

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

SB 894 (Corbett) – As Amended: June 19, 2014

SENATE VOTE: 27-8

SUBJECT: Residential care facilities for the elderly (RCFE): revocation of license.

SUMMARY: Increases the responsibilities of the California Department of Social Services (DSS) when issuing a temporary suspension order (TSO) or when revoking the license of a RCFE. It also establishes a private right of action for RCFE residents when a facility is alleged to have violated the law. Specifically, this bill:

- 1) Requires DSS to provide the Office of the State Long-Term Care (LTC) Ombudsman a precautionary notification for the purposes of providing advocacy services to residents “if the department begins to prepare to issue” a temporary suspension order (TSO) to a RCFE or revoking a facility's license.
- 2) Requires DSS to contact the Office of the State LTC Ombudsman and local placement and advocacy agencies, as specified, and to work with local agencies and the licensee if DSS has issued the facility a TSO or has revoked the facility's license.
- 3) Prohibits a facility from accepting new residents when it has received a TSO or has had its license revoked.
- 4) Upon issuance of a TSO, requires the licensee to provide written notice of the TSO to residents and the residents' responsible person, if applicable, as soon as practically possible, but no later than within 24 hours of receipt of the TSO.
- 5) Upon issuance of a TSO, establishes a process by which the facility's day-to-day operations may be managed by another individual or entity designated by DSS until an administrative law hearing is held, as specified.
- 6) Requires a resident to be refunded their paid preadmission fee proportionate to the amount of time they have resided in a facility if that facility has been issued a TSO or has had its license revoked, as specified.
- 7) Specifies that within 24 hours after each resident who is transferring has left the facility, the licensee that had his or her license temporarily suspended or revoked is required, based on information provided by the resident or the resident’s responsible person, to submit a final list of names and new locations of all residents to DSS and the Office of the State LTC Ombudsman.
- 8) Requires DSS, if at any point during or following a TSO or revocation of a license the director determines that there is a risk to the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, to take any necessary action to minimize trauma for the residents, including, but not limited to, all of the following:

- a) Contact any local agency that may have placement or advocacy responsibility for the residents, and work with those agencies to locate alternative placement sites;
  - b) Contact the residents' relatives, legal representatives, authorized agents in a health care directive, or responsible parties;
  - c) Assist in the transfer of residents, and, if necessary, arrange or coordinate transportation;
  - d) Provide onsite evaluation of the residents and use any medical personnel deemed appropriate by DSS to provide onsite evaluation of the residents and assist in any transfers;
  - e) Arrange for or coordinate care and supervision;
  - f) Arrange for the distribution of medications;
  - g) Arrange for the preparation and service of meals and snacks;
  - h) Arrange for the preparation of the residents' records and medications for transfer of each resident;
  - i) Assist in any way necessary to facilitate a safe transfer of all residents; and
  - j) Check on the status of each transferred resident within 24 hours of transfer.
- 9) Clarifies that DSS' and local agencies' participation in the relocation of residents from an RCFE does not relieve the licensee of any responsibility. A licensee that fails to comply with the requirements, as specified, is required to reimburse the DSS and local agencies for the cost of providing these services.
- 10) Provides that if the licensee fails to provide the services required, DSS is required to request that the Attorney General's office, the city attorney's office, or the local district attorney's office seek injunctive relief and damages.
- 11) Holds a licensee who fails to comply with the requirements to be liable for civil penalties in the amount of five hundred dollars (\$500) per violation, per day for each day that the licensee is in violation, until the violation has been corrected. Requires the civil penalties to be issued immediately following the written notice of violation.
- 12) Permits a current or former resident of an RCFE to bring a civil action against any person that owns, operates, establishes, manages, conducts, or maintains an RCFE that violates the rights of the resident, as specified.
- 13) Holds any person that owns, operates, establishes, manages, conducts, or maintains an RCFE in violation responsible for the acts of the facility employees and liable for costs and attorney's fees. Also, permits the RCFE to be enjoined from permitting the violation to continue.

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:

- 1) Potentially significant initial and future costs in the high hundreds of thousands of dollars (General Fund/Special Fund). One-time costs to establish the response plan and protocol will likely be in the low hundreds of thousands of dollars. Future costs will be dependent on the number of residents requiring DSS to provide the expanded duties of care enumerated in this bill in the event of a license suspension or revocation.
- 2) Unknown, additional state costs, should the DSS seek injunctive relief and damages through the Attorney General for reimbursement of costs from the licensee.
- 3) Minor fiscal impact to the Department of Aging to receive additional notifications from DSS of pending suspension and revocation orders.

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 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: "Shattering Castro Valley Senior Care Facility Sparks Criminal Investigation" October, 2013.
- The Sacramento Bee: "Care Home Owner to Stand Trial" March 2013.

Author's Statement: "SB 894 strives to prevent the unimaginable tragedy that happened at Valley Springs Manor from ever happening again. SB 894 prioritizes the ongoing safety of elderly and sick residents at assisted living facilities in California by ensuring that the facility closure process is both robust and comprehensive."

In addition, the author indicates that:

SB 894 will provide for greater notice requirements to residents in the case of orders to suspend licenses; tightens the time frame of reporting requirements for licensees upon the relocation of residents; further outlines the State's role in protecting the resident of RCFEs; raises the limit on civil penalties for licensees who fail to comply with the law from \$100 to \$500 per day per violation for each violation; and provides for civil action for residents against licensees for any violation of this law. It will also increase penalties for other violations by residential care facilities for the elderly licensees."

Supporters: In support of the bill, the National Association of Social Workers – California Chapter writes that:

SB 894 will strengthen and improve the procedures for the relocation of the residents of RCFEs. This will ensure that California protects the health and safety of some of our most vulnerable citizens. More specifically, this bill will work to lessen the trauma experienced by residents if their RCFE ceases to operate. Additionally, this bill would give the state a more punitive method with which to punish those facilities that violate the law.

Governor's Enacted Budget: As of Friday, June 20, 2014, Governor Jerry Brown signed the state budget (SB 852) for 2014-15. If and when the Governor signed the budget trailer bill related to human services (SB 855), the author intends to amend the provisions of this bill that are included in the enacted budget.

Previous Hearing: SB 894 was previously heard and amended in the Assembly Human Services Committee where it passed on a vote of 5-0-2 (Maienschein, 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 1153 (Leno)** - Would permit CDSS to order a suspension of new admissions for an RCFE when the facility has violated applicable laws and regulations that present a direct risk to the health and safety of residents, is not providing adequate care and supervision, has been cited for subsequent violations of the same law within 12 months, or has failed to pay existing fines.

**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

AARP

California Alliance for Retired Americans (CARA)

California Long-Term Care Ombudsman Association (CLTCOA)

Consumer Attorneys of California

Elder Abuse Task Force of Santa Clara County

Los Angeles District Attorney's Office

National Association of Social Workers-California Chapter (NASW-CA)

Opposition

None on file.

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