

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 1911 (Reyes) – As Amended March 19, 2024

SUBJECT: Residential care facilities: complaints

SUMMARY: Imposes specified timelines for the California Department of Social Services (CDSS) to conduct complaint investigations. Specifically, **this bill:**

- 1) Requires (CDSS) to conduct an onsite investigation within one business day of all complaints that allege a threat of imminent danger of death or serious harm.
- 2) Requires CDSS to communicate, in writing within 10 calendar days of receiving the complaint, if the department determines an investigation is not warranted and the reason for the determination. The complainant has the right to seek review of that determination by the regional office manager, or their designee.
- 3) Requires CDSS to send a written notification to the complainant of the following:
 - a) Complaint tracking number;
 - b) Proposed course of action;
 - c) Name and contact information of the analyst who will conduct the investigation;
 - d) Nature of the allegations to be investigated;
 - e) Opportunity to accompany the investigator on the investigation of the facility; and
 - f) Relevant deadline for the department to complete its investigation.
- 4) Commencing July 1, 2025, imposes a 60 calendar day timeline for CDSS to complete an investigation of a complaint and 30 day timeline for a complaint that entails a treat of imminent danger of death or serious harm.
- 5) Permits CDSS to extend the investigation by additional 60 calendar days due to good cause with documentation of the circumstances in its final determination and requires CDSS to notify the facility and the complainant in writing of the basis for the extension and the estimated completion date.
- 6) Requires CDSS to interview any residents who are the subject of the investigation.
- 7) Requires CDSS to notify the complainant within 10 business days the complainant's right to seek an informal conference, and the process for seeking an informal conference.
- 8) Requires CDSS to provide the complainant a copy of any documents describing violations and enforcement actions resulting from the investigation, if applicable, with the notification.

- 9) Specifies an appeal process as follows:
- a) A complainant may, within 30 calendar days after receipt of the notice, notify the regional office manager in writing of their request for an informal conference.
 - b) Requires the informal conference to be held with the regional office manager or their designee within 30 calendar days of the receipt of the request, and requires CDSS to summarize to the complainant all of the evidence and information it reviewed pursuant to its investigation
 - c) Requires the regional office manager to notify the complainant, in writing, of their determination within 10 working days after the informal conference and shall apprise the complainant and licensee, in writing, of the right to a review by the deputy director.
 - d) Permits the complainant to appeal the determination of the regional office manager, within 30 days after receipt of this determination, notify in writing the deputy director,
 - e) Requires the deputy director to review the facts that led to both determinations, within 30 days of the receipt of the notice.
 - f) Requires the deputy director or their designee to interview the complainant. Requires, the deputy director to make an independent determination and notify the complainant, in writing, of their determination and reasons therefor, within 30 calendar days after receipt of the request for review.
- 10) Permits a complainant may be assisted or represented by any person of their choice in the appeal process described in this subdivision.

EXISTING LAW:

- 1) Establishes the Residential Care Facilities for the Elderly Act which provides for the CDSS to license and regulate RCFEs as a separate category within the existing residential care licensing structure of CDSS. (Health and Safety Code [HSC] § 1569 et seq.)
- 2) Provides that RCFEs shall be subject to unannounced visits by CDSS and be visited as often as necessary to ensure the quality of care provided. (HSC § 1569.33)
- 3) Requires annual unannounced inspections when a license is on probation, when required by the terms of a facility compliance plan, when an accusation is pending, when required for federal financial participation, or to verify that a person who has been ordered out of the facility is no longer present. (HSC § 1569.33)
- 4) Requires CDSS to perform random inspections each year on no fewer than 20 percent of the RCFE facilities not subject to annual inspections. Provides that this percentage shall increase by 10 percent if the total citations issued by the department exceeds the previous year by 10 percent. As a result of this trigger, CDSS currently is required to perform random inspections on 30 percent of the RCFE facilities not subject to annual inspection. Requires CDSS to visit every facility no less than every 5 years. (HSC § 1569.33)

- 5) Requires CDSS to visit a newly licensed facility within 90 days after a facility accepts its first resident to evaluate compliance with regulatory requirements. (HSC § 1569.24)
- 6) Permits any person to request an inspection of any RCFE by transmitting notice of an alleged violation orally or in writing. Requires CDSS to make a preliminary review and an onsite inspection within 10 days after receiving the complaint except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies (HSC § 1569.35)
- 7) Through regulation, requires CDSS to conduct a follow-up visit within 10 working days following the latest date of correction specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required. Provides that no penalty shall be assessed unless a follow-up visit is conducted. (Title 22 CCR 87759)

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

COMMENTS:

Background: *Residential Care Facilities for the Elderly.* RCFEs are situated between in-home care and skilled nursing facilities. RCFEs are most commonly referred Assisted Living, Board and Care, or Residential Care. These residences are designed to provide homelike housing options to residents who need some help with activities of daily living, such as cooking, bathing, or getting dressed, but otherwise do not need continuous, 24-hour assistance or nursing care. RCFEs do not have a uniform care model and a wide variation in the level of services and independence available to residents. This flexibility is intended to allow aging individuals the ability to find care that fits within their lifestyle and personality.

The RCFE licensure category includes facilities with as few as six beds to those with hundreds of residents, whose needs may vary widely. Typically, the smaller facilities are homes in residential neighborhoods while the larger facilities resemble apartment complexes with structured activities for their residents. Residents may reside in their own apartment or may share a bedroom.

State Oversight Responsibly for Facilities Serving the Aging Population. CDSS is charged with regulating and licensing non-medical residential facilities and community services. CDSS is required to make unscheduled visits to all licensed RCFEs “as often as necessary,” and is required to do so annually in certain instances, such as when a licensee is on probation, the facility compliance plan requires annual visits, or when an accusation against a licensee is pending, among others. CDSS is required to visit all RCFEs no less than once every five years and any individual may request an inspection of an RCFE.

In 2023, CDSS inspected 75% of all adult and senior facilities, and CDSS reports they anticipate a higher rate of inspection in 2024.

CDSS publicly posts a transparency dashboard for each licensed facility that shows a tab for all visits, citations, inspections, complaints, other visits, locations, and reports. Within these tabs, you can see how many inspections they have received and how many, if any, A or B citations have been found. The dashboard also permits someone to subscribe and receive updates about specific facilities.

CDSS' Complaint Process. CDSS' Community Care Licensing Division is responsible for receiving and investigating complaints. Licensing complaints can be filed by anyone who believes a licensee is violating applicable laws and regulations including loved ones, facility residents, and staff. CDSS has the following posted on its website to inform the public how the complaint will be handled:

- “The local licensing office will make an unannounced visit to the facility to investigate the complaint within 10 days of receipt of the complaint.
- You will be notified in writing that your complaint has been received, if you have provided your contact information, and a Licensing Program Analyst (LPA) or Enforcement Analyst will be assigned to your case who will be your point of contact throughout the investigation.
- When reaching a determination on a complaint, Community Care Licensing uses a “Preponderance of the Evidence” standard, meaning the available evidence must show that it is more likely than not (more than 50%) that the allegation is true. If this standard is met, the allegation will be “Substantiated.” The LPA or Enforcement Analyst may reach a finding of “Unsubstantiated” if the investigation shows that this standard hasn't been met, meaning there isn't enough evidence to prove a violation occurred. The LPA or Enforcement Analyst may reach a finding of “Unfounded” if the evidence shows an allegation could not have happened, is false, and/or is without a reasonable basis.
- Once the investigation is completed, the Department will notify you in writing of the findings if you have provided your contact information. The length of the investigation depends on the complexity of the case.”

There are two types of violations CDSS issues – A or B. An “A” citation is for the most serious type of violation in which there is an immediate risk to the health, safety, or personal rights of those in care. A “B” citation is for licensing violations that if corrected may not pose an immediate danger to residents. This bill would require CDSS to investigate “A” violations within one business day of receiving the complaint.

Beginning in late 2019, CDSS began using Compliance and Regulatory Enforcement (CARE) Tools as developed by the Inspection Process Project. The CARE tools were designed to focus on Prevention, Compliance, and Enforcement.

To aid in the efficiency of the inspection process, the CARE Tools were developed utilizing a tiered approach which allows efforts to be focused on areas where compliance issues are likely to be found. As such, the CARE Tools are broken out into four distinct parts, the standard tool, domain-focused tools, correlated domains, and the comprehensive tool. Statistically derived triggers will automatically add these additional elements to the CARE Tools based on violations found during the inspection process.

Complaint Investigations Timelines. Over the last fiscal year (FY), CDSS has met the statutory requirement of initiating a complaint investigation within 10 days 98% of the time, with an average of six days from receiving a complaint to the first complaint investigation visit. In FY 2022- 23, including complex investigations and their backlog, CDSS took approximately 229 days from beginning on investigation to finalizing and closing it. Due to severity, complexity, the number of allegations, and the involvement of law enforcement, some investigations take

longer to investigate and close. Excluding investigations that might take longer due to the nature of the complaint, in FY 2022-23 CDSS took approximately 229 days from beginning on investigation to finalizing and closing it. The following is a table showing complaints received and approved for completion:

Number of Complaints Received and Approved in RCFEs by Fiscal Year		
Category	FY 2021/22	FY 2022/23
Received	4,690	5,467
Approved	4,090	5,372

Of note, the COVID-19 pandemic shifted CDSS’ Adult and Senior Care Program priorities from fieldwork to providing COVID-19-related technical support and assistance to licensees. CDSS reports this contributes to the backlog.

Author’s Statement: According to the Author, “AB 1911 will improve Residential Care Facility for the Elderly (RCFE) complaint investigations performed by the California Department of Social Services' Community Care Licensing Division (CCLD). It ensures that all complainants receive a response and provides for more effective and timely investigations and appeals for dissatisfied complainants. Currently, the experience for individuals who file complaints against an RCFE is inadequate and discourages individuals from filing complaints. Often times, CDSS determinations on complaints are not communicated to complainants, leaving them without the information they need to follow-up on complaints and unaware of whether their complaints will be investigated. When CDSS determines that a complaint warrants an investigation, current law does not require written notification to the complainant that their complaint has been received or information regarding the process for the investigation. AB 1911 will improve the complaint process by improving CDSS' communication with complainants and imposing clear deadlines on complaint investigations.”

Equity Implications: Currently, there are more than 6.1 million residents over the age of 65. According to Justice in Aging, 10.8 million Californians will be over the age of 60 by 2030, accounting for 25% of the state’s total population. Aging adults reside in RCFEs to receive assistance with daily tasks, and find community, and housing. RCFEs can also be an alternative to more costly care at skilled nursing homes. Without RCFEs, many of these adults would be forced to be without care, lack hygiene, or become homeless. This is why ensuring RCFEs are safe places is crucial to keeping the aging population safe.

Policy Considerations: As in print, this bill does not allow for technological advances in communication. The COVID-19 pandemic showed that the state is capable of harnessing technology in a way that is beneficial to access and efficiency. This bill sets forth a timeline that is about 1/3 of the average time CDSS is processing complaints. To meet timelines, it is prudent to allow technological communication when appropriate.

This bill also requires CDSS to complete an investigation of the complaint within 30 calendar days of receipt of the complaint if the complaint *alleges* a threat of imminent danger of death or

serious harm. As written, this puts the onerous of a complaint to allege imminent danger. Complainants may not know the issue they are bringing forward constitutes imminent danger.

Proposed Committee Amendments:

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

- Permit CDSS to use phone or video conference after an initial onsite investigation has been conducted.
- Clarify that complaints involving a threat of imminent danger of death or serious harm shall be investigated within 30 calendar days.

RELATED AND PRIOR LEGISLATION:

AB 1387 (Chu), Chapter 486, Statutes of 2015, streamlined the appeals process for community care facility civil penalty and violation appeals and enhanced the complaint process for residential care facilities for the elderly

AB 1554 (Skinner) of 2014, would have updated the complaint investigation process used by the CDSS when responding to complaints submitted against RCFEs and affords complainants with two levels of appeal.

SB 895 (Corbett), Chapter 704, Statutes of 2014, requires CDSS to conduct annual unannounced comprehensive inspections for all facilities by 2018, requires CDSS to verify compliance following deficiencies within 10 days, and requires results of inspections to be available on the CDSS website.

AB 1436 (Waldron) of 2014, would have required the results of all reports of inspections, evaluations or consultations and lists of deficiencies to be posted on the department's Internet Web site. *AB 1436 was held on the Assembly Appropriations Committee suspense file.*

AB 1454 (Calderon) of 2014, would require all licensed community care facilities, RCFEs, and child day care centers to be subject to an annual unannounced visits visit by CDSS. *AB 1454 was held on the Assembly Appropriations Committee suspense file.*

AB 2171 (Wieckowski), Chapter 702, Statutes of 2014, established specified RCFE residents' rights and required facilities to inform residents of these rights as specified.

AB 2236 (Mainschein), Chapter 813, Statutes of 2014, among other provisions, imposed a new civil penalty structure, commencing July 1, 2015, for program violations in facilities licensed by the Community Care Licensing Division of CDSS involving the death or physical abuse of, or serious bodily injury to, a resident or child at the care facility.

AB 581 (Ammiano), Chapter 295, Statutes of 2013, strengthened protections against retaliation or discrimination when complaints are made.

REGISTERED SUPPORT / OPPOSITION:

Support

California Advocates for Nursing Home Reform (Sponsor)

AARP

Alzheimer's Greater Los Angeles

Alzheimer's Orange County

Alzheimer's San Diego

Community Legal Services in East Palo Alto

Justice in Aging

Legal Assistance for Seniors

Office of The State Long-term Care Ombudsman

The Geriatric Circle

Opposition

None on file.

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