

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 1227 (Obernolte) – As Amended March 21, 2019

SUBJECT: Health and human services: information sharing: administrative actions

SUMMARY: Requires the sharing of information by specified state and county departments regarding individuals or entities subject to certain administrative actions. Specifically, **this bill:**

- 1) Changes from permissive to requisite the sharing of information by the California Department of Aging (CDA), the Department of Public Health (DPH), the Department of Health Care Services (DHCS), the California Department of Social Services (CDSS), and the Emergency Medical Services Authority (EMSA) regarding individuals or entities who have been the subject of any administrative action resulting in certain outcomes, as specified.
- 2) Changes from permissive to requisite the sharing of information by CDSS and county child welfare agencies regarding individuals or entities who have been the subject of any administrative action resulting in certain outcomes, as specified.

EXISTING LAW:

- 1) Establishes the California Community Care Facilities Act to provide for the licensure and regulation of community care facilities. (Health and Safety Code [HSC] Section 1500 *et seq.*)
- 2) Defines “community care facility” to mean any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with physical disabilities or mental impairments and abused or neglected children. Includes within this definition, among a number of other facilities: adult day programs, foster family homes, small family homes, full-service adoption agencies, and short-term residential therapeutic programs. (HSC 1502 (a))
- 3) Requires community care facilities operating in California, as specified, to have a valid license. (HSC 1503.5)
- 4) Establishes the California Residential Care Facility for the Elderly (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 those facilities to be licensed by CDSS. (HSC 1569 *et seq.*)
- 5) Establishes the California Child Day Care Facilities Act to provide a comprehensive, quality system for licensing child day care facilities to ensure that working families have access to healthy and safe child care providers and that child care programs contribute positively to a child’s emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. (HSC 1596.70 *et seq.*)

- 6) Defines “administrative action” to mean any proceeding initiated by CDA, DPH, DHCS, CDSS, EMSA, and county child welfare agencies to determine the rights and duties of various individuals and entities over which the department has jurisdiction and which may include, but is not limited to, action involving the denial of an application for, or the suspension, revocation, or rescission of, any license, special permit, certificate of approval, administrator certificate, criminal record clearance, exemption, or exclusion. (HSC 1522.08 (d))
- 7) Authorizes, in order to protect the health and safety of people who receive care or services from CCLD-licensed individuals or facilities, or from foster-family-agency-certified or -approved individuals, information to be shared as follows:
 - a) CDA, DPH, DHCS, CDSS, and EMSA are permitted to share information regarding various individuals or entities who have been the subject of any administrative action resulting in the denial, suspension, probation, revocation, or rescission of a license, permit, or certificate of approval or in the exclusion of any individual from certain settings who is subject to a background check, as specified; and,
 - b) CDSS and county child welfare agencies are permitted to share information regarding various individuals or entities who have been the subject of any administrative action resulting in the denial, suspension, probation, revocation, or rescission of a license, permit, or certificate of approval or in the exclusion of any individual from certain settings who is subject to a background check, as specified. (HSC 1522.08 (a))
- 8) Requires CDSS to maintain a centralized system for monitoring and tracking final administrative actions to be utilized by CDA, DPH, DHCS, CDSS, EMSA, and county child welfare agencies as part of the background check process, as specified. (HSC 1522.08 (b))
- 9) Requires certain individuals, not including residents, to obtain a criminal record clearance or criminal record exemption from CDSS prior to their initial presence in a community care facility or certified family home, as specified. (HSC 1522)

FISCAL EFFECT: Unknown

COMMENTS:

Community care licensing: The Community Care Licensing Division (CCLD) within CDSS is charged with licensing and regulating a variety of community care facilities, defined in the California Health and Safety Code as “any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children” (HSC 1502). Community care facilities include an array of programs and settings, such as foster family agencies, foster family homes, adult day programs, social rehabilitation facilities, transitional shelters, group homes, runaway and homeless youth shelters, and others. CCLD also licenses and regulates facilities such as child care centers and residential care facilities for the elderly. There were approximately 72,000 CCLD-licensed facilities with the total capacity to serve almost 1.4 million Californians as of June 29, 2018.

The Caregiver Background Check Bureau (CBCB) within CDSS is charged with managing the background check process on all licensed community care facilities and their employees, volunteers and adults residing in a facility who are not clients, and also on home care aides, license-exempt child care providers, and out-of-state child abuse checks for foster care. CBCB receives criminal history records from the state Department of Justice (DOJ) and other entities; it then uses the information received to review an individual's criminal history as part of a required background check. Individuals subject to background checks for purposes of presence at a community care facility must either obtain a criminal record clearance or a criminal record exemption; exemptions may be granted after conviction for certain crimes if, upon review, it is determined that the individual in question is of good character and does not pose a threat to client well-being.

Part of CBCB's responsibilities include gathering information on administrative actions received from other state departments and agencies. Administrative actions are formal actions that are taken against an individual or entity and can include suspension or revocation of a license. If an individual subject to an administrative action is determined to pose a threat to the clients of a licensed facility, CDSS can remove that individual from any licensed facility. Pursuant to Health and Safety Code Section 1522.08(a), CDA, DPH, DHCS, CDSS, and EMSA are permitted to share information regarding individuals or entities who have been the subject of an administrative action resulting in the denial, suspension, probation, revocation, or rescission of a license, permit, or certification of approval or in the exclusion of any individual from certain settings. This section of state law also permits CDSS and county child welfare agencies to share this information for the same purposes

Caregiver background check audit: The California State Auditor released a report in March of 2017 entitled, "California Department of Social Services: Its Caregiver Background Check Bureau Lacks Criminal History Information It Needs to Protect Vulnerable Populations in Licensed Care Facilities." The audit that was the focus of this report did a number of things, including examining the CDSS background check process for individuals who have contact with clients of community care facilities, and looking in particular at the timeliness and quality of the background checks performed.

The audit found that CDSS was not receiving sufficient information to protect the health and safety of vulnerable clients. The State Auditor's report observed that, "[CDSS] and four other state departments are not effectively sharing information about administrative actions they take against individuals, although state law intends for them to do so. Therefore, these five departments do not have access to information that could help them protect vulnerable populations. In addition, [CDSS] is not always timely in evaluating whether an individual who has been subject to an administrative action should be allowed to remain present in a licensed facility."

The State Auditor, along with providing other recommendations in the report, recommended that, "to ensure that all applicable entities share their administrative actions with each other as state law intends, the Legislature should amend state law to require that Social Services, the Department of Aging, Public Health, Health Care Services, Medical Services, and county agencies provide each other their administrative action information."

Governor's veto message: AB 2397 (Oberholte) of 2018 proposed language identical to this bill and was vetoed. The Governor's veto message stated that: "This bill would mandate that the Departments of Aging, Health Care Services, Public Health, Social Services and the Emergency Medical Services Authority, share information regarding adverse administrative actions against licensees, facilities or providers. This bill is unnecessary because the information called for is already being shared as authorized under current law."

In response, the author states that, "As the State Auditor found in her audit of the Department of Social Services, the Departments of Social Services, Aging, Public Health, Health Care Services, and Medical Services are not sharing information with each other regarding administrative actions taken against an individual that could affect their qualification to be at a licensed facility. While the Governor was correct in his point that these agencies are authorized to share this information under current law, the auditor found that in practice they simply aren't doing so. This results in Social Services not being able to adequately safeguard the vulnerable populations they are charged with protecting. It is essential that we protect these populations and [this bill] will ensure that we do so by implementing recommendations made by the state auditor to require that information to be shared."

Need for this bill: This bill seeks to enact the State Auditor's recommendation that CDA, DPH, DHCS, CDSS, EMSA, and county child welfare agencies be required (versus authorized, as in current law) to share information regarding various individuals or entities who have been the subject of any administrative action resulting in the denial, suspension, probation, revocation, or rescission of a license, permit, or certificate of approval or in the exclusion of any individual from certain settings.

According to the author, "[This bill] requires information regarding administrative actions to be shared between the Departments of Aging, Public Health, Health Care Services, Medical Services, and Social Services in order to help protect the vulnerable populations whose health and safety they are responsible for. The sharing of information has been allowed by state law since 2006, but in many cases is not being properly carried out. According to a 2016 State Auditor's report, these five state departments often fail to promptly share information with one another regarding Administrative Actions they take against individuals. This results in Social Services not being able to adequately safeguard the vulnerable populations they are charged with protecting. [This bill] will fix this by allowing the departments that oversee some of the same individuals to utilize information from one another in order to keep these vulnerable populations safe."

Double referral: This bill will be referred to the Assembly Health Committee should it pass out of this committee.

PRIOR LEGISLATION:

AB 2397 (Oberholte) of 2018 was identical to this bill. AB 2397 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Regional Center Agencies

Opposition

None on file

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