
THIRD READING

Bill No: AB 2377
Author: Chiu (D), et al.
Amended: 8/25/20 in Senate
Vote: 21

SENATE HUMAN SERVICES COMMITTEE: 5-2, 8/10/20
AYES: Hurtado, Beall, Jackson, Pan, Wiener
NOES: Jones, Melendez

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 64-6, 6/10/20 - See last page for vote

SUBJECT: Residential facilities

SOURCE: City and County of San Francisco

DIGEST: This bill (1) establishes closure requirement for adult residential facilities (ARFs), including specified notifications to the residents or the residents' responsible person and the city and county; (2) gives the city or county first opportunity to make an offer to purchase the property and continue the operation of the ARF, as specified; and (3) requires specified licensees and applicants to maintain an email address of record with the California Department of Social Services (CDSS).

Senate Floor Amendments of 8/25/20 make technical changes and clarify the circumstances under which a licensee of an ARF must take specified action to inform CDSS, residents of the ARF and the local city and county of certain changes in the planned operation of the ARF.

ANALYSIS:

Existing law:

- 1) Establishes the California Community Care Facilities Act, which provides regulatory structure for a coordinated and comprehensive statewide system of care for the mentally ill, developmentally and physically disabled, and children and adults who require care or services provided by licensed community care facilities. (*HSC 1500 et seq.*)
- 2) 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)*)
- 3) Requires a licensee of an ARF to inform the city and county in which the facility is located of a proposed closure, including whether the licensee intends to sell the property or business, no later than 180 days before its proposed closure, or as soon as practicably possible. (*HSC 1562.2*)
- 4) Establishes licensure and regulatory requirements for ARFs for persons with chronic life-threatening illness. (*HSC 1568.01 et seq.*)
- 5) Requires a residential care facility for the elderly (RCFE), prior to transferring a resident to another facility or to an independent living arrangement as a result of the forfeiture of a license or change in use of the facility, to take all reasonable steps to transfer affected residents safely, and minimize possible trauma by taking specified actions. (*HSC 1569.682(a)*)
- 6) Declares that it is the intent of the Legislature to authorize CDSS to take quick, effective action to protect the health and safety of residents of RCFEs and to minimize the effects of transfer trauma and sets requirements for the appointment and responsibilities of temporary managers (*HSC 1569.481 et seq.*)
- 7) Defines “adult residential facility” in regulations to mean any facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to persons 18 years of age through 59 years of age. (*22 CCR 80001(a)(5)*)

This bill:

- 1) Requires an applicant or licensee of an adult community care facility or an

ARF to maintain an email address of record with CDSS, as specified.

- 2) Defines “adult residential facility” to mean a facility licensed as an ARF.
- 3) Requires a licensee of an ARF to inform a resident and the resident’s representative, if any, of a proposed closure, including whether the licensee intends to sell the property or business, no later than 180 days before its proposed closure, or as soon as practicably possible.
- 4) Requires the licensee to specify in the notification that it is not, and should not be construed as, an eviction notice.
- 5) Requires a licensee of an ARF to, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as specified, or a closure of the facility for another reason, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, as specified.
- 6) Requires the licensee to submit a proposed closure plan to CDSS, as specified.
- 7) Requires CDSS to take any necessary action to minimize trauma for ARF residents, including caring for the residents through the use of a temporary manager or receiver, as specified.
- 8) Requires CDSS to contact any local agency that may have assessment, placement, protective, or advocacy responsibility for the residents, and to work together with those agencies to locate alternative placement sites, contact relatives or other persons responsible for the care of these residents, provide onsite evaluation of the residents, and assist in the transfer of the residents.
- 9) Provides that the participation of CDSS and local agencies in the relocation of residents from an ARF does not relieve the licensee of any responsibility and establishes that a licensee that fails to comply shall be required to reimburse CDSS and local agencies for the cost of providing the relocation services or the costs incurred in caring for the residents through the use of a temporary manager or receiver.
- 10) Permits CDSS to seek injunctive relief and damages, including restitution to the department of any costs incurred in caring for the residents through the use of a temporary manager or receiver, if the licensee fails to provide the relocation services.
- 11) Requires that a licensee who fails to comply with the closure requirements

shall be liable for the imposition of civil penalties of one hundred dollars per violation per day for each day that the licensee is in violation of this section, until the violation has been corrected, as specified.

- 12) Provides that, on and after January 1, 2021, a licensee who abandons the facility and the residents in care resulting in an immediate and substantial threat to the health and safety of the abandoned residents, in addition to forfeiture of the license, shall be excluded from licensure in facilities licensed by CDSS without the right to petition for reinstatement.
- 13) Permits a resident of an ARF to bring a civil action against any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains an ARF who violates the rights of a resident, as specified.
- 14) Requires that a licensee who is also the owner of an ARF who notifies the city and county of an intent to sell the property shall give the city or county the first opportunity to make an offer to purchase the property, as specified.
- 15) Permits an individual or entity planning to continue operating the licensed ARF to make an offer to purchase the facility, and permits the licensee to accept the offer at any time. Requires the individual or entity that makes an offer to purchase a facility to provide a written statement to the licensee and CDSS that the individual or entity agrees to continue the operation of the ARF and apply for licensure as an ARF upon completion of the sale of the existing facility.
- 16) Provides that a city or county shall have maximum flexibility in seeking and securing available funding sources to purchase an ARF, including any federal, state, local, as specified.
- 17) Permits a city or county that purchases an ARF to either take over operation of the facility, or, if possible, enter into a long-term lease for its operation with a nonprofit or for-profit entity, as specified.
- 18) Requires that a lease entered into include a requirement that the lessee maintain licensure of the property as an ARF.
- 19) Requires a licensee of an ARF to notify the city and county in which the facility is located, CDSS, all residents, and, if applicable, their legal representatives, in writing, within two business days, and notify all applicants for potential residence, and if applicable, their legal representatives, prior to admission, of any specified events, or knowledge of specified events.

Background

Residential Care Facilities for the Elderly and Adult Residential Facilities

RCFEs (also known as assisted living facilities) are residential facilities that provide 24-hour nonmedical care and supervision for persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual who is 60 years of age or older.

ARFs (also known as board and care homes) are residential facilities that provide 24-hour nonmedical care and supervision for persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual who is aged 18–59.

Both RCFEs and ARFs provide housing, housekeeping, supervision, and personal care assistance with activities of daily living to individuals who need that level of care. These are nonmedical facilities that are designed for individuals who are unable to live by themselves, but who do not need 24-hour nursing care, and as such the facilities are not required to have nurses, certified nursing assistants or doctors on staff. These facilities usually centrally store and distribute medications for residents to self-administer. Residents in both RCFEs and ARFs may have mental, behavioral, or physical health needs or a developmental disability that results in their inability to live independently. These facilities range in size from small facilities operating out of a single family homes serving a handful of residents to larger buildings that can house over a 100 residents.

There are significant differences between the requirements for operating ARFs versus those for RCFEs, some of which were explored in the background paper prepared for an oversight hearing conducted earlier this year by this committee on the State Oversight of Licensed Homes for Vulnerable Adults. This bill is intended to incorporate provisions of AB 949 (Krekorian, Chapter 686, Statutes of 2007), which established closure requirements for RCFEs. Those requirements include preparing a relocation evaluation of the needs of each resident, and providing written and verbal notification of the impending move within certain timeframes; thereby protecting residents from potentially becoming homeless as the result of an ARF closure.

Impact of ARF Closures on Homelessness

Prior to the COVID-19 outbreak, policy-makers and advocates were exploring the effects that closure of licensed residential facilities were having on homelessness. Counties throughout the state reported that housing options for low-income

individuals within licensed residential facilities have been shrinking. It has been observed that this problem is particularly exacerbated in areas with high costs of living and high property values, because the owners of residential facilities may choose to sell the property rather than continue operations.

Many counties use ARFs in their efforts to find residential placements for people experiencing homelessness. For example, the County of Los Angeles has placed over 1,000 people who were experiencing homelessness into board and care homes, many of whom struggle with severe mental illness. This demonstrates a connection between maintaining the operation of board and care facilities and preventing homelessness. This bill requires ARF operators to notify local city and county officials whenever the property owner intends to sell the property in order to give the local entities the opportunity to purchase the property for the purpose of maintaining the operation of ARFs within their communities. According to the author, multiple Bay Area counties have expressed interest in making such purchases.

Comments

According to the author, “this bill reduces the risk of homelessness for vulnerable residents of board and care facilities by creating more stringent closure requirements for Adult Residential Facilities.” The author notes that ARFs “are closing at an alarming rate, with San Francisco alone having lost 43 facilities between 2012 and 2019 (a nine percent decline)” and that ARFs are “increasingly serving greater numbers of vulnerable residents, including individuals with serious mental illnesses and other chronic conditions.” Per the author, “it is imperative that we take preventative measures in 2020 by helping those most vulnerable to homelessness...to ensure the growing vulnerable ARF resident population is provided similar protections that residents of RCFEs have when a facility closes.”

COVID-19 Impact on Committee Jurisdiction

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this bill for the benefit of Senators and the public, this analysis includes information from Senate Judiciary Committee as shown below:

“The Senate Judiciary Committee has historically favored protections for vulnerable individuals housed in care facilities in order to ensure that they have continued access to care and shelter. By adopting requirements for the closing of

adult residential facilities comparable to those applicable to residential care facilities under existing law, this bill draws on established processes to protect individuals who require assistance with daily living due to chronic conditions such as mental illness or disability. By reducing closures, giving counties the opportunity to purchase the facilities, and providing residents with advanced notice of closures, this bill would help minimize the trauma that residents may experience from such transitions, giving them more continuity and time to prepare for change, and helping to protect them from experiencing homelessness.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Approximately \$1.05 million General Fund in FY 2020-21, and ongoing, to CDSS for contract costs of a temporary manager. Although this figure is based on experiences of a temporary manager for RCFE, staff notes the estimate could greatly vary depending on a number of factors that are unknowable at this time, including, among others: (1) the duration of temporary management; (2) the severity of the situation the temporary manager will enter; (3) and, the number of facilities that may be unable to care for clients,. In addition, as the COVID-19 pandemic continues, there is also an anticipated strain to existing facility administration and costs.
- Unknown, potentially significant ongoing court cost pressures to the courts to adjudicated alleged violations of this measure. While superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and put pressure on the General Fund to fund additional resources. The Budget Act of 2020 provided \$273.8 million from the General Fund to backfill the continued reduction in fine and fee revenue for trial court operations.

SUPPORT: (Verified 8/25/20)

City and County of San Francisco (source)
California Association of Local Behavioral Health Boards and Commissions
County Behavioral Health Directors Association
Heart Forward LA
National Alliance on Mental Illness-California
National Association of Social Workers, California Chapter
The People Concern

OPPOSITION: (Verified 8/25/20)

None received

ASSEMBLY FLOOR: 64-6, 6/10/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner

Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Daly, Diep, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wicks, Wood, Rendon

NOES: Brough, Choi, Cunningham, Flora, Obernolte, Voepel

NO VOTE RECORDED: Bigelow, Chen, Megan Dahle, Fong, Gallagher, Kiley, Mathis, Patterson, Quirk

Prepared by: Taryn Smith / HUMAN S. /
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