

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Cheryl Brown, Chair

SB 648 (Mendoza) – As Amended January 26, 2016

SENATE VOTE: 27-12

SUBJECT: Health and care facilities: referral agencies.

SUMMARY: SB 648 adds referrals to residential care facilities for the elderly (RCFEs) to the body of law requiring anyone who refers someone to a skilled nursing or intermediate care facility for compensation to be licensed as a referral agency, and establishes new requirements on referral agencies. Specifically, **this bill:**

- 1) Adds referrals to RCFEs to the body of law requiring anyone who refers someone to a skilled nursing or intermediate care facility for compensation to be licensed as a referral agency.
- 2) Prohibits a referral agency from referring any person to an RCFE if that RCFE does not meet state licensing standards.
- 3) Prohibits any extended care facility, skilled nursing home, intermediate care facility, or a residential care facility for the elderly from paying a commission or fee to a referral agency that is not licensed.
- 4) This bill requires a referral agency to provide a disclosure statement to each person receiving its services, and to retain, for 3 years, a signed acknowledgment stating that the disclosure statement was received. The disclosure statement among other things must include:
 - a) Whether the referral agency has an agreement or contract with the facility to which the person is being referred.
 - b) If a commission or fee will be received by the referral agency from the facility as a result of the referral, if applicable.
 - c) Any gift or exchange of monetary value between the facility and the referral agency that is in addition to, or in lieu of, a commission or fee.
 - d) Any fee charged to the person or persons by the referral agency, and requires a notice to include a description of the services being rendered for that fee and the referral agency's refund policy.
- 5) States that failure to provide the disclosure statement or retain the acknowledgment, constitutes unfair competition which includes unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising and is subject to a civil penalty of up to \$2,500.

- 6) Limits the personal information of a consumer that a referral agency can share with other parties or from disclosing any personal information of a person receiving services, unless authorized to do so.
- 7) Prohibits a referral agency from holding any power of attorney for a person receiving placement referral services, or receiving or holding their property in any capacity.
- 8) Requires referral agencies to maintain liability insurance coverage in an amount of at least one million dollars (\$1,000,000) per person occurrence and three million dollars (\$3,000,000) in the total annual aggregate, for negligent acts or omissions.

EXISTING LAW:

- 1) Licenses and regulates extended care, skilled nursing home or intermediate care facilities by the Department of Public Health.
- 2) Licenses and regulates residential care facilities for the elderly (RCFEs).
- 3) Licenses and regulates referral agencies of extended care facilities, skilled nursing homes, and intermediate care facilities.
- 4) Defines “referral agency” to mean a private, profit or nonprofit agency which is engaged in the business of referring persons for remuneration to any extended care, skilled nursing home or intermediate care facility or a distinct part of a facility providing extended care, skilled nursing home care, or intermediate care.
- 5) Prohibits a licensee from having a direct or indirect financial interest in any medical facility doing business with the licensee.

FISCAL EFFECT:

According to the Senate Appropriations Committee:

- Minor, one-time costs to update existing regulations by the Department of Social Services (special fund).
- One-time costs of about \$2.5 million over two years for initial licensure of additional referral agencies by the Department of Social Services (special fund). The total number of referral agencies that are referring consumers to residential care facilities for the elderly is not known, as there are not current licensing requirements for this segment of the referral agency market. It is estimated that there are about 2,000 such agencies statewide. Under this assumption, it will require about \$2.5 million in staff costs over two years to complete the initial licensing process. After that, ongoing licensing and enforcement costs are anticipated to be minor.

COMMENTS:

Author's statement: According to the author, “Elder care referral agencies are mostly unregulated, in spite of the fact that they can be deeply involved in the decision making of a

senior or their family when determining care options. Consumers rely heavily on the advice and recommendations of referral agencies, especially since seniors and their families typically seek the assistance of a referral agency following a decline in independence or a significant health event, which can be a stressful and traumatic time. Given the significance of these health and life decisions, California should ensure that referral agencies are at least meeting minimal standards.”

What are RCFEs: There are approximately 8,000 Assisted Living, Board and Care, and Continuing Care Retirement homes that are licensed as RCFEs in California. These residences are designed to provide home-like housing options to residents who need some help with activities of daily living, such as cooking, bathing, or getting dressed, but otherwise do not need continuous, 24-hour assistance or nursing care. The RCFE licensure category includes facilities with as few as six beds to those with hundreds of residents, whose needs may vary widely. More than 90 percent of RCFEs in California are for-profit homes, the majority of which are small facilities. Most residents pay privately or with long-term care insurance, and fees can range from \$1,500 to more than \$8,000 per month.

In recent years, there have been several high-profile incidents and investigative articles that have drawn attention to questions about the adequacy of Department of Social Services (DSS) oversight of RCFEs. In July 2013, *ProPublica* and *Frontline* reporters wrote and produced a series of stories on Emeritus, the nation’s largest RCFE provider. Featured in the stories was a woman who died after receiving poor care at a facility in Auburn, California. The series documented chronic understaffing and a lack of required assessments and substandard care. In late October 2013, 19 frail seniors were abandoned at Valley Springs Manor in Castro Valley by the licensee and all but two staff after the state began license revocation proceedings for the facility. DSS inspectors, noting the facility had been abandoned, left the two unpaid service staff to care for the abandoned residents with insufficient food and medication, handing them a \$3,800 citation before leaving for the weekend. The next day sheriff’s deputies and paramedics sent the patients to local hospitals.

Arguments in Support: Writing as the sponsor of the bill, the Consumer Federation of California states, “generally, referral agency services are offered at no charge to seniors. Instead, referral agencies receive a commission or finders’ fee from the care facility after they have successfully referred a senior for care and housing. The commission or finders’ fee is typically calculated as a percentage of the seniors monthly rent, creating an incentive for the referral agent to place the senior in a specific facility or one where the agency has an exclusive referral contract. Oftentimes these are more expensive for the senior, even if the senior doesn’t need a high level of care or may have difficulty affording it.”

Previous Legislation:

AB 1863 (Jones) of 2014 would have established “domestic home care aide referral organizations” as a new licensure category under the Home Care Services Consumer Protection Act overseen by the Department of Social Services (DSS), as specified.. AB 1863 was held in the Senate Appropriations Committee.

SB 398 (Romero) of 2003 would have, among other things, made the licensing and regulation provisions of the Employment Agency, Employment Counseling, and Job Listing Services Act applicable to health care employment agencies, as defined. SB 398 was held in the Senate Appropriations Committee.

SB 70 (Murray) of 1999 would have established licensing and regulations for residential care facilities for the elderly referral agencies. SB 70 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Federation of California - Sponsor

Area Agency on Aging Advisory Council – Support with Amendment

AARP

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

California Alliance for Retired Americans

California Long-Term Care Ombudsman Association

California Public Interest Research Group (CALPIRG)

Consumer Attorneys of California

Elder & Dependent Adult Abuse Prevention Council of Santa Barbara County – Support with Amendment

Institute on Aging

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

Older Women’s League Sacramento Capitol

Opposition

Caring.com – Oppose Unless Amended

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