

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Sharon Quirk-Silva, Chair
AB 1821 (Gordon) – As Amended: April 22, 2014

SUBJECT: Medical foster homes.

SUMMARY: Establishes the Medical Foster Home Pilot Program.

Specifically, this bill:

- 1) Authorizes, until January 1, 2018, a United States Department of Veterans Affairs (USDVA) facility to establish a Medical Foster Home (MFH) that is not subject to licensure or regulation under the California Residential Care Facilities for the Elderly Act provided that specified federal requirements are satisfied, the USDVA facility establishing the home agrees to be subject to the jurisdiction of the California State Auditor, and the USDVA obtains criminal background information for caregivers and specified individuals residing in the home.
- 2) States the intent of the Legislature that the California State Auditor, through a request to the Joint Legislative Audit Committee, conduct an audit evaluating the program created by this bill no sooner than January 1, 2016, as specified.

EXISTING LAW:

- 1) Establishes the Department of Veterans Affairs, which is responsible for administering various programs and services for the benefit of veterans.
- 2) Provides for the licensure of residential care facilities for the elderly by the State Department of Social Services under the California Residential Care Facilities for the Elderly Act.
- 3) Exempts from these provisions specified facilities, including general acute care hospitals, clinics, and recovery houses for individuals with drug or alcohol addiction.
- 4) Authorizes the California State Auditor, upon the request by the Joint Legislative Audit Committee and to the extent funding is available, to audit a state or local governmental agency, as defined, or any other publicly created entity.

FISCAL EFFECT: Unknown at this time.

COMMENTS: According to the Author:

MFHs are home-based care models for mostly older and medically frail veterans needing assisted living care. MFHs provide 24-hour a day, 7-days a week care for up to a maximum of 3 eligible veterans in a private home. MFHs are currently operational at more than 83 sites in 39 states.

To qualify for the MFH program, a veteran must first be enrolled in the Veterans Health Administration's (VHA's) Home Based Primary Care program (HBPC). In this program the veteran's medical care is provided by an interdisciplinary team of physicians, nurses, aides, and others which are all provided by the VHA. The private home, where the veteran is placed, is also monitored closely by the VHA under strict standards required of the caregivers. Families who volunteer to participate in the MFH program must be approved by the VHA's interdisciplinary team as well as submit income statements, and train in CPR.

Additionally, the MFHs are routinely inspected by the VHA. Veterans pay room and board in the MFH program; however, the Veterans Benefits Administration's "Aid and Attendance" benefit and Social Security benefits are generally anticipated to cover these costs. MFHs are distinguished from other typical residential care homes or facilities because a MFH caregiver is required to reside in their own private home while providing 24-hour personal care and supervision to the veteran. The veteran, in turn, receives their medical care through the VHA in a highly regulated, yet independent, community-based setting.

Currently, the federal Medical Foster Home program can only exist in California if operated as and under the Residential Care Facilities for the Elderly (RCFE) law. Unfortunately, that law does not envision the MFH model under traditional assisted living care such that all potential MFH caregivers would need to have their personal home licensed, they would have to become a Certified Administrator for RCFE, and they would also incur all the costs associated with their training and licensure. This creates a barrier for caregivers to open their home to a veteran and limits the growth of the program in our state.

In addition, placements in existing RCFEs are not financially feasible due to the 3 veteran limitation, as most "board and care" RCFEs have up to 6 residents residing in one location. Therefore, the RCFE requirements impede California veterans from having similar opportunities as veterans in other states who are able to "age in place" with dignity and independence, in a home-like environment with a loving and caring foster family.

To ensure the MFH is a feasible alternative to institutionalization for California's veterans, the bill would establish the Medical Foster Home Pilot Program. Under the pilot program, a United States Department of Veterans Affairs (USDVA) facility, such as a VA hospital, may establish a Medical Foster Home program as long as the following conditions are met: the MFH meets the requirements of the federal regulations; the USDVA facility submits a proposal to establish a medical foster home program to the Director of Home and Community-Based Care in Geriatrics and Extended Care Services in the Central Office of the USDVA and that director authorizes the program; and finally that the USDVA facility establishing the MFH agrees to be subject to the jurisdiction of the California State Auditor and agrees to provide data, information, and case files as requested by the California State Auditor to perform all of his or her duties in evaluating the MFH pilot program.

The MFHs in the pilot program are not subject to existing RCFE law; however, it is the intention of the author and stated in the bill that a request will be made to the Joint

Legislative Audit Committee for the California State Auditor to audit and evaluate the success of the pilot program providing a safeguarding mechanism to protect California's veterans. In addition, the State Auditor will make recommendations regarding the continuation of the program in order to determine if the state should have a role in the federal MFH program as the pilot program will sunset on January 1, 2018. This bill would allow the MFH program to be a viable option for our veterans who want to live and receive care in a smaller setting that feels more like home.

The concept of providing veterans with an additional federally-funded health care delivery setting option from which to choose is an excellent one. Being treated in a home-like setting will surely be an attractive option for many veterans. Staff is aware that the program is running successfully in other states. Furthermore, this model of care seems in keeping with the United States Supreme Court's decision in *Olmstead v. L.C.*, a ruling that requires states to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs.

The step of exempting MFH's from state regulation and oversight should be carefully evaluated. The author realizes this and has proposed a pilot program, sunset, audit, and certain other steps as safeguards, as well as noted the rigorous federal regulatory and oversight scheme. Still, removing care from state oversight and regulation in this way for our some of our most vulnerable veterans, even as a pilot program, should give pause.

Policy Question for Members and Suggested Amendments:

Should MFHs be exempted from state regulation and oversight, even with the bill's proposed safeguards and limits? There have been several recent media reports alleging serious misconduct at the USDVA Veterans Health Administration (VHA) including destruction of patient records (which has been the subject of investigation by the U.S. House Veterans Affairs Committee) and the VHA has allegedly refused state inspectors in Florida access to patient records.

Will our veterans will be properly and safely cared for without state oversight during the pilot program?

If the MFH model does not fit within the RCFE rubric, rather than exempting it from state regulation, why are the relevant state agencies not proposing a new a regulatory model? The pilot program will provide a testing period for the new program, but is it good policy to test this program on California veterans first and then later decide what the state's role should be?

Proposed Amendments:

All proposed amendments are to the Military and Veterans Code.

Amendment 1.

Section 1851. No sooner than June 1, 2015 a USDVA facility may establish a medical foster home program in this state. A medical foster home established pursuant to that program is not subject to licensure or regulation under the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code) unless all of the following requirements are satisfied...

Rationale: It takes some time to safely and carefully launch a new program, Assuming this bill proceeds to the Governor, it might not be considered by the Governor until September 2014, which is not enough time to launch a program on January 1. Further this bill would not take effect until January 1, 2015, so an additional small delay is not unreasonable.

According to the Author:

The author has no concerns with the first proposed amendment and is happy to accept the amendment to delay establishing a Medical Foster Home program until June 1, 2015.

Amendment 2.

Section 1851 (e) The medical foster home complies with and provides for the basic health and safety standards as determined by the Department of Social Services. In implementation of this section, the Department of Social Services shall consult with the USDVA to determine with which provisions of Chapter 3.2 of Division 2 (Commencing with Section 1560) of the Health and Safety Code Medical Foster Homes shall comply to provide for the health and safety of its residents. Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) the Department of Social Services shall implement this section through all-county letters or similar instructions from the director no later than May 31, 2015.

Rationale: The proposed amendment retains a basic “floor” of health and safety standards during this pilot period so the bare health and safety minimums are being met, yet still preserves the author’s intent to exempt MFHs from state regulation to the maximum extent. The Author has provided a comparison of the RCFE state regulations and the MFH federal regulations. The federal regulatory scheme appears very rigorous. It may even be more rigorous than the RCFE scheme. If that is the case then this proposal should not impose a burden other than an official verification before the pilot starts. This proposal also requires compliance before the implementation date proposed above so as not to delay implementation.

According to the Author:

The author believes that if the second amendment is taken to require Department of Social Services (DSS) to determine what provisions from RCFE law should be complied with and requires DSS to implement this through county letters or similar instructions, this amendment will add substantial costs to the bill effectively killing it and not allowing veterans this option.

The reason the author would even consider exempting state oversight is that fact that the federal VA standards for the Medical Foster Home program are higher and more stringent than are offered under RCFE. DSS has told the author’s office this directly and even mentioned that if the state were to have oversight it could be duplicative. Moreover, if this amendment were taken, would VA have to lower their standards to be in compliance with RCFE, if DSS was involved in determining what provision from the RCFE law would have to be followed?

In addition, the state has no oversight over VA hospitals. Veterans under the Medical Foster Home program are receiving the exact same care as if they were in the VA hospital; the only difference is that the veteran is in the private medical foster home receiving care from an interdisciplinary team.

The author is cognizant of the policy question of exempting state regulation and oversight; however, the bill proposes multiple safeguards and limits. First, this is a pilot program so the number of Medical Foster Homes would be limited. Second, the bill has a sunset date requiring the policy to be reexamined. Third, the bill requires federal and state background checks on Medical Foster Home caregivers and residents of the Medical Foster Home over the age of 18. Lastly, and most importantly, the bill states the author's intent for the state auditor to conduct an audit of the Medical Foster Home pilot program and evaluate the program and determine whether the state should have a role in this federal program. Further, as a condition of establishing the Medical Foster Home program in California, USDVA facilities must agree to be subject to the jurisdiction of the California State Auditor for the purpose of evaluating the program. This means that the USDVA facility must provide data, information, and case files as requested by the California State Auditor to perform all of his or her duties in evaluating the program. Therefore, this provides an essential safeguard in that the VA must comply with the audit and provide all necessary information to be evaluated effectively.

This bill does not leave California's veterans on their own with no protections, in fact the higher federal protections justify why this worthwhile program should be piloted. AB 1821 attempts to strike a balance between ensuring that there are protections for our veterans (after all our first priority is the health and safety of California's veterans) while providing a Medical Foster Home that is a viable model.

Amendment 3.

Section 1852. It is the intent of the Legislature that the Department of Social Services, in consultation with the Department of Veterans Affairs, shall assess and evaluate, the pilot program created by this chapter no sooner than January 1, 2017. ...

Rationale: An entity with regulatory compliance expertise in these kinds of health care models (or their closest analogues) should be the one assessing the pilot program. DSS is the most logical entity to entrust with this step of protecting the health and safety of what are likely to be some of our most vulnerable veterans. Substantially similar oversight is already one mission of the DSS. The proposed amendment also gives an additional year to run the pilot, compensating for the delayed implementation.

According to the Author:

The author has concerns with the [DSS] conducting the evaluation. The first concern is the fiscal cost this would entail. But, more importantly, the author believes that the state auditor is the appropriate entity to conduct the evaluation because the state auditor does not have skin in the game and would be a neutral entity best able to evaluate the program without any biases. Furthermore, the state auditor conducts many audits on a range of topics. If the state auditor feels that they may not have the needed subject expertise, the state auditor has and can contract to get an expert to assist in the audit.

Amendment 4.

Section 1852(b) Make recommendations to the Legislature...

Rationale: This requires a report to the Legislature so it may make an informed decision about the pilot program.

According to the Author:

The author has no concerns with the fourth proposed amendment and is happy to accept the amendment to report to the Legislature the findings and recommendations of the state audit.

REGISTERED SUPPORT / OPPOSITION:

Support

Public Law Center
Leading Age California
California Commission on Aging

Opposition

None.

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