Date of Hearing: July 14, 2015

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Kansen Chu, Chair

SB
524 (Lara) - As Amended July 8, 2015

SENATE VOTE: 35-1

SUBJECT: Private residential care facilities for youth.

SUMMARY: Establishes a new type of community care facility - a private or public residential care facility for youth - and provides for its licensure and regulation.

Specifically, this bill:

1)Makes Legislative findings and declarations related to nontraditional treatment programs for children, including that such facilities: receive numerous allegations of abuse, including death; currently operate unlicensed in California; advertise services for youth who may feel they have no other options; and have students who may have been previous victims of trauma, experienced parental rejection based on actual or perceived sexual orientation or gender identity, and have mental health and substance use issues. Further, states the intent of the Legislature that the state license private or public residential care facilities for youth as community care facilities to ensure the safety of children residing in those

facilities.

2)Defines "private or public residential care facility for youth" as a facility or program licensed by the Department of Social Services (DSS) as a community care facility to provide nonmedical care, counseling, or education or vocational support to persons under the age of 18 with social, emotional, behavioral, or mental health issues or disorders. Further, specifies that a private or public residential care facility for youth may provide any of the following: a program with wilderness or outdoor experience, expedition, or intervention; a boot camp or related, experience; a therapeutic boarding school; or a behavior modification program.

3)Requires DSS to license a private or public residential care facility for youth as a community care facility.

4)Prohibits DSS from licensing a private or public residential care facility for youth unless all therapeutic components of the programs provided are appropriately licensed.

5)Requires staff members of private or public residential care facility for youth who supervise residents to receive training, as specified. Further, specifies components to be

included in a private or public residential care facility for youth's training plan, including components that DSS shall establish by adopting regulations, and requires the facility to submit its training plan to DSS for approval prior to implementing it.

6)States that a staff member of a private or public residential care facility for youth is a mandated child abuse reporter, pursuant to current law.

7)Enumerates rights of residents of private or public residential care facilities for youth, including, but not limited to, the right to: be free of corporal punishment, deprivation of basic necessities, including education, as a punishment, deterrent, or incentive, and physical restraints of any kind; be free from abusive, humiliating, degrading, or traumatizing actions; be accorded dignity in his or her relationships; and have frequent contact with parents or guardians. Further, requires a list of these rights to be publically posted and accessible to residents.

8)Prohibits a private or public residential care facility for youth from accepting for placement or providing services to a child assessed as seriously emotionally disturbed, with exceptions as specified.

9)Prohibits a private or public residential care facility for youth from advertising or otherwise promoting services, as specified, related to alcohol or drug use treatment unless the facility has been licensed accordingly.

10)Prohibits a private or public residential care facility for youth from using secure containment or restraints of any kind, with specified exceptions.

11)States that a private or public residential care facility for youth is not an eligible placement option for dependents or wards of the court, and is not eligible for a foster care group home rate.

12)Prohibits a private or public residential care facility for youth from accepting for residential placement any child under the age of 12.

13)Requires a licensee of a private or public residential care facility for youth that advertises or otherwise promotes special care, programming, or environments for persons with mental health, emotional, or social challenges to provide prospective residents and their parents or guardians with a written description of its programs and services prior to admission.

14)Makes conforming technical changes.

EXISTING LAW:

1)Establishes the California Community Care Facilities Act to provide for the licensure and regulation of community care facilities. (HSC 1500 et seq.)

2)Defines "community care facility" to mean any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, individuals with physical disabilities or mental impairments and abused or neglected children. Includes within this definition, among a number of other facilities: group homes, foster family homes, small family homes, full-service adoption agencies, noncustodial adoption agencies, and transitional shelters. (HSC 1502)

3)Requires community care facilities operating in California, as specified, to have a valid license. (HSC 1503.5)

4)Requires DSS to conduct unannounced visits of each licensed community care facility, except for foster family homes, and requires that no facility or center be visited less frequently than once every five years. Further requires DSS to conduct annual unannounced visits of licensed facilities under specified circumstances, such as when a licensee is on probation. Additionally requires annual visits of a random sample of at least 20% of facilities and centers not subject to annual inspections for specified circumstances and states that, should the total citations for this 20% of facilities and centers exceed the previous year's by 10%, the random sample subject to annual inspection shall increase in the next year by 10%. Because of this trigger, 30% of eligible facilities and centers are now randomly sampled each year for inspection. (HSC 1534)

FISCAL EFFECT: According to the May 18, 2015, analysis by the Senate Appropriations Committee, this bill may result in the following costs:

1)One-time costs potentially in excess of $250,000 (General Fund) to develop two sets of regulations for the new licensure category, for the establishment of the new regulatory category as well as for the training plan requirements for these programs.

2)Potentially significant ongoing costs in excess of $500,000 (General Fund) to the DSS Community Care Licensing Division (CCLD) to license, monitor, and inspect additional facilities, to be offset by the authority to charge both application and regulatory fees. Ongoing costs would be dependent on the number of entities impacted statewide, which is unknown. To the extent the number of new licensees is significant would require additional field staff for monitoring and oversight.

3)Potential non-reimbursable local enforcement costs, offset to a degree by fine revenue to the extent licensing and regulatory violations are enforced and prosecuted.

COMMENTS:

Licensing and oversight of community care facilities: CCLD licenses and regulates a variety of community care facilities, defined as "any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children." There are a number of different types of community care facilities, including: adult day programs, foster family agencies, foster family homes, social rehabilitation facilities, transitional shelters, group homes, runaway and homeless youth shelters, and others. CCLD also licenses and regulates child care centers, residential care facilities for the elderly (RCFEs), and other facilities. Currently, approximately 65,000 care facilities are licensed in the state, with the capacity to serve 1.3 million Californians.

CCLD conducts random inspections of 30% of facilities annually, and each facility must be visited at least once every five years. Some exceptions triggering more frequent inspections exist, and federal funding requires approximately10% of facilities to be inspected annually. Approximately 500 licensing analysts are employed by CCLD to conduct inspections and complaint investigations.

Prior to 2004, annual inspections were required for most

facilities; the 2003-04 state budget reduced this to once every five years. The last two state budgets enhanced supports and made changes related to inspections. The 2014-15 budget included a 10% increase in annual licensing and application fees, and investments in quality enhancement, including increased staff, training, a quality assurance unit, and centralization of application and complaint processes. The 2015-16 budget adopted further supports and reforms, including enacting upcoming changes to the frequency of inspections: starting in January 2017, DSS will increase inspections to once every three years for all facilities, then to once every two years for all facilities except child care by 2018, then to annually for adult day care facilities and RCFEs by 2019.

Residential facilities for youth with emotional and behavioral challenges: In 2008, the United States General Accountability Office (GAO) released a report entitled, "Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth with Behavioral and Emotional Challenges." This reported described the proliferation since the 1990s of residential facilities serving youth with behavioral and emotional challenges. These facilities include boarding schools and academies, boot camps, and wilderness camps. Some such facilities have spawned reports of health and safety risks for the youth who attend them. According to the GAO report, "annual investigations by the Civil Rights Division within the Department of Justice, have detailed incidents of abuse and neglect, which in some cases have been severe enough to result in hospitalization or death."

These facilities may also carry out concerning (and in some

cases, illegal) practices such as "conversion therapy." For example, a sponsor of this bill, the Los Angeles LGBT Center, reports that, "Many LGBT young people have been sent to these institutions to change their sexual orientation or gender identity. These institutions exist across the state and provide services in a range of settings, from residential boarding school facilities to military style academies and boot camps."

Regarding the licensure and regulation of these types of facilities, the 2008 GAO report observed that:

> "States are primarily responsible for ensuring the well-being of youth in facilities and other settings, and states vary in how they license and monitor facilities in accordance with individual state standards of care. In addition, in return for receiving funds under various federal grant programs, state agencies agree to comply with federal program requirements, including those related to youth well-being. These programs generally fall under the purview of three federal agencies: The Department of Health and Human Services (HHS) provides funds to states for child welfare, mental health, and substance abuse; the Department of Justice (DOJ), for serving delinquent youth; and the Department of Education (Education), for educating youth. These agencies have authority to hold states accountable for state-operated or private facilities that serve youth under federally funded state programs. However, the federal government does not have oversight authority for other private facilities that serve only youth placed and funded by parents or other private entities."

Nonetheless, the federal government has taken note of these types of facilities and the potentially associated problems. The existence of a GAO report on the issue is a testament to this, as were bills introduced in Congress. While it ultimately didn't pass, the "Stop Child Abuse in Residential Programs for

Teens Act" was introduced in 2013 (H.R. 1981) and 2014 (S. 2054). This Act would have required certain standards and enforcement provisions for the prevention of child abuse and neglect in residential programs.

Need for this bill: Reports of abuse and neglect taking place in certain residential facilities for youth - including accounts of highly troubling practices of discrimination and so-called "conversion" related to sexual orientation and gender identity - raise the question of how such programs are able to continue unlicensed and unregulated. The current lack of licensure requirements also makes it difficult to even get a sense of how many and what types of these facilities exist across the state, and the impacts (positive or negative) on the youth who attend them.

The 2008 GAO report found that, "States could take action to improve the well-being of youth in residential facilities through their licensing processes, contract provisions, or accreditation requirements. Expanding licensing coverage would allow states to establish minimum standards for youth in all facilities, but may require state legislation to provide necessary authority, as well as increased funding for oversight

and enforcement."

According to the author:

> "Tragically, many young people have experienced horrendous abuse, neglect, and even death at unregulated boot camps, wilderness camps, and residential institutions. Survivors report being denied medical care, corporal punishment, solitary confinement, discrimination due to sexual orientation. Often parents and guardians have no idea that the facility they are sending their child to is not held to any standards and does not have any oversight.
>
> The current lack of oversight and regulations over these private institutions has opened up California's most vulnerable youth to abuse. While private institutions should retain the right to offer the unique programs they specialize in, all children regardless of where they are should have their essential health and safety needs met."

PRIOR LEGISLATION

SB 1089 (Liu), 2012, sought to license and regulate "private nontraditional alternative treatment facilities for youth." It died in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

AIDS Project Los Angeles (APLA)

American Civil Liberties Union of California

BIENESTAR Human Services Inc.

California Alliance of Child and Family Services

California LGBT Health & Human Services Network

City Council of the City of West Hollywood

City of Los Angeles

Equality California (EQCA)

Gender Health Center

Los Angeles LGBT Center, co-sponsor

Sacramento LGBT Community Center

SIA Organization

Stonewall Democratic Club

Transgender Law Center

WWASP Survivors

Opposition

None on file.

Analysis Prepared by:Daphne Hunt / HUM. S. / (916) 319-2089