

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Lisa Calderon, Chair  
AB 499 (Blanca Rubio) – As Introduced February 9, 2021

**SUBJECT:** Referral source for residential care facilities for the elderly: duties

**SUMMARY:** Recasts the requirements on a placement agency for residential care facilities for the elderly (RCFE) to a referral source; additionally requires a referral source to provide a senior or their representative with specified disclosures and privacy information. 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; 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; 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; a violation of this provision is a misdemeanor.

- 9) 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); failure to report as required is a misdemeanor.
- 10) 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 residents' health or safety in a RCFE, including, but not limited to, 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) The referral source privacy policy, and if the referral source maintains an internet website, a link or URL to the internet website if the 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; and,
  - 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](http://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 manner designed to give actual notice of its contents in any of the following methods:

- a) A written disclosure at least in 12-point font either in hardcopy form or by electrical means;
  - b) A link to an electronic disclosure displayed on a web page in a larger font than the surrounding text; and
  - c) Verbally, if the verbal disclosure is given telephonically and recorded with the senior or senior's representative's consent, as specified.
- 14) Requires the referral source to maintain records of the disclosures for three years and 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 for 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;
  - 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;
  - e) Refrain from holding any power of attorney for a potential resident or hold that person's property in any capacity;
  - f) Cease making referrals on behalf of the senior or the senior's representative within 15 days after receipt of a written request, as specified; and,
  - g) Cease contacting the senior or senior's representative within 15 days after receipt of a written request, as specified.
- 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, and 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 California Community Care Facilities Act (CCFA) and requires CDSS to administer and license community care facilities providing non-medical services, including adult residential facilities and RCFEs, among others. (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 daycare, 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 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 licensed by CDSS. (HSC 1569 *et seq.*)
- 5) 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))
- 6) 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)) 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))
- 7) 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 RCFE or is exempt from licensing. Further provides that a violation of this provision is a misdemeanor. (HSC 1569.47 (c))
- 8) Requires any employee of a placement agency who knows, or reasonably suspects, that a facility that is not exempt from licensing is operating without a license to report the facility's name and address to CDSS. Further provides that failure to report as required by this provision is a misdemeanor. (HSC 1569.47 (d))
- 9) 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))
- 10) Requires a placement agency to notify the appropriate licensing agency of any known or suspected incidents that would jeopardize residents' health or safety 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:**

**Community Care Facilities:** The California Community Care Facilities Act (CCFA), enacted in 1973, contains the provisions for various community-based housing options for the elderly and disabled. The CCFA aimed to create a new system of community-based care for those who require additional supervision and services 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 and ensures regulatory compliance and enforcement when necessary. Within CDSS is the Community Care Licensing Division (CCLD), which is directly responsible for oversight of 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."

**Residential Care Facility for the Elderly:** A RCFE is a specific type of facility established under the CCFA that provides non-medical care and supervision to individuals with certain daily living needs. RCFEs typically provide support to those 60 years or older who do not need 24-hour services, with populations that often have functional or cognitive impairments that limit their ability to live independently. An outside medical professional manages residents' medical conditions within RCFEs, and facility staff helps complete daily living tasks. Licensing responsibilities for RCFEs are also under the purview of CCLD.

**Placement Agencies:** A placement agency, often referred to as a referral source, is a private business that connects seniors and their loved ones with the proper residential care facility. Placement agencies have a range of models, from small businesses to nationwide services that provide assistance in person and online or by phone. Due to the range of models for placement agencies and state jurisdiction, many of these services currently lack consumer protection regulations. When an agency connects an aging individual with a care facility, there is commonly a referral fee associated with the process that comes from the facility for placement of a resident.

**Need for this bill:** This bill would provide protections for consumers while locating an appropriate living facility for their loved ones through a referral source. Navigating the process of finding an appropriate setting for an aging family member can be stressful and is often done

under pressing circumstances. This bill aims to increase safeguards during a time when consumers are trusting a referral source to help them make an informed decision and could provide assurance to friends and family members that their loved ones will receive adequate care.

According to the author, "During COVID-19, referral agencies have been a crucial part of placement decisions as visitation is either not an option or infrequent to limit the exposure of residents and staff. This legislation, if passed, would allow for more transparency and access of information for consumers seeking placement at a residential care facility. This bill seeks to protect all interested parties by codifying a number of regulations during a referral source's interaction with a client and increased regulations on referral sources. Currently, the law loosely regulates 'placement agencies,' focusing solely on the interaction between them and a residential care facility for the elderly.

**Double referral:** This bill will be referred to the Assembly Aging and Long-term Care Committee should it pass out of this committee.

#### **RELATED AND PRIOR LEGISLATION:**

**AB 2926 (Calderon) of 2020**, similar to this bill, would have recast the requirements on a placement agency for a RCFE to a referral source while requiring a referral source to provide a senior or their representative with specified disclosures and privacy information. AB 2926 was held on the Senate Appropriations suspense file.

**AB 2744 (Reyes) of 2018**, would have required referral agencies providing referrals to RCFEs to register with CDSS and set forth several 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 (Co-Sponsor)  
Caring.com (Co-Sponsor)  
6Beds, INC.  
ActEight, LLC  
Alzheimer's Greater Los Angeles  
Alzheimer's Orange County  
Alzheimer's San Diego  
California Long-term Care Ombudsman Association  
Greenberg Traurig  
Retired Public Employees Association  
Sacramento Advisors, LLC

**Opposition**

None on file

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