

Date of Hearing: May 7, 2020

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 2926 (Calderon) – As Amended May 4, 2020

SUBJECT: Referral agencies for residential care facilities for the elderly: duties

SUMMARY: Recasts the requirements on a placement agency for residential care facilities for the elderly (RCFEs) to be placed on a referral source; additionally requires a referral source to provide a senior or their representative with specific written, electronic, or verbal disclosures and for a compensated referral source to post specific information on its internet website or marketing materials relating to its privacy policy. Specifically, **this bill:**

- 1) Deletes provisions related to a placement agency and its responsibilities.
- 2) Defines “compensated referral” to mean a referral by a private, for-profit or nonprofit agency that is engaged in the business of referring persons to an RCFE in exchange for any consideration or thing of value, including a fee, commission, gift, or any reciprocal benefit.
- 3) Defines “referral” to mean identifying and connecting a senior or that senior’s representative to a RCFE to facilitate the further evaluation, in consultation with the facility, of whether that facility is a suitable senior housing option for that senior.
- 4) Defines “referral source” to mean a person or entity that provides a referral to a RCFE, including, but not limited to, a county welfare department; county social service department; county mental health department; county public guardian; general acute care hospital discharge planner or coordinator; state-funded program or private agency providing referral services; conservator, as specified; and, a regional center for persons with developmental disabilities that is engaged in identifying senior housing options at RCFEs.
- 5) Specifies that a referral source does not include a resident, a resident’s family member, a licensee of a RCFE, or any professional services staff member of a RCFE, who on behalf of that facility makes a referral, even if they have received a discount or other remuneration from the facility.
- 6) Prohibits a referral source from knowingly referring a person to a facility providing care and supervision or protective supervision unless the facility is licensed as a RCFE or is exempt from licensing. Further provides that a violation of this provision is a misdemeanor.
- 7) Prohibits a referral source from knowingly referring an individual to a RCFE if the individual, because of their health condition, cannot be cared for within the limits of the facility’s license or requires inpatient care in a health facility. Further provides that a violation of this provision is a misdemeanor.
- 8) Prohibits a referral source from referring a person to a RCFE in which the referral source, and an affiliated group or an immediate family member of the referral source, has an ownership interest or a common employee in an executive management position, unless the referral source obtains a written waiver from the senior or that senior’s representative before making the referral. Further provides that a violation of this provision is a misdemeanor.

- 9) Prohibits a referral source from holding any power of attorney for a potential resident or hold that person's property in any capacity. Further provides that a violation of this provision is a misdemeanor.
- 10) Requires a referral source to report the name and address of a facility that the referral source knows, or reasonably suspects is operating without a license to the California Department of Social Services (CDSS). Further requires CDSS to investigate any report filed, and if CDSS has probable cause to believe that the facility that is the subject of the report is operating without a license, the department shall investigate the facility within 10 days after receipt of the report.
- 11) Requires a referral source to notify the appropriate licensing agency of any known or suspected incidents that would jeopardize the health or safety of residents in a RCFE. Reportable incidents include, but are not limited to, all of the following:
 - a) Incidents of physical abuse;
 - b) Any violation of personal rights;
 - c) Any situation in which a facility is unclean, unsafe, unsanitary, or in poor condition;
 - d) Any situation in which a facility has insufficient personnel or incompetent personnel on duty; and,
 - e) Any situation in which residents experience mental or verbal abuse.
- 12) Requires a referral source, either before or simultaneous with a compensated referral to a RCFE located in California, to provide the senior or their representative with information that includes all of the following disclosures:
 - a) A description of the referral source's service.
 - b) The referral source's contact information, including email address and telephone number.
 - c) A referral source's privacy policy, and if the referral source maintains an internet website, a link or URL to the internet website, if disclosure is provided in a written or electronic format.
 - d) A statement regarding whether the referral source will be paid a referral fee by the RCFE to which the senior is referred.
 - e) A statement that the senior or representative may request in writing that the referral source cease contact with the senior.
 - f) The following language: "Pursuant to Section 1569.33(g)(1) of the Health and Safety Code, reports on the results of each inspection, evaluation, and complaint for California's residential care facilities for the elderly, also known as assisted living facilities, are open to public inspection and can be acquired by contacting the State Department of Social Services, Community Care Licensing Division website at www.cdss.ca.gov."

- 13) Authorizes the information and disclosures required by the referral source be provided, together or separately, to the senior or their representative via a clear and conspicuous written disclosure designed to give actual notice of its contents; an electronic disclosure; or, verbally, if the verbal disclosure is given telephonically and recorded under state law.
- 14) Requires the referral source to maintain records of the disclosures for a period of three years and to provide a copy of the disclosures to the senior, representative, or the RCFE, upon written request.
- 15) Requires a compensated referral source, in addition to the disclosures required by a referral source, to do all of the following:
 - a) Use a nationally accredited service provider to perform background checks on referral sources who have direct contact with seniors or their representatives;
 - b) Maintain liability insurance coverage in an amount of at least \$1,000,000 per occurrence and \$2,000,000 in total annual aggregate for negligent acts or omissions by the referral source or any of its employees;
 - c) Accept remuneration only from RCFEs with which the referral source has a written contract; and,
 - d) Maintain and prominently display a privacy policy on every internet website it operates or in its written marketing materials, if the referral source does not maintain an internet website.
- 16) Provides that a referral source that violates these provisions is subject to a civil penalty of between \$250 and \$1,000 for each violation. Further, the Attorney General or a district attorney may institute a proceeding in superior court to recover the civil penalty under this subdivision and to restrain and enjoin a violation of this section.

EXISTING LAW:

- 1) Establishes the Community Care Licensing Division (CCLD) within CDSS and requires CDSS to license various community care facilities and residential facilities, including RCFEs. (Health and Safety Code Section [HSC] 1502 and 1522)
- 2) 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 CDSS. (HSC 1569 *et seq.*)
- 3) Defines a “residential care facility for the elderly” as a housing arrangement chosen voluntarily by persons 60 years of age or older, 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. (HSC 1569.2 (o))
- 4) Defines a “placement agency” as any county welfare department; county social service department; county mental health department; county public guardian; general acute care

hospital discharge planner or coordinator; state-funded program or private agency providing placement or referral services; conservator, as specified; and, regional center for persons with developmental disabilities which is engaged in finding homes or other places for the placement of elderly persons for temporary or permanent care. (HSC 1569.47 (a))

- 5) Prohibits a placement agency from placing individuals in licensed RCFEs when the individual, because of his or her health condition, cannot be cared for within the limits of the license or requires inpatient care in a health facility. Further provides that a violation of this provision is a misdemeanor. (HSC 1569.47 (b))
- 6) Prohibits a placement agency or employee of a placement agency from placing, referring, or recommending placement of a person in a facility providing care and supervision, or protective supervision, unless the facility is licensed as a residential care facility for the elderly or is exempt from licensing. Further provides that a violation of this provision is a misdemeanor. (HSC 1569.47 (c))
- 7) Requires any employee of a placement agency who knows, or reasonably suspects, that a facility which is not exempt from licensing is operating without a license to report the name and address of the facility to CDSS. Further provides that failure to report as required by this provision is a misdemeanor. (HSC 1569.47 (d))
- 8) Requires CDSS to investigate any report filed, and if the CDSS has probable cause to believe that the facility which is the subject of the report is operating without a license, requires the department to investigate the facility within 10 days after receipt of the report. (HSC 1569.47 (e))
- 9) Requires a placement agency to notify the appropriate licensing agency of any known or suspected incidents which would jeopardize the health or safety of residents in a RCFE. Reportable incidents include, but are not limited to, all of the following:
 - a) Incidents of physical abuse;
 - b) Any violation of personal rights;
 - c) Any situation in which a facility is unclean, unsafe, unsanitary, or in poor condition;
 - d) Any situation in which a facility has insufficient personnel or incompetent personnel on duty; and,
 - e) Any situation in which residents experience mental or verbal abuse. (HSC 1569.47 (f))

FISCAL EFFECT: Unknown

COMMENTS:

CDSS Community Care Licensing Division: CCLD is tasked with the responsibility of licensing and investigating complaints against facilities within its jurisdiction, which include RCFE and child care facilities, among others. These facilities typically provide non-medical care and supervision for children and adults in need, which includes adult care services, families in need of early childhood education (child care), children in foster care, and at-risk youth needing

shelter services, seniors in need of residential care, and individuals with disabilities. CCLD is responsible for screening and inspecting facilities to ensure facilities comply with applicable laws and regulations, as well as overseeing any necessary corrective actions in the event of noncompliance. As of July 2019, CCLD licensed nearly 72,000 facilities with the total capacity to serve almost 1.4 million Californians.

Residential Care Facilities for the Elderly: Sometimes referred to as “assisted living facilities,” RCFEs are responsible for providing housing, care, supervision, and assistance with activities of daily living to individuals ages 60 and older, as well as individuals under the age of 60 with similar needs. RCFEs are considered a housing alternative for individuals, rather than a medical facility, such as Skilled Nursing Facilities; however, medical services can be provided in an RCFE under certain specialized care plans. As of July 2019, 7,361 RCFEs were licensed to operate in California, with the capacity to serve 188,717 residents.

Placement agencies: A number of private placement agencies exist to connect seniors and their loved ones with residential care, including RCFEs. These placement agencies can be known by a few interchangeable terms including “placement agencies,” “referral agencies,” and “referral sources.” These placement agencies can range from local small businesses to large, internet-based agencies that provide placement agencies across the country. Due to the relative lack of regulation of this industry in California, it is difficult to estimate how many of these placement agencies operate in the state. While business models and practices also vary, it is common that consumers do not pay a fee to use the services of a placement agency and these individuals do not enter into a contract with the agency; instead, placement agencies typically contract with a number of RCFEs and receive a fee (often, reportedly, the amount of one month’s rent in the facility) if an individual the agency has referred moves into that RCFE.

Need for this bill: Locating an adequate and appropriate living environment and accompanying services for an aging loved one can be confusing and, for some, daunting—particularly if accompanied by the stress of coping with a parent or other relative or friend not being able to live as independently as they once were able. Entities like placement agencies or referral sources hold the potential to connect future residents and their family members or representatives with RCFEs that can provide an appropriate setting and care, thereby potentially taking out much of the “guesswork” and providing potential residents and their loved ones some assurances. This bill aims to provide some protections for consumers during a stressful and vulnerable time as they use referral sources to help them make a significant decision in the placement of a loved one.

According to the author, “Currently, the law loosely regulates ‘placement agencies’ focusing solely on the interaction between them and a residential care facility for the elderly. [This bill] seeks to do the same, by reassigning enhanced regulations on referral sources, but also protects consumers by codifying a number of regulations during a referral source’s interaction with a client.”

RELATED AND PRIOR LEGISLATION:

AB 2744 (Reyes) of 2018 would have required referral agencies providing referrals to RCFEs to register with CDSS, and set forth a number of requirements for these referral agencies including providing a client with a disclosure prior to providing a referral that includes certain pieces of information in clear language; displaying certain information on its internet website; and,

displaying its name and registration number on all advertising, promotions, or marketing material. AB 2744 was held on the Assembly Appropriations Committee suspense file.

SB 648 (Mendoza) of 2017 would have established requirements for private agencies that refer potential residents for a fee to adult residential facilities, including RCFEs, and would have required CDSS to track consumer complaints about private referral agencies, authorized CDSS to levy civil penalties, and required CDSS to submit a report to the Legislature on the effectiveness of existing statutory remedies related to private referral agencies by January 1, 2023, as specified. SB 648 was held on the Senate Appropriations Committee suspense file.

SB 648 (Mendoza) of 2015 would have added 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, and established new requirements on referral agencies, including disclosure of any agreement with the facilities that clients are being referred to, any commissions or fees received, and a requirement for liability insurance. SB 648 was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

A Place for Mom
Caring.com
Hearts That Matter

Opposition

None on file

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