

December 30, 2015

Assemblymember Kansen Chu, Chair
Assembly Human Services Committee
1020 N Street, Room 124
Sacramento, CA 95814

RE: AB 1467 (Bloom) – Oppose

Dear Assemblymember Chu:

California Advocates for Nursing Home Reform (CANHR) is strongly opposed to AB 1467, a bill that promises to gouge an integral piece of 2014's RCFE Reform Act by reducing penalties for facilities that abuse, injure, or kill their residents.

In 2014, after a series of media and advocacy reports had uncovered major problems in Residential Care Facilities for the Elderly (RCFEs), the legislature responded with a once-in-a-generation comprehensive package of legislation to raise the quality of care and improve state oversight. A central bill was AB 2236, which raised the maximum fine a facility could receive for the death of a resident from a trivial \$150 to a more meaningful \$15,000. CANHR was a proud sponsor of AB 2236 which passed and was signed into law.

In passing AB 2236, the Legislature established the strong penalty system necessary to ensure RCFEs comply with health and safety regulations meant to protect vulnerable residents from abuse, serious neglect, and death. As it stated in Health and Safety Code Section 1548.1:

“the current civil penalty structure for facilities licensed by the State Department of Social Services [DSS] is insufficient to ensure the health and safety of those in care.”

Now, AB 1467 proposes to decimate AB 2236's penalty enhancements only six months after they went into effect. Retreating to a system of insufficient fines will damage the health and safety “of those in care” and should be rejected.

The Value of a Life Should not Be Dependent on a Facility's Size.

DSS fines are meant to better guarantee compliance with California's regulatory standards and promote the health and safety and quality of life of residents. Minimizing the consequences of regulatory non-compliance is a sure way to erode that guarantee.

Another purpose of fines is to promote justice. If our rules are to mean anything, there must be meaningful consequences when they are violated, commensurate with the harm committed and impact on the victims. These are the basic tenets of justice. In the case of fines for the serious injury or death of an RCFE resident, AB 1467 sends a distasteful message by disparately penalizing the death of residents, according to the size of the facility in which they live. AB 1467's sliding-scale justice is a huge disservice to assisted living residents.

Aside from the unfortunate inequity to residents in a penalty-by-size system, it does not provide equity to RCFE operators either. Size is a poor proxy for measuring a RCFE's ability to pay a fine. Owners of small facilities often own multiple facilities and maintain robust profit margins.

In other long-term care contexts, fines are rightfully levied according to the harm done, not the violator's size. In nursing homes, which have much greater fines for regulatory violations, no account is made for the size of the facility. The greater the harm caused by the violation, the more the facility can be fined. Additionally, fines for illegal and exploitive labor practices, which have been increasingly levied in RCFEs and often run in excess of \$100,000, are based on the harm done to the employees, not on the size of the facility that's harmed them.

A \$5,000 Maximum Fine For Killing a Resident Will Not Provide Effective Deterrence.

Demand for assisted living services has never been greater in California. As the Baby Boom generation continues to age and the incidence of dementia and other cognitive disorders skyrockets, revenue for RCFEs continues to grow. The median cost of a RCFE is nearly \$4,000 a month per resident. A \$5,000 fine is too weak to offset the financial benefits of understaffing a facility or underserving the residents.

To stem the growing financial incentives for RCFEs to take residents for whom they cannot provide care, fines need to be ample. \$5,000 for causing the death of a resident is not a sufficient disincentive when a facility can clear that much profit in a couple of months taking care of a single resident who requires a nursing home level of care. A maximum \$5,000 fine hardly sends a message of zero-tolerance.

AB 1467 Will Dangerously Cut Fines by Two-Thirds for Licensees Whose Action or Inaction Has Directly Led to the Death or Serious Injury of a Resident.

AB 1467 is an attempt to "go easy" on smaller RCFEs and ensure that a fine for causing the death of a resident does not force the facility to close. We think a better way to ensure facilities are not forced to close is for them to not cause the death of a resident. The legislature should not let concern about the continued viability of RCFEs that have killed a resident justify the rollback of an enforcement system that finally takes an appropriate stand for resident health and safety.

We oppose AB 1467 because it rolls back hard-earned, significant RCFE resident protections that have been in effect for only six months. The bill would undercut the progress California has made and most importantly, render RCFE residents throughout the state more vulnerable to abuse and neglect.

We urge you to vote no on AB 1467. Don't diminish the fines necessary to protect RCFE residents from unsafe, and sometimes deadly, conditions.

Sincerely,



Patricia L. McGinnis
Executive Director

cc: Members, Assembly Human Services Committee