

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 499 (Blanca Rubio)  
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Hearing Date: July 13, 2021  
Fiscal: Yes  
Urgency: No  
JT

**SUBJECT**

Referral source for residential care facilities for the elderly: duties

**DIGEST**

This bill recasts provisions of existing law that apply to a placement agency for residential care facilities for the elderly (RCFEs) to instead apply to a newly defined “referral source.” Among other things, the bill requires referral sources to provide the senior or their representative with specified disclosures, perform background checks, and carry liability insurance. The bill also provides for criminal and civil penalties.

**EXECUTIVE SUMMARY**

When a family seeks to place a loved one in an assisted-living facility, they frequently turn to referral sources to find an appropriate fit for their needs. While RCFEs are regulated under existing law, private referral sources, which typically provide free referrals but receive compensation from the RCFE, are not regulated.

This bill represents the fifth attempt since 2015 to regulate compensated referral sources. Broadly, these bills can be grouped into two separate efforts. First, three bills, SB 648 (Mendoza, 2015), SB 648 (Mendoza, 2017), and AB 2744 (Reyes, 2018), attempted to establish comprehensive regulatory schemes for these entities. AB 2744 was opposed by A Place for Mom and all three bills were opposed by Caring.com, the two largest referral sources.

The second group of bills – this bill and last year’s similar AB 2926 (Calderon) – have been sponsored by these two companies, along with ActEight, LLC. The sponsors argue they have struck a more appropriate balance by establishing key consumer protections without imposing costs to the state or unduly burdening the industry. The bill is supported by, among others, the National Association of Social Workers – California Chapter, the Retired Public Employees Association, and the California Assisted Living Association.

The bill is opposed by the California Commission on Aging and by California Advocates for Nursing Home Reform (CANHR), which argues: “Although this bill is being cast as a consumer protection bill, it is not. Instead, AB 499 is a referral source protection bill that weakens existing consumer protections, and attempts to insulate referral sources from liability by failing to provide for oversight of their conduct, and codifying enforcement actions that are illusory.”

The bill passed the Senate Human Services Committee by a vote of 5-0. Amendments are proposed on page 15.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the California Residential Facilities for the Elderly Act (Health and Saf. Code § 1569 et seq.)<sup>1</sup> (Act) to provide for the licensing and regulation of residential care facilities for the elderly by the State Department of Social Services. Defines “residential care facilities for the elderly” as a housing arrangement chosen voluntarily by persons 60 years of age or older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or personal care are provided, based upon the resident’s varying needs, as determined in order to be admitted and to remain in the facility. (§ 1569.2(o).)
- 2) Provides that anyone who violates the Act, or who willfully or repeatedly violates any rule or regulation adopted under the Act, is guilty of a misdemeanor, which may be prosecuted regardless of any concurrent enforcement of civil penalties or administrative remedies available to the department. (§ 1569.40(a), (c); *see also* § 1569.495.) Enables district attorneys and city attorneys upon their own initiative or application by the department to prosecute violations of the Act, as specified. (§ 1569.43.)
- 3) Defines “placement agency” as any county welfare department, county social service department, county mental health department, county public guardian, general acute care hospital discharge planner or coordinator, state-funded program or private agency providing placement or referral services, conservator, and regional center for persons with developmental disabilities that is engaged in finding homes or other places for placement of elderly persons for care, as specified. (§ 1569.47(a).)
- 4) Regulates placement or referral services as follows:
  - a) Prohibits a placement agency from placing individuals in licensed residential care facilities for the elderly when the individual, because of a health condition, cannot be cared for within the limits of the license or

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<sup>1</sup> All further section references are to the Health and Safety Code unless otherwise specified.

requires inpatient in a health facility. A violation of this provision is a misdemeanor. (*Id.* at (b).)

- b) Prohibits a placement agency or employee thereof from placing, referring, or recommending placement of a person in a facility providing care and supervision, or protective supervision, unless the facility is licensed as a residential care facility for the elderly, except as specified. A violation of this provision is a misdemeanor. (*Id.* at (c).)
- c) Provides that a placement agency or employee of a placement agency who knows, or reasonably suspects, that a facility that is not exempt from licensing is operating without a license must report the name and address of the facility to the department. Failure to report is a misdemeanor. (*Id.* at (d).) The department must investigate these reports, as specified. (*Id.* at (e).)
- d) Requires a placement agency to notify the appropriate licensing agency of any known or suspected incidents that jeopardize the health or safety of residents in a residential care facility for the elderly, including: physical abuse; violations of personal rights; unclean, unsafe, unsanitary, or poor conditions; insufficient personnel or incompetent personnel on duty; and mental or verbal abuse. A violation is a misdemeanor. (*Id.* at (f).)

This bill:

- 1) Deletes existing section 1569.47 and replaces it with a new section 1569.47.
- 2) Defines:
  - a) "Compensated referral" as a referral by a private, for-profit or nonprofit agency that is engaged in the business of referring persons to residential care facilities for the elderly in exchange for any consideration or thing of value, including a fee, commission, gift, or any reciprocal benefit.
  - b) "Referral" to mean identifying and connecting a person or that person's representative to a residential care facility for the elderly to facilitate the further evaluation, in consultation with the facility, of whether that facility is a suitable senior housing option for that person.
  - c) "Referral source" to include the entities listed in the existing definition of "placement agency," as described above, but adds for-profit agencies and a person or entity that provides a referral to a residential care facility for the elderly on behalf of other referral sources, that is engaged in identifying senior housing options at residential care facilities for the elderly. Provides that this definition does not include a licensee of a residential care facility for the elderly, or any professional services staff member of a residential care facility for the elderly, who on behalf of that facility, makes a referral, even if they have received a discount or other remuneration from the facility.

- 3) Prohibits a referral source from knowingly referring a person to a facility providing care or protective supervision unless the facility is licensed as a residential care facility for the elderly, except as specified. Violation of this provision is a misdemeanor.
- 4) Prohibits a referral source from knowingly referring an individual to a residential care facility for the elderly if the individual, because of their health condition, cannot be cared for within the limits of the facility's license or requires inpatient care in a health facility. Violation of this provision is a misdemeanor.
- 5) Prohibits a referral source from referring a person to a residential care facility for the elderly in which the referral source, and an affiliated group, as defined, or an immediate family member, as defined, of the referral sources, has an ownership or management interest or a common employee in an executive management position, unless the referral source obtains a written waiver from the person or that person's representative before making the referral. Violation of this provision is a misdemeanor.
- 6) Provides that a referral source that knows or reasonably suspects that a facility that is not exempt from licensing is operating without a license must report the name and address of the facility to the department. Failure to report is a misdemeanor. The department must investigate these reports, as specified.
- 7) Requires a referral source to notify the appropriate licensing agency of any known or suspected incidents that would jeopardize the health or safety of residents in a residential care facility for the elderly, including: physical abuse; violations of personal rights; unclean, unsafe, unsanitary, or poor conditions; insufficient personnel or incompetent personnel on duty; and mental or verbal abuse.
- 8) Requires a referral source, before sending a compensated referral to a residential care facility for the elderly located in California, to provide the person or their representative with information that includes all of the following disclosures:
  - a) A description of the referral source's service.
  - b) The referral source's contact information, including business address, email address, and telephone number.
  - c) A referral source's privacy policy, or if the referral sources maintains a website, a link or URL to the privacy policy on the website.
  - d) A statement regarding whether and under what circumstances the referral source will be paid a fee by residential care facilities for the elderly to which the person is referred.
  - e) A statement that the person or their representative may request at any time via email or by submitting a letter that the referral source cease contact with the person or their representative at points of contact they designate, such as telephone numbers and email addresses, and that the

referral source will cease contact in response to that request and also cease making additional referrals on behalf of the person or the their representative.

- f) The following language: "Information regarding inspections, evaluations, complaints, and citations associated with any of California's residential care facilities for the elderly, also known as assisted living facilities, can be viewed at the State Department of Social Services Community Care Licensing website at: [www.cdss.ca.gov](http://www.cdss.ca.gov). Additionally, during a health-related state of emergency, information about the active cases within residential care facilities for the elderly may also be posted on this website."
- 9) Provides that the information and disclosures described above must be provided to the person or their representative in a manner designed to give actual notice of its contents and may be provided, together or separately, in any of the following methods:
- a) A written disclosure at least in 12-point bold font either in hardcopy form or by electronic means.
  - b) A link to an electronic disclosure displayed on a web page in a larger font than the surrounding text.
  - c) Verbally, if the verbal disclosure is given telephonically and recorded with the consent of the person or their representative.
    1. At the time of the verbal disclosure, a person or their representative may verbally request a written or electronic disclosure be provided to them.
    2. If, in a subsequent phone conversation, the person or their representative verbally requests a written disclosure, the referral agency shall inform them of the procedure for submitting the request in writing, as specified.
- 10) Additionally requires a compensated referral source to:
- a) Use a nationally accredited service provider to perform background checks on referral sources who have direct contact with persons or their representatives.
  - b) Maintain liability insurance coverage in an amount of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in total annual aggregate for negligent acts or omissions by the referral source or any of its employees.
  - c) Accept remuneration only from residential care facilities for the elderly with which the referral source has a written contract.
  - d) Maintain and prominently display a privacy policy on every internet website it operates or, if the referral source does not maintain an internet website, then it shall provide the person or their representative with a written copy of the privacy policy.

- e) Refrain from holding any power of attorney for a resident or potential resident or from holding that person's property in any capacity.
  - f) 15 days after receipt of a written request:
    - ii. Cease making referrals on behalf of the person or their representative
    - iii. Cease contacting the person or their representative.
- 11) Provides that a violation of the provisions in (10)-(12), above, are subject to a civil penalty of between \$250 and \$1,000 for each violation and that they are not subject to existing law that allows for concurrent enforcement of civil, administrative, and criminal penalties. Authorizes a district attorney to institute a proceeding in superior court to recover the civil penalty and restrain and enjoin violations.

### COMMENTS

#### 1. Author's statement

The author writes:

During COVID-19, referral agencies have been a crucial part of placement decisions as visitation is either not an option or infrequent to limit the exposure of residents and staff. Currently, the law loosely regulates 'placement agencies' focusing solely on the interaction between them and a residential care facility for the elderly.

This measure would allow for more transparency and access of information for consumers seeking placement and care at a residential care facility. AB 499 adds protections for all parties including residents, client families, referral agencies, and the facilities themselves by codifying a number of regulations during a referral source's interaction with a client and increased regulations on referral sources.

#### 2. Background

##### *a. Residential care facilities*

"Long-term care" facilities provide inpatient care to individuals over extended periods of time. In general, long-term care facilities are appropriate for persons who are elderly, chronically ill, or in need of extensive rehabilitative services. There are three generally recognized classifications of long-term care facilities: skilled nursing facilities, intermediate care facilities, and residential care facilities for the elderly – the subject of this bill. A "residential care facility for the elderly" is a housing arrangement chosen voluntarily by persons 60 years of age or older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, or

personal care are provided, based upon the resident's varying needs, as determined in order to be admitted and to remain in the facility. (§ 1569.2(o).) These entities are governed by the California Residential Facilities for the Elderly Act (Health & Saf. Code § 1569 et seq.) (Act), which provides for the licensing and regulation of residential care facilities for the elderly by the State Department of Social Services.

*b. Entities that provide referrals to RCFEs*

According to the Senate Human Services Committee:

When a person can no longer live independently due to age or disability, locating appropriate housing and support can be an overwhelming endeavor. It is especially challenging if the person doing the searching is not familiar with the various types of assisted living services and settings. Under such circumstances, businesses, often referred to "referral agencies," offer the service of identifying and referring seniors, or their representatives, to potentially suitable living arrangements, or "placements". Referral agencies are also known as "placement agencies" and "referral sources" and they range from small local businesses to large, internet-based agencies that provide referral services across the country. By law, the referrals must be made to an appropriately licensed facility that can provide necessary care for the senior within the limits of the RCFE license.

Business models vary, but it is common that clients do not pay a fee for a referral. Clients also do not usually enter into a contract with the agency. Instead, referral agencies typically have financial arrangements with RCFEs and receive a fee, often, reportedly, the amount of one month's rent in the facility, if an individual moves into an RCFE to which the agency has made a referral.

California does not regulate this industry. Thus, it is difficult to estimate how many of these agencies operate in the state. However, the National Placement and Referral Alliance (NPRA) indicates it has about 200 members in California.

NPRA has established a code of ethics and recommended set of best practices to ensure seniors and their families are cared for properly, some of which are included in this bill. For example, the bill requires disclosure of the fact that the referral agency will be compensated and that referral agencies must maintain liability insurance. This bill also contains provisions that are not stemming from the NPRA's established code of ethics.

Writing in support of the bill, the Long-Term Care Ombudsman Association that its membership will:

...often hear concerns from field Ombudsmen responding to complaints from families after having worked with a referral placement agency. These families share feeling misled, lied to, and exploited, especially when they learn that personal information about care services and the financial means of the older adult has been “blasted” to multiple facilities without their consent.

Families want to get vital, unbiased information about the residential care facilities they are considering providing care for their loved ones. It is only after the fact that many families learn that the referral agent is financially connected to the facilities. But most heinous of all these families discover after the resident has moved into a facility that the facilities being encouraged were not based on which facility would provide the best care for the individual. Instead, the list was crafted based on which facility would pay the agent the largest referral fee.

3. Establishes certain requirements governing compensated referrals

This bill repeals and recasts existing section 1569.47, which regulates placement agencies but does not expressly cover compensated referral by for-profit entities. The bill generally incorporates the existing scheme in that section with certain key changes. The bill also adds several new requirements specific to compensated referrals.

*a. New definition of “referral source”*

To begin, the bill replaces the term “placement agency” with “referral source,” and defines that term to include the entities listed in the existing definition of “placement agency,” but adds for-profit agencies and a person or entity that provides a referral to a residential care facility for the elderly on behalf of other referral sources, that is engaged in identifying senior housing options at RCFEs. The bill provides that this definition does not include a licensee of an RCFE, or any professional services staff member of a RCFE, who on behalf of that facility, makes a referral, even if they have received a discount or other remuneration from the facility.

*b. Alters, adds, and incorporates certain responsibilities that are punishable as a misdemeanor*

Existing law makes it a misdemeanor for:

- (1) A placement agency to place individuals in licensed RCFEs when the individual, because of a health condition, cannot be cared for within the limits of the license or requires inpatient care in a health facility.
- (2) A placement agency or an employee thereof to place, refer, or recommend placement of a person in a facility providing care and supervision, or protective



supervision, unless the facility is licensed as an RCFE or is exempt from licensing.

- (3) Any employee of a placement agency who fails to report to the DSS when they know, or reasonably suspect, that a facility that is not exempt from licensing is operating without a license report.
- (4) A placement agency that fails to notify the appropriate licensing agency of any known or suspected incidents which would jeopardize the health or safety of residents in an RCFE, as specified.<sup>2</sup>

This bill includes those provisions but makes two key changes. First, it omits reference to “employees” of the referral source in (2) and (3). Second, it provides that a referral source only can only violate (1) and (2) when it does so “knowingly,” thereby omitting referrals made with negligent or reckless disregard of these requirements. Additionally, because “referral source” includes “placement agencies” under the existing version of section 1569.47, those entities would also be subject to this higher standard of proof and their employees would no longer be subject to these requirements.

The insertion of the word “knowing” has drawn the opposition of CANHR and the California Commission on Aging. These organizations argue that this change is unclear, weakens existing protections, and makes liability virtually impossible to prove. The sponsors respond that the inclusion of “knowing” brings these provisions in line with (3) and (4), which create reporting requirements when the placement agency knows or reasonably suspects that a facility is operating without a license or there is an incident that jeopardizes the health or safety of the residents of the RCFE.

The bill would additionally make it a misdemeanor for a referral source to refer a person to an RCFE in which the referral source, or an affiliated group, as defined, has an ownership or management interest or a common employee in an executive management position, unless the referral source obtains a written waiver from the person or their representative before making the referral.

### *c. Disclosures*

The bill requires a referral source, before sending a compensated referral to an RCFE for the elderly located in California, to provide the person or their representative with information that includes all of the following disclosures:

- A description of the referral source’s service.
- The referral source’s contact information, including business address, email address, and telephone number.

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<sup>2</sup> This provision does not specifically state that a violation is a misdemeanor. However, section 1569.40(a) provides “Any person who violates [the Act], or who willfully or repeatedly violates any rule or regulation adopted under this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000), by imprisonment in the county jail for a period not to exceed one year, or by both the fine and imprisonment.”

- The referral source's privacy policy, or if the referral source maintains a website, a link or URL to the privacy policy on the website.
- A statement regarding whether and under what circumstances the referral source will be paid a fee by RCFE to which the person is referred.
- A statement that the person or their representative may request at any time via email or by submitting a letter that the referral source cease contact with the person or their representative at points of contact they designate, such as telephone numbers and email addresses, and that the referral source will cease contact in response to that request and also cease making additional referrals on behalf of the person or their representative.
- A statement referencing DSS's website for more information.

The disclosures must be provided to the person or their representative in a clear manner designed to give actual notice of its contents. Despite this requirement, the bill provides that the disclosure can be provided "together or separately" in any of the following methods:

- A written disclosure at least in 12-point bold font either in hardcopy form or by electronic means.
- A link to an electronic disclosure displayed on a web page in a larger font than the surrounding text.
- Verbally, if the verbal disclosure is given telephonically and recorded with the consent of the person or their representative.
  - At the time of the verbal disclosure, a person or their representative may verbally request a written or electronic disclosure be provided to them.
  - If, in a subsequent phone conversation, the person or their representative verbally requests a written disclosure, the referral agency shall inform them of the procedure for submitting the request in writing, as specified.

While the content of these disclosures includes important information, the means by which the disclosures are provided, particularly if in segments and through different methods, could make it difficult for elderly individuals who may lack internet savviness, to fully access that information when needed.

This disclosure requirement appears to be the only prerequisite to making a referral. Indeed, the bill does not expressly require the referral source to the consent or authorization of the person before a referral is made. That being said, undesired referrals do not make much business sense.

*d. Requests to cease contact and referrals*

If a person no longer wishes to be contacted, or have referrals made, by a referral source, they must submit a written request to the referral source. 15 days after receipt of the written request, the referral source must cease making referrals on behalf of the

person or their representative and must cease contacting the person or their representative.

In opposition, CANHR objects to the apparent incongruity between how disclosures may be made and how requests to cease contact and referrals are made. They write:

... while the bill allows referral agencies to provide information to seniors about its services and fees verbally, it requires seniors to submit a written request if they want to receive such information in writing. Additionally, it requires seniors to make written requests if they want the agencies to cease making referrals or cease contact with them. Seniors should not be restricted to a particular mode of communication to request assistance, obtain information, or terminate services. Instead, like the referral agencies from whom they are seeking assistance, they should be allowed to communicate their wishes verbally, electronically or in writing.

*e. Privacy policy*

The bill requires a compensated referral source to maintain and prominently display a privacy policy on every website it operates. If the referral source does not maintain a website, it must provide the person or their representative with a written copy of the privacy policy.

While this is an important disclosure, the bill does not establish any requirements related to the policy or restrictions on the use of personal information. Such information would likely be subject to the provisions of the California Consumer Privacy Act of 2018 and the California Privacy Rights Act of 2020, which would enable the referral source to sell off the person's personal information unless they know whether and how to opt out.

*f. Other key provisions*

The bill additionally requires a compensated referral source to:

- Use a nationally accredited service provider to perform background checks on referral sources who have direct contact with persons or their representatives.
- Maintain liability insurance coverage in an amount of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in total annual aggregate for negligent acts or omissions by the referral source or any of its employees.
- Accept remuneration only from residential care facilities for the elderly with which the referral source has a written contract.
- Refrain from holding any power of attorney for a resident or potential resident or from holding that person's property in any capacity.

*g. Penalties*

The bill provides that a violation of the provisions described in (c) through (f) above, are subject to a civil penalty of between \$250 and \$1,000 for each violation and that they are not subject to existing law that allows for concurrent enforcement of civil, administrative, and criminal penalties. The bill authorizes a district attorney to institute a proceeding in superior court to recover the civil penalty and restrain and enjoin violations of those provisions. CANHR and the California Commission on Aging oppose this provision, arguing that it is unlikely to result in meaningful enforcement compared to administrative remedies or a direct right of action against the referral source.

*h. Comparison with prior legislation*

This bill is substantially similar to AB 2926 (Calderon, 2020), which was held on the Senate Appropriations suspense file. That bill was not referred to this Committee due to time constraints arising from the COVID-19 pandemic.

Prior to that, three related bills failed at various points: SB 648 (Mendoza, 2015) was vetoed, SB 648 (Mendoza, 2017) was held in Senate Appropriations, and AB 2744 (Reyes, 2018) was held in the Assembly Appropriations Committee. AB 2744 was opposed by A Place for Mom and all three bills were opposed by Caring.com – the sponsors of this bill. The Mendoza bills passed this Committee by votes of 5-1 and 5-2 respectively. Broadly, in addition to many of the provisions contained in this bill, those bills would have:

- required referral agencies to be licensed and registered with the DSS;
- enabled DSS to assess civil penalties;
- authorized consumers to file complaints with DSS against referral agencies;
- prohibited referral agencies from disclosing personal information, unless specifically authorized to do so;
- made referral agencies mandatory reporters of elder abuse;
- imposed training requirements for referral agency employees; and
- required a report from DSS re effectiveness of existing statutory remedies related to private referral agencies

4. Support

One of the co-sponsors, A Place for Mom, writes:

AB 499 is the result of six years of legislative discussions contemplating how to provide consumer benefit-oriented notice to families without costs to the state or unduly burdening the industry, while positively changing the playing field within the industry. After six months of negotiations

with the Consumer Advocates for RCFE Reform (CARR)<sup>[3]</sup> and other stakeholders, the amended version strikes a good balance between consumer notice and protections. For the first time in California, this bill would create statutory requirements for disclosures to families, limit conflict of interests, and provide background checks and insurance coverage minimums.

AB 499 would enact basic consumer disclosures and protections that will assist California families dealing with the difficult problem of finding the right assisted living facility for their family member, often at a time of stress and crisis for the family without impeding the work of companies like A Place for Mom and Caring.com that are dedicated to helping these families through this process.

Co-sponsor Caring.com writes:

The existing statutory regime was adopted twenty-nine years ago when the referral industry was dominated by public agencies and health care and other professional sources in a pre-internet world. The landscape has changed over the years in two important ways.

First, the senior population has grown dramatically in the last three decades in California accompanied by a corresponding increase in demand for senior housing. Second, major technology advances over that period have led consumers to interact with referral sources increasingly over the internet. These referral sources allow consumers to access senior care information however and whenever consumers want.

As the market has matured and with the advent of compensated referrals, it is important as a prophylactic measure to introduce staple consumer protection provisions that have been applied in similar circumstances. These provisions should also account for the many consumers who are interacting with referral sources increasingly over the internet, especially during the COVID-19 pandemic.

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<sup>3</sup> This San Diego-based nonprofit, founded in 2009, closed its doors last year. (*Consumer Advocates for RCFE Reform (CARR) to Cease Operations October 31* (Oct. 16, 2020) AP News <https://apnews.com/press-release/send2press/business-consumer-protection-and-advocacy-assisted-living-elderly-welfare-elder-care-8c4115f20c1b4a5a76ea9c4e8f570a36> (as of Jul. 4, 2021).) However, negotiations occurred on a similar bill last year.

Co-sponsor ActEight, LLC writes:

The referral source industry in California, comprised of large national organizations and many smaller local agencies, is largely unregulated. Current referral source practices are arcane and opaque, thereby disadvantaging consumers. This bill levels the playing field for consumers by including disclosures that referral sources must give to a consumer, and imposing minimum requirements for ethical conduct.

AB 499 represents the culmination of nearly five years' prior legislative work to bring to Californians and their families reasonable transparency and disclosures now unavailable, while balancing and respecting the needs and capabilities of the many smaller referral agencies throughout the state.

## 5. Opposition

California Advocates for Nursing Home Reform writes:

[...] Although this bill is being cast as a consumer protection bill, it is not. Instead, AB 499 is a referral source protection bill that weakens existing consumer protections, and attempts to insulate referral sources from liability by failing to provide for oversight of their conduct, and codifying enforcement actions that are illusory.

AB 499 seeks to amend California law governing referral agencies for assisted living facilities (known in California as Residential Care Facilities for the Elderly or RCFEs) to provide greater transparency, but instead reduces accountability and creates unnecessary communication and compliance barriers. Specifically, the bill now adds an undefined and ambiguous intent requirement of "knowingly" to hold referral sources accountable that does not exist in current law. Additionally, while the bill allows referral agencies to provide information to seniors about its services and fees verbally, it requires seniors to submit a written request if they want to receive such information in writing. Additionally, it requires seniors to make written requests if they want the agencies to cease making referrals or cease contact with them. Seniors should not be restricted to a particular mode of communication to request assistance, obtain information, or terminate services. Instead, like the referral agencies from whom they are seeking assistance, they should be allowed to communicate their wishes verbally, electronically or in writing.

AB 499 also establishes several compliance barriers. Specifically, it restricts enforcement of violations to actions by district attorneys, and its penalty provisions are limited and static. To deter illegal conduct, consumers

should have a right to obtain injunctive relief and recover civil penalties, costs and attorney fees. Additionally, civil penalties should increase for multiple or repeat violations, and should be in addition to any other remedies provided by law. [...]

## 6. Amendments

While this bill offers certain consumer protections, in view of the concerns set forth above by the opposition and some of the differences between the bill and prior bills that have been approved by this Committee, the author has agreed to amend the bill to strengthen its consumer protections with the following changes:

- For those violations that are punishable as a misdemeanor under the bill only when the referral source “knowingly” refers a person to a facility that is unlicensed or inappropriate for their care, add circumstances in which the referral source “reasonably suspects” that the circumstances constituting a violation apply.
- Require the person’s affirmative consent before a referral is made.
- With respect to disclosure of personal information not necessary for a referral, require affirmative informed consent to the disclosure.
- Require disclosures to be provided electronically if email is provided. If an oral disclosure is made, require the referral source to offer to provide a hardcopy version of the disclosures.
- Enable a person to orally request the referral source to cease contact and cease referrals. Reduce the timeframe in which a referral source must comply with any such request to as soon as feasible but no longer than 10 days.
- Specify that violations of the bill’s provisions are subject to enforcement under the Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.).

Those specific changes would be made as follows:

### Amendments<sup>4</sup>

1569.47. [...]

(b) (1) A referral source shall not knowingly refer a person to a facility providing care and supervision or protective supervision unless *the referral source knows or reasonably suspects* the facility is licensed as a residential care facility for the elderly or is exempt from licensing under Section 1569.145. Violation of this paragraph is a misdemeanor.

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<sup>4</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel as well as the addition of co-authors.

(2) A referral source shall not knowingly refer an individual to a residential care facility for the elderly if *the referral source knows or reasonably suspects* the individual, because of their health condition, cannot be cared for within the limits of the facility's license or requires inpatient care in a health facility. Violation of this paragraph is a misdemeanor.

[...]

(A) A written disclosure at least in 12-point bold font either in hardcopy form or by electronic means. *If the person or their representative provides the referral source with an email address, the referral source shall send an electronic version of the disclosure to the person or representative's email address.*

(B) A link to an electronic disclosure displayed on a web page in a larger font than the surrounding text.

(C) Verbally, if the verbal disclosure is given telephonically and recorded with the consent of the person or their representative. At the time of the verbal disclosure, a person or their representative *shall be informed that they may verbally request a written or electronic disclosure be provided to them. If the person or their representative requests a written or electronic disclosure, the referral source shall provide the written or electronic disclosure to the person or their representative who makes the request.* If, in a subsequent phone conversation, the person or their representative verbally requests a written disclosure, the referral agency shall inform them of the procedure for submitting the request in writing pursuant to paragraph (3).

(3) The referral source shall maintain records of the disclosures set forth pursuant to this subdivision for a period of three years and shall provide a copy of the disclosures provided to the person, representative, or the residential care facility for the elderly, upon written request.

(4) In addition to the requirements of paragraph (1), a compensated referral source shall comply with all of the following:

[...]

(F) Cease making referrals on behalf of the person or their representative within 15 *as soon as feasible but no longer than 10 days* after receipt of a *an oral request or of a written request*, pursuant to subparagraph (E) of paragraph (1).

(G) Cease contacting a person or their representative ~~within 15~~ *as soon as feasible but no longer than 10 days* after receipt of a *an oral request or of a written request*, pursuant to subparagraph (E) of paragraph (1).



*(H) Obtain the affirmative consent of the person or their representative for the following:  
(i) Making referrals on a person's behalf. Consent may be obtained verbally in a telephone conversation and recorded in an audio file, or may be obtained electronically or in writing.*

*(ii) Disclosing a person's personal information, as defined in Section 1798.140 of the Civil Code, for any purpose other than those necessary to make an authorized referral, unless the person or their representative provides affirmative informed consent to the disclosure.*

(d) A referral source that violates subdivision (c) is subject to a civil penalty of between two hundred fifty dollars (\$250) and one thousand dollars (\$1,000) for each violation, and Section 1569.40 shall not apply. A district attorney may institute a proceeding in superior court to recover the civil penalty under this subdivision and to restrain and enjoin a violation of subdivision (c).

*(e) In addition to any other action, violations of this section are subject to an action under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.*

#### **SUPPORT**

ActEight, LLC (co-sponsor)  
A Place for Mom (co-sponsor)  
Caring.com (co-sponsor)  
Alzheimer's Greater Los Angeles  
Alzheimer's Orange County  
Alzheimer's San Diego  
California Assisted Living Association  
California Long-term Care Ombudsman Association  
LeadingAge California  
National Association of Social Workers, California Chapter  
Retired Public Employees Association  
Sacramento Advisors, LLC

#### **OPPOSITION**

California Commission on Aging  
California Advocates for Nursing Home Reform

#### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 2926 (Calderon, 2020), similar to this bill, would have recast the requirements on a placement agency for a RCFE to a referral source while requiring a referral source to provide a senior or their representative with specified disclosures and privacy information. AB 2926 was not heard by this Committee due to time constraints associated with the COVID-19 pandemic. The bill was held on the Senate Appropriations suspense file.

AB 2744 (Reyes, 2018) would have required referral agencies providing referrals to RCFEs to register with CDSS, and set forth a number of requirements for these referral agencies including providing a client with a disclosure prior to providing a referral that includes certain pieces of information in clear language; displaying certain information on its internet website; and, displaying its name and registration number on all advertising, promotions, or marketing material. AB 2744 was held on the Assembly Appropriations Committee suspense file.

SB 648 (Mendoza, 2017) would have established requirements for private agencies that refer potential residents for a fee to adult residential facilities, including RCFEs, and would have required CDSS to track consumer complaints about private referral agencies, authorized CDSS to levy civil penalties, and required CDSS to submit a report to the Legislature on the effectiveness of existing statutory remedies related to private referral agencies by January 1, 2023, as specified. SB 648 passed this Committee by a vote of 5-2 but was held on the Senate Appropriations Committee suspense file.

SB 648 (Mendoza, 2015) would have added referrals to RCFEs to the body of law requiring anyone who refers someone to a skilled nursing or intermediate care facility for compensation to be licensed as a referral agency, and established new requirements on referral agencies, including disclosure of any agreement with the facilities that clients are being referred to, any commissions or fees received, and a requirement for liability insurance. SB 648 passed this Committee by a vote of 5-1. It was vetoed by Governor Brown, who wrote: "This bill creates an expansive and costly licensing scheme for agencies that make referrals to residential care facilities for the elderly" and concluded: "The proponents of this measure have not made a convincing case for this new licensing structure."

**PRIOR VOTES:**

Senate Human Services Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Aging and Long Term Care Committee (Ayes 7, Noes 0)

Assembly Human Services Committee (Ayes 8, Noes 0)

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