

Date of Hearing: April 24, 2017

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Ash Kalra, Chair

AB 1437 (Patterson) – As Amended April 18, 2017

**SUBJECT:** California Residential Care Facilities for the Elderly Act: licensing.

**SUMMARY:** Stipulates that an individual with a current criminal record clearance who is employed at a residential care facility for the elderly (RCFE) does not need to transfer his or her clearance to an RCFE operated by the same licensee, and exempts an individual with a current license as a certified RCFE administrator from having to complete the licensure certification program when applying for licensure of a facility.

**EXISTING LAW:**

- 1) 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 the Department of Social Services (DSS).
- 2) Defines “residential care facility for the elderly” as a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where care and services, are provided based upon individuals’ varying needs, and as determined in order for them to be admitted and remain in the facility.
- 3) Requires DSS to inspect and license RCFEs and further specifies that an RCFE license is not transferable.
- 4) Requires DSS to obtain a full criminal record, if any, for certain individuals, including adults responsible for administration or direct supervision of staff; any person, other than a client, residing in the facility; any person who provides client assistance in dressing, grooming or bathing; and any staff person, volunteer, or employee who has contact with the clients, among others, for purposes of criminal record clearance.
- 5) Permits DSS to allow an individual to transfer a current criminal record clearance from one facility to another if the clearance has been processed through and is being transferred to another facility licensed by a state licensing district office. Further requires the request to be submitted to DSS in writing, include a copy of the person’s driver’s license, or other form of valid identification, and requires DSS to verify whether the individual has a clearance that can be transferred.
- 6) Sets forth requirements for anyone seeking to become an RCFE administrator, including but not limited to: successful completion of an approved certification program; passing a written test administered by DSS within 60 days of completing the certification program; and submitting documentation within 30 days of being notified of having passed the test. Further requires certificates be renewed every two years upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the uniform core of knowledge.

- 7) Clarifies that in the event that an individual is both the licensee and the administrator of a facility, or a licensed nursing home administrator, the individual shall comply with the requirements of an administrator.
- 8) Sets forth requirements for anyone seeking an RCFE license, including but not limited to filing with DSS: evidence satisfactory to DSS that the applicant is of reputable and responsible character; evidence satisfactory to DSS that the applicant has sufficient financial resources to maintain the standards of service required; and, disclosure of licensing and violation history.
- 9) Requires an applicant for licensure to demonstrate that he or she has successfully completed a certification program approved by DSS, and that consists of certain criteria, including but not limited to: eighty hours of coursework with at least 60 hours attended in person; a state-administered examination consisting of no less than 100 questions that reflects the uniform core of knowledge; and successful completion of the state-administered examination.
- 10) Defines the uniform core of knowledge as information regarding; law, including regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly; business operations; management and supervision of staff; physical needs for elderly residents; and, community and support services, among others.
- 11) Requires DSS to make a determination regarding the completeness of an initial RCFE license application within five working days of its filing. Further requires DSS, within 60 days of a determination that a file is complete, to make a determination as to whether the application is in compliance with all pertinent law, rules, and regulations and to immediately issue the license or notify the applicant of deficiencies, and whether those deficiencies constitute a denial of the application or that further corrections will likely result in approval.
- 12) States that operation of an RCFE without a license is subject to a court summons and is punishable as a misdemeanor.
- 13) Allows DSS to deny an application for an RCFE license or suspend or revoke an RCFE license for certain acts and violations.

**FISCAL EFFECT:** Unkown.

**COMMENTS:** According to the author's office, "AB 1437 is needed to streamline regulations in a manner that allows employee flexibility and sensible management of facilities for the elderly without compromising important consumer protections. With an aging populations and an increasing retirement population, 6 bed facilities play an important role in allowing elderly Californian's to live in a home with friends and within the community next to neighbors, family and friends.

"It is important that California takes steps to ensure that there is safe and affordable quality care available for California seniors and disabled adults in a home-like environment. AB 1437 makes it easier for quality care to be delivered."

**BACKGROUND:**

**RCFEs**, sometimes referred to as “assisted living facilities,” provide housing, care, supervision and assistance with activities of daily living to individuals aged 60 and older, as well as individuals under the age of 60 with compatible needs. RCFEs are different from Skilled Nursing Facilities (SNFs) in that an RCFE is considered a housing alternative, while SNFs are a medical facility; still, some medical services may be provided in an RCFE under special care plans. RCFE residents require varying levels of care and services, and RCFEs can vary widely in the services offered and can range in size from six beds to over 100 beds.

**Application Requirements for RCFE Licensees:** As part of the general operating requirements, RCFEs have both a licensee, who is the individual or entity licensed to operate an RCFE in the State of California, and an administrator, who is the individual certified to manage the day-to-day operations of the facility. As a requirement for licensure, individuals must: file an application for licensure with DSS that includes a criminal record clearance, employment history, character references, disclosure of previous service in other RCFEs, outpatient health clinics, health facilities, or a community care facility, and demonstrate the successful completion of a certification program.

**Application Requirements for RCFE Administrators:** In order to become an administrator of an RCFE, administrator applicants must: be at least 21 years of age, have a high school diploma or pass a general educational development (GED) test, obtain criminal record clearance, and complete an 80-hour initial certification program, of which 60 hours must be in-person instruction on the uniform core of knowledge. In addition to this, applicants must complete a standardized test administered by DSS, submit a completed request for Administrator Certificate form, obtain a criminal record clearance from the Department of Justice, and submit a non-refundable \$100 processing fee. Once an administrator is certified, they must complete 40 hours of continuing education within a two-year period in order to renew their certification.

Oftentimes a licensee and an administrator are the same person; in these instances current law requires the individual to comply with the requirements of an administrator, including ongoing training and certificate renewal requirements.

**Obtaining Criminal Record Clearances:** Current law requires a background check of all applicants, licensees, adult residents, volunteers under certain conditions, and employees of community care facilities who have contact with clients. Individuals must submit fingerprints to be used by the Department of Justice (DOJ) when conducting a background check. If an individual does not have a criminal history, DOJ will forward a clearance notice to the applicant or licensee and to the Caregiver Background Check Bureau (CBCB) of the Community Care Licensing Division (CCLD). If an individual has a criminal history, DOJ will send a record transcript to CBCB, which will show the arrests and convictions of the individual. If the crimes are eligible for exemption under current law, CBCB will send an exemption notification letter to the applicant or licensee, and to the individual. Individuals awaiting an exemption may not be present in a facility until an exemption is granted by CBCB.

Currently, an active criminal record clearance may be transferred between state-licensed facilities. To request a clearance transfer between state licensed facilities, a licensee or a license applicant must submit a Criminal Record Clearance Transfer Request form to his or her regional office; transfer to multiple facilities may be requested on one form. All clearance requests must be submitted to DSS before the individual with the clearance may be in contact with any clients

or the licensee will be in violation of the law and subject to a \$150 civil penalty per day per violation. A licensee who operates multiple facilities can request a waiver to designate one facility within a regional office as the central administrative facility to which all criminal record background checks may be associated. The waiver request must be submitted to and approved by the Regional Office in writing, and the licensee must agree to comply with certain requirements. In the event that the waiver is approved by a Regional Office, staff associated to the central administrative facility may work in any of the facilities in the region without transferring or adding associations. In the event that a licensee does not have an approved waiver and an employee is found to be working in a facility with which he or she is not associated, the licensee will be subject to civil penalties.

**Arguments in Support:** The California Assisted Living Association writes, “AB 1437 provides efficiencies for Community Care Licensing Division (CCLD) and RCFEs by stipulating that an RCFE employee with a current criminal record clearance does not need to transfer their clearance to an RCFE operated by the same licensee. Eliminating this paperwork process will save time and effort for both CCLD and the licensee, without altering the underlying consumer protection.

“This bill also clarifies that an individual seeking a new license does not have to repeat the initial administrator certification course if they have an existing certification that has been kept current (40 hours of continuing education every two years).”

**Arguments in Opposition:** None.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Assisted Living Association

##### **Opposition**

None on file.

**Analysis Prepared by:** Barry Brewer / AGING & L.T.C. / (916) 319-3990