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AB-2377 Residential facilities. (2019-2020)

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Assembly Bill No. 2377

CHAPTER 146

An act to amend Section 1562.2 of, and to add Sections 1509.56, 1562.1, 1562.15, and 1568.023 to, the Health and Safety Code, relating to health and care facilities.

[Approved by Governor September 25, 2020. Filed with Secretary of State September 25, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2377, Chiu. Residential facilities.

Existing law, the California Community Care Facilities Act, provides for the licensing and regulation by the State Department of Social Services of community care facilities. Under existing law, community care facilities include, among others, various types of adult residential facilities. Existing law also provides for the regulation by the department of residential care facilities for persons with chronic life-threatening illness.

This bill would require an applicant or licensee of an adult community care facility or a residential care facility for persons with chronic life-threatening illness to maintain an email address of record with the department and notify the department in writing of the email address and any change to that address, as specified.

Existing regulations of the department define an "adult residential facility" as a facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to persons 18 to 59 years of age, inclusive, and, under specified conditions, to persons 60 years of age and older. Existing law requires the licensee of an adult residential facility that has submitted a closure plan to inform the city and county in which the facility is located of the proposed closure, including whether the licensee intends to sell the property or business, no later than 180 days before the proposed closure, as specified. Under existing law, a violation of the act is a misdemeanor.

Existing law separately licenses and regulates residential care facilities for the elderly (RCFE), which provide housing and other specified services for persons 60 years of age and older. Among other things, existing law requires an 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 relating to resident notification and transfer and relocation planning, as prescribed, including providing written notice to the resident or the resident's responsible person 60 days prior to the eviction. Among other provisions, existing law requires an RCFE, if 7 or more residents of the facility will be transferred as a result of the forfeiture of a license or the change in the use of a facility, to submit a proposed closure plan for the affected residents to the department for review, and requires the department to approve or disapprove the plan. Existing law requires an RCFE to refund to a resident any paid preadmission fees, according to a prescribed schedule. Existing law imposes civil penalties for a violation of these requirements by an RCFE, of \$100 per violation per day. Existing law requires the licensee of an RCFE to notify the city and county in which the facility is located, current residents, and other designated parties, in writing, of specified events relating to the facility and the licensee.

This bill would establish similar procedures and requirements for the licensee of a licensed adult residential facility when notifying the city and county of a proposed closure or other event, and when transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license or a closure of the facility for another reason.

The bill would additionally give the city or county the first opportunity to make an offer to purchase the property and continue the operation of the adult residential facility within 60 days after a licensee who is also the owner has notified the city or county of an intent to sell the property, as specified. The bill would authorize the city or county to either take over operation of the facility under those circumstances, or enter into a long-term lease for its operation with a nonprofit or for-profit entity with a history of providing adult residential facility services, as specified. The bill would require a lease entered into pursuant to the bill to include a requirement that the lessee maintain licensure of the property as an adult residential facility.

Because a violation of the bill's requirements by certain residential facilities would be a misdemeanor, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1509.56 is added to the Health and Safety Code, to read:

1509.56. An applicant or licensee of an adult community care facility shall maintain an email address of record with the department. The applicant or licensee shall notify the department, in writing, of the email address and of any change to the email address within 10 business days of the change.

SEC. 2. Section 1562.1 is added to the Health and Safety Code, to read:

1562.1. (a) For purposes of this section "adult residential facility" means a facility licensed as an adult residential facility pursuant to this chapter.

(b) (1) In addition to the notification requirements provided for in Section 1562.2, a licensee of an adult residential facility shall 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.

(2) The licensee shall specify in the notification required by paragraph (1) that it is not, and shall not be construed as, an eviction notice.

(c) A licensee of an adult residential facility shall, 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 described in subdivision (a), (b), or (f) of Section 1520, or a closure of the facility for another reason, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(1) Prepare, for each resident, a relocation evaluation of the needs of that resident, which shall include all of the following:

(A) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan.

(B) A list of facilities, within a 60-mile radius of the resident's current facility, that meet the resident's present needs.

(C) If applicable, the possibility for the resident to remain in the facility under certain circumstances, including the sale or transfer of the facility to a city or county.

(2) Provide each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident's current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(3) Discuss the relocation evaluation with the resident and their legal representative within 30 days of issuing the notice of eviction.

(4) Submit a written report of any eviction to the licensing agency within five days.

(5) Upon issuing the written notice of eviction, a licensee shall not accept new residents or enter into new admission agreements.

(6) (A) For paid preadmission fees in excess of five hundred dollars (\$500), the resident is entitled to a refund in accordance with all of the following:

(i) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(ii) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

(iii) A 50-percent refund if preadmission fees were paid more than 12 months but not more than 18 months before notice of eviction.

(iv) A 25-percent refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.

(B) No preadmission refund is required if preadmission fees were paid 25 months or more before the notice of eviction.

(C) The preadmission refund required by this paragraph shall be paid within 15 days of issuing the eviction notice. In lieu of the refund, the resident may request that the licensee provide a credit toward the resident's monthly fee obligation in an amount equal to the preadmission fee refund due.

(7) If the resident gives notice five days before leaving the facility, the licensee shall refund to the resident or their legal representative a proportional per diem amount of any prepaid monthly fees at the time the resident leaves the facility and the unit is vacated. Otherwise the licensee shall pay the refund within seven days from the date that the resident leaves the facility and the unit is vacated.

(8) Within 10 days of all residents having left the facility, the licensee, based on information provided by the resident or the resident's legal representative, shall submit a final list of names and new locations of all residents to the department.

(d) If seven or more residents of an adult residential facility will be transferred as a result of the forfeiture of a license or change in the use of the facility pursuant to subdivision (a), the licensee shall submit a proposed closure plan to the department for approval. The department shall approve or disapprove the closure plan, and monitor its implementation, in accordance with the following requirements:

(1) Upon submission of the closure plan, the licensee shall be prohibited from accepting new residents and entering into new admission agreements for new residents.

(2) The closure plan shall meet the requirements described in subdivision (a), and describe the staff available to assist in the transfers. The department's review shall include a determination as to whether the licensee's closure plan contains a relocation evaluation for each resident.

(3) Within 15 working days of receipt, the department shall approve or disapprove the closure plan prepared pursuant to this subdivision, and, if the department approves the plan, it shall become effective upon the date the department grants its written approval of the plan.

(4) If the department disapproves a closure plan, the licensee may resubmit an amended plan, which the department shall promptly either approve or disapprove, within 10 working days of receipt by the department of the amended plan. If the department fails to approve a closure plan, it shall inform the licensee, in writing, of the reasons for the disapproval of the plan.

(5) If the department fails to take action within 20 working days of receipt of either the original or the amended closure plan, the plan, or amended plan, as the case may be, shall be deemed approved.

(6) Until the department has approved a licensee's closure plan, the facility shall not issue a notice of transfer or require any resident to transfer.

(e) (1) If a licensee fails to comply with the requirements of this section, or if the director determines that it is necessary to protect the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the

department shall take any necessary action to minimize trauma for the residents, including caring for the residents through the use of a temporary manager or receiver as provided for in Sections 1546.1 and 1546.2 when the director determines the immediate relocation of the residents is not feasible based on transfer trauma or other considerations such as the unavailability of alternative placements. The department shall contact any local agency that may have assessment, placement, protective, or advocacy responsibility for the residents, and shall 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.

(2) The participation of the department and local agencies in the relocation of residents from an adult residential facility does not relieve the licensee of any responsibility under this section. A licensee that fails to comply with the requirements of this section shall be required to reimburse the department 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 as provided for in Sections 1546.1 and 1546.2. If the licensee fails to provide the relocation services required in this section, then the department may request that the Attorney General's office, the city attorney's office, or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, including restitution to the department of any costs incurred in caring for the residents through the use of a temporary manager or receiver as provided for in Sections 1546.1 and 1546.2.

(f) A licensee who fails to comply with the requirements of this section shall be liable for the imposition of civil penalties in the amount of one hundred dollars (\$100) per violation per day for each day that the licensee is in violation of this section, until the violation has been corrected. The civil penalties shall be issued immediately following the written notice of violation. However, if the violation does not present an immediate or substantial threat to the health or safety of residents and the licensee corrects the violation within three days after receiving the notice of violation, the licensee shall not be liable for payment of any civil penalties pursuant to this subdivision related to the corrected violation.

(g) On and after January 1, 2021, a licensee who fails to comply with this section and 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 pursuant to Section 1524, shall be excluded from licensure in facilities licensed by the department without the right to petition for reinstatement.

(h) A resident of an adult residential facility covered under this section may bring a civil action against any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains an adult residential facility who violates the rights of a resident, as set forth in this section. Any person, firm, partnership, or corporation who owns, operates, establishes, manages, conducts, or maintains an adult residential facility who violates this section shall be responsible for the acts of the facility's employees and shall be liable for costs and attorney's fees. The adult residential facility may also be enjoined from permitting the violation to continue. The remedies specified in this section are in addition to any other remedy provided by law.

SEC. 3. Section 1562.15 is added to the Health and Safety Code, to read:

1562.15. (a) (1) If a licensee who is also the owner of an adult residential facility notifies the city and county of an intent to sell the property, as required by Section 1562.2, the licensee shall give the city or county the first opportunity to make an offer to purchase the property, at a price that reflects its fair market value, and continue the operation of the adult residential facility. The city or county shall notify the licensee of its intent to purchase the property within 60 days after the notice required by Section 1562.2.

(2) (A) After the city or county has made an offer pursuant to paragraph (1), the licensee may accept that offer or any other offer received by the licensee.

(B) Notwithstanding paragraph (1), an individual or entity planning to continue operating the licensed adult residential facility may make an offer to purchase the facility, and the licensee may accept the offer at any time. The individual or entity that makes an offer to purchase a facility pursuant to this subparagraph shall provide a written statement to the licensee and the department that the individual or entity agrees to continue the operation of the adult residential facility and apply for licensure as an adult residential facility upon completion of the sale of the existing facility.

(3) A city or county shall have maximum flexibility in seeking and securing available funding sources to purchase a residential care facility under this section, including any federal, state, local, and private funds. Funding from multiple sources may be combined for purposes of this paragraph. The purchase of property under this section is subject to all existing requirements otherwise applicable by law to the purchasing city or county.

(b) (1) A city or county that purchases an adult residential facility pursuant to this section may 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. A nonprofit or for-profit entity

selected by the city or county shall have a demonstrated history of providing adult residential facility services to individuals in need of those services, including, but not limited to, Medi-Cal and Supplemental Security Income (SSI) recipients.

(2) A lease entered into pursuant to paragraph (1) shall include a requirement that the lessee maintain licensure of the property as an adult residential facility.

SEC. 4. Section 1562.2 of the Health and Safety Code is amended to read:

1562.2. (a) A licensee of an adult residential facility shall notify 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.

(b) A licensee of an adult residential facility shall inform the city and county in which the facility is located, the department, all residents, and, if applicable, their legal representatives, in writing, within two business days, and shall notify all applicants for potential residence, and, if applicable, their legal representatives, prior to admission, of any of the following events, or knowledge of the event:

(1) A notice of default, notice of trustee's sale, or any other indication of foreclosure is issued on the property.

(2) An unlawful detainer action is initiated against the licensee.

(3) The licensee files for bankruptcy.

(4) The licensee receives a written notice of default of payment of rent described in Section 1161 of the Code of Civil Procedure.

(5) A utility company has sent a notice of intent to terminate electricity, gas, or water service on the property within not more than 15 days of the notice.

SEC. 5. Section 1568.023 is added to the Health and Safety Code, to read:

1568.023. An applicant or licensee for a residential care facility licensed pursuant to this chapter shall maintain an email address of record with the department. The applicant or licensee shall notify the department, in writing, of the email address and of any change to the email address within 10 business days of the change.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.