
THIRD READING

Bill No: AB 2119
Author: Flora (R)
Amended: 8/11/22 in Senate
Vote: 21

SENATE MILITARY & VETERANS COMMITTEE: 4-0, 6/14/22
AYES: Newman, Grove, Melendez, Umberg
NO VOTE RECORDED: Archuleta, Eggman, Roth

SENATE HUMAN SERVICES COMMITTEE: 5-0, 6/27/22
AYES: Hurtado, Jones, Cortese, Kamlager, Pan

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 76-0, 5/25/22 - See last page for vote

SUBJECT: Veterans: Medical Foster Home Program

SOURCE: Author

DIGEST: This bill creates a new community care licensing category, overseen by the California Department of Social Services (CDSS), known as Medical Foster Homes (MFHs) for veterans. Under this new licensing category, Medical Foster Homes approved by the United States Department of Veterans Affairs (VA), in which up to three veterans receive home-based healthcare from the VA and 24/7 support from a caregiver in a private home, would be authorized to operate in California subject to licensure, inspection, training, and other oversight activities by CDSS.

ANALYSIS:

Existing federal law:

- 1) Establishes the MFH program, under which the VA approves homes for the placement of veterans. Under the MFH program, the VA refers veterans to approved MFHs, inspects homes to ensure they are meeting set requirements,

and oversees and trains MFH caregivers. *(38 Code of Federal Regulations (CFR) 17.73(a))*

- 2) Defines an MFH to mean a private home in which an MFH caregiver provides care to a veteran resident, as provided. *(38 CFR 17.73(b))*
- 3) Allows VA health care personnel to assist a veteran by referring such a veteran for placement in an MFH if the following conditions are met: the veteran is unable to live independently safely or is in need of nursing home level care; the veteran is enrolled in either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and the MFH has been approved by the VA, as specified. *(38 CFR 17.73(c))*
- 4) Establishes that the duty of the MFH caregiver, with assistance from relief caregivers, is to provide a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran. *(38 CFR 17.73(e))*
- 5) Establishes standards applicable to MFHs, including, but not limited to: facility standards; requirements for recreational and leisure activities; standards for residents' bedrooms, and other health and safety requirements, as provided. *(38 CFR 17.74)*

Existing state law:

- 1) Establishes the California Community Care Facilities Act, which provides regulatory structure for a coordinated and comprehensive statewide system of care for individuals with mental illnesses, individuals with disabilities, and children and adults who require care or services provided by licensed community care facilities. *(HSC 1500 et seq.)*
- 2) Establishes the California Residential Care Facilities for the Elderly (RCFE) Act, which requires facilities that provide personal care and supervision, protective supervision, or health related services for persons 60 years of age or older who voluntarily choose to reside in those facilities to be licensed. *(HSC 1569 et seq.)*

This bill:

- 1) Expresses legislative intent to require MFHs authorized by the VA to be licensed as medical foster homes for veterans by CDSS; to require CDSS to implement a licensing structure to support and ensure safety standards and

safeguards adhere to existing federal approval processes for MFHs; and for CDSS to work collaboratively with the VA in overseeing the program, including coordinating visits and inspections.

- 2) Allows CDSS to establish an MFH for veterans program in California no sooner than July 1, 2024.
- 3) Requires an MFH established pursuant to the program to comply with all relevant federal regulations, in addition to licensing standards adopted by CDSS.
- 4) Requires CDSS to develop criteria to evaluate how the MFH program benefits veteran residents.
- 5) Requires MFHs to be licensed by CDSS and prohibits the operation of unlicensed MFHs.
- 6) Requires a person seeking a license for an MFH to file an application with CDSS which includes information and disclosures relevant to the person's ability to comply with program regulations and standards of service, the person's good standing with the VA, and other information required by CDSS.
- 7) Requires CDSS to issue a written decision regarding an application for licensure within 60 days of receiving all relevant information.
- 8) Allows CDSS to deny an applicant a license for noncompliance with program rules and regulations, as provided, and allows an applicant to appeal a denial.
- 9) Establishes an application fee of \$88 for the issuance of an MFH license.
- 10) Establishes conditions under which CDSS may suspend or revoke an MFH license, and conditions under which a license must be forfeited, as provided. Requires proceedings for the suspension, revocation, or denial of an MFH license to be conducted by the Office of Administrative Hearings, as provided.
- 11) Requires CDSS to periodically inspect and evaluate MFHs for quality of care, including unannounced visits at least annually and as often as necessary. Allows CDSS to initiate a professional level of care assessment and consult with the VA if CDSS determines that a veteran resident requires a higher level of care than the MFH is authorized to provide. Establishes a process for

remediating deficiencies, including requiring an MFH to remedy any deficiencies within 10 days of a notification.

- 12) Establishes a process for investigating complaints relating to an MFH, including requiring CDSS to conduct an onsite inspection within 10 days and send any complaint findings to the VA, as provided.
- 13) Requires CDSS, upon discovery of an unlicensed MFH, to refer residents to the appropriate placement, adult protective services agency, or local or state long-term care ombudsman if there is an immediate threat to a veteran resident's health and safety and the MFH will not cooperate with CDSS.
- 14) Establishes civil penalties for violations of MFH requirements, as follows:
 - a) \$100 per resident per day for operating an MFH without a license. Allows this to be doubled if the unlicensed facility refuses to seek licensure or is denied licensure and continues to operate, as provided.
 - b) \$7,500 for a violation resulting in the death of a veteran resident.
 - c) \$2,500 for a violation that constitutes physical abuse or serious bodily injury, as defined.
 - d) Requires revenue from civil penalties to be deposited into a Technical Assistance Fund for assistance, training, and education of licensees.
 - e) Establishes a licensee's right to a formal review and appeal of a civil penalty assessed by CDSS, as provided.
- 15) Requires applicants for licensure, any adult residing in the home, and any other individual who has contact with a client in an MFH to complete a background check and obtain either a clearance or exemption from CDSS prior to employment, residence, or initial presence in an MFH, as provided.
- 16) Establishes conditions under which CDSS may prohibit a person from being a licensee or having contact with a veteran resident of an MFH, as provided. Establishes a process for CDSS to issue an exclusion order if the action is necessary to protect veteran residents from a substantial threat to their health and safety, and allows CDSS to take disciplinary action against a licensee or excluded person. Establishes the right of a person to appeal an exclusion order.
- 17) Requires an MFH caregiver and relief caregiver to provide CDSS with written evidence of all initial and ongoing training and education received as required by the VA within 30 days of completion. Allows CDSS to require an MFH caregiver and relief caregiver to receive additional training as necessary.

- 18) Allows CDSS to adopt regulations and issue written directives to implement and administer the MFHs for veterans program.
- 19) Creates definitions for the purposes of implementing these provisions.

Background

VA Medical Foster Home Program. The MFH program is a VA program in which veterans receive home-based healthcare from the VA while living in a private family home with a 24/7 caregiver. To qualify for the MFH program, a veteran must be in need of a nursing home level of care and be enrolled in the VA's Home Based Primary Care, VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home. Each MFH program is connected to a VA Medical Center or outpatient clinic. The veteran receives care and regular visits by the VA interdisciplinary care team, which includes an advanced registered nurse practitioner, nurse, social worker, dietician, psychologist, occupational therapist, and recreational therapist. The caregiver, who resides in the MFH, assists the veteran with activities of daily living, such as bathing, getting dressed, meals, laundry, cleaning, and other activities. In addition to visits from the interdisciplinary care team, the VAN MFH Coordinator is required to conduct monthly visits to the MFH.

MFHs are distinguished from other typical residential care homes because an MFH caregiver is required to reside in their own private home while providing 24-hour personal care and supervision to the residents. No more than three veterans may live and receive care in an MFH. There are currently over 700 MFHs operating in 41 states and Puerto Rico.

Residential Care Facilities for the Elderly. Sometimes referred to as assisted living facilities, RCFEs are responsible for providing housing, housekeeping, supervision, and assistance with activities of daily living to individuals ages 60 and older. California's network of RCFEs range from small homes serving a handful of residents to larger facilities that can house over 100 residents. This level of care and supervision is for people who are unable to live by themselves but who do not need 24 hour nursing care. They are considered non-medical facilities and are not required to have nurses, certified nursing assistants or doctors on staff. RCFEs are licensed and overseen by CDSS.

Under existing law, MFHs need to be licensed as RCFEs in order to operate in California, which poses numerous barriers for the implementation of the MFH program. AN MFH caregiver is required to have their personal home become a

licensed RCFE, become a certified administrator, and incur costs associated with licensure. Most RCFEs in California are licensed to operate with four to six beds; the maximum number of residents receiving care in an MFH is three. Importantly, RCFEs are non-medical models, whereas MFHs provide a nursing home level of care to veterans enrolled in the VA's Home Based Primary Care or similar programs.

Previous Attempts to Establish the MFH Program in California. The Legislature has made several attempts over the last eight years to establish a workable MFH program in California. AB 1821 (Gordon, Chapter 650, Statutes of 2014) established the first MFH pilot program, which would have allowed the VA to implement the MFH program without homes becoming licensed RCFEs, but the authority to initiate the pilot program was never exercised. AB 550 (Flora, 2019) would have reauthorized the pilot program and was vetoed by Governor Newsom. In his veto message, the Governor expressed that California should maintain oversight of the homes to ensure the safety of veteran residents, and directed the California Health and Human Services Agency and CDSS to explore a workable regulatory model to allow the program to move forward.

This bill creates a new licensing category specific to MFHs for veterans in California; it provides for licensing and oversight of MFHs in California by CDSS, without requiring the homes to be licensed as RCFEs. This bill is a product of collaboration between CDSS and the author, and reflects the new regulatory model for MFHs that was articulated in the Governor's veto message of AB 550 (Flora, 2019).

Comments

According to the author, "AB 2119 establishes the Medical Foster Home for veterans program and gives veterans options on how and where they would like to age. California families are ready and willing to open their homes to veterans, giving them the option to live out the rest of their days in a family setting rather than that of an institution. They are ready to serve those who have served, and AB 2119 will make this possible."

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

According to the Senate Appropriations Committee, unknown significant costs, likely ranging in the high hundreds of thousands to low millions of dollars for CDSS to establish and oversee the MFH program (General Fund). CDSS's administrative and enforcement costs may be offset to some extent by fee and penalty revenue.

SUPPORT: (Verified 8/12/22)

None received

OPPOSITION: (Verified 8/12/22)

None received

ASSEMBLY FLOOR: 76-0, 5/25/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, O'Donnell

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8/15/22 13:05:06

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