Ian Calderon), 2014, was substantially similar to this bill. It would have phased in annual licensing inspection visits by July 1, 2017 and deleted language requiring inspection visits at least once every 5 years. It died on the Senate Appropriations Suspense File.

AB 364 (Ian Calderon), 2013, required CCL to conduct licensing inspections in most community care facilities at least once every two years. It died on the Assembly Appropriations Suspense File.

AB 419 (Mitchell), 2011, would have required DSS to conduct an unannounced inspection of a care facility, using prescribed inspection protocols, at least once each year and as often as necessary to ensure the quality of care provided, except for family day care centers, which the department would have been required to inspect at least once every 2 years. It died on the Assembly Appropriations Committee Suspense File.

SB 185 (Mello, Chapter 1127, Statutes of 1985) established the “Residential Care Facilities for the Elderly Act” which provides for the licensing, regulation, and operation of RCFEs and found that due to shortages in affordable housing and a greater demand for residences for the elderly providing some care and supervision, a growing number of elderly persons with health and social care needs were residing in community care facilities that were not necessarily designed to meet their needs, and that therefore, residential care facilities for the elderly should be licensed and overseen as a separate category within the existing licensing structure of the State Department of Social Services, and that consulting services by the Department be offered to licensees to assure compliance.

CONFLICT: The office of Legislative Counsel has notified the committee that AB 74 is in conflict with AB 403 (Stone).

DOUBLE REFERRAL: This bill was previously heard by the Assembly Committee on Human Services on April 2, 2015 and passed, as amended, on a vote of 7-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Advancement Project

The Alliance

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

California Advocates for Nursing Home Reform (CANHR) – Support if amended.

California Alternative Payment Program Association (CAPPA)

California Assisted Living Association (CALA)

California Association of Area Agencies on Aging (C4A)

California Child Care Resource & Referral Network

California Commission Aging

California Communities United Institute

California Continuing Care Residents Association (CALCRA)

California Long-Term Care Ombudsman Association (CLTCOA)

California Retired Teachers Association

California State PTA

Child Care Alliance Los Angeles

Child Development Resources

Children Now

Community Action Partnership of Madera County

Community Residential Care Association of California

Community Resources for Children
County of San Bernardino
County of San Diego
Del Norte Child Care Council
Department of Defense State Liaison Office
Early Edge California
First 5 California
LeadingAge California
League of California Cities
Los Angeles Universal Preschool
Office of State Long-Term Care Ombudsman
Special Needs Network (SNN)
Solano Family & Children's Services
Numerous individuals.

Opposition

None on file.

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