

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

SB 1153 (Leno) – As Amended: April 10, 2014

SENATE VOTE: 36-0

SUBJECT: Residential care facilities for the elderly (RCFE): Admissions

SUMMARY: Authorizes the Department of Social Services (DSS) to order a suspension of new admissions prohibiting a residential care facility for the elderly (RCFE) from admitting new residents if the facility has failed to pay a fine assessed by DSS or if DSS finds that the facility has violated applicable laws and the violation presents a direct or immediate risk to the health, safety, or personal rights of a resident and is not corrected immediately. Specifically, this bill:

- 1) Authorizes DSS to order a suspension of new admissions for a facility in either of the following circumstances:
  - a) The RCFE has violated statute or any applicable regulations, the violation presents a direct and immediate risk to the health, safety, or personal rights of a resident or residents of the facility, and the violation is not corrected immediately; or
  - b) The RCFE has failed to pay a fine assessed by the department after the facility's appeal rights have been exhausted.
- 2) Provides that any suspension of new admissions for a failure to pay a fine, as specified, shall remain in effect until the facility pays the assessed find.
- 3) Requires a suspension of new admissions to remain in effect until DSS determines that the facility has corrected the violation.
- 4) Requires DSS to conduct a follow-up visit to determine compliance within 10 working days following the latest date of correction specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required in the notice.
- 5) Authorizes DSS to make unannounced visits after the suspension of new admissions is lifted to ensure that the facility continues to maintain correction of the violation and permits DSS to order another suspension of new admissions or take other appropriate enforcement action if the facility does not maintain correction of the violation.
- 6) Provides appeal rights for RCFEs who have received an admissions suspension.
- 7) Requires DSS to adopt regulations that specify the appeal procedure.
- 8) Provides that a suspension of new admissions ordered may not be stayed pending the facility's appeal or request for review.

EXISTING LAW:

- 1) Establishes the California Community Care Facilities Act (CCFA) to provide a comprehensive statewide service system of quality community care for people who have a mental illness, a developmental or physical disability, and children and adults who require care or services by a facility or organization.
- 2) 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 DSS.
- 3) Prohibits any person, firm, partnership, association, corporation or public agency from establishing, operating, managing, conducting or maintaining a Community Care Facility (CCF) or RCFE without a valid license provided by DSS.
- 4) Provides that any person who violates the RCFE Act shall be guilty of a misdemeanor and upon conviction be fined no more than \$1,000, imprisoned in county jail for up to one year, or both.
- 5) Establishes the Long-Term Care Ombudsman program as a result of the federal Older Americans Act (OAA) and the Mello-Granlund Older Californians Act (OCA), and places it within the California Department of Aging to encourage community contact and involvement with elderly patients or residents of long-term care facilities through the use of volunteers and volunteer programs.
- 6) Requires the Ombudsman, either personally or through representatives, to identify, investigate, and resolve complaints that may adversely affect the health, safety, welfare, or rights of residents of long-term care facilities.
- 7) Provides that representatives of the Ombudsman program have access to long-term care facilities and residents, and the medical and social records of residents.
- 8) Prohibits willful interference with the functions of the Ombudsman representative and the Ombudsman program.
- 9) Prohibits retaliation and reprisals by a long-term care facility, and provides for sanctions with respect to interference, retaliation, and reprisals.
- 10) Provides that representatives of the Ombudsman program have the right to enter and move about long-term care facilities to identify, hear, investigate, and resolve complaints; observe and monitor conditions of residents and facilities; speak confidentially with residents; and provide services to assist residents in protecting their health, safety, welfare, and rights.
- 11) Prohibits RCFE licensees or their staff from discriminating or retaliating against a resident if the resident has participated in the filing of a complaint, grievance, or request for inspection with the California Department of Social Services (DSS) or with a local or state ombudsman.

- 12) Prohibits an RCFE licensee or their staff from discriminating or retaliating against a fellow staff person, as specified, if the staff person has participated in the filing of a complaint, grievance, or request for inspection with DSS or with a local or state ombudsman.

FISCAL EFFECT: According to the Senate Appropriations Committee: Per Senate Rule 28.8 – “a) any additional state costs are not significant and do not and will not require the appropriation of additional state funds, and (b) the bill will cause no significant reduction in revenues.”

COMMENTS:

Background: California has the largest population of people age 65 and older of any state in the nation. California's 65+ population is projected to double from its 2010 census of about 4.3, to 8.4 million in 2030. By 2035, the 65+ population will exceed 20 percent of the population. This year, California's 65+ population will reach 5 million people. Although research shows that older, low-income women's life-spans are decreasing, most other populations are experiencing longer life-spans. As California's population ages, it is becoming more culturally and ethnically diverse. Disability is highly associated with age, and as the aged population expands, so will the presence of disabilities within our communities.

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. Oversight of RCFEs consists of licensing visits once every 5 years. For RCFEs under the scrutiny of the Community Care Licensing (CCL) division, or on probation, annual unannounced visits from CCL occur.

The number of RCFEs, and corresponding workload to oversee and enforce laws and regulations therein, has grown rapidly during the past decade. In 2004, there were about 6,500 licensed facilities. By 2014, nearly 7,600 facilities housing over 175,000 people are in operation throughout the state. 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. Although most RCFE's are administered and staffed by competent caregivers and people committed to the wellbeing of their clients, frightening accounts of poor care and administration has focused policy makers on the RCFE model of care. In September 2013, the California Health Care Foundation (CHCF) Center for Health Reporting and San Diego Union Tribune reported that at least 27 San Diego County seniors died from neglect and injuries in RCFEs, in some cases with no investigation by CCL. Also reported, The CCL Investigations Branch, an internal police force, has not made an arrest in nine years even though the investigation found that hundreds of RCFE residents have suffered sexual assaults, physical abuse, medication errors, life threatening bedsores and other abuses. During the past year, Californians monitoring local, state and national media have been confronted with no less than the following range of media reports about RCFEs:

- PBS Frontline/ProPublica: "Life and Death in Assisted Living" and "Elderly, At Risk and Haphazardly Protected" July, 2013.
- San Diego Union Tribune, California Health Care Foundation Center for Health Reporting: "Deadly Neglect, Medical Errors, Weaker Rules Signal Safety Problems in California Assisted Living Homes" September, 2013.
- San Jose Mercury: "Shuttering Castro Valley Senior Care Facility Sparks Criminal Investigation" October, 2013.
- The Sacramento Bee: "Care Home Owner to Stand Trial" March 2013.

Author's Statement: According to the author:

California needs tougher enforcement tools to help ensure that assisted living facilities comply with the state's critical health and safety regulations, which are designed to keep elderly people safe during a critical time in their lives. SB 1153 allows Community Care Licensing (CCL) to ban all new admissions to care facilities that have serious violations of health and safety regulations. It gives assisted living facilities an opportunity to focus on correcting the identified problems before admitting new, paying clients. The bill would also ban new admissions if a facility has not paid its fines. It is unacceptable to allow elderly Californians, especially those who are most vulnerable, to become residents of care homes that we already know are unsafe. Under no circumstances should new patients enter a facility that has documented and unaddressed health and safety violations.

Supporters: In support of the bill, AARP writes that:

SB 1153 is a vital legislative improvement that will allow California to achieve one of our highest priorities: replacing California's current disjointed and dysfunctional system with a comprehensive and coherent systems of long-term services and supports, including reform of the current system of Residential Care Facility for the Elderly.

Previous Hearing: SB 1153 was previously heard in the Assembly Human Services Committee where it passed on consent with a vote of 6-0-1 (Grove).

Related Current Legislation:

**SB 895 (Corbett)** Would require CDSS to conduct annual unannounced comprehensive inspections for all facilities, requires CDSS to verify compliance following deficiencies within 10 days, and requires results of inspections to be available on the CDSS website.

**SB 911 (Block)** Would increase certification training requirements for RCFE licensees, and staff who care for residents, increases training requirements for staff providing dementia care.

**SB 1382 (Block)** Would increase the annual licensure fees by 30 percent and make related findings and declarations.

**AB 1571 (Eggman)** Would increase disclosure requirements for RCFE licensee applicants and require applicant information to be cross-referenced with the State Department of Public Health. Would require, by 2015, CDSS to create an online inquiry system posting detailed information about RCFE facilities including complaints, deficiencies and enforcement actions resulting in fines. In subsequent years, would require CDSS to post additional information, as specified.

**AB 1572 (Eggman)** Would require RCFEs, at the request of two or more residents, to assist the residents in establishing and maintaining a single resident council, as specified, and would require the facility to interact with the council in specified ways.

**AB 1523 (Atkins and Weber)** Would require RCFEs to maintain liability insurance covering injury to residents and guests in the amount of \$1 million per occurrence and \$3 million annually.

**AB 1436 (Waldron)** Would require the results of all reports of inspections, evaluations or consultations and lists of deficiencies to be posted on the department's Internet Web site.

**AB 1454 (Calderon)** Would require all licensed community care facilities, RCFEs, and child day care centers to be subject to an annual unannounced visit by CDSS.

**AB 1570 (Chesbro)** Would increase the certification training requirements for RCFE administrators, training requirements for RCFE staff that care for residents, and training requirements for staff providing dementia care.

**AB 1554 (Skinner)** Would make various changes to existing RCFE complaint procedures including requiring the department to make an onsite inspection within 24 hours of a complaint alleging abuse, neglect or a threat of imminent danger. Additionally would require the department to complete its investigation within 90 days of receiving a complaint. Would permit a complainant to file an appeal of departmental findings.

**AB 1899 (Brown)** Would make a person whose license is revoked or forfeited for abandonment of the facility ineligible for reinstatement of the license for a period of 10 years following the revocation or forfeiture. Additionally would require CDSS to establish and maintain a telephone hotline and an Internet Web site dedicated to receiving complaints.

**AB 2171 (Wieckowski)** Would establish specified RCFE resident's rights and require facilities to inform residents of these rights as specified.

**AB 2044 (Rodriguez)** Would require every licensed residential care facility to be subject to an annual unannounced visit by the department, as specified. Additionally, would require complaints to be inspected within three days if the complaint involves alleged abuse or serious neglect, or within 10 days for all other complaints and would require investigations to be completed within 30 days. Would provide a complainant with the right to request an informal conference and subsequent appeal, as specified. Also would require certain staff to be present in the facility for specified times.

REGISTERED SUPPORT / OPPOSITION:Support

California Advocates for Nursing Home Reform (CANHR) – Sponsor  
AARP  
Advocacy, Inc.  
American Federation of State, County and municipal Employees (AFSCME), AFL-CIO  
Alliance on Aging of Monterey County  
Assisted Living Consumer Alliance (ALCA)  
California Assisted Living Association (CALA)  
California Association of Public Authorities  
California Commission on Aging  
California Continuing Care Residents Association (CALCRA)  
California Long-Term Care Ombudsman Association (CLTCOA)  
California Senior Legislature (CSL)  
Congress of California Seniors  
Consumer Attorneys of California  
Consumer Federation of California (CFC)  
Contra Costa County Area Agency on Aging (CCACOA)  
County of San Diego  
Elder Abuse Task Force of Santa Clara County  
Elder Law & Advocacy  
Johnson Moore Trial Lawyers  
LeadingAge California  
Long Term Care Ombudsman Services of San Luis Obispo County  
Long Term Care Services of Ventura County, Inc.  
National Consumer Voice for Quality Long-Term Care  
National Senior Citizens Law Center (NSCLC)  
Ombudsman & HICAP Services of Northern California  
Ombudsman Services of Contra Costa  
Riverside County Advisory Council on Aging  
Valentine Law Group

Opposition

None on file.

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