

Residential Care Facilities for the Elderly Reform Principles

February 2014

Currently in California, 170,000 elderly are in need of quality care at assisted living facilities. In 2012, approximately 3,000 complaints resulted in nearly 13,000 citations from the Department of Social Services. It is clear existing California regulations do not ensure appropriate care for elderly residents.

With longer life-spans and the retiring baby-boomer generation, the need for assisted living facilities is expected to continue to quickly grow. This growing demand will temporarily result in additional relative market power to the providers of the service in a market in which consumers are more prone to mistreatment than the typical market. These realities underline the importance of appropriate oversight that ensures access to open information and resident's rights. The following principles outline appropriate action to increase quality of care.

Open Information:

- A. **Accessible Facility Information:** The State should require disclosure of ownership, operators, and compliance history of any type of nursing home, assisted living facility, and any other like entity and a website should be established and maintained by the state to provide consumers' access to this vital information. This information should be made available to consumers along with all related Department of Social Services information. As a service to all Residential Care Facility consumers, the website should be funded through increased annual renewal fees assessed on a per bed basis. Cost controls should be sufficient to ensure minimal fee levels.
- B. **Liability Insurance:** Liability insurance should be required or a bond should be carried sufficient to cover settlements resulting from deficient care. Alternatively, facilities should be allowed to require a signed affidavit clearly informing the consumer that the facility does not maintain insurance or a bond.
- C. **Increased Inspections:** The State should increase the frequency of RCFE inspections to ensure safety and quality of care. Annual unannounced inspections should be completed and through increased annual license renewal fees assessed on a per bed basis.
- D. **Consumer Complaints:** The State should respond to consumer complaints involving abuse, neglect, or serious harm within 24 hours and complete investigations within 30 days. Additionally, investigations for all other consumer complaints should be completed within 90 days. As a service to all Residential Care Facility consumers, consumer complaint investigations should be funded through increased annual license renewal fees assessed on a per bed basis. Staffing levels should be flexible and appropriately sized to ensure minimal fee levels.
- E. **Whistle Blower Protection:** The State should enforce a whistle blower policy that prohibits employee or licensee discrimination and retaliation against any resident or employee who dials 911 or contacts the Department of Social Services to register a complaint. This protection should complement a facilities self-reporting requirement for unexpected death.

Residents' Rights:

- F. **Compliant Facilities:** The State should empower the Community Care Licensing Division to ban RCFEs from accepting new residents when a facility is currently failing to comply with health and safety regulations. In addition the State should enable the Community Care Licensing Division to ensure the safe relocation of residents when a facility's license has been revoked.
- G. **Educated Personnel:** All staff members who will have contact with residents shall receive annual training to increase their awareness of health and social issues impacting the residents they serve, including but not limited to any adverse effects of psychotropic drugs, and controlling persons with dementia. In addition, if a facility accepts or currently serves residents with a medical condition, a full or part-time medical professional should be available. The full cost for increased instruction should be funded by prospective licensee.
- H. **Resident and Family Council:** By establishing the right to create formal Resident and Family Councils (Council) the state can empower residents and family members by requiring RCFEs to respond to concerns. Large facilities should designate a staff member and a meeting space to allow for Council meetings. All facilities should provide information regarding this specific opportunity to all residents.
- I. **Increased Civil Penalty:** The Civil Penalty should be increased to, but not exceed, a level sufficient to effectively discourage deficient care. A \$1,000 penalty for minor offenses and a \$15,000 penalty for death or other serious harm should be pursued.

Residential Care Facilities for the Elderly (RCFEs) Reform

February 2014

SDCTA Position:

SEE REFORM PRINCIPLES

Rationale for Position:

Residents of Residential Care Facilities for the Elderly (RCFE) in San Diego County are vulnerable to sub-par facilities. Although the State regulates RCFEs, recent high-profile incidents have demonstrated ineffective and inadequate existing government oversight and regulation. Currently liability insurance is not required for these facilities to operate, a facility could go up to five years without being inspected by the CCL, the current maximum civil penalty for deficient care (including deficient care resulting in the death of a resident) is \$150, and there is not an online resource for consumers to review fines and violations at a facility to make an informed decision. Action needs to be taken to increase safety and quality of care. Two specific areas of concern are access to open information and resident's rights.

Title: Residential Care Facilities for the Elderly (RCFEs) Reform

Jurisdiction: State of California

Type: Reform Principles

Vote: N/A

Status: Early

Issue: Residential Care Facilities for the Elderly

Description: Currently in California, 170,000 elderly are in need of quality care at assisted living facilities. In 2012, approximately 3,000 complaints resulted in nearly 13,000 citations from the Department of Social Services. It is clear existing California regulations do not ensure appropriate care for elderly residents. Action needs to be taken to increase safety and quality of care. Two specific areas of concern are access to open information and resident's rights.

Fiscal Impact: The SDCTA Principles are designed to encourage net neutral effect on the State budget.

Background:

Currently there are 170,000 elderly living in Residential Care Facilities for the Elderly (also known as RCFEs, Assisted Living Facilities or Boarding Care) in California and there are 8,000 registered facilities in the state. Eighty percent of these facilities are one to six bed operations, providing basic assistance to seniors in a home environment. RCFEs do not take Medi-Cal, and only accept private payment, which ranges from \$2,000 to \$8,000 per month.¹

¹ Consumer Advocates for RCFE Reform. "[No Supporter Fact Sheet.](#)" Retrieved December, 12 2013.

Over 3,000 complaints resulting in 13,000 citations were completed by the California Department of Social Services, Community Care Licensing (CCL) in 2012.² While the number of complaints has risen since 2008, the number of state-issued citations has decreased. In 2012, 12,767 citations were issued as compared to 16,384 in 2008.³ Since July 2007, the Department of Social Services has collected half of the 2.9 million in penalties against facilities statewide.⁴

It is estimated that up to 80 percent of RCFEs operate without liability insurance.⁵ Although RCFEs are designed for higher functioning and independent elderly, in San Diego county 73 percent of RCFEs house at least one medically needy resident.⁶

Currently under California regulations, RCFEs are housing alternatives, not medical facilities. No medical professionals are currently required to be employed at an RCFE. Medical care is outsourced either to a first responder or if the family chooses to hire a Registered Nurse, or Certified Nurse's Assistant to provide medical care. RCFE employees are only required to have 10 hours of initial training and have a first aid certificate. The state does not require CPR or Automated External Defibrillator training for RCFE employees.⁷

When an issue does occur, few civil litigators will take a contingency case against an RCFE if the RCFE is uninsured. Even when sued, the facility can go out of business leaving the injured client with no recourse and leaving the remaining residents in need of a new facility.⁸ An example of a facility being abandoned occurred in Castro Valley, when in October of 2013, owners and staff left twelve residents for two days until authorities were notified.⁹

Within the California's Department of Social Services there are 14 district offices of the CCL. The CCL is the solitary oversight entity responsible for all RCFE monitoring and licensing.

Currently the law requires 20 percent of assisted living facilities be randomly selected each year for inspection, with the caveat that no RCFE goes more than five years without an inspection.¹⁰ California has reduced oversight and inspections of RCFEs. In the 1970s, CCL completed inspections twice per year; by the 1990s the inspection mandate dropped to once per year. In 2004 inspection regulations were again decreased to the current system allowing

² California Advocates for Nursing Home Reform. [Residential Care in California: Unsafe, Unregulated, and Unaccountable.](#) Retrieved December 10, 2013.

³ Deborah Schoch. Deadly Neglect: Union Tribune San Diego, pp. SD-SD4. September 8, 2013.

⁴ Jeff McDonald and Matt Clark. [Assisted Living Fines Often GO Uncollected.](#) Union Tribune San Diego. December 14, 2013.

⁵ Consumer Advocates for RCFE Reform. [The Empty Bag: RCFEs and Liability insurance.](#) Retrieved January 25, 2014.

⁶ Consumer Advocates for RCFE Reform. [No Supporter Fact Sheet.](#) Retrieved December, 12 2013.

⁷ Consumer Advocates for RCFE Reform. [The Benefits of Bayless.](#) Retrieved January 29, 2014.

⁸ Consumer Advocates for RCFE Reform. [Mandatory Liability Insurance for California's Assisted Living Facilities.](#) Retrieved January 3, 2014.

⁹ NBC Bay Area. [Castro Valley Assisted Living Facility Shut Down, Patients Abandoned.](#) Retrieved January 29, 2014.

¹⁰ Monitoring Quality of Care in Residential Care Facilities for the Elderly. *Journal of Aging and Social Policy* 21 (3), 225-242.

up to five years before an RCFE receives an inspection from CCL.¹¹ In comparison, Skilled Nursing homes in California are mandated to have inspections at least every 12 months.

The Manual of Policies and Procedures Community Care Licensing Division, Residential Care Facilities for the Elderly (RCFE) Title 22, Division 6, Chapter 8, outlines the regulations for RCFE facilities.¹² If a facility is inspected and any violations of laws or regulations are noted these are termed as “deficiencies.” Based on the deficiencies, the state evaluator, or Licensing Program Analyst (LPA) may issue the facility a “citation.” Depending upon the severity of the deficiency, the LPA can issue a Type A or a Type B citation.¹³ Neither Type A nor Type B citations have automatic civil penalties associated with them. Instead these citations ultimately amount to a warning for the facility and a notation in the facility’s state file.

In addition to Type A and Type B citations, a facility may also incur a Civil Penalty. Civil penalties are fines for the following:¹⁴

- (1) Failure to secure criminal record clearances for employees
- (2) Repeating a violation within a 12-month period
- (3) Sickness, injury or death of a resident as a result of deficiencies within a facility
- (4) Accessible firearms, ammunition or both
- (5) Accessible bodies of water
- (6) Refused state evaluator entry to facility or any part of a facility.

If an investigation concludes that a Civil Penalty is warranted as a result of deficient care, the maximum civil penalty assessed can be \$150.

Currently, consumers do not have ease of access to information regarding fines, citations, abuses, or neglect in RCFE facilities. Consumers only have access to facility’s files by scheduling an in-person meeting with the CCL Program Office. Statewide, there are 17 program offices providing oversight for 8,000 facilities.¹⁵

Comparing RCFE oversight to Skilled Nursing facilities controlled by the Department of Health reveal significant differences. The Department of Health has an online directly to look up specific facilities by name, region, or zip code.¹⁶

SDCTA Past Positions

None.

¹¹ California Advocates for Nursing Home Reform. “[Residential Care in California: Unsafe, Unregulated, and Unaccountable.](#)” Retrieved December 10, 2013.

¹² Manual of Policies and Procedures. “[Residential Care Facilities for the Elderly, Title 22, Division 6, Chapter 8.](#)” December 3, 2013.

¹³ Consumer Advocates for RCFE Reform. “[No Supporter Fact Sheet.](#)” Retrieved December 12, 2013.

¹⁴ Consumer Advocates for RCFE Reform. Rcfereform.org. Retrieved January 3, 2014.

¹⁵ Consumer Advocates for RCFE Reform – [No Supporter Fact Sheet.](#) Retrieved December, 12 2013.

¹⁶ CA.gov: Consumer Information System. [Health Facilities Search.](#) Retrieved December 3, 2013.

Proposals:

In January 2014, several reform efforts were introduced on the topic of RCFEs. Proposals and potential fiscal and economic impacts are outlined below.

Health and Human Services Proposed Budget

- \$7.5 Million and 71.5 positions allocated for quality enhancement and program improvement in Community Care Licensing to respond to incidents in children's and adult residential care facilities.
- Increasing Civil Penalties and improving timeliness and frequency of investigations to strengthen enforcement.
- A specialized complaint hotline is being introduced to assist with acquiring initial information, prioritize, and dispatch complaints to regional offices.
- Directing the Department of Social Services to assist with policy development for medical and mental health conditions in community facilities to increase training for new field staff and create training for supervisors and managers.
- Allocate resources to achieve quality assurance and consistency for consumer safety and protection throughout the state.
- These changes are funded in part by a proposed 10 percent increase in licensing fees.

Open Information:

Consumer Information System. (Eggman – Chavez) – Not Yet Introduced

- This provision requires the Department of Social Services to establish an on-line information system to include license, survey, ownership, complaint, and enforcement information on every licensed Assisted Living Facility in California. The system would be phased in over five-year period ending in June of 2019. *Assemblywoman Marie Waldron, R – Escondido has also proposed similar legislation.
- The fiscal impact will be the creation and maintenance of the on-line information system.

AB 1523 - Residential care facilities for the elderly: liability insurance. (Atkins - Weber)

- This provision would require Assisted Living Facilities to obtain and maintain liability insurance for operation. Currently language is being drafted and the proposed level of liability insurance is \$1 Million with a \$3 Million annual aggregate or bond. Additionally, a proposal has been made to allow for a \$300,000 bond or a signed affidavit confirming an understanding that insurance is not maintained by the facility.
- A potential economic impact would be an increased cost to consumer when costs are increased for the facility.
- Potential fiscal impact would include enforcement and oversight of the new requirement.

SB 895 - Residential care facilities for the elderly: unannounced visits. (Corbett)

- This provision would amend Health and Safety Code 1569.33 to require the Department of Social Services to conduct, comprehensive inspections of all Assisted Living Facilities at least once per year and as often as needed to ensure quality of care for the residents. In addition, unannounced inspections will be completed at no less than 20 percent of facilities per year. Inspectors must evaluate each facility for compliance.
- The primary fiscal impact would be an increased cost of staffing and other inspection related costs offset by the increase civil penalties. In later years the impact would decrease as violations decrease. As a result this should not be considered a stable and perpetual revenue source. Since 2007, the Department of Social Services has collected approximately half of the \$2.9 Million dollars in penalties.

Responding to Consumer Complaint in a Timely Manner. (Skinner) – Not Yet Introduced

- This provision would require Community Care Licensing to begin investigations of complaints involving abuse, neglect or serious harm of an RCFE resident within 24 hours. Additionally investigations of these highest priority complaints would be completed within 30 days. All other complains would be completed within 90 days including interviewing complainants, residents, and other pertinent parties involved in the investigation. Currently the law allows for 10 days to begin all investigations and does not have a completion timeline or a requirement to immediately investigate cases of abuse or serious neglect.
- The fiscal impact would be to have staff trained and available to respond to the complaints in the provided time requirement.

Residents' Rights:

Ban on Admissions when facility is noncompliant. (Leno) – Not Yet Introduced

- This provision would allow the Community Care Licensing Division to impose a ban on allowing RCFEs to accept new residents when the facility is failing to comply with critical health and safety regulations. Bans on admissions are already available in 21 other states. Nursing home admissions bans are federal law.
- The economic impact would be removing the opportunity to create revenue when a facility is not compliant.

SB 911 – Residential care facility for the elderly. (Block)

- This provision would require an increase for the hours of training for both administrators and direct care staff and creates new training requirements for direct care staff serving residents who are at risk, terminally ill, or receiving hospice care. Currently there is not requirement for additional staff training for facilities serving at risk residents with restricted health conditions, i.e., pressure sores, incontinence or bladder issues, diabetes, etc. The current minimum requires the completion of a 40 hour certification. The proposed provision would double this to 80 hours. Additionally, the provision would require a facility to employ trained medical personnel on a full or part-time basis as appropriate.
- The fiscal impact will be requiring the State to have higher qualified and educated staff members providing longer trainings for RCFE administrators and direct care staff members.

- Economic impacts would be increased costs for a facility to hire and retain a full time or part-time medical professional.

SB – 894 Residential care facilities for the elderly: revocation of license. (Corbett)

- This provision would strengthen Section 1569.525 of the Health and Safety Code to improve procedures of suspending licenses and create timelines for the safe relocation of residents when a facility's license has been revoked. Additionally, the code would have clear and unambiguous guidelines for the safe relations and protection of residents' rights who are being evicted from RCFEs. The current law gives the Director of the Community Care Licensing Division the authority to determine when it is necessary to temporarily suspend or revoke a license of an RCFE in order to protect the resident from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The provision would require Social Services to check in on the status of any transferred resident within 24 hours after the transfer.
- The fiscal impact would be to have additional staff available to process revoked licenses and follow up on transferred residents.

AB – 1571 Residential care facilities for the elderly: licensing and regulation. (Eggman, Skinner, and Block)

- This provision would amend the current law to require complete disclosure of ownership and prior ownership of any type of facility, including nursing homes, and any similar entity in other states. This includes the history of compliance and non-compliance with applicable regulations. Additionally this would require the Department of Social Services Community Care Licensing to cross check with the Department of Public Health to determine if there is any history of ownership licensed facilities. The current law requires RCFE license applicants to disclose their prior history of operating in any other residential or health care facility. However, it does not require a cross check with the Department of Public Health. For example, the owner of Valley Spring Manor, in Castro Valley, owed more than \$800,000 in fines to the federal government for violations that occurred when they owned nursing homes in the late 1990s. This information was not available when the owner applied for several RCFE licenses in 2007.
- The potential fiscal impact would be additional resources dedicated to thorough background checks to confirm applicant's previous compliance and non-compliance.

AB – 1572 Residential care facilities for the elderly: resident and family council. (Eggman, Skinner, and Block)

- This provision would promote the development of independent Resident/Family Councils in RCFEs as a way for residents to know and exercise their rights, improving overall quality of care. The bill places the responsibility for forming the Councils onto the residents requiring two or more to formally organize. For a facility of 16 or more beds, the bill requires assigning a staff contact person, a meeting space, as well as a bulletin board for posting this statute and information about the Resident/Family Council issues. The proposal creates the right to meet independently, invite staff or guest to the meeting, and participate in surveys conducted by the regulatory agency. Any interference by the facility in the

formation or maintenance of the Council is considered a rights violation. Currently RCFEs have no requirement to promote Resident of Family Councils, there is no requirement to respond to Council concerns, and there are no penalties if the facility interferes with the Council.

- An Economic impact would be a facility's responsibility to devote staffing to directly support this provision.

Increased Penalties for Violations. (Maienschein - Chavez) – Not Yet Introduced

- This provision would increase maximum Civil Penalties for violations of laws and regulations from \$150 to \$15,000. Also this would create a citation classification system similar to that used for violations in nursing homes. A \$1,000 penalty would occur for minor offenses and a \$15,000 penalty would occur for death or other serious harm.
- Economic impact would be the increased amount required for each violation.
- A potential fiscal impact would be a decrease in revenue if violations decrease. As a result this should not be considered a true revenue source but focused on encouraging appropriate care. Since 2007, the Department of Social Services has collected approximately half of the \$2.9 Million dollars in penalties.

Policy Implications:

A potential outcome of proposed legislation could be increased cost to the consumer. With the increased costs of RCFE staff, higher qualified training, required liability insurance, and increased penalties, these increased costs will to some degree be passed on to residents of the facility.

Fiscal Impact:

The SDCTA Principles are designed to encourage net neutral effect on the State budget.

The current application fee for an RCFE license is between \$550 (one – six beds) and \$964 (26+ beds). The annual fee is between \$275 (one – six beds) and \$482 (26+ beds). In addition to the annual fee there is a \$10 fee for each bed in the facility.¹⁷

The 2014 – 2015 proposed State budget states that a 10 percent increase in licensing fees will assist with covering the cost of the above proposed legislation.

Refer to above for the specific potential fiscal impacts of each of the proposed pieces of legislation.

List of Proponents:

Several California State legislators and Governor Brown, through the State Budget, have demonstrated support for different related issues by proposing reform. The proponents listed here may not ultimately support all related legislation.

¹⁷ CA.gov: Department of Social Services, Community Care Licensing. [Annual Fee Schedule](#). Retrieved December 3, 2013.

- Governor Jerry Brown
- Senate Majority Leader Ellen M. Corbett
- Senator Marty Block
- Senator Mark Leno
- Assembly Speaker Toni Atkins
- Assemblymember Rocky Chavez
- Assemblymember Susan Eggman
- Assemblymember Brian Maienschein
- Assemblymember Nancy Skinner
- Assemblywoman Marie Waldron
- Assemblymember Shirley Weber

Proponent Arguments:

- It is clear existing California regulations do not ensure appropriate care for elderly residents. Action needs to be taken to increase safety and quality of care. Facility could go up to five years without being inspected and the current maximum civil penalty for deficient care (including deficient care resulting in the death of a resident) is only \$150.
- Residents that are in need of assisted living services are easily ignored and abused and deserve government consumer protections defining the responsibilities of assisted living facilities, the rights of their residents, and ensuring access to information so residents and their families can select a facility with confidence.

List of Opponents:

- Community Residential Care Association of California

Opponent Arguments:

- Requiring increased government oversight and regulation will ultimately increase the cost to consumers and taxpayers, and limit access to care.