
EVALUATOR MANUAL TRANSMITTAL SHEET

<p><u>Distribution:</u></p> <p>___ All Child Care Evaluator Manual Holders</p> <p><u>X</u> All Residential Care Evaluator Manual Holders</p> <p>___ All Evaluator Manual Holders</p>	<p><u>Transmittal No.</u> 07APX-01</p> <hr/> <p><u>Date Issued</u> January 2007</p>
---	---

Subject:

Appendix E

Memorandum of Understanding between the California Department of Developmental Services and the California Department of Social Services to implement Senate Bill 962, Home Pilot Program

Reason For Change:

The Memorandum of Understanding is effective beginning December 1, 2006 through January 1, 2010.

Filing Instructions:

Insert: Memorandum of Understanding

Approved:

Thomas Stahl

1/31/07

THOMAS STAHL, Chief
Policy Development Bureau
Community Care Licensing Division

Date

Contact Person: Seton Bunker

Phone Number: (916) 322-1192

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL SERVICES AND THE CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES TO IMPLEMENT SENATE BILL 962**

The purpose of this document is to set forth agreements between the California Department of Developmental Services (DDS) and the Department of Social Services (CDSS) regarding the implementation of the SB 962 Home Pilot Program as codified in Article 9 (commencing with Section 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code and Article 3.5 (commencing with Section 4684.50) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code (W&I Code). Provisions include protocols to address shared responsibilities, including monitoring responsibilities, complaint investigations, administrative actions, and closures. This agreement satisfies the requirement of Health and Safety Code 1567.50 (b) (9).

EFFECTIVE PERIOD AND REVIEW

This agreement is effective beginning December 1, 2006 and will remain in effect until January 1, 2010 as specified in Health and Safety Code 1567.50(c). This agreement may be revised or extended through amendments/changes authorized by signature of both parties.

I. BACKGROUND:

A. General Responsibilities of Each Department

CDSS, Community Care Licensing Division (CCLD), is responsible for licensing and monitoring community care facilities. CDSS is a regulatory enforcement agency, which implements and enforces regulations relating to the health and safety of children and adults in these facilities. These facilities are non-medical in nature, though specified medical care may be allowed and individuals served in community care settings may independently contract for medical services.

DDS is responsible for administration and oversight of the state developmental centers and community programs serving over 200,000 persons with developmental disabilities. DDS is further responsible for the allocation of funds to, and oversight of, 21 private nonprofit regional centers.

B. Pilot Project Responsibilities of Each Department

Both parties to this agreement understand that for purposes of the SB 962 Home Pilot Project, some of the roles and responsibilities of each Department have been modified from those currently in effect with respect to other community care facilities for persons with developmental disabilities. These modifications are to allow specialized facilities licensed by CDSS to serve consumers/clients with more significant health care needs. For purposes of implementation, the two Departments have the following specified roles and responsibilities:

1. The Community Care Licensing Division:
 - a. Is responsible to license and monitor a new facility category entitled Adult Residential Facility for Persons with Special Health Care Needs (SB 962 Homes) to provide 24-hour services for up to five adults with developmental disabilities who have special health care and intensive support needs as defined in subdivisions (f) and (g) of W&I Code section 4684.50;
 - b. Through currently established visit methodologies, is responsible for ensuring that SB 962 Homes meet the requirements of General Licensing Requirements (Chapter 1, Division 6 of Title 22 of the California Code of Regulations) and any additional standards established by statute for the pilot project as identified in this agreement, with the exception that SB 962 Homes will not be subject to Article 8 of Division 6 of Title 22 "Incidental Medical Services" or any regulations that involve evaluating health care related services;
 - c. Is not responsible for evaluating consumers/client's level of care or health care provided in any SB 962 Home. CCLD shall immediately report any suspected deficiencies in this area to the appropriate regional center and DDS for investigation;
 - d. Is responsible for taking any necessary administrative actions against the applicant, licensee or employee of any SB 962 Home.
2. The Department of Developmental Services:
 - a. Is responsible for granting the certificate of program approval for any SB 962 Home;
 - b. Through at least one visit to each SB 962 Home every six months, shall ensure that the appropriate Regional Center is monitoring and enforcing the program and health and safety requirements, including monitoring and evaluating the quality of care and intensive support services provided by the home;
 - c. May decertify any SB 962 Home that does not comply with program requirements. When DDS determines that urgent action is necessary to protect clients of the SB 962 Home from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, DDS may request that regional center or centers remove the clients from the Home, or direct the regional center or centers to obtain alternative services for consumers/clients within 24 hours. In these cases DDS shall inform the CCLD of the decertification;
 - d. Is responsible to provide the CCLD all available documentation and evidentiary support determined necessary by CCLD for any investigation, monitoring or enforcement proceedings;

- e. Is responsible to contract with an independent agency or organization to evaluate the pilot project and prepare a written report of its findings as required by Welfare and Institutions Code section 4684.74.

II. AREAS OF COORDINATION

A. Housing Acquisition

Both parties agree to the information sharing and timeframes contained in the Bay Area Housing Project (BAHP) Process Flow Diagram (see Appendix A). Both parties recognize that adjustments to the Flow Diagram may be necessary based upon application processing and housing purchasing experience.

CDSS agrees to assist DDS, the Master Developer (Hallmark) and Regional Centers to consider specific properties and conduct a preliminary check of local licensing data to ensure overconcentration issues are avoided at the time of inquiry. Once a completed application is received, CDSS will again review local licensing data and will place the application into a pending status for a specific property. CDSS will ensure that any overconcentration issue presented is identified and shared with DDS, the Master Developer and Regional Centers.

DDS agrees to ensure that CDSS is promptly notified whenever any property previously identified for purchase and licensure is no longer a viable property.

B. Certification and Licensure Decisions

Program certification is a condition of licensure, but a license application may be accepted prior to program certification.

DDS will coordinate with and advise CDSS when processing program certification requests.

CDSS will coordinate with and advise DDS in processing license applications.

Each party will promptly notify the other as certification and licensure decisions are made.

C. Decisions Regarding Consumers/Clients Placed into or Residing in SB 962 Homes

As stated in W&I Code section 4684.70(a), CDSS shall not have any responsibility for evaluating any consumer's/client's level of care or health care provided in any SB 962 Home.

The responsibility for evaluating whether a consumer/client has an appropriate level of health care need for placement in an SB 962 Home shall rest with DDS directly and/or indirectly through its oversight of participating Regional Centers.

Consumers/clients with stage 3 or 4 dermal ulcers may not be admitted or retained in an SB 962 Home

Consumers/clients with active TB may not be admitted or retained in an SB 962 Home.

D. Enforcement of Additional Protective Standards Included in the Pilot Project

1. Both parties to this agreement recognize that in order to allow consumers/clients with significant health care needs to be placed in community care facilities licensed by CDSS, additional protective standards were codified specific to SB 962 Homes. In many cases, these additional standards increase staffing ratios and qualifications already required of community care facilities subject to CDSS enforcement mechanisms. The following enforcement responsibilities have been worked out between the two Departments with respect to these new or enhanced requirements, to avoid duplication licensee and/or service provider confusion:
2. CDSS shall have responsibility to enforce the following with respect to SB 962 Homes:
 - a. All homes must have automatic fire sprinkler systems approved by the appropriate fire jurisdiction;
 - b. A licensed Registered Nurse (RN), Licensed Vocational Nurse (LVN) or Psychiatric Technician (PT) shall be awake and on duty 24 hours per day, seven days per week;
 - c. A licensed RN shall be awake and on duty at least eight hours per consumer/client per week;
 - d. At least two staff are on the premises, awake and on duty when providing care to four or more consumers/clients;
 - e. Each consumer/client shall be examined by his/her primary care physician at least once every 60 days;
 - f. The administrator shall meet the CCLD regulatory and statutory requirements and have at least one year of administrative and supervisory experience in residential programs for the developmentally disabled;
 - g. The administrator shall be either an RN, a Licensed Nursing Home Administrator, or a PT with at least five years of experience serving persons with developmental disabilities, or be an individual who has a bachelors degree in the health or human services field and who has two years experience working in a licensed residential program for persons with developmental disabilities or special needs;

- h. The administrator shall be present and on duty at least 20 hours per week;
- i. The administrator may be responsible for no more than two licensed facilities;
- j. While fulfilling the duties of any statutorily required hours of a given position, one shall not simultaneously be fulfilling the duties of any other statutorily required hours of another position for that facility or any other facility.

Example: Statute requires that a licensed registered nurse is awake and on duty at least eight hours per person, per week. Statute also requires that an administrator is on duty at least 20 hours per week. One employee may not claim that 16 hours of their Administrator time was simultaneously fulfilling the RN requirement.

- 3. In addition to existing oversight responsibilities for developmentally disabled consumers/clients living in community care facilities, DDS shall have responsibility to enforce the following with respect to SB 962 Home homes:
 - a. An individual health care plan team shall develop, monitor and revise the individual health care plan for each consumer/client;
 - b. Each SB 962 Home shall be equipped with a back-up emergency alternative power source, meeting the requirements of W&I Code section 4684.53(i), that is tested every 14 days under the full load condition for a minimum of 10 minutes;
 - c. Each consumer/client shall have an assigned Regional Center Service Coordinator;
 - d. A Regional Center Registered Nurse shall visit each facility at least monthly with at least four of these visits annually being unannounced.

E. Routine Monitoring Visits

The separation of responsibilities provides a system of checks and balances for consumers/clients and their family members. Each entity, operating as part of an overall protective services network, has an obligation to provide consistent direction to licensees/service providers and to prevent unnecessary disruption to the lives of consumers/clients. Joint visits will be conducted as often as practical to advance this objective.

- 1. Pre- licensing visits
 - a. CDSS agrees to notify the DDS Nurse Consultant at the time a pre-licensing visit is being scheduled to provide the nurse the opportunity to participate in the visit.

- b. DDS agrees that the Nurse Consultant will respond to this notification in a manner that will not delay the visit.
2. Subsequent visits
 - a. CDSS agrees that once the home is licensed, the Licensing Representative will notify the DDS Nurse Consultant or designee in advance of the annual unannounced visit schedule.
 - b. DDS agrees that the DDS Nurse Consultant or designee will protect the confidentiality of this visit schedule.
 - c. DDS agrees that the DDS Nurse Consultant or designee will provide at least 30 days notice to the Licensing Representative when planning a routine visit that is not done in conjunction with the annual licensing visit to afford the Licensing Representative the opportunity to participate.
3. Both parties agree to the following:
 - a. That at the beginning of any joint monitoring visit, the DDS Nurse Consultant or designee and the Licensing Representative will hold an entrance conference with the Licensee/Service Provider;
 - b. Prior to the exit interview and completion of the licensing report or other visit documentation or service provider directive, the DDS Nurse Consultant or designee and the Licensing Representative will confer on findings;
 - c. Findings and any plans of corrections from any routine monitoring visit, whether made jointly or individually, shall be shared with one another and sent to the appropriate Regional Center Contact;
 - d. When corrective actions are verified, each Department will notify the other as well as the appropriate Regional Center Contact.

F. Complaint Processing and Investigation

1. Both parties agree to the following with respect to complaints:
 - a. When assessing and responding to complaints, DDS and CDSS will jointly discuss and decide who will investigate, predicated upon the statutory/regulatory authorities applicable to each Department, including SB 962;
 - b. One complaint may have many allegations that directly involve one or both departments.

2. CDSS agrees to:
 - a. Take the lead on investigations of complaints alleging violations of licensing standards or required processes for which it has oversight;
 - b. Make phone contact with the DDS Nurse Consultant or other designee and the Regional Center when a complaint is received by CDSS. When a complaint is against an RC, DDS will decide when and what information to share with the RC.
3. DDS agrees to:
 - a. Take the lead on investigation of complaints against any SB 962 Home, alleging violations of standards and/or required processes for which it has oversight responsibilities. This includes allegations involving regional center activities;
 - b. Make phone contact with the Licensing Representative and the Regional Center Contact when a complaint is received by DDS.

G. Incident Report Sharing and Investigation

1. Section 1538.55(a) of the Health and Safety Code was added by SB 962 to specify reporting responsibilities for SB 962 Homes. The following incidents are to be reported by the licensee/service provider to DSS within the next working day and to the Regional Center and DDS within 24 hours, with a written report following within seven days:
 - a. Death of any client from any cause;
 - b. Use of an automated external defibrillator;
 - c. Client injury requiring medical treatment;
 - d. Any unusual incident that threatens physical or emotional health/safety of a client;
 - e. Suspected physical or psychological abuse of any client;
 - f. Epidemic outbreaks;
 - g. Poisonings;
 - h. Catastrophes;
 - i. Fires or explosions that occur in or on the premises.

2. Both parties agree to the following with respect to Incident Reports:
 - a. Incident reports will be discussed in a manner similar to that of complaints, including any reports required of any SB 962 Home by either Department which are in addition to those contained in section 1538.55(a) of the Health and Safety Code;
 - b. Upon receipt of any incident report, contact will be made with the other department and with the appropriate regional center to ensure they have also been notified and to schedule a discussion, if necessary;
 - c. CDSS will take the lead on follow up activities for any of those incidents listed above, unless mutually agreed otherwise;
 - d. Reported incidents which are not listed in Health and Safety Code Section 1538.55 (a) or listed in other statutes or applicable Title 22 regulations or other CDSS responsibilities, shall fall to DDS to determine the course of action.

H. Information Sharing/Cross Reporting

1. CDSS agrees to notify and/or share information with DDS and, as requested by DDS, to any involved Regional Center under the following circumstances:
 - a. Upon completion of any visit to an SB 962 Home that was not conducted jointly with DDS, including a copy of the licensing report;
 - b. Any CDSS concerns with medical care or appropriate level of care provided to any consumer/client as observed during any visit to an SB 962 Home;
 - c. Upon receipt of any complaint or incident report;
 - d. Upon scheduling of any conference or compliance meeting with any SB 962 Home licensee, including the reason for such a meeting;
 - e. Upon recommendation of any administrative action regarding any SB 962 Home, including revocation, temporary suspension, employee exclusion or any action to place restrictions on the license.
2. DDS agrees to notify and/or share information with CDSS under the following circumstances:
 - a. Upon certification of any applicant for an SB 962 Home license;
 - b. Prior to a decertification decision regarding any SB 962 Home;
 - c. Both parties will confer on decertification and license revocation plans and timelines;

- d. Upon receipt of any complaint or incident report;
 - e. In response to any medical or level of care assessment question or concern submitted by the DSS Licensing Program Manager;
 - f. Upon completion of any complaint investigation or incident report follow-up, including a copy of their reports.
3. Both parties jointly agree to provide reciprocal notifications, depending on which organization first learns of the following:
 - a. Any public records act request made regarding an SB 962 Home;
 - b. Any neighborhood complaints regarding an SB 962 Home;
 - c. Legislative or other government agency inquiries regarding any SB 962 Home or regarding the SB 962 pilot project.

I. Cooperation in Administrative Actions, Including Closure Activities

1. Both parties agree to participate and cooperate in each respective organization's administrative action processes. This includes provisions of any documents which can be legally shared, and provision of written and oral testimony to fact and process regarding any administrative actions served against any SB 962 applicant/licensee or staff person/employee, or any other person visiting or providing services to a client.
2. Both parties agree to recognize that the intent of the SB 962 pilot was to create permanent community homes for consumers/clients and to pursue necessary avenues to prevent the need for consumer/client relocations, should an administrative action be taken.

J. Pilot Measurement Activities

1. W& I Code section 4684.74 requires that DDS contract with an independent agency or organization to conduct an evaluation and to prepare a written report of findings.
2. CDSS agrees to cooperate with the contractor by providing requested information that may be legally provided.
3. DDS agrees to:
 - a. Include CDSS in discussions regarding the development of criteria for the measurement of the pilot;

- b. Ensure that the evaluation contractor regularly briefs CDSS on process and progress of the study and ensures that the CDSS perspective is considered;
- c. Give CDSS opportunity to review and comment on the draft evaluation document.

Signed this 28th day of December, 2006 at Sacramento, California.

***[ORIGINAL SIGNED BY
TERRI DELGADILLO]***

**Terri Delgadillo
Director
Department of Developmental Services**

***[ORIGINAL SIGNED BY
CLIFF ALLENBY]***

**Cliff Allenby
Interim Director
Department of Social Services**