

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 770 (Kalra) – As Amended March 29, 2023

SUBJECT: Residential care facilities for the elderly

SUMMARY: Strikes the six person bed limit for residential care facilities for the elderly (RCFEs) located in a family dwelling. Specifically, **this bill:**

- 1) Deletes the restriction of an RCFE with six or fewer beds in a family dwelling, and instead allows RCFEs licensed by the California Department of Social Services (CDSS) and that provides onsite services in a family dwelling to:
 - a) Be considered a family for the purposes of any law or zoning ordinance;
 - b) Not be included within the definition of a boarding house, rooming house, institution or home for the care of the aged, guest home, rest home, community residence, or differs in any other way from a family dwelling; and,
 - c) Not be required to have a conditional use permit, zoning variance, or other zoning clearance.
- 2) Strikes other references to RCFEs serving six or fewer persons and replaces with references to RCFEs that are licensed by CDSS and provide onsite services to conform code section.

EXISTING LAW:

- 1) Establishes the “California Residential Care Facilities for the Elderly Act”. (Health and Safety Code Section [HSC] 1569)
- 2) Requires CDSS to establish regulations, inspect, and license RCFEs. (HSC 1569.30-1569.39; 1569.10-1569.24)
- 3) Permits an RCFE serving six or fewer persons in a family dwelling to be considered a family for the purposes of zones ordinances. (HSC 1569.85)
- 4) Establishes “Resident’s Bill of Rights” for residents in RCFEs which include 30 separate rights with the legislative intent that persons residing in RCFEs be treated with dignity, kindness, and respect, and that their civil liberties be fully honored. (HSC 1569.261-1569.269)
- 5) Requires every facility required to be licensed to provide at least the following basic services:
 - a) Care and supervision as defined in 6) below.
 - b) Assistance with instrumental activities of daily living in the combinations which meet the needs of residents;

- c) Helping residents gain access to appropriate supportive services, as defined, in the community;
 - d) Being aware of the resident's general whereabouts, although the resident may travel independently in the community;
 - e) Monitoring the activities of the residents while they are under the supervision of the facility to ensure their general health, safety, and well-being; and,
 - f) Encouraging the residents to maintain and develop their maximum functional ability through participation in planned activities. (HSC 1569.312)
- 6) Defines "care and supervision" to mean the facility assumes responsibility for, or provides or promises to provide in the future, ongoing assistance with activities of daily living without which the resident's physical health, mental health, safety, or welfare would be endangered. Assistance includes assistance with taking medications, money management, or personal care. (HSC 1569.2)
- 7) Establishes three levels of care as follows:
- a) Level I—Base care and supervision. Residents at this level are able to maintain a higher degree of independence and need only minimum care and supervision and minimal personal care assistance;
 - b) Level II—Nonmedical personal care. Residents at this level have functional limitations and psychosocial needs requiring not only care and supervision but frequent assistance with personal activities of daily living and active intervention to help them maintain their potential for independent living; and,
 - c) Level III—Health related assistance. Residents at this level require the services of lower levels and rely on the facility for extensive assistance with personal activities of daily living. This level may include residents who also require the occasional services of an appropriate skilled professional due to chronic health problems and returning residents recovering from illness, injury, or treatment that required placement in facilities providing higher levels of care. (HSC 1569.70)
- 8) Provides operating requirements for RCFEs. (California Code of Regulations 87202-87300)

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *Residential Care Facilities for The Elderly* are non-medical facilities that house and care for the aging population that have minimal health needs, but need basic daily help for services such as housekeeping, medication assistance, personal and hygiene care, and eating. There are three levels of care permitted in an RCFE which range from basic care when a resident still can retain some independence, to nonmedical care when a resident needs help with personal daily living activities, and the highest level of care being reserved for someone who needs extensive care with daily living activities and may have chronic health problems.

California's network of RCFEs consists of small homes serving a handful of residents to larger RCFEs that can house over 100 residents in communities across the state. Facilities provide a special combination of housing, personalized supportive services, and 24-hour staff designed to respond to the individual needs of those who require help with activities of daily living. This level of care and supervision is for people who are unable to live by themselves but who do not need 24-hour nursing care. They are considered non-medical facilities and are not required to have nurses, certified nursing assistants or doctors on staff. Facilities usually centrally store and distribute medications for residents to self-administer.

Costs of RCFEs vary widely. RCFEs in California cost an average of \$4,500 per month. However, monthly fees can exceed \$10,000. According to CDSS' website, there are 12,037 licensed RCFEs total and 9,470 RCFEs that serve six or fewer persons.

Homelessness. U.S. Department of Housing and Urban Development (HUD) has seen the number of individuals 62 and older experiencing homelessness jump 68.5% from 2007 to 2017. The Los Angeles Times reported that in Los Angeles County, older adult homelessness jumped 22% in 2018, reflecting an increase from just over 4,000 individuals experiencing homelessness age 62 and older to just over 4,800. San Diego, San Francisco, and Sacramento Counties have all also reported increases in their populations of people 55 and older experiencing homelessness. Furthermore, in an article by KPBS entitled "*A Senior On The Streets, With Little Chance Of A Home*", researchers predicted that in Los Angeles County alone, the number of older adults experiencing homelessness could reach nearly 14,000 by 2030, if solutions are not found.

Due to the higher needs of many older adults, finding solutions to make RCFEs and other living arrangements that offer assistance attainable is vital to lowering homelessness in older adults. Given the high cost of places for older adults to live, it is even more crucial to find ways to encourage RCFEs to house these residents.

Supplemental Security Income/State Supplementary Payment (SSI/SSP). SSI/SSP provides a monthly cash benefit to qualified low-income individuals and couples in order to help them pay for basic living expenses, such as food, clothing and shelter. In order to be eligible for SSI/SSP, a person must be at least 65 years old, blind, or disabled and meet certain income and resource requirements. SSI asset limits of \$2,000 for individuals and \$3,000 for couples prevent many from qualifying for SSI. These asset thresholds were last updated in 1989, the only time they have increased since the inception of SSI in 1972. If these federal SSI asset limits had been indexed to inflation since 1989, they would be about twice as high as they are today. A qualified SSI recipient is automatically eligible for SSP. SSI is a federally funded benefit. The SSP benefit is funded with the state's General Fund and California sets its own SSP rates. SSI/SSP grant amounts vary based on a number of factors, including: whether a recipient is aged, blind, or living with disabilities; the individual's or couple's living arrangements; a recipient's marital status; and, whether or not a recipient is a minor.

CDSS data shows the current SSI/SSP caseload at about 1.1 million individuals which is down from the 1,289,437 caseload in 2015. CDSS attributes this to the median income of Baby Boomers aged 55-64 now being approximately \$60,000 annually, which exceeds SSI/SSP eligibility standards, advancement in technology, and healthier behavior. According to CDSS the following is the average grants for individuals and couples combined are based on actual data from January 2022 through August 2022:

- Aged: \$613.74 (\$404.29 is SSI and \$209.45 is SSP).
- Blind: \$804.20 (\$538.38 is SSI and \$265.82 is SSP).
- Disabled: \$792.75 (\$589.26 is SSI and \$203.49 is SSP).

Some residents of RCFEs are SSI/SSP recipients who receive the Non-Medical Out of Home Care (NMOHC) monthly rate of \$1,492.82. Of this amount, \$1,324.82 is paid to the adult residential facility (ARF) or RCFE operator and \$168 is retained by the SSI/SSP recipient. Facilities are not permitted to charge individuals receiving SSI/SSP above the state-mandated rate. Thus, licensed RCFEs receive a government-set SSI/SSP payment that amounts to about \$35 a day to pay for housing, 24-hour care, and three daily meals. This set rate, coupled with high cost of real estate and increasing costs of doing business, has made it somewhat difficult to sustain the operation of RCFEs that accept SSI/SSP recipients. However, they are an essential component of addressing California's increasing homeless population, as they serve a particularly vulnerable population that requires 24-hour assistance and are living at or near the poverty level.

AB 1766 (Bloom), Chapter 139, Statutes of 2020, required CDSS to collect information and send a report to each county's department of mental health or behavioral health of all licensed ARFs and RCFEs in the county that accept the federal supplemental security rate and accept residents with a serious mental disorder and the number of licensed beds at each facility. According to CDSS, the latest available data shows the following breakdown of residents:

Facility Type	Number of Facilities Serving SSI/SSP Recipients*	Number of SSI/SSP Recipients
Continuing Care Retirement Community - RCFE	27	114
Residential Care Facility for the Elderly - RCFE	1,030	6,949

* Any facility accepting SSI/SSP residents at least one SSI/SSP resident is captured in this total.

Several counties have incorporated licensed residential facilities in their approach for providing services to vulnerable populations that need housing, care, and supervision. Most commonly, counties appear to be utilizing licensed residential facilities to address the needs of individuals with a serious mental illness, some of whom may have been experiencing homelessness or be at risk of homelessness. SSI/SSP recipients are frequently among this targeted population.

Some counties have made efforts to provide additional funding to licensed residential facilities that accept SSI/SSP recipients who have a serious mental illness, are chronically homeless, or meet other criteria. This additional funding is typically provided as a "patch" or a supplemental payment of a certain dollar amount per a day for a qualifying individual. This is in addition to the NMOHC SSI/SSP payment, thus patching the difference between the SSI/SSP and the actual costs of providing room, care and supervision for that individual.

Author's Statement: According to the Author, "Aging adults are the fastest growing population of unhoused individuals in California, and affordable housing is limited, placing them at risk for

becoming homeless. Current law and zoning regulations limit small operators of RCFE's to only serve and house six or fewer individuals. RCFE's that have the capacity to expand must go through a process to obtain a conditional use permit, which are rarely issued. [This bill] will eliminate the cap to allow small operating RCFE's to expand their services and help open up more spots for these facilities to offer an affordable housing option to older individuals."

Need for this bill: This bill seeks to expand the usage of RCFEs in a family dwelling and expand locations in which elderly can reside.

Equity Implications: For adults over the age of 50 who already struggle to meet their basic needs, financial and medical emergencies can push them into homelessness. According to HUD, roughly 30% of state's unhoused population is Black due to a history of racial discrimination in housing, as well as an overrepresentation within the justice and child welfare systems. Data show that a substantial number of adults experiencing homelessness in California are older adults. According to the Budget Policy Center, over 40% of unhoused Californians in adult-only households who came in contact with the homelessness response system in the 2021-22 fiscal year were 50 and older. Complicating matters, adults over the age of 50 are more likely to have underlying health conditions that can be exacerbated by not having access to a stable home or health care, and research confirms that being homeless accelerates severe health declines. These adults often require more assistive services in addition to housing. Research conducted by the University of California, San Francisco (UCSF) indicates that 44% of all homeless people older than the age of 50 became homeless for the first time after they were 50, and account for half of all unhoused adults. For comparison, this same UCSF research found that in 1990, only 11% of homeless adults were over the age of 50.

While the reasons for this increase in homeless adults is varied, not being able to afford rent is a common factor. Adults who were unable to save for retirement can find themselves without a safety net when a medical emergency or rent increase occurs. As part of the Master Plan for Aging, California has prioritized creating more affordable housing options to meets the needs of all stages of life, regardless of age, race, or income.

Policy Considerations: This bill would revise provisions in law restricting the number of adults RCFEs may serve, to now allow RCFEs to serve more than six adults. RCFEs provide personal care and housing to those who require assistance with daily living, but who do not require 24-hour nursing care and serve. Because RCFEs are not medical facilities, neither Medicare nor Medi-Cal pay directly for their services. Some counties, through the Assisted Living Waiver Program, are authorized to have Medi-Cal pay for eligible residents to live in an RCFE, however most of the residents pay privately for care. Data indicate only 5% of RCFE residents are SSI/SSP recipients and because the reimbursement rate is not lucrative, fewer facilities are willing to accept these residents.

While expanding the beds that an RCFE located in a family dwelling is important for increasing the supply of available housing, it is crucial that these homes also accept SSI/SSP individuals. The Committee proposes the author reserves beds specifically for individuals with low incomes or SSI/SSP recipients in an effort to ensure that this expansion of care is inclusive for all California seniors and not just those with the means to pay privately for their care.

Proposed Committee Amendments: The Committee proposes amendments to address policy considerations stated above to do the following:

- For RCFEs in family dwellings that choose to have over six persons, then the RCFE must reserve 30% of the beds after six for low-income or SSI/SSP recipients. For example, for an RCFE in a family dwelling with ten beds, then four would be subject to the 30% requirement and thus, 1.2 beds would be reserved for a low-income or an SSI/SSP resident.

RELATED AND PRIOR LEGISLATION:

SB 648 (Hurtado) of 2021, would have established the “Enriched Care Adult Residential Facility” pilot program for the purpose of promoting the sustainability of essential residential care facilities that serve recipients who receive SSI/SSP benefits. Specifically, SB 648 would have established a monthly stipend of \$1,000 per SSI/SSP recipient residing in qualifying licensed ARFs and RCFEs. The stipend would have been capped at \$4,000 per month. *SB 648 was placed on the inactive file by the author.*

SB 1259 (Hurtado) of 2020, would have required CDSS to establish a task force for the purpose of issuing a report that would have included recommendations on how to meet the housing and care needs of low income individuals who are blind, disabled, or over 65 years of age and receiving SSI/SSP, as specified. SB 1259 would also have required CDSS to provide updates on its progress in developing the report to specified committees. *SB 1259 was held on the Assembly Appropriations Committee suspense file.*

REGISTERED SUPPORT / OPPOSITION:

Support

6beds, INC. (Co-Sponsor)
California Commission on Aging (Co-Sponsor)
AARP
American Planning Association, California Chapter
California Office of The State Long-Term Care Ombudsman
Self-Help for The Elderly

Opposition

California Association of Realtors
Health Care for Us

Analysis Prepared by: Alexandria Smith / HUM. S. / (916) 319-2089