

Date of Hearing: June 25, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

SB 1406 (Allen) – As Amended June 10, 2024

SENATE VOTE: 31-7

SUBJECT: Residential care facilities for the elderly: resident services

SUMMARY Increases the number of days a residential care facility for the elderly (RCFE) is required to provide prior written notice to residents regarding an increase in fees, from 60 days to 90 days; adds a requirement for the notice to include a detailed justification for the increase; restricts the annual increase in the rates of fees or rate structures for services based on a formula utilizing the Consumer Price Index for All Urban Consumers for All Items (CPI-U) and Occupational Employment and Wage Statistics (OEWS) data; and, adds to the RCFE bill of rights. Specifically, **this bill**:

- 1) Changes the timeline a licensee of an RCFE is required to provide a written notice to its residents, or residents' representatives, regarding increases to the rate of fees, or in any of its rate structure for services, from 60 days to 90 days.
- 2) Requires the written notice to residents, or residents' representatives, to include a detailed justification for the increase in rates.
- 3) Stipulates admission agreements entered into or modified on and after January 1, 2025, restrict the annual increase in the rates of fees for residents or in any of its rate structures for services to 5% plus the percentage change in the cost-of-living index as measured by the CPI-U, plus half the percentage change in the annual median wage using the OEWS data for California-specific "personal care and service occupations" in the last two years.
- 4) Provides that rate increases due to a change in the level of care of the resident, a resident's voluntary move to a different unit, or a voluntary change in the number of individuals residing in the unit are not restricted by this provision.
- 5) Permits an admission agreement to provide for more restrictive rate increase terms.
- 6) Specifies that an expiration of a discount, incentive, concession or credit offered by the licensee, and disclosed to the resident, is not an increase, so long as the length and other terms of the discount, incentive, concession, or credit was disclosed to the resident or the resident's representative prior to their provision. Exempts RCFEs owned, controlled, or operated by the Department of Veterans Affairs from this provision.
- 7) Clarifies these provisions do not apply to optional services that are provided by individuals, professionals, or organizations under a separate fee-for-service arrangement with residents.
- 8) Defines "Consumer Price Index for All Urban Consumers for All Items" to mean the metropolitan area in which the property is located, as published by the United States (U.S.) Bureau of Labor Statistics, as specified.

- 9) Defines “percentage change in the cost of living” as the percentage change in the applicable CPI-U.
- 10) Makes additional specifications regarding which month of data to use based on available data published.
- 11) Requires the wage metric to be calculated by determining the percentage change between the annual median wage for personal care and service occupations using OEWS data for all of California based on the most recent data available compared to the data available for the same quarter of the previous year.
- 12) Requires the specified calculations to be applied only to the extent that they do not conflict with any other applicable law that restricts annual increases in the rate of fees for residents to be less than provided by this act.
- 13) Adds the right to request, refuse, or discontinue a service to the RCFE residents’ Bill of Rights.

EXISTING LAW:

- 1) Establishes the California Residential Care Facilities for the Elderly Act. (Health and Safety Code [HSC] § 1569 *et seq.*)
- 2) Defines an RCFE as a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. Allows persons under 60 years of age with compatible needs to be admitted or retained if a licensee determines that person is compatible, as defined. (HSC § 1569.2)
- 3) Requires a person, firm, partnership, association, corporation, or state or local public agency to have a current valid license to operate, establish, manage, conduct, or maintain an RCFE. (HSC § 1569.10)
- 4) Requires the California Department of Social Services (CDSS) to inspect and license RCFEs. (HSC § 1569.11)
- 5) Tasks the administrator of an RCFE with the responsibility to provide or ensure provision of services to residents with appropriate regard for the residents’ physical and mental well-being and needs. (22 California Code of Regulations (CCR) § 87405(h))
- 6) Establishes the Resident’s Bill of Rights for residents of RCFEs, which lists 30 rights, including, but not limited to, the following:
 - a) To be encouraged and assisted in exercising their rights as citizens and residents of the facility; and to be free from interference, coercion, discrimination, and retaliation in exercising their rights;
 - b) To care, supervision, and services that meet their individual needs and are delivered by staff that are sufficient in numbers, qualifications, and competency to meet their needs;

- c) To make choices concerning their daily life in the facility;
 - d) To fully participate in planning their care, including the right to attend and participate in meetings or communications regarding the care and services to be provided, as specified, and to involve persons of their choice in the planning process. The licensee shall provide necessary information and support to ensure that residents direct the process to the maximum extent possible, and are enabled to make informed decisions and choices;
 - e) To be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and verbal, mental, physical, or sexual abuse;
 - f) To present grievances and recommend changes in policies, procedures, and services to the staff of the facility, the facility's management and governing authority, and to any other person without restraint, coercion, discrimination, reprisal, or other retaliatory actions. The licensee shall take prompt actions to respond to residents' grievances;
 - g) To contact CDSS, the long-term care ombudsman, or both, regarding grievances against the licensee;
 - h) To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided, and to receive written notice of any rate increases; and,
 - i) To be protected from involuntary transfers, discharges, and evictions in violation of state laws and regulations. (HSC § 1569.269)
- 7) Requires every licensed RCFE to provide at least the following basic services:
- a) Care and supervision;
 - b) Assistance with instrumental activities of daily living in the combinations which meet the needs of residents;
 - c) Helping residents gain access to appropriate supportive services, as defined, in the community;
 - d) Being aware of the resident's general whereabouts, although the resident may travel independently in the community;
 - e) Monitoring the activities of the residents while they are under supervision of the facility to ensure their general health, safety, and well-being; and,
 - f) Encouraging the residents to maintain and develop their maximum functional ability through participation in planned activities. (HSC § 1569.312)
- 8) Requires basic services to include, at a minimum:
- a) Care and supervision, as defined;

- b) Safe and healthful living accommodations and services, as specified;
 - c) Three nutritionally well-balanced meals and snacks made available daily, as specified;
 - d) Personal assistance and care as needed by the resident and as indicated in the pre-admission appraisal, with those activities of daily living such as dressing, eating, bathing, and assistance with taking prescribed medications, as specified;
 - e) Regular observation of the resident's physical and mental condition, as specified;
 - f) Arrangements to meet health needs, including arranging transportation, as specified; and,
 - g) A planned activities program which includes social and recreational activities appropriate to the interests and capabilities of the resident, as specified. (22 CCR § 87464(f))
- 9) In the circumstance a licensee increases the rates of fees for residents or makes increases in any of its rate structures for services, requires the licensee to provide no less than 60 days' prior written notice to the residents or the residents' representatives with the amount of the increase, the reason for the increase, and a general description of the additional costs, except for an increase in the rate due to a change in the level of care of the resident. This provision does not apply to optional services under a separate fee-for-service arrangement with residents. (HSC § 1569.655)
- 10) In the circumstance of a rate increase due to a change in the level of care of the resident, requires the licensee to provide the resident and the resident's representative, if any, written notice of the rate increase within two business days after initially providing services at the new level of care. Requires the notice to include a detailed explanation of the additional services to be provided at the new level of care and an accompanying itemization of the changes. (HSC § 1569.657(a))
- 11) Requires the admission agreement to include all of the following:
- a) A comprehensive description of any items and services provided under a single fee, such as a monthly fee for room, board, and other items and services;
 - b) A comprehensive description of, and the fee schedule for, all items and services not included in a single fee. In addition, the agreement shall indicate that the resident shall receive a monthly statement itemizing all separate charges incurred by the resident;
 - c) A facility may assess a separate charge for an item or service only if that separate charge is authorized by the admission agreement. If additional services are available through the facility to be purchased by the resident that were not available at the time the admission agreement was signed, a list of these services and charges shall be provided to the resident or the resident's representative. A statement acknowledging the acceptance or refusal to purchase the additional services shall be signed and dated by the resident or the resident's representative and attached to the admission agreement;

- d) An explanation of the use of third-party services within the facility that are related to the resident's service plan, as specified, and who is financially responsible for the third-party services;
 - e) A comprehensive description of billing and payment policies and procedures;
 - f) The conditions under which rates may be increased;
 - g) The facility's policy concerning family visits and other communication with residents;
 - h) The facility's policy concerning refunds, including the conditions under which a refund for advanced monthly fees will be returned in the event of a resident's death;
 - i) Conditions under which the agreement may be terminated; and,
 - j) An explanation of the facility's responsibility to prepare a relocation evaluation, for each resident and a closure plan and to provide notice in the case of an eviction pursuant. (HSC § 1569.884)
- 12) Requires admissions agreements to include specified information, including, but not limited to, the following:
- a) Basic services to be made available;
 - b) Additional items and services which are available; and,
 - c) Payment provisions, including the following:
 - i) Rate for all basic services which the facility is required to provide in order to obtain and maintain a license, as specified;
 - ii) Rate for additional items and services, as specified;
 - iii) Any fee that is charged prior to or after admission, as specified;
 - iv) Payor of all items and services;
 - v) Due date;
 - vi) Funding source, as specified;
 - vii) A comprehensive description of billing and payment procedures;
 - viii) A provision indicating that an itemized monthly statement that lists all separate charges incurred by the resident that are collected by the facility shall be provided to the resident or the resident's representative;
 - d) Modification conditions, including the requirement for the provision of at least 60 days prior written notice to the resident of any rate or rate structure change, or as soon as the licensee is notified of Supplemental Security Income/State Supplementary Payment rate

changes, as specified; and,

- e) Refund conditions, as specified. (22 CCR § 87507)
- 13) Requires the pre-admission appraisal to be updated, in writing, as frequently as necessary to note significant changes and to keep the appraisal accurate. Requires the reappraisals to document changes in the resident's physical, medical, mental, and social condition. Requires the licensee to immediately bring any such changes to the attention of the resident's physician and their family or responsible person. Requires the licensee to arrange a meeting with the resident, the resident's representative, if any, appropriate facility staff, and a representative of the resident's home health agency, if any, when there is a significant change in the resident's condition, or once every 12 months, whichever occurs first, as specified. Significant changes include, but are not limited to:
- a) A physical trauma such as a heart attack or stroke;
 - b) A mental/social trauma such as the loss of a loved one; or,
 - c) Any illness, injury, trauma, or change in the health care needs of the resident that results in a prohibited health condition, as specified. (22 CCR § 87463)
- 14) Requires, based on the resident's preadmission appraisal and subsequent changes to that appraisal, requires the facility to provide assistance and care for the resident in those activities of daily living which the resident is unable to do for themselves. Authorizes the use of postural supports, as specified. (22 CCR § 87608)

Federal law:

- 15) Requires the U.S. Secretary of Labor to publish the percentage change in the Consumer Price Index no later than November 15 of each fiscal year. (29 United States Code § 720(c))

FISCAL EFFECT: According to the Senate Committee on Appropriations on April 26, 2024, unknown, ongoing General Fund costs for CDSS for state administration for licensing complaint investigation and enforcement activities.

COMMENTS:

Background: *Residential Care Facilities for the Elderly.* RCFEs are situated between in-home care and skilled nursing facilities. RCFEs are most commonly referred assisted living, board and care, or residential care. These residences are designed to provide homelike 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. RCFEs do not have a uniform care model and offer a wide variation in the level of services and independence available to residents. This flexibility is intended to allow individuals over 60 years of age the ability to find care that fits within their lifestyle and personality.

The RCFE licensure category includes facilities with as few as six beds to those with hundreds of residents, whose needs may vary widely. Typically, the smaller facilities are homes in residential neighborhoods while the larger facilities resemble apartment complexes with structured activities

for their residents. Residents may reside in their own apartment or may share a bedroom. According to CDSS' website, there are 12,037 licensed RCFEs total.

Residential Care Facilities for the Elderly Rates Setting and Affordability. Costs of RCFEs vary widely. RCFEs in California cost an average of \$5,250 per month. However, monthly fees can exceed \$10,000. Due to insufficient long-term care insurance, most residents pay for care via private pay and some use Medi-Cal.

As described above, RCFEs are typically designed with the concept of "aging in place." Aging in place refers to allowing adults to remain in one home as they age, whether it is an RCFE or their family home. This concept helps ensure adults receive consistent care without traumatic transfers as their care needs increase.

RCFEs charge for a service package based on a resident's needs for care and supervision, as determined by the facility, often through a points-based appraisal process, and signed into contract through the admission agreement. State regulations require a pre-admission appraisal to be updated in writing as frequently as necessary to note significant changes and to keep the appraisal accurate. However, due to increase in care, the cost of care inevitably also increases. When a resident enters an admission agreement, it is likely the admission agreement will continually be amended as needs increase. For example, a resident may enter with full continence and then over time, a resident may be unable to use the bathroom without assistance. As such, residents' rates increase.

However, in addition to rate adjustments that might match the level of care increases, there have been complaints of rate increase abuses. According to the Office of the State Long-Term Care Ombudsman (Ombudsman), in 2023, local programs received more than 14,000 complaints from RCFE residents, hundreds of these related to billing, add-on charges and unexpected or excessive rate increases. Many of these types of complaints devolve into disputes over unwanted discharges and evictions of elderly residents. Examples provided by the Ombudsman include:

- One facility in San Luis Obispo began charging residents to wash their clothes more than once per week.
- A facility in Solano County was charging residents extra for a vegan meal, despite it being included as part of the base rate in their Admissions Agreement.
- A recent complaint received from an RCFE resident in Contra Costa County revealed facility management had raised their rent by 200%, with no justification for the increase.

Rate and fee increases make it difficult for residents to stay housed since they are often on fixed incomes, with shrinking savings and few options.

This bill prescribes an equation for RCFEs to use in order to raise rates, which attempts to capture labor and consumer prices rather than a generalized rate increase prohibition. *The bill* uses data from the OEWS and the CPI-U to calculate the new rate and requires prior notice to be given at least 90 days prior to the increase and include a detailed justification.

The OEWS program produces employment and wage estimates for approximately 830 occupations based on a survey of business establishments (employers). The OEWS survey covers wage and salary workers in nonfarm establishments and does not include the self-

employed, owners and partners in unincorporated firms, household workers, or unpaid family workers. OEWS data are published annually in May.

According to the U.S. Bureau of Labor Statistics, “The [Consumer Price Index (CPI)] is a measure of the average change over time in the prices paid by urban consumers for a representative basket of consumer goods and services. The CPI measures inflation as experienced by consumers in their day-to-day living expenses.” Indexes are available for various geographic areas. The CPI is designed to measure inflation for the U.S. urban population, and may not accurately reflect the experience of people living in rural areas.

The U.S. Bureau of Labor Statistics specifies that the CPI methodology “excludes institutionalized populations such as those living in nursing homes.” Although nursing homes are different than residential care facilities, it is reasonable to assume the CPI does not consider expenses incurred by residents of RCFEs. Additionally, according to the U.S. Bureau of Labor Statistics, the CPI does not produce official estimates for the rate of inflation experienced by subgroups of the population including the aging population.

Residential Care Facilities for the Elderly Residents’ Bill of Rights. AB 2171 (Wieckowski), Chapter 702, Statutes of 2014, established the Bill of Rights for RCFE residents and was part of a package of bills referred to as the Residential Care Facilities for the Elder Reform Act of 2014. This suite of bills was prompted, in part, by the mishandling of an RCFE closure following license revocation. In response to some of the critical issues faced by RCFE residents in California, a report was issued and recommended the Legislature and CDSS take immediate action to protect the elder and dependent adults living in RCFEs by adopting recommendations to create a tiered level of care system, require the Community Care and Licensing Division within CDSS to conduct annual RCFE inspections, strengthen complaint investigations and appeal processes, increase penalties for violations, establish a private right of action to stop illegal RCFE activities, and establish a comprehensive statutory residents’ bill of rights. (Cal. Advocates for Nursing Home Reform, *Residential Care in California: Unsafe, Unregulated & Unaccountable* (2013))

This bill adds to the RCFE Residents’ Bill of Rights by making the 31st right “to request, refuse, or discontinue a service.”

Author’s Statement: According to the Author, “From 2017 to 2021, California’s overall senior population grew by 7 percent. However, during that same period, the number of people 55 and over who sought homelessness services increased 84 percent — more than any other age group. As costs rise, it is expected that the number of seniors experiencing homelessness, many on fixed incomes, will triple by 2030. While many older Californians and people with disabilities benefit from the independence and social opportunities offered by assisted living communities, assisted living communities are expensive. In response to the escalating affordability crisis in the assisted living industry, [this bill] aims to address the pressing concerns faced by vulnerable Californians living in these facilities. Specifically, [this bill] requires a 90-day notice and a detailed justification for rate increases, and sets a cap on annual rate hikes not due to changes in the level of care. [This bill] acts as a safeguard and ensures greater housing stability for California’s seniors.”

Equity Implications: The U.S. Department of Housing and Urban Development has seen the number of individuals experiencing homelessness who are 62 years of age and older jump 68.5%

from 2007 to 2017. A follow-up study from the University of California, San Francisco's Benioff Homelessness and Housing Initiative expects this trend to continue as "the proportion of people age 65 and older experiencing homelessness in the United States [is] expected to triple between 2017 and 2030."

In Los Angeles County alone, homelessness among adults 62 years of age and older increased by a total of 22% in 2018, despite seeing a decrease in all other age groups. San Diego, San Francisco, and Sacramento Counties have all also reported increases in the number of people 50 years of age and older experiencing homelessness: San Diego reports one of four of the homeless adults is over 55 years of age; a study in San Francisco found that nearly 50% of homeless adults were 50 years of age and older, and in Sacramento, there are more than 1,000 people over 55 years of age who are experiencing homelessness. Furthermore, in an article by KPBS entitled "*A Senior on the Streets, with Little Chance of a Home*," researchers predicted that in Los Angeles County alone, the number of older adults experiencing homelessness could reach nearly 14,000 by 2030, if solutions are not found.

Due to the higher needs of many older adults, finding solutions to make RCFEs and other assisted living arrangements affordable is vital to decreasing homelessness in older adults. Given the high costs to rent or buy a home, RCFEs serve a vital purpose to the housing continuum.

Double referral: This bill was previously heard in the Assembly Long-Term Care and Aging Committee on June 18, 2024, and was approved on a 5-1 vote.

RELATED AND PRIOR LEGISLATION:

AB 1482 (Chiu), Chapter 597, Statutes of 2019, created the Tenant Protection Act of 2019, which limited rent gouging by placing an upper limit on annual rent increases of 5% plus inflation, and required landlords to have just cause to evict tenants of over one year. AB 1482 sunsets in 2030.

AB 2171 (Wieckowski), Chapter 702, Statutes of 2014, see comments above.

AB 2598 (Leno) of 2008, would have removed the exemption for RCFEs from rent controls, and would have authorized a local governing body that is imposing rent controls to require a RCFE to inform each resident or prospective resident of the amount of the monthly fee that is attributable to rent. *AB 2598 died on the Assembly third reading file.*

AB 2101 (Wolk) of 2008, would have required RCFEs to provide residents with 90 days' prior written notice for increases in the rates of fees for residents or increases in any of the facility's rate structures for services of more than 10%. AB 2101 would also have required RCFEs to provide specified information in the prospective resident information packet, resident admission agreement, and rate increase notices. *AB 2101 was held on the Senate Appropriations Committee suspense file.*

SB 1898 (Soto), Chapter 557, Statutes of 2002, required an RCFE licensee to provide an applicant with a written statement of costs relating to a fee charged for preadmission, and required a licensee to provide residents written notice of rate increases, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California Advocates for Nursing Home Reform (Sponsor)
California Retired Teachers Association
Office of the State Long-Term Care Ombudsman
Resident Council of Brookdale Santa Monica Gardens

Opposition

6Beds, INC.
LeadingAge California

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