

SAN FRANCISCO

Daily Journal

www.dailyjournal.com

VOL. 120 NO. 84

THURSDAY, MAY 1, 2014

© 2014 Daily Journal Corporation. All Rights Reserved

Critics say elder protection bills would encourage suits

Proponents say option to sue is essential, but hospice industry fears a wave of litigation

By Paul Jones
Daily Journal Staff Writer

After instances of elder abuse in California assisted living homes drew widespread attention last year, reform advocates floated a spate of bills to ramp up regulation. One, backed by consumer attorneys, would expand protections for senior citizens and make it easier to sue facilities over violations.

Stories from 2013 included the literal abandonment of elderly residents at a Castro Valley facility and a claim that thousands of reported crimes at retirement homes weren't

followed up on by the California Department of Social Services. In response, California Advocates for Nursing Home Reform is pushing a raft of 11 reform bills to step up oversight of "residential care facilities for the elderly" — senior living facilities that are distinct from nursing homes.

Of the bills, AB 2171, by Assembly Judiciary Committee Chair Bob Wieckowski, D-Fremont and backed by the Consumer Attorneys of California, creates a "bill of rights" for seniors in homes and the option to sue over violations.

As currently written, the bill would establish residents' right to privacy, dignity, confidential treatment of medical records, individualized care, and control over daily life, among other protections. If facilities violate the provisions, tenants or their family members could pursue \$500 per violation, plus attorney fees.

Nancy Peverini, legislative director with the Consumer Attorneys of California, said the right to sue was essential for the protections to be enforceable. The bill was amended last week, she said, to allow a facility operator 30 days to fix an alleged violation before a lawsuit could be filed.

"Some legislators expressed concern ... that lawyers might file suits over so-called minor causes," she said. The 30-day correction period reflects "existing law as related to the California Consumer Legal Remedies Act."

Backers said the bill is modeled after existing law relating to nursing facilities. Last week the bill was also modified to provide protection to hospice facilities from some lawsuits, freeing it of opposition by the hospice industry.

But the senior care industry remains opposed to the bill, which it argues will spawn expensive litigation.

tion.

Katherine Pettibone, head lobbyist for the Civil Justice Association of California, a pro-business group, said the proposed rights are vaguely worded and that the bill's 30-day cure period was written so that it would only apply when a party was seeking damages.

That means lawsuits seeking injunctions to fix alleged violations — actions for which attorneys can still seek fees — would go forward without a chance for facility owners to correct problems, she said.

"It's incentivizing absolutely meritless cases," she added. For example, "You're saying you can sue someone to [require them to provide] a 'homelike environment.' What is that?"

Proponents take issue with the criticism. Kathryn Stebner, an elder abuse attorney with Stebner & Associates who is involved with the reform effort, said the right to sue

over violations wouldn't create a flood of new lawsuits.

"You can get fees" if you're an attorney filing a complaint, she said. "But if you fix it really soon, the fees are minimal. ... It's the cost of writing a letter."

Consumer attorneys and advocates for senior citizens say the bill is essential to protect residents because the Department of Social Services is stretched thin.

"It's the Wild West out there. There's no oversight," said Stebner, who has fought against facility owners in lawsuits over elder abuse.

"I've been in many, many of these places, and even after doing these cases for 25 years, I still sometimes want to cry," she said. "I see people living in closets. I see people sitting in their rooms by themselves with no attention given to them. They're dirty."

Michael Weston, a spokesman with the California Department of

Social Services, said the department's budget cuts had contributed to lower staffing. Roughly a decade ago, residential facilities for the elderly were reviewed annually, he said. Currently, they're visited once every five years.

Stebner said the growth of the industry over the past 10 years also contributed to a need for new legislation, especially for smaller homes, which often have fewer than six beds.

Other bills being backed by CANHR include AB 2336, which would increase current penalties for violations of existing law and regulations, the maximum for which is currently \$150. SB 894 would increase obligations for the Department of Social Services and a facility owner when a facility's license is revoked, and it would provide for relocation of residents.

paul_jones@dailyjournal.com