

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Eloise Gómez Reyes, Chair
AB 447 (Patterson) – As Introduced February 11, 2019

SUBJECT: Care facilities: criminal record clearances

SUMMARY: Creates a process by which licensees of community care facilities, residential care facilities for persons with chronic life-threatening illness (RCFCLTIs), residential care facilities for the elderly (RCFEs), and child day care facilities may transfer the current criminal record clearance of an individual associated with the facility, with the exception of individuals associated with a certified family home or resource family of a foster family agency, to multiple facilities of the same facility type operated by the same licensee. Specifically, **this bill:**

- 1) Requires the California Department of Social Services (CDSS), until there exists an automated system to track changes in facility associations, to permit a licensee who operates more than one community care facility of the same facility type, except in instances involving individuals associated to a certified family home or resource family of a foster family agency, to, on a form provided by and submitted to CDSS, either:
 - a) Transfer an individual's current criminal record clearance to one or more facilities of the same facility type operated by the licensee; or,
 - b) Designate, within a single state licensing region, one facility as the central administrative facility to which individuals with a current criminal record clearance are associated, as specified.
- 2) Extends certain provisions of current law that apply to employees of licensed facilities to apply to all individuals associated at those facilities, as follows:
 - a) Prohibits certain exemptions from criminal background clearance requirements from applying to any individual associated at a facility, as specified; and,
 - b) Requires CDSS to hold criminal record clearances in its active files for a minimum of three years after an individual is no longer associated at a licensed facility for purposes of transferring criminal record clearances.
- 3) Requires a licensee, or an individual on behalf of a licensee, be available to CDSS to identify the current work location of all cleared and exempted individuals employed by the licensee.
- 4) Creates a process, until there exists an automated system to track changes in facility associations, by which facility associations may be updated, as follows:
 - a) Requires CDSS, at the time a facility's annual fee is due, to provide the licensee a list of associated individuals previously identified by the licensee;
 - b) Requires the licensee to update the list indicating any individuals whose employment has been terminated or who is otherwise no longer associated with the facility or facilities identified by the licensee, and further, requires the updated list and annual fee to be returned to CDSS by a certain date; and,

c) Requires the licensee, within six months of the due date of the annual fee or at any time upon request by CDSS, and provided the licensee has received a list of previously identified associated individuals from CDSS, to update the list indicating any individual whose employment has been terminated or who is otherwise no longer associated with the facilities previously identified by the licensee, as specified.

5) Makes technical changes.

EXISTING LAW:

- 1) Establishes the Community Care Facilities Act, which allows for the licensure and oversight of out of home placements for abused and neglected children by CDSS. (Health and Safety Code [HSC] Section 1500 *et seq.*)
- 2) Establishes the Community Care Licensing Division (CCLD) within CDSS and requires CDSS to license group care facilities, private foster family agencies, and foster family homes in order to place children who are in the child welfare system. Further requires, prior to licensure, a foster home provider to undergo a criminal background check, as specified. (HSC 1502 and 1522)
- 3) Defines “community care facility” 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, individuals with disabilities or mental impairments and abused or neglected children, and includes: residential facilities, adult day programs, foster family agencies, group homes, and children’s crisis residential programs, among others. (HSC 1502 *et seq.*)
- 4) Defines a “chronic, life-threatening illness” as HIV disease or AIDS, and further defines “residential care facility” as a residential care facility for persons with chronic, life threatening illness or are 18 years of age or older or are emancipated minors, and for family units. (Welfare and Institutions Code Section 1568.01 (c) and (j))
- 5) Establishes the California Residential Care Facilities 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 that facility to be licensed by CDSS. (HSC 1569 and 1569.1)
- 6) Defines “residential care facility for the elderly” as a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where care and services, as specified, are provided based upon individuals’ varying needs and as determined in order for them to be admitted and remain in the facility. (HSC 1569.2 (l))
- 7) Requires CDSS to obtain a full criminal record, if any, for certain individuals, including adults responsible for administration or direct supervision of staff; any person, other than a client, residing in the facility; any person who provides client assistance in dressing, grooming or bathing; and any staff person, volunteer, or employee who has contact with the clients, among others for purposes of criminal record clearance. (HSC 1569.17 (b))
- 8) Permits CDSS to allow an individual to transfer a current criminal record clearance from one facility to another if the clearance has been processed through and is being transferred to

another facility licensed by a state licensing district office. Further, requires the request to be submitted to CDSS in writing, to include a copy of the person's driver's license, or other form of valid identification, and requires CDSS to verify whether the individual has a clearance that can be transferred. (HSC 1569.17 (g)(1))

- 9) Requires all personnel records be maintained at the facility, and further, allows licensees to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility. (22 California Code of Regulations 87412 (g))

FISCAL EFFECT: Unknown

COMMENTS:

Community Care Licensing Division (CCLD): Within CDSS is CCLD, which is responsible for licensing and investigating complaints against facilities that fall within its jurisdiction, such as RCFEs, child care facilities, and out-of-home placements for foster youth, among others. Typically, these facilities provide non-medical care and supervision for adults and youth in need by providing adult care services, early childhood education (child care), foster care and shelter services, and residential care for seniors or individuals with developmental disabilities. CCLD is also responsible for ensuring these facilities comply with all applicable laws and regulations, including criminal background checks, as well as overseeing any necessary corrective actions in the event of noncompliance.

Criminal background checks: Applicants, licensees, adult residents, certain volunteers, and employees of community care facilities who have contact with clients are required by law to undergo a background check and obtain a criminal record clearance or exemption, if applicable. The background check requires these individuals to submit fingerprints which are used by the Department of Justice (DOJ) to search for any criminal record history. For individuals without a criminal history, DOJ forwards a clearance notice to the applicant or licensee, and to the Caregiver Background Check Bureau (CBCB) of CCLD. In the event that the individual does have a criminal history, DOJ sends a record transcript to CBCB, detailing the person's arrests and convictions. If the crimes meet the criteria necessary to qualify for an exemption, pursuant to current law, CBCB sends an exemption notification letter to the applicant or licensee and to the individual. Individuals who are awaiting an exemption may not be present in a facility until an exemption is granted by CBCB.

Facility associations: CCLD allows for certain associations related to community care facilities. Current law allows CDSS to permit a person to transfer a current criminal record clearance from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. Under this process, an individual can be associated to more than one facility; however, for licensees who operate multiple facilities and employ large numbers of staff, the current transfer process may be administratively burdensome.

The second form of association pertains to the waiver process enumerated in the CCLD Evaluator Manual (EM) Section 7-1100, which states that a licensee with multiple licensed facilities may request a waiver to be allowed to designate one facility, within a regional office, as the central administrative facility to which all criminal background checks may be associated. However, it is unclear as to whether the authority to associate all criminal background checks to

one facility exists given the requirements in current law that require criminal record clearance transfers to occur on a case-by-case basis.

As it pertains to physical personnel files, current law requires all personnel records for employees be maintained at the facility at which the individual is employed; however, a licensee is able to retain those records in a central administrative location, provided that the documents are readily available to the licensing agency. The maintenance of records at one central administrative location, however, does not enable individuals to be associated with multiple facilities, but simply allows documentation regarding their criminal background check clearance to be maintained at one facility.

Health and safety concerns in RCFEs: In October 2013, Valley Springs Manor RCFE in Castro Valley was subjected to the beginning phases of license revocation by CDSS. During the proceedings, 19 seniors in need of care were abandoned by the licensee, when all staff, except for two, abandoned the facility. The employees who stayed over the weekend provided care to the abandoned residents until law enforcement officials and emergency response workers arrived and sent the residents to local hospitals. Press coverage of the situation stated "...records showed the owners of the facility had a disastrous history running both nursing homes and other RCFEs over the past several years, including facilities in Modesto, Oakland, and Castro Valley." More recently, in 2017, amidst wildfires in Northern California, multiple residents were left behind in two retirement communities owned by the same organization. An investigation by CCLD later found that the four staff members on duty had never participated in a fire drill, and the supervisor that night did not know the evacuation plan, did not use the emergency binder, and did not know where the keys for the facilities' vehicles were. In the fall of 2018, CDSS moved to revoke the facility licenses and banned top administrators from operating facilities in the future. In response to these incidents, legislators in both the Assembly and Senate introduced multiple pieces of legislation aimed at improving the safety in, and oversight of, the RCFE system in order to better protect California's most vulnerable populations.

Governor's veto message: This bill is substantially similar to AB 1437 (Patterson) of 2018, which was vetoed by the Governor. In his veto message, Governor Brown stated: "This bill would create a new process to centralize criminal record clearances for employees of an owner of multiple licensed residential facilities. The Department of Social Services has two simple processes for transferring employee criminal record clearances among facilities run by the same owner, one of which is nearly identical to this bill. A third process is unnecessary."

In response to the Governor's veto message, the author and sponsors of this bill continued discussions with CDSS to determine whether the processes referenced in the Governor's veto achieve the same goals that provisions of this bill seek to achieve: namely, the ability of a licensee who operates multiple facilities to associate employees to multiple facilities of the same facility type that are operated by the same licensee. Ongoing discussions with CDSS seem to indicate that CDSS does not currently have a process in place that accomplishes the goals of this bill. In response, the bill's author has reintroduced legislation similar to AB 1437 to allow employees to be associated with more than one facility of the same facility type that is operated by the same licensee.

Need for this bill: The provisions of this bill seek to streamline the transfer of criminal background check clearances for licensees who operate multiple facilities, thereby enabling employees of one facility type that are operated by the same licensee to work in multiple

facilities of the same facility type without having to undergo a complex transfer process between multiple facilities. While documents dictating CCLD procedures afford licensees the ability to associate all criminal record background checks to a central administrative facility, it is unclear, given potentially conflicting statutory requirements, whether this authority currently exists. The provisions of this bill seek to clarify this uncertainty.

According to the author, “Currently, owners/operators of these 6-bed facilities can assign an employee to only one facility at a time, even though many of them own and operate multiple facilities in close proximity to each other. This makes it nearly impossible for operators to make brief or last-minute changes to their ‘assigned’ staff at each facility, which could be necessary due to an employee’s illness, jury duty, vacation, or other reason. [This bill] will simplify this process, allowing owners/operators to instead associate all of their employees with one clearly identified centralizes facility.”

PRIOR LEGISLATION:

AB 1437 (Patterson) of 2018 was substantially similar to this bill and would have created a process by which licensees of certain facilities licensed by CCLD to transfer current criminal record clearances of individuals associated with a facility to multiple facilities of the same type operated by the same licensee. AB 1437 was vetoed by the Governor.

AB 1436 (Waldron) of 2014 would have required CDSS to post all inspection reports, consultation reports, violations, plans of correction, and the number, nature, and status of complaints filed against a facility on its internet website. AB 1436 was held on the Assembly Appropriations Committee suspense file.

AB 1571 (Eggman) of 2014 would have required CDSS to provide information on RCFE facilities on its internet website, as specified. AB 1571 was held on the Senate Appropriations Committee suspense file.

AB 1899 (Brown), Chapter 700, Statutes of 2014, expanded allowable causes for CDSS to exclude individuals from RCFE licensure to include abandonment of facilities and residents, as specified, and further forbade the right to petition for reinstatement.

AB 2236 (Maienschein), Chapter 813, Statutes of 2014, increased the amount of civil penalties for violations that CDSS determines resulted in death of, or serious bodily injury or physical injury to, a resident or child at a licensed facility. Further, AB 2236 required CDSS to adopt regulations setting forth appeals procedures for deficiencies, as specified.

SB 855, (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2014, among other things, adopted a number of provisions related to the care and treatment of residents in the event of a suspension or revocation of an RCFE license or the closure of an RCFE facility.

SB 895 (Corbett), Chapter 704, Statutes of 2014, added additional requirements to the RCFE Act and increased reporting and notification requirements of CDSS, including requiring the department to post certain licensing information on its internet website, as specified.

SB 1153 (Leno), Chapter 706, Statutes of 2014, authorized CDSS to suspend new admissions to an RCFE if it has failed to pay a fine, or is found to be in violation of laws and regulations and

presenting a direct or immediate risk to residents, as specified. Further, SB 1153 directed CDSS to adopt regulations specifying the appeal process related to this suspension.

AB 2066 (Monning), Chapter 643, Statutes of 2012, required CDSS to make every effort to minimize trauma for residents in the event of the revocation of an RCFE's license, required CDSS to notify residents and their responsible persons of licensure revocation, as specified, and permitted licensees to secure alternative managers, as specified.

AB 313 (Monning), Chapter 313, Statutes of 2011, required licensed RCFEs to provide residents and other parties with a written notice, as specified, whenever a substantiated violation posing a serious threat to health and safety has occurred and resulted in assessment of a penalty or pursuit of licensure revocation.

REGISTERED SUPPORT / OPPOSITION:

Support

6Beds, Inc.
California Assisted Living Association

Opposition

None on file

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