

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Eloise Gómez Reyes, Chair
AB 737 (Eggman) – As Amended April 1, 2019

SUBJECT: Residential care facilities for the elderly: licensing and regulation

SUMMARY: Requires entities, and agents signing on behalf of entities, to provide certain evidence and information when applying for a residential care facility for the elderly (RCFE) license. Specifically, **this bill:**

- 1) Requires, as is required of a person in current law, an entity or agent signing on behalf of an entity, who is seeking an RCFE license to file an application with the California Department of Social Services (CDSS) that includes, but is not limited to, all of the following, as specified:
 - a) Evidence satisfactory to CDSS of the applicant’s ability to comply with state law, rules, and regulations regarding RCFE licensure;
 - b) Evidence satisfactory to CDSS that the applicant is of reputable and responsible character, to include such evidence regarding any individual or entity holding a beneficial ownership interest of 10% or more and the person who has operational control of the RCFE when the applicant is a firm, association, organization, partnership, business trust, corporation, or company;
 - c) As applicable, the applicant’s for-profit or not-for-profit status, a diagram indicating the relationship between the applicant and the persons or entities that are part of any chain the applicant belongs to, and contact information and certain other information for the following:
 - i) Other facilities owned, managed, or operated by the same applicant or parent organization of the applicant;
 - ii) Any person or entity that controls the applicant;
 - iii) Any persons, organizations, or entities that own real property on which the facility seeking licensure, and other facilities with which the applicant is associated, are located; and,
 - iv) Any management company serving the facility;
 - d) Evidence satisfactory to CDSS that the applicant has sufficient financial resources to maintain the standards of service required by regulations;
 - e) The name and certain information regarding a person with operational control of the applicant;
 - f) Information regarding administrative disciplinary actions involving the applicant and each individual or entity with operational control of the applicant, and information

regarding any petition for bankruptcy relief filed by any of those parties within five years of the date of application involving operation or closure of a licensed facility;

- g) Any other information required by CDSS for the proper administration and enforcement of laws related to RCFE licensure and regulation;
 - h) Evidence satisfactory to CDSS of the applicant's ability to meet the regulatory requirements for the level of care the facility intends to provide;
 - i) Evidence satisfactory to the department of adequate knowledge of supportive services and other community supports that may be necessary to meet the needs of elderly residents;
 - j) A signed statement that the person desiring issuance of a license has read and understood the RCFE statute and regulations;
 - k) Designation by the applicant of the individual who shall be the administrator of the facility;
 - l) Evidence of the right of possession of the facility prior to the time the license is granted;
 - m) Evidence of successful completion of a certified pre-licensure education program; and,
 - n) Disclosure to CDSS of the special features of the facility it plans to operate, for any facility advertising special programming or special environments for persons with dementia.
- 2) Subjects the application of an entity, or agent signing on behalf of an entity, who is seeking an RCFE license to the same requirements that current law applies to the application of a person seeking RCFE licensure, as specified.

EXISTING LAW:

- 1) 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. (Health and Safety Code [HSC] Section 1569 *et seq.*)
- 2) 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))
- 3) Requires CDSS to inspect and license RCFEs and further specifies that an RCFE license is not transferable. (HSC 1596.11)
- 4) Sets forth requirements for anyone seeking an RCFE license, including but not limited to filing with CDSS: evidence satisfactory to CDSS that the applicant is of reputable and responsible character, as specified; evidence satisfactory to CDSS that the applicant has sufficient financial resources to maintain the standards of service required, as specified; disclosure of licensing and violation history, as specified; and, certain information related to

other entities with ownership, administrative, or other business affiliations with the applicant. (HSC 1569.15)

- 5) Requires CDSS to cease review of an RCFE license application if that application indicates, or CDSS determines, that the applicant was previously issued a license for a facility, as specified, or a certificate of approval by a foster family agency, and that license or certificate was revoked in the past two years; specifies that this cessation of review should last until two years after the revocation in question. (HSC 1569.16)
- 6) Requires CDSS to cease review of an RCFE license application if that application indicates, or CDSS determines, that the applicant was previously excluded from a facility licensed by CDSS unless the excluded individual has been reinstated, as specified. (HSC 1569.16)
- 7) Requires CDSS to make a determination regarding the completeness of an initial RCFE license application within five working days of its filing, as specified. Further requires CDSS, within 60 days of a determination that a file is complete, to make a determination as to whether the application is in compliance with all pertinent law, rules, and regulations and to immediately issue the license or notify the applicant of deficiencies, and whether those deficiencies constitute a denial of the application or further corrections will likely result in approval. (HSC 1569.20)
- 8) Requires the director of CDSS to establish an automated license information system on RCFE licensees and former RCFE licensees, as specified. (HSC 1569.355)
- 9) States that individuals found in violation of RCFE licensing laws and regulations, as specified, are guilty of a misdemeanor and shall be subject to a fine of up to \$1,000, imprisonment in county jail for up to one year, or both. (HSC 1569.40)
- 10) States that operation of an RCFE without a license is subject to a court summons and punishable as a misdemeanor, as specified. (HSC 1569.40)
- 11) Allows CDSS to deny an application for an RCFE license or suspend or revoke an RCFE license for certain acts and violations, as specified. (HSC 1569.50)
- 12) Permits CDSS to exclude individuals from facilities and certain other activities, affiliations, and interactions, if they are found to have committed certain violations or have engaged in certain conduct, as specified. (HSC 1569.58)

FISCAL EFFECT: This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

Community care licensing: The 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 RCFEs, 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.

Residential Care Facilities for the Elderly: RCFEs are one type of community care facility. Often referred to as “assisted living facilities,” RCFEs provide housing for individuals ages 60 and older, accompanied by services including care, supervision, and assistance with activities of daily living. RCFEs differ from nursing homes (also referred to as “skilled nursing facilities” [SNFs]) in that RCFEs are typically considered a housing alternative, while SNFs are considered a medical facility. Incidental medical services, however, may be provided in RCFEs pursuant to special care plans. Individuals living in RCFEs can require varying levels of care and services, and RCFEs can differ in the range of services offered. As of June 29, 2018, there were 7,252 RCFEs licensed in California, with the capacity to serve over 153,000 residents. RCFEs range in size from six-bed home-like facilities to large assisted living facilities with over 100 beds.

AB 601: AB 601 (Eggman), Chapter 628, Statutes of 2015, sought greater transparency and oversight of RCFEs through the adoption of a number of changes, including requiring an applicant for an RCFE license to disclose additional information related to other facilities owned, managed or operated by the licensee or a parent organization of the licensee, as well as information related to individuals or entities holding a beneficial ownership interest of 10% or more in the licensed facility. AB 601 also required RCFE licensees to disclose to CCLD individuals or entities who have control of the facility, and other related information. AB 601 required CDSS to cross-check all disclosed applicant information with the California Department of Public Health (CDPH). AB 601 also required RCFE licensees to report any changes to the disclosed information within specified timeframes.

Need for this bill: According to the California Advocates for Nursing Home Reform (CANHR), the adoption of AB 601 in 2015 gave “...the Department of Social Services' Community Care Licensing Division (CCLD) crucial information to consider when analyzing an RCFE application so it can better predict if a facility is going to provide adequate care to its residents. Despite the improved transparency required by AB 601, increasingly complex ownership structures and management arrangements have made it difficult for CCLD to properly vet applications to run RCFEs. By using Limited Liability Companies (LLCs), the individual owners and operators of RCFEs are hidden from CCLD and their connections to poorly managed facilities cannot be considered. The lack of information protects owner/operators with bad track records and enables them to proliferate. [This bill] builds on AB 601 and ensures all RCFE owners and managers are identified so important information about their fitness to run a new facility is established in their application process. The bill also enhances CCLD’s ability to connect entities to people so it has a clear picture of who will be responsible for the care provided at each new RCFE.”

According to the author, “This is a follow up to my 2015 bill, AB 601, that increased accountability and transparency of RCFE licensees, and made facility information more accessible to the public. This bill will further that purpose by allowing the Department of Social Services to track RCFEs held by LLCs. Companies that are tracked by CDSS do not have to report their LLCs, so that ownership looks like it is held by a different entity than the company that actually owns it. Additionally, family, friends, and other caregivers will gain clarity about

what company owns the RCFE they may be placing their loved one in. The more information available to the public about entities operating these critical facilities for our elders, the better.”

PRIOR LEGISLATION:

AB 601 (Eggman), Chapter 628, Statutes of 2015, required an RCFE applicant to disclose specified additional information related to other facilities owned, managed or operated by the licensee or a parent organization of the licensee, as well as information related to individuals or entities holding a beneficial ownership interest of 10% or more in the licensed facility, and required licensees to disclose individuals or entities who have control of the facility, as defined, and other information. AB 601 also required CDSS to cross-check all disclosed applicant information with CDPH), as specified and, to the extent the department’s computer system can accommodate the information, to post specified information on its internet website, and required licensees to report any changes to the disclosed information within specified timeframes.

AB 927 (McCarty) of 2015 would expand certain requirements regarding disclosure of ownership and governance information by SNF and Intermediate Care Facility license applicants, and adopt related provisions. AB 927 was referred to the Assembly Health Committee but was not heard at the request of the author.

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, it directed CDSS to adopt regulations specifying the appeal process related to this suspension.

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

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 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 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.

SB 897 (Leno), Chapter 376, Statutes of 2011, enacted the RCFE Residents Foreclosure Protection Act of 2011, requiring RCFE licensees to notify CDSS, the State Long-Term Care Ombudsman, and all residents, applicants, and their legal representatives when the property is subject to foreclosure, the licensee files for bankruptcy, or other similar events, as specified, occur.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Advocates for Nursing Home Reform (Sponsor)

Opposition

None on file

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