

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Mariko Yamada, Chair

SB 911 (Block) – As Amended: June 19, 2014

SENATE VOTE: 25-11

SUBJECT: Residential care facilities for the elderly: Training requirements

SUMMARY: Increases training requirements for licensees and staff of Residential Care Facilities for the Elderly (RCFE). Specifically, this bill:

- 1) Increases the initial certification training for administrators from 40 hours to at least 100 hours including 60 hours of in-person classroom instruction and include additional topics to the uniform core of knowledge, including, but not limited to, the adverse effects of psychotropic drugs for use in controlling the behavior of persons with dementia.
- 2) Increases the continuing education requirement for administrators from 20 hours to at least 40 hours during each two-year certification period.
- 3) Provides that no RCFE licensee, or officer or employee of the licensee, may discriminate or retaliate against any person on the basis, or for the reason that, the person dialed or called 911, and provides that any violation of this prohibition shall result in a civil penalty, as specified.
- 4) Provides that a RCFE that accepts or retains a resident with a prohibited health condition, as specified, shall assist residents with accessing home health or hospice services to ensure that the resident receives medical care as prescribed by the resident's physician and contained in the resident's service plan. Makes RCFEs violating this provision subject to a civil penalty, as specified.
- 5) Provides that a RCFE that accepts or retains residents with restricted health conditions, as specified, shall ensure that residents receive medical care as prescribed by the resident's physician and contained in the resident's service plan by appropriately skilled professionals acting within their scope of practice. Makes RCFEs violating this provision subject to a civil penalty, as specified.
- 6) Defines an “appropriately skilled professional” as an individual who has training and is licensed to perform the necessary medical procedures prescribed by a physician, which includes but is not limited to a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, or respiratory therapist who may be employed by a home health agency (HHA), the resident, or a facility, and who are currently licensed in this state.
- 7) Provides that an “appropriately skilled professional” may not be required when the resident is providing self-care, as defined by the Department of Social Services (DSS), and there is no documentation in the resident’s service plan that the resident is capable of providing self-care.

- 8) Requires DSS to develop jointly with the California Department of Aging requirements for a uniform core of knowledge for the required initial certification and continuing education for administrators, and their designated substitutes, and for recertification of administrators of RCFEs, as specified. Requires this training to be developed in consultation with individuals or organizations with specific expertise in RCFEs or assisted living services, or by an outside source with expertise in residential care facilities for the elderly or assisted living services.
- 9) Requires staff who assist residents with prescription medication management in a RCFE with more than 16 persons to complete 24 hours, instead of 16 hours, of initial training related to medication management, as specified. For RCFEs providing care to 15 or fewer persons, requires staff to complete 10 hours, instead of six hours, of initial training.
- 10) Adds new training requirements for RCFE staff at facilities serving residents with postural supports, restricted health conditions or who receive hospice services to receive, in addition to other training requirements, 4 hours of training prior to providing direct care to residents on the care, supervision, and special needs of those residents, and two 2-hour trainings thereafter of in-service training every 6 months on the subject of serving those residents.
- 11) Delays implementation of the bill until January 1, 2016.

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 California Department of Social Services' (DSS) Community Care Licensing Division (CCLD). (H&S Code 1569 and 1569.1)
- 2) Requires RCFE licensee applicants to attend an orientation given by the department which outlines the applicable rules and regulations, and the scope and responsibility for operation of a RCFE. (H&S Code 1569.235)
- 3) Requires a RCFE administrator to be at least 21 years of age, have a valid RCFE administrator certificate, as specified, and hold a high school diploma or pass a general educational development (GED) test, as specified. (H&S Code 1569.613).
- 4) Requires RCFE licensee applicants to successfully complete a certification program approved by DSS, consisting of a minimum of 40 hours of classroom instruction, as specified, and passage of a written test. (H&S Code 1569.23)
- 5) Requires DSS to authorize organizations, as specified, to provide certificate and continuing education courses for RCFE administrators. (H&S Code 1596.616(i))
- 6) Requires RCFE licensees, administrators, facility managers and staff to undergo a criminal background check and clearance prior to operation or employment. (H&S Code 1569.17)
- 7) Requires RCFE administrator certification to consist of 40 hours of classroom instruction, to be renewed every two years, and makes issuance of the renewal conditional upon the administrator to submit documentation of completion of 40 hours of continuing education,

which shall include eight hours of training on providing care to residents with dementia, as specified. (H&S Code 1596.616(f))

- 8) Requires an RCFE administrator who holds a valid license as a nursing home administrator, as specified, to comply with required administrator training requirements, but exempts him or her from having to take the written administrator test. (H&S Code 1596.616)
- 9) Permits a RCFE administrator to designate a "facility manager;" defined as a person on the premises with the authority and responsibility necessary to manage and control the day-to-day operation of a RCFE and supervise residents. (H&S Code 1596.618)
- 10) Requires RCFE staff to undergo ten hours of training within the first four weeks of employment and four hours annually thereafter, as specified. (H&S Code 1569.625)
- 11) Requires RCFE staff to undergo an additional six hours of training on providing care to residents with dementia within the first four weeks of employment and eight hours of in-service training on dementia care annually thereafter. (H&S Code 1569.626)
- 12) Requires DSS to provide appropriate training to CCLD licensing personnel, which includes 40 hours of pre-service training, as specified, and 36 hours of annual training, as specified. (H&S Code 1569.652)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Significant one-time costs potentially in excess of \$500,000 (General Fund) for DSS to revise regulations and consult with specified groups to update the uniform core of knowledge for RCFE administrators and training for direct care staff.
- 2) No new costs to the Department of Aging to continue existing efforts of collaboration with the DSS in development of training curriculum and a resident assessment tool.
- 3) Significant ongoing increase in training costs to employees and/or facilities to meet the enhanced initial and continuing education training requirements imposed.
- 4) Potential minor non-reimbursable local enforcement costs for violations of any of the provisions of this bill.

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 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 Community Care Licensing (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.

No uniform common care model currently exists for RCFEs. The types of assistive services can vary widely, which can include differing levels of personal care and protective supervision, based upon the needs of the resident.

If a resident needs medical care in his or her residence in order to maintain an independent lifestyle, incidental medical services are permitted to be provided by a licensed or otherwise approved external provider, such as a home healthcare agency (HHA), which is licensed by the California Department of Public Health. Additionally, some RCFEs, upon approval of DSS and

after having met specified orientation and training requirements, may provide assistive memory care services to individuals with dementia or Alzheimer's disease.

Existing regulations also lay out the circumstances under which an individual may be allowed to reside in RCFEs. Specifically, they include persons:¹

- 1) Capable of administering their own medications;
- 2) Receiving medical care and treatment outside the facility or who are receiving needed medical care from a visiting nurse;
- 3) Who because of forgetfulness or physical limitations need only be reminded or to be assisted to take medication usually prescribed for self-administration;
- 4) With problems including, but not limited to, forgetfulness, wandering, confusion, irritability, and inability to manage money;
- 5) With mild temporary emotional disturbance resulting from personal loss or change in living arrangement;
- 6) Who are temporarily bedridden, as specified; and
- 7) Who are under 60 years of age whose needs are compatible with other residents in care, if they require the same amount of care and supervision as the other residents in the facility.

Regulations also provide specific prohibitions on individuals who are allowed to reside in a RCFE, which includes whether the resident has active communicable tuberculosis, requires 24-hour skilled nursing or intermediate care, has an ongoing behavioral or mental disorder, or has dementia, unless he or she is otherwise permitted to be cared for in a RCFE by CCLD.²

Growing demand: Over the past thirty years, the demand for RCFEs has grown substantially. Although RCFEs have been generally available, they experienced explosive growth in the 1990s, more than doubling the number of beds between 1990 and 2002,³ and continued to grow 16 percent between 2001 and 2010.⁴ Nationwide, states reported 1.2 million beds in licensed RCFEs in 2010.⁵ In 2010, the national Centers for Disease Control reported that 40 percent of RCFE residents needed help with three or more activities of daily living and three-fourths of residents had at least two of the 10 most common chronic conditions.⁶

According to DSS, as of June 2, 2014 there are 7,587 licensed RCFEs in California with a capacity to serve 176,891 residents.

¹ Section 87455(b) of Title 22, California Code of Regulations.

² Section 87455(c) of Title 22, California Code of Regulations.

³ Flores and Newcomer, "Monitoring Quality of Care in Residential Care for the Elderly: The Information Challenge". Journal of Aging and Social Policy, 21:225-242, 2009.

⁴ SCAN Foundation. "Long Term Care Fundamentals: Residential Care Facilities for the Elderly." March 2011. http://thescanfoundation.org/sites/thescanfoundation.org/files/LTC_Fundamental_7_0.pdf

⁵ "Assisted Living and Residential Care in the States in 2010," Mollica, Robert, AARP Public Policy Institute

⁶ "Residents Living in Residential Care Facilities: United States, 2010, Caffrey, Christine, et al., US Centers for Disease Control, April 2012

RCFE licensee and administrator requirements: California statute differentiates between administrators and facility licensees, who often are the business owners and may be property owners and administrators charged with overseeing the quality of the day-to-day operations and are generally required to be present at the facility during normal working hours. However, initial training and certification requirements for licensees and administrators are similar.

At minimum, in order to be eligible to apply for a RCFE license, a person must be at least 21 years of age, pass a criminal background check and have a high school diploma or pass a GED test. A prospective licensee must then provide evidence that he or she is of “reputable and responsible character,” which includes providing an employment history and character references. A prospective licensee must also document that he or she has sufficient financial resources to maintain the standard of care required by law and must disclose any prior role as an administrator or licensee of another community care facility, including whether any disciplinary action was taken against him or her.

Regarding training, a licensee and an administrator are both required to undergo 40 hours of classroom instruction in order to be certified. This training covers relevant laws and regulations and core competencies as follows:

- 1) Laws, regulations, and policies and procedural standards that impact the operations of residential care facilities for the elderly;
- 2) Business operations;
- 3) Management and supervision of staff;
- 4) Psychosocial needs of the elderly;
- 5) Community and support services;
- 6) Physical needs for elderly persons;
- 7) Use, misuse, and interaction of medication commonly used by the elderly;
- 8) Resident admission, retention, and assessment procedures;
- 9) Training focused specifically on serving clients with dementia; and
- 10) Cultural competency and sensitivity in issues relating to the underserved aging lesbian, gay, bisexual, and transgender community.

Once completed, licensees and administrators must pass a written exam administered by CCLD, and once they are certified, licensees and administrators must renew their certification every two years. However, for administrators, in order to have their certification renewed, they must have participated in at least 40 hours of continuing education. The continuing education hours are required to include at least eight hours of education on providing dementia care, and no more than half of the hours of continuing education can be completed through online courses.

RCFE staff requirements: Licensees employ a wide range of staff to provide day-to-day support and care for residents of RCFEs. Although many employ individuals with specific expertise and certifications, such as Licensed Vocational Nurses and Certified Nursing Assistants, at minimum staff "who assist residents with personal activities of daily living" are required to be at least 18 years of age and undergo 10 hours of training within four weeks of being employed by the RCFE and four hours of training each year thereafter. The training is somewhat similar to that required of licensees and administrators, but is limited to covering the physical limitations and needs of the elderly, the importance and techniques for personal care services, residents' rights, policies and procedures regarding medications and the psychosocial needs of the elderly.

There are also additional training requirements for staff who work in RCFEs that "provide" dementia care or who assist residents with managing their medication. Staff who work in a RCFE that advertises or promotes special care, special programming, or a special environment for persons with dementia are required to undergo an additional six hours of training on providing care to persons with dementia. Staff also must annually complete eight hours of continuing training on dementia care. Training for staff who assist residents in the management and self-administration of medication depends on the size of the facility in which they work. For facilities with 16 or more residents, staff must undergo 16 hours of training, and for facilities with 15 or fewer residents, staff must complete six hours of training on medication management. Both training requirements must be completed within the first two weeks of employment and conclude with an examination. Four hours of annual continuing medication management training is required, as well.

All personnel, including the licensee, administrator and staff, are required to undergo and receive a criminal background clearance, and must demonstrate they are of good health, which means they must be physically and mentally capable of performing assigned tasks. In order to ensure that all personnel are of good health, they are required to undergo a health screening not more than six months prior or seven days after employment or licensure.⁷

Adequacy and relevance of existing training and certification requirements: Nearly 25 years have passed since existing RCFE licensing and certification requirements have been changed. The last noted change was in AB 1615 (Hannigan), Chapter 848, Statutes of 1991, which required prospective licensees to undergo an orientation training prior to commencing the licensee certification process. Additionally, there are no requirements that licensees or administrators have a college degree or professional license, and staff are only required to be 18 years of age regardless of whether they have a high school diploma. The staff training requirements pale in comparison to those of many service related positions that do not provide direct care to the infirm, elderly or disabled. In its 2013 special report, "Residential Care in California: Unsafe, Unregulated, and Unaccountable," California Advocates for Nursing Home Reform wrote that even a manicurist "must have 400 hours of training and pass a state exam."

The existing training requirements and methods by which RCFE personnel access and meet their ongoing training needs are also antiquated. Currently, RCFE licensees and administrators are required to undergo 40 hours of training and complete a written exam. However, as noted by DSS, "currently, no proctoring protocol exists, resulting in no statewide uniformity on how the

⁷ Section 87411(f) of Title 22, California Code of Regulations.

exams are administered. This lack of consistency and guidance results in errors and can ultimately result in candidates getting certified who may not meet the minimum qualifications."⁸

Staff Comments: This measure is part of a package of legislative measures that seek to establish the RCFE Reform Act of 2014. Previously, SB 911 was in conflict with AB 1570 (Chesbro), which, like this bill, proposes to increase training requirements for licensees and staff, and dementia care. The Assembly Human Services Committee approved this measure with amendments agreed to by the respective authors of this bill and AB 1570 to avoid any conflict and to address increased training requirement for RCFE administrators.

AB 1570 will continue to address licensee, staff and dementia care training, but will be amended in Senate Human Services Committee to resolve the policy differences in the training requirements between the two bills.

With the adoption of these amendments, the two bills will become companion measures that provide for a holistic and comprehensive reform of RCFE training requirements.

Author's Statement: According to the author:

Residential Care Facilities for the Elderly (RCFE) law is more than 20 years old and has not been updated to reflect changes in medical and industry practices in caring for the elderly. RCFEs now serve more residents with serious health problems and higher levels of dementia. Five years ago these residents would have been treated in nursing homes. And although residents' health care needs are greater, the lack of qualifications and training required of administrators and direct care staff is inadequate to meet the residents' needs for care and supervision, placing RCFE residents at risk.

SB 911 seeks to uplift RCFE care and services to our most vulnerable population by increasing administrator and specified training for direct care staff, by adding higher staffing requirements to care for residents with higher acuity, and finally protecting residents and staff from any retaliation when they call 911 if they notice someone needs emergency assistance.

Previous Hearing: SB 911 was previously heard and amended in the Assembly Human Services Committee where it passed on a vote of 6-1 (Grove).

Current Related Legislation:

SB 894 (Corbett) Would increase 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.

SB 895 (Corbett) Would require CDSS to conduct annual unannounced comprehensive inspections for all facilities, requires CDSS to verify compliance following deficiencies within

⁸ 2014-15 Budget Change Proposal #CCLD-2; Department of Social Services; Social Services and Licensing. 2014-15 Budget. Page 12.

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 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

Hazel's Army (Co-Sponsor)
Stand Up for Rosie (Co-Sponsor)
AARP
Alliance on Aging of Monterey County
Assisted living Consumer Alliance (ALCA)
California Advocates for Nursing Home Reform (CANHR)
California Association of Public Authorities (CAPA)
California Continuing Care Residents Association (CALCRA)
California Long-Term Care Ombudsman Association (CLTCOA)
California Senior Legislature (CSL)
Catholic Charities Diocese of Stockton
Consumer Attorneys of California
Consumer Federation of California (CFC)
Contra Costa Advisor Council on Aging (CCACOA)
County of San Diego
Elder Abuse Task Force of Santa Clara County
Elder law & Advocacy (ELA)
Johnson Moore Trial Lawyers
Long Term Care Ombudsman Services of San Luis Obispo County
Long Term Care Services of Ventura County, Inc.
National Association of Social Workers, California Chapter (NAWS-CA)
National Consumer Voice for Quality Long-Term Care (Consumer Voice)
Office of the State Long-Term Care Ombudsman
Ombudsman Services of Contra Costa
Stanislaus County Commission on Aging
Valentine Law Group
Two individuals.

Opposition

California Association for Health Services at Home (CAHSAH) (Unless Amended)
LeadingAge California (Unless Amended)

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