

Date of Hearing: May 7, 2020

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 2377 (Chiu) – As Amended May 4, 2020

SUBJECT: Adult residential facilities: closures and resident transfers

SUMMARY: Establishes closure requirements for Adult Residential Facilities (ARFs) and expands protections for the residents of these centers. Specifically, **this bill:**

- 1) Defines “adult residential facility” as a facility of any capacity that provides 24-hour-a-day non-medical care and supervision to persons 18 to 59 years of age.
- 2) Requires a licensee of an ARF, prior to transferring a resident to another facility or to an independent living arrangement as a result of facility closure, to take the following steps, at minimum:
 - a) Prepare a relocation evaluation of the needs of each resident which shall include all of the following:
 - i) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan;
 - ii) A list of facilities, within a 60-mile radius of the resident’s current facility that meet the resident’s present needs; and,
 - iii) If applicable, the resident’s right to remain in the facility, if purchased by the city or county, as specified.
 - b) Provide each resident, or individual deemed responsible for the recipient, with written notice no later than 180 days before the intended eviction that includes all of the following:
 - i) The reason for the eviction, with specific facts to permit a determination of the date, place, witness, and circumstances concerning the reasons;
 - ii) A copy of the resident’s current service plan; and,
 - iii) A list of referral agencies.
 - c) Discuss the relocation evaluation with the resident and their legal representative within 30 days of issuing the eviction;
 - d) Submit a written report of any eviction to the licensing agency within five days;
 - e) Require that once a licensee has issued the written notice of eviction, they shall not accept any new resident or enter into new admission agreements;
 - f) Refund residents a percentage of preadmission fees in excess of \$500 depending upon the date of payment of the fee in accordance with the following schedule:

- i) A 100% refund if preadmission fees were paid within six months of notice of eviction;
 - ii) A 75% refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction;
 - iii) A 50% refund if preadmission fees were paid more than 12 months but not more than 18 months before notice of eviction; and,
 - iv) A 25% refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.
- g) Refund the resident or their legal representative a proportional per diem amount of any prepaid monthly fees if the resident gives five days' notice before leaving the facility. In other cases, pay the refund within seven days from the date that the resident leaves the facility; and,
- h) Submit a final list of names and new locations of all residents to the California Department of Social Services (CDSS) within 10 days of all residents leaving the facility.
- 3) Requires the ARF licensee to submit a closure plan to CDSS if seven or more residents require transfer as a result of facility closure. The closure plan must be in accordance with the following requirements:
- a) Upon submission of the closure plan, the ARF is prohibited from accepting new residents and entering into new admission agreements;
 - b) The closure plan must meet all specified requirements and describe the staff available to assist in resident transfers. CDSS must include in their review a determination as to whether the licensee's closure plan contains a relocation evaluation for each resident;
 - c) CDSS must approve or disapprove the licensee's closure plan within 15 days of receipt and, if approved, the plan will become effective upon the date the department grants its written approval of the plan;
 - d) Allows a licensee if CDSS disapproves of their closure plan to resubmit an amended plan to the department. If CDSS again disapproves of a licensee's closure plan, the department must explain in writing the reasons for denying approval;
 - e) States that if CDSS fails to take action on a closure plan, whether original or amended, within 20 working days of receipt, the case shall be deemed approved; and,
 - f) A facility may not issue notice of transfer or require any resident to transfer until CDSS has approved of a licensee's closure plan.
- 4) Requires CDSS to contact and work with any local agency that may have assessment, placement, protective or advocacy responsibility for the residents if the licensee fails to comply with the requirements of this section, or if the director determines it is necessary to protect the residents of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director may also care for residents through a

temporary manager or receiver if it is determined immediate relocation of the residents is not feasible.

- 5) Provides that an ARF licensee who fails to comply with the requirements of this section is liable for civil penalties of up to \$100 per violation, per day, until the violation has been corrected and requires that written notice of violation immediately follow. If the violation does not present an immediate threat to the health or safety of residents, the licensee may correct the violation within three days of receiving the notice and will not be liable for the payment of any civil penalties as related to the notice.
- 6) Establishes that a licensee that fails to comply with the requirements of this section and abandons their facility and its residents, on or after January 1, 2021, in addition to the forfeiture of license will be excluded from licensure in facilities under CDSS purview without the right to petition for reinstatement.
- 7) Authorizes a resident of an residential care facility for the elderly (RCFE) to bring a civil action against any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts or maintains an ARF who violates the rights of a resident outlined in the bill, and provides that the owners, operators, and managers of ARFs are responsible for the acts of the facility's employees and liable for costs and attorney fees.
- 8) Establishes that in addition to resident notification requirements, a licensee of an ARF must inform the city and county which the facility is located in of the proposed closure, including whether there are plans to sell the property.
- 9) Requires that if an ARF licensee notifies the city and county that the facility is located in of an intent to sell the property, the local governments must be given the right of first refusal to purchase the property, at a fair market value price, and continue the operation of the ARF. Within 60 days of the notice of intent to sell, the local government must notify the licensee of its intent to purchase the property, as specified.
- 10) Authorizes a city or county maximum flexibility in finding and securing available funding sources, including federal, state, local, or private funds, or a combination of the named, to purchase a facility under this section. Establishes that a purchase of property under this section is subject to all existing requirements applicable by law to the purchasing city or county.
- 11) Authorizes a city or county that purchases an ARF under this section to take over operation of the facility or, if possible, enter into a long-term lease for operation under a nonprofit or for-profit entity. Requires that the nonprofit or for-profit entity selected to operate the ARF have a history of providing adult residential facility services to individuals in need of those services, including but not limited to, Medi-Cal and Supplemental Security Income (SSI) recipients.
- 12) Requires that a lease for the operation of an ARF under this section between a city or county and a nonprofit or for-profit entity include a requirement that the lessee maintains the licensure of the property as an ARF.
- 13) Makes technical changes.

EXISTING LAW:

- 1) Establishes the California Community Care Facilities Act and requires CDSS to administer and license community care facilities providing non-medical services, including ARFs. (Health and Safety Code Section [HSC] 1500 *et seq.*)
- 2) Defines “community care facility” to mean any facility, place, or building that is maintained and operated to provide non-medical 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. (HSC 1502 (a))
- 3) Defines “residential facility” as any family home, group care facility, or similar facility determined by the department, for 24-hour non-medical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual. (HSC 1502 (a)(1))
- 4) Establishes that a licensee of a RCFE shall not require any form of preadmission fee or deposit from a recipient under the State Supplementary Program for the Aged, Blind, and Disabled. (HSC 1569.651 (a))
- 5) Requires that a licensee of a RCFE shall, prior to transferring a resident of the facility to another facility or an independent living arrangement as a result of the forfeiture of a license, or change of use of the facility pursuant to the department’s regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma. (HSC 1569.682 *et seq.*)
- 6) Requires a RCFE, prior to transferring a resident to another facility or to an independent living arrangement as a result of the forfeiture of a license or change in use of the facility, to take all reasonable steps to transfer affected residents safely, and minimize possible trauma by taking the following specified actions:
 - a) Prepare, for each resident, a relocation evaluation of the needs of that resident;
 - b) Provide each resident or the resident’s responsible person with written notice no later than 60 days before the intended eviction;
 - c) Discuss the relocation evaluation with the resident and their legal representative within 30 days of issuing the notice of eviction;
 - d) Submit a written report of any eviction to the licensing agency within five days;
 - e) Require that upon issuing the written notice of eviction a licensee shall not accept new residents or enter into new admission agreements;
 - f) Ensure that for paid preadmission fees in excess of five hundred dollars (\$500), and the resident is entitled to a refund in accordance with specified criteria;
 - g) Require that if the resident gives notice five days before leaving the facility, the licensee shall refund to the resident or their legal representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility, and the unit is

vacated. Otherwise, the licensee shall pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated; and,

- h) Require that within 10 days of all residents having left the facility, the licensee, based on information provided by the resident or resident's legal representative, shall submit a final list of names and new locations of all residents to the department and the local ombudsman program. (HSC 1569.682(a))
- 7) Declares that it is the intent of the Legislature to authorize CDSS to take quick, effective action to protect the health and safety of residents of RCFEs and to minimize the effects of transfer trauma that accompany the abrupt transfer of residents by appointing a temporary manager to assume the operation of a facility that is found to be in a condition in which continued operation by the licensee or their representative presents a substantial probability of imminent danger of serious physical harm or death to the residents. (HSC 1569.481 (a))
- 8) Requires that a RCFE admission agreement include 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. (HSC 1569.884 (j))

FISCAL EFFECT: Unknown

COMMENTS:

Senior Homelessness: Over 151,278 individuals are experiencing homelessness in California based on 2019 reports by the United States Department of Housing and Urban Development. Unfortunately, these numbers are likely undercounted due to the many homeless who never enter the shelter system and instead rely on personal supports to survive. While there are many contributing factors to homelessness, obstacles such as lack of affordable housing, dwindling retirement options, and rising healthcare costs leave seniors particularly vulnerable to joining the unhoused population. A study conducted by Los Angeles, Boston, and New York City in 2019 estimates that the number of homeless seniors 65 years and older will triple by the year 2030, spiking to over 100,000 individuals across the country. In attempts to counteract the rising rate of senior homelessness, California continues to offer early intervention methods and social welfare supports through shelters and nonprofit organizations throughout the state.

Community Care Facilities: The California Community Care Facilities Act (CCFA), enacted in 1973, contains the provisions for a variety of community-based housing options for the elderly and disabled. The CCFA seeks to provide a new system of community-based care for those who require additional supervision and services that are determined to be non-medical. Facilities established under the act provide care to individuals with disabilities, seniors, children in foster care, families who need early child education, and those with severe behavioral, emotional, or mental disorders.

Facilities created under the CCFA are administered through CDSS. The department is responsible for licensing facilities across programs, along with ensuring regulatory compliance and enforcement when necessary. Within CDSS is the Community Care Licensing Division (CCLD), responsible for a variety of community care facilities. According to the state, the mission of the CCLD is to "promote the health, safety, and quality of life of each person in community care through the administration of an effective collaborative regulatory enforcement system." The types of facilities under the purview of the CCLD include adult day programs,

transitional shelters, group homes, foster family homes, homeless youth shelters, child care centers, and others.

Adult Residential Facilities: ARFs, established under the CCFA, provide non-medical services to residents age 18-59, or those 60 and older who meet certain requirements. These facilities are open 24-hours a day and assist those with a mental, physical, or developmental disability. ARFs, also commonly referred to as Board and Care Homes, are not required to have nurses or doctors on staff.

Residents of ARFs can receive assistance with a variety of daily living tasks such as: housekeeping, personal hygiene upkeep, bathing, dressing, distribution of medication, and general supervision. While ARFs do not commonly provide skilled nursing services, these facilities may offer this option if a credentialed Registered Nurse (RN) or Licensed Vocational Nurse (LVN) is on staff. Also created under the CCFA, and regulated under different licensing procedures, are RCFEs.

An RCFE, also created under the CCFA, is another type of facility that provides non-medical care and supervision to individuals with certain daily living needs. However, these facilities primarily offer support to those 60 years or older who do not need 24-hour services. RCFE populations often have functional and cognitive impairments that limit their ability to complete various living tasks, but their medical conditions are managed either by themselves or by an outside medical professional. Under current law, there are several closure requirements for licensees of these types of facilities, enacted to preserve the services and protect the residents.

Need for this bill: This bill seeks to expand ARF closure requirements, mandating a licensee to send advanced notification of the closure to residents and local governments. The language includes provisions to allow a locality ample time to purchase and continue the use of the facility as an ARF, if desired. These facilities house residents that require assistance with daily living tasks due to disability, age, or mental illness, yet, current law contains limited protections for these populations when facing eviction from their primary facility. This legislation would strengthen the closure requirements for ARFs, possibly minimizing transfer trauma for residents. Requiring ARF licensees to provide advanced notice of closures would give their vulnerable population time to plan for the change, which could reduce the number of seniors who fall into homelessness.

According to the author, “This bill reduces the risk of homelessness for vulnerable residents of ARFs. Throughout the state, these facilities are closing at an alarming rate, with San Francisco alone having lost 43 facilities between 2012 and 2019. In 2019, Los Angeles lost more than 200 beds for low-income people with serious mental illness. ARFs are increasingly serving more significant numbers of vulnerable residents, including individuals with serious mental illnesses and other chronic conditions. The current closing requirements for ARFs, which are less protective than those for Residential Care Facilities (RCFEs, serving seniors), increase the challenges residents face when facilities close. Already, a third of those experiencing homelessness are suffering from mental illness. Because of their vulnerability and the current housing crisis, residents are especially at risk of becoming homeless. To ensure the growing vulnerable ARF resident population is provided similar protections that residents of RCFEs have when a facility closes, this bill will align ARF closure requirements with those of RCFEs. By improving closure requirements, California will be better able to reduce the effects of homelessness and protect some of the state’s most vulnerable communities.”

Double referral: This bill was originally double-referred with the Assembly Judiciary Committee; however, due to the Legislature's unanticipated recess in the response to the COVID-19 pandemic and the truncated timeframe in which committees may hear bills, this bill has been single-referred to the Human Services Committee.

RELATED AND PRIOR LEGISLATION:

AB 1034 (Friedman) of 2019 would have required community care facilities that serve children or nonminor dependents, resource families, certified or licensed foster family homes, small family homes, community care facilities that serve adults, residential care facilities for persons with a chronic, life-threatening illness, and child care centers to have emergency and disaster plans. AB 1034 was held in the Assembly Appropriations Committee.

AB 275 (Wood), Chapter 185, Statutes of 2017, revised procedures for long-term health care facilities as the result of license change or closure.

SB 1329 (Leno) of 2010 would have required RCFEs to notify residents and CDSS of specified events related to missed or delated facility upkeep payments and would have required the department to initiate a compliance plan or other appropriate actions upon notice of such event. SB 1329 was vetoed by Governor Schwarzenegger.

AB 949 (Krekorian), Chapter 686, Statutes of 2007, established procedures for RCFEs to transfer residents as the result of a change in facility use or license forfeiture.

REGISTERED SUPPORT / OPPOSITION:

Support

CANHR
City and County of San Francisco
Family Caregiver Alliance (FCA)
Homebridge
Justice in Aging
Life Skills Training and Educational Programs, INC. (LIFESTEPS)
National Association of Social Workers, California Chapter
St. Anthony Foundation
Steinberg Institute
Swords to Plowshares - Vets Helping Vets

Opposition

None on file

Analysis Prepared by: Emmalynn Mathis / HUM. S. / (916) 319-2089